Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Scope
The Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013 (Regulations) cover on-premises, off-premises and distance trader to consumer contracts subject to certain exceptions. This includes auctions (although there are no cancellation rights in relation to public auctions) and contracts for social services and healthcare (which are not covered by the Consumer Rights Directive (CRD)). They implement the bulk of the CRD and will supersede the Consumer Protection (Distance Selling) Regulations 2000 and the Cancellation of Contracts made in a Consumer’s Home or Place of Work etc. Regulations 2008. The superseded legislation will still be relevant in respect of any contracts concluded prior to the Regulations coming into force.

Implementation
The Regulations were laid before Parliament on 13 December 2013 and will come into effect on 13 June 2014.

Contracts outside the scope of the Regulations
The Regulations will not apply to the following contracts relating to:

- gambling within the meaning of the Gambling Act 2005;
- services of a banking, credit, insurance, personal pension, investment or payment nature (unless offered as ancillary services to contracts which are covered);
- creation of or rights in immovable property;
- rental of accommodation for residential purposes;
- construction of new or substantially new (through conversion) buildings;
- supply of food and beverages supplied by a trader on regular rounds (e.g. milkmen);
- package travel and holidays;
- timeshares;
- automatic vending machines or automated commercial premises;
- a single connection by telephone, internet or fax established by a consumer;
- single public payphone connections;
- sale of goods by way of execution or other authority of law.

Some definitions
“consumer” means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession;

“trader” means a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf”;

“business premises” in relation to a trader means:

a) any immovable retail premises where the activity of the trader is carried out on a permanent basis, or

b) any movable retail premises where the activity of the trader is carried out on a usual basis;

“delivery” means voluntary transfer of possession from one person to another;

“distance contract” means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;

“durable medium” means 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;

“off-premises contract” means a contract between a trader and a consumer which is any of these —

a) a contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;

b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;

c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer;

d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;

“on-premises contract” means a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract;

“sales contract” means a contract under which a trader transfers or agrees to transfer the ownership of goods to a consumer and the consumer pays or agrees to pay the price, including any contract that has both goods and services as its object.

Information requirements

All contracts within the scope of the Regulations are subject to pre-contractual information requirements with the exception of:

- off-premises contracts where the payment from the consumer is less than £42 (27(3));
- on-premises contracts involving a day-to-day transaction performed immediately at the time when the contract is entered into (9(2));
- contracts for the supply of prescription medicinal products or certain other healthcare products (7(2)); and
- an exemption for contracts for passenger transport services except where concluded by electronic means.

Note that pre-contractual information requirements under other legislation including the Consumer Protection from Unfair Trading Regulations 2008 and the Electronic Commerce (EC Directive) Regulations 2000, may still apply even if contracts are exempt under the Regulations.

Any pre-contractual information which must be provided under the Regulations is incorporated into the contract.

Information is only made available to a consumer if the consumer can reasonably be expected to know how to access it (8).

On-premises contracts

Before a consumer is bound by an on-premises contract, the trader must give the consumer the information set out in in Schedule 1* of the Regulations in a clear and comprehensible manner if that information is not already apparent from the context (9(1)). This does not apply to day to day transactions performed immediately (9(2)).

Off-premises contracts

Before a consumer is bound by an off-premises contract, the trader must give the information in Schedule 2* of the Regulations to the consumer and, where a cancellation right exists, give the consumer a cancellation form as set out in Schedule 3 (10(1)).

The information must be given on paper or (with the consumer’s agreement) on another durable medium (10(2)). The trader is given the option of using model cancellation instructions as set out in Schedule 3 but is not obliged to do so. If they are used, the trader will be treated as having complied with some of the key information requirements.

A copy of the signed contract or confirmation of the contract must be provided on paper (or another durable medium with the consumer’s agreement) within a reasonable time after conclusion of the contract but in any event, no later than:

- the time of delivery of any goods.
- before the performance of any services.

If the contract is for the supply of digital content not on a tangible medium and the consumer has consented to receiving the content and acknowledged that the cancellation right will be lost on supply, the copy or confirmation of the contract must include confirmation of the consent and acknowledgment.

Where the contract relates to a contract for immediate (as requested by the consumer) repair or maintenance services with a value under £170, s10(1) will not apply provided certain conditions are met (11).

Distance contracts
Before a consumer is bound by a distance contract, the trader must provide the information listed in Schedule 2 in a clear and comprehensible manner and in a way appropriate to the means of distance communication used. If a right to cancel exists, a cancellation form must be provided as set out in Schedule 3 (13).

Confirmation of the contract must be given on a durable medium and include all the Schedule 2 information unless already provided on a durable medium. The time of provision is within a reasonable time after conclusion of the contract but in any event, no later than:

- the time of delivery of any goods;
- before the performance of any services.

