

GUIDANCE FOR BUSINESS

CHANGES TO THE CONSUMER PROTECTION (DISTANCE SELLING) REGULATIONS 2000

INTRODUCTION

1. DTI is changing parts of the Consumer Protection (Distance Selling) Regulations 2000, to make the rules more workable. The Distance Selling Regulations cover sales by traders to consumers where there is no face-to-face contact – for example sales over the internet, over the phone or by mail order.
2. This guidance describes changes that will come into force in 6 April 2005.
3. The Distance Selling Regulations require suppliers to give consumers clear information about the transaction; and in most cases they give consumers the right to a cooling off period.
4. This guidance has no legal force and should not be relied on as a complete statement of the law. To understand your rights and obligations fully, study the relevant law or consult a solicitor.

Exclusions from all or part of the Regulations

5. The Distance Selling Regulations do not apply to financial services, sales of land, products bought from vending machines and contracts for goods or services concluded at auctions.
6. Most of the Regulations, including the information requirements and the cancellation rights, do not apply to:
 - sales of food, drinks or other goods for everyday consumption delivered to the consumer's home or workplace by regular roundsmen – but they do cover groceries etc bought over the internet from shops such as supermarkets;
 - accommodation, transport, catering or leisure services where the supplier agrees to provide the service on a specific date or within a specific period;
 - package travel and timeshare (which are covered by separate legislation).

THE CHANGES

7. This section describes the parts of the Regulations that are to be amended. New legal requirements are highlighted.

Information about the goods or services

Regulation 7: pre-contractual information

8. The Regulations require suppliers to give consumers the following information before the contract is made - that is, before the consumer agrees to buy:
- i. supplier's identity - and address if payment is in advance;
 - ii. description of the main characteristics of the goods or services;
 - iii. price including any taxes;
 - iv. details of any delivery costs;
 - v. arrangements for payment, delivery or performance;
 - vi. information about the consumer's right to cancel;
 - vii. the cost of communication (eg phone) if different from the standard rate;
 - viii. the period for which the offer or price is valid; and the minimum duration of the contract if it is to run over a period of time.
9. This information can be given by any method appropriate to the form of communication you are using to conclude the contract, providing it is clear and comprehensible.
10. There has been some uncertainty about how (vi) works in relation to contracts which are excluded from the right to cancel, or where that right may be of short duration. New guidance is at paragraph 18.

Regulation 8: written confirmation of the pre-contractual information

11. If you provide the information in paragraph 9 in a form that does not allow it to be stored or reproduced by the consumer (eg you give it over the phone), Regulation 8 requires you to confirm items (i)-(vi) in writing or in another durable medium such as e-mail.

12. You must also give your customers written/durable information on:

- how to exercise the right to cancel, including how to return any goods;
- the geographical address of the business to which the consumer may address complaints;
- details of any guarantees or after-sales services;
- the conditions for exercising any contractual right to cancel, if the contract lasts more than a year or is open-ended.

Timing for provision of written or otherwise durable information

13. The information must be provided:

- before the contract is concluded; or
- in good time and in any event
 - during the performance of the contract in the case of services
 - for goods: at the latest when they are delivered.

14. The point at which you provide the information will affect the duration of the cooling-off period (see paragraph 16).

Q&A

Q What does “in good time” mean?

15. You must provide the information in time for it to be useful to the consumer, given that it will cover the right to cancel and how to exercise it. If you plan to provide the information before performance starts (in cases where the right to cancel would end once performance had begun), you must not delay providing it until just before the performance of the service starts in order to limit the consumer’s ability to use the information. If you provide the information only after performance has started with the consumer’s consent you must not delay providing it until performance is nearly completed in order to limit the consumer’s ability to use the information.

Cooling-off periods

Goods

16. The right to cancel:

- starts the day the contract is concluded
- ends seven working days after the day following delivery, provided the supplier provides the written/durable information no later than the time of delivery

Services

17. The right to cancel:

- starts the day the contract is agreed;
- ends:
 - seven working days after the day after the contract is agreed, if the supplier provides the written/durable information on or before the day the contract is concluded;
 - when performance starts, if by that time the supplier has provided the written/durable information and the consumer has agreed to the service starting before the cancellation period would otherwise expire;
 - seven working days after the day after the consumer receives the written/durable information, if the consumer has agreed to the service starting before the cancellation period would otherwise expire and the supplier provides the durable information in good time during performance of the service;
 - when performance is completed, if the consumer has agreed to the service starting before the cancellation period would otherwise expire and the supplier provides the written/durable information in good time during performance of the service and performance is completed within seven clear working days of the consumer having received the written/durable information;
 - three months and seven working days from the day after the day the contract was agreed, if none of the above applies.

Regulation 7(1)(a)(vi): information about cancellation rights

18. Paragraph 9(vi) above reflects Regulation 7(1)(a)(vi) which requires suppliers to provide information about the right of cancellation except in the cases that are covered by exceptions to the right to cancel in Regulation 13.

19. Suppliers must explain the following:

Sales of goods

- the right to cancel lasts until seven clear working days after delivery (provided the supplier provides the written/durable information no later than the time of delivery);

Services

The point at which the right to cancel ends depends on when the supplier provides the written/durable information:

- if the information is provided before the contract is agreed, the supplier should explain that the right to cancel will end seven clear working days after the contract is agreed;
- if the information is to be provided before performance starts and the consumer agrees to performance starting within seven days, the supplier should explain that the right to cancel will end when performance starts;
- if the information is to be provided in good time during performance of the service, and the consumer agrees to performance starting within seven days of the contract being agreed, the supplier should explain that the right to cancel will end seven clear working days after the consumer receives the written/durable information;
- if in the above case performance will be completed part way through the seven day period, the supplier should explain that the right to cancel will end when performance is completed.

Q&A

Q Which goods and services are excluded from the right to cancel?

20. The following:

- sales of food, drinks or other goods for everyday consumption delivered to the consumer's home or workplace by regular roundsmen. Note however that deliveries by supermarkets of orders made over the internet are not excluded from the right to cancel;
- accommodation, transport, catering or leisure services where the supplier agrees to provide the service on a specific date or within a specific period;
- goods or services whose price depends on fluctuations in the financial market which cannot be controlled by the supplier;
- goods made to the customer's specifications or clearly personalised or which by reason of their nature cannot be returned or are liable to deteriorate or expire rapidly;
- audio or video recordings or computer software if they are unsealed by the consumer;
- newspapers, periodicals or magazines;
- gaming, betting or lottery services.

Q In the above situations, where goods or services are completely excluded from the statutory right to cancel, must I inform the consumer that they have no such right?

22. This is not a legal requirement, but it may be a good idea - particularly if you think the consumer may assume he or she has a right to cancel. However, whenever there is a right to cancel, even if it is of short duration because the consumer agrees to performance starting early, you must inform the consumer.

Q What if I decide to tell customers they won't be able to cancel?

23. You must not mislead people about rights they will still have under other legislation such as that on the supply of goods and services, under which (for example) consumers have the right to reject faulty goods.

END