



## Consumer Contracts Regulations 2013: does your website comply?

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If you are a trader (a business or an individual) selling goods, services or digital content to consumers online, you should be aware that new Regulations came into force on 13 June. It is important to ensure compliance: a failure to do so will give the consumer the right to claim against you for breach of contract or (in some cases) to walk away from the contract. You may also become liable for certain costs relating to the sale.

This article summarises the requirements of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the “Regulations”). The changes introduced by the Regulations will almost certainly require you to revisit your website terms and conditions and related sales processes.

### Who and what do the Regulations affect?

The Regulations apply if you sell goods, services or “digital content” online (or otherwise “at a distance” to consumers. “Digital content” is a new concept introduced by the Regulations, and is broadly defined as data which is produced and supplied in a digital form, not on a tangible medium (i.e. not on CD or DVD etc). It therefore covers downloads and streaming of online music, games, apps and the like.

### What are the key requirements?

#### **Pre-contract information:**

- the Regulations introduce an extended list of pre-contract information which you must give to the consumer. This includes information about you, the goods, price and any other applicable charges, the contract terms and the right of cancellation;
- such pre-contract information has to be given in a “clear and comprehensible” manner before the consumer commits to the contract;
- you must also confirm this information on a “durable medium” within a reasonable time after the contract is formed (and no later than delivery of the goods or start of performance of the services). A “durable medium” can include email, text message or via the consumer’s personal account, but via a website link is not acceptable.

#### **Charges:**

- you must set out the total price payable (including delivery) and if this cannot be calculated in advance, how this will be calculated. If you fail to give this information, the customer will not be liable for those costs;
- you must obtain the consumer’s express consent before taking any additional charges (e.g. for extended warranties, express delivery or other optional extras). This can be achieved via a blank tick box – pre-ticked boxes are now banned;
- you must make clear and unambiguous the point at which proceeding with a transaction will trigger payment (e.g. by providing a “PAY NOW” button). If you fail to do this, the customer will not be bound by the contract;
- if you offer a phone line for post-contract queries, the consumer must not be charged more than the basic rate to contact you – premium lines for post-contract purposes are now banned;
- separate regulations require that you must not impose excessive payment surcharges in certain circumstances (e.g. by credit card).

### Cancellation and returns:

- the “cooling off” period (i.e. the statutory right to cancel) has been extended from 7 to 14 calendar days. For goods, the clock starts to tick the day after the day of delivery; for services, the day after the day on which the consumer enters the contract;
- if you fail to provide the now extended list of pre-contract information (as above), the cooling off period can be extended to a whole year (unless you rectify the position);
- where a right to cancel exists, you must now provide the consumer with a model cancellation form (e.g. via a link) although there is no obligation on the consumer to use that form if he wishes to cancel. The Regulations set out a prescribed cancellation form;
- goods must be delivered without undue delay, and within at least 30 days unless agreed otherwise with the consumer. The consumer has 14 calendar days to return unwanted goods (starting from the date of cancellation);
- if you want the consumer to pay for the cost of returning goods, you must say so in the pre-contract information given. If you don't, you will bear that cost;
- there are exceptions to the right of cancellation, including for customised goods and, in certain circumstances, sealed goods once unsealed;
- you must process a refund within 14 days of cancellation of the contract (for services) or receipt of the goods (or, the customer's evidence of returning them). For goods, you can withhold the refund until receipt of the returned goods or that evidence;
- you must refund the total price paid (including the outbound delivery charge to the extent that this is a standard charge).

### Digital content:

- the Regulations introduce a new concept of “digital content” and new rules for the cancellation of contracts for the supply of downloaded or streamed digital content;
- the pre-contract information required for digital content includes information about the functionality of the digital content, details of compatibility with hardware and software, and information on any technical protection or restriction (e.g. via rights management or coding);
- you cannot make digital content available before the expiry of the cooling off period, unless the consumer has given express consent (before the download starts) to his loss of the right to cancel. If this is given, the consumer will lose his right to cancel as soon as the download or streaming starts;
- you must still provide the customer, within a reasonable time after conclusion of the contract, with a copy of the contract on a durable medium (see above).

### What shall I do now?

If you trade online or sell goods or services over the telephone or via mail order catalogues, you should review your website, processes, policies and terms and conditions to ensure immediate compliance. It's not hard to comply. It's harder to deal with the fall out of non-compliance.

If you would like assistance, please contact Aisha Dickson

## Aisha Dickson

This article is not intended to be a full summary of the law and advice should be sought on all issues.

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