The trader is given the option of using model cancellation instructions as set out in Schedule 3 but is not obliged to do so. If they are used, the trader will be treated as having complied with some of the key information requirements.

Distance contracts concluded by telephone
Where a trader makes a telephone call to conclude a distance contract, certain information must be disclosed at the start of the call including identification of the caller and the commercial purpose of the call (15).

Distance contracts concluded by electronic means
Where a distance contract is concluded by electronic means, the following Schedule 2 information must be provided “in a clear and prominent manner” directly before the order is placed (14(2)):

- main characteristics of goods and services;
- total price or manner of calculation of price;
- delivery charges;
- for contracts with billing periods, the total cost per period;
- duration of the contract or, if indeterminate, conditions of termination; and
- minimum duration of consumer’s obligations where applicable.

The trader must ensure that when placing the order, the consumer explicitly acknowledges any obligation to pay (14(3)). Where the placing of the order involves clicking on a button or similar, the button must be labelled “in an easily legible manner only with the words ‘order with an obligation to pay’ or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader” (14(4)). Failure to comply with these obligations will mean the customer is not bound (14(5)). The Regulations are unclear as to the precise meaning of this and whether the contract has been formed but is unenforceable or whether no contract has been formed at all and this may require clarification.

Any trading website must indicate clearly and at the latest at the beginning of the ordering process, whether any delivery restrictions apply and what means of payment is accepted (14(6)).

Failure to comply with information requirements
It is a fineable offence in relation to off-premises contracts not to provide a consumer with information about the right to cancel and about the cost of returning any goods or paying for any services provided during the cancellation period (19(1) and Schedule 2 paras l-n). In addition, failure to provide this information leads to the loss of right to certain payments.

Public authorities can enforce the information rules on receipt of a complaint.
Cancellation Rights

When do these apply?
These apply only to off-premises and distance contracts covered by the Regulations, subject to the following exceptions in relation to contracts for:

- the supply of prescription medication or other health products or to passenger transport services;
- passenger transport services;
- off-premises contracts where payment by the consumer is less than £42;
- goods or services (excluding some utilities) whose prices fluctuate due to market fluctuations beyond the trader’s control;
- personalised goods;
- goods liable to expire or deteriorate rapidly;
- supply of alcoholic beverages where price is agreed but delivery cannot take place for 30 days during which time prices have changed due to market fluctuations beyond the trader’s control;
- the supply of urgent repair or maintenance services specifically requested by the consumer;
- the supply of a newspaper, periodical or magazine (other than by subscription);
- items sold at public auction;
- the provision of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities where the contract includes a specific date for performance;
- sealed goods whose seal has been broken which cannot be returned for health and safety reasons;
- sealed audio, video or computer software if unsealed after delivery; and
- goods which become inseparably mixed with other goods after delivery.

Cancellation rights do not affect the consumer’s right to withdraw from a distance or off-premises contract at any time before the contract is concluded without incurring costs or giving a reason for withdrawal.

Cancellation periods

<table>
<thead>
<tr>
<th>Contract type</th>
<th>Cancellation period ends</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
<td>End of 14 days after the day the contract was entered into.</td>
</tr>
<tr>
<td>Supply of digital content not on a tangible medium</td>
<td>End of 14 days after the day the contract was entered into.</td>
</tr>
<tr>
<td>Sales contracts (goods or goods and services)</td>
<td>End of 14 days after the day the goods come into the physical possession of the consumer (or a person nominated by the consumer other than the carrier).</td>
</tr>
<tr>
<td>Sale of multiple goods with different delivery dates</td>
<td>End of 14 days after the day the last of the goods come into the physical possession of the consumer (or a person nominated by the consumer other than the carrier).</td>
</tr>
<tr>
<td>Regular delivery of goods</td>
<td>End of 14 days after the day the first of the goods come into the physical possession of the consumer (or a person nominated by the consumer other than the carrier).</td>
</tr>
</tbody>
</table>

The cancellation period extends by an additional 12 months if the trader fails to provide the consumer with valid notice of the right to cancel (31(1)). If valid notice is provided during the extended period, the cancellation period will last for 14 days after the consumer receives the information (31(2)).
What happens if a consumer exercises cancellation rights?

The obligations of the parties to perform the contract will end (33(1)) and any ancillary contract will be automatically terminated (38).

The trader must:
- reimburse all payments (except for delivery charges in excess of standard delivery costs) for sales contracts or where the trader has agreed to collect the goods, without undue delay and no later than 14 days after the day on which the trader receives the returned goods or (if earlier) evidence that the consumer has returned the goods. For other contracts or where the consumer has to return the goods, reimbursement must take place within 14 days after cancellation or the trader being informed of the cancellation; (this will be treated as a term of the contract where it applies) (34);
- collect goods if he has offered to do so or, if in an off-premises contract, the goods were delivered to the consumer’s home on conclusion of the contract and cannot be returned by post (35(1));
- inform any other trader with whom the consumer has an ancillary contract which is automatically cancelled, of the cancellation (38).

The consumer must:
- bear delivery costs in excess of standard delivery charges (34);
- return the goods without undue delay and in any event no later than 14 days from the date of notification of cancellation (subject to the qualifications in Regulation 35(1));
- bear the cost of returning the goods unless the trader has agreed to do so or failed to notify the consumer prior to conclusion of the contract that the consumer would be liable for such costs (as required under Schedule 2) or unless the goods were sold and delivered under an off-premises contract and are too bulky to return by post;
- pay for non-standard delivery costs, diminished value of goods due to consumer handling; return of goods; and services provided at the consumer’s request during the cancellation period in relation to any ancillary contracts terminated as a result of exercising cancellation rights (38);
- pay for any reduction in the value of the goods due to handling or use by the consumer - the consumer will be liable for a deduction from any refund due up to the value of the contract or will have to pay the trader if the trader has not yet received payment. It is unclear exactly how any deduction will be determined although the Regulations do state that the type of handling which would trigger a deduction would be anything beyond what is necessary to establish the nature, characteristics and functioning of the goods, particularly if it goes beyond what might reasonably be allowed in a shop. The trader will lose this right if the consumer is not informed of its cancellation rights prior to conclusion of the contract (34(9-11));
- pay for any services specifically requested and performed before the end of the cancellation period unless not informed of this liability before conclusion of the contract. The trader must not begin the supply of services before the end of the cancellation period unless the consumer has made an express request for the trader to do so (this must be made on a durable medium in off-premises contracts). The consumer’s cancellation right is lost if the services have been performed in full at the consumer’s request and with the acknowledgment that the cancellation right would be lost. Interestingly, the Regulations do give guidance on the amount to be paid for partially performed services and say they should be calculated with reference to the contract price unless the total price is “excessive on the basis of the market value of the service provided” (36).

Special provisions for digital content

The trader cannot begin the supply of digital content on a non-tangible medium before the end of the cancellation period unless the consumer gives express consent to receiving it together with acknowledgment that he will lose the right to cancel. In addition, the trader must provide the necessary confirmation of the contract within a reasonable time (37). If the conditions of supply are not complied with, the trader loses the right to be paid for the content.
Model cancellation instructions and forms
Model cancellation instructions are set out in Part A of Schedule 3. These may be used by the trader to notify the consumer of the right to cancel. While the trader is not obliged to use them, if he does, he will be treated as complying with the obligation to inform the consumer of the cancellation rights.

Part B of Schedule 3 sets out a model cancellation form which must be supplied to the consumer in an off-premises contract and made available to the consumer in a distance contract. The consumer is not required to use this in order to cancel the contract. If the consumer does use a model cancellation form or “other statement” on the trader’s website, the trader must acknowledge receipt in a durable medium without delay (32(4)).

Protection from inertia selling and additional charges
Regulation 39 amends the Consumer Protection from Unfair Trading Regulations (2008) to include an additional provision to the effect that where a trader engages in inertia selling, the consumer has no obligation to pay for the products. Any failure by the consumer to respond to the trader will not constitute consent to pay for the products nor to return or keep them safe. In the case of an unsolicited supply of goods, the consumer may treat them as if they were an unconditional gift.

Under Regulation 40, the consumer must give express consent to any additional payments prior to the conclusion of the contract. This is designed to prevent traders using devices such as pre-ticked boxes to add extras to a purchase.

This provision does not apply to contracts for financial services where the provision of financial services is the main obligation.

Charges for communication by telephone
Where a trader provides a contact number to a consumer in connection with a contract, calls must not be charged over the basic rate. If more than the basic rate is charged, the trader will be liable to compensate the consumer for charges above the basic rate (41).

Delivery and risk
In relation to all sales contracts (as defined in the Regulations), unless agreed otherwise, the contract will be treated as including terms providing that goods must be delivered without undue delay and in any event, no more than 30 days after the contract is entered into. If delivery does not occur as agreed or as provided under default terms, the consumer may treat the contract as at an end where:

- the trader has refused to deliver the goods;
- delivery of the goods at the agreed time or within the agreed period is essential taking into account all circumstances of the case; or
- the consumer told the trader before entering into the contract that delivery in accordance with the default terms or at the agreed time or within the agreed period was essential.

In other situations, where delivery has not taken place as agreed or as provided by the default terms, the consumer may specify a further delivery period. If delivery still does not occur within the second period, the consumer may treat the contract as at an end.

Where the consumer treats the contract as at an end due to breach of delivery terms, the trader must reimburse all payments under the contract without undue delay. If the consumer does not treat the contract as at an end, the consumer may still cancel the order or reject delivered goods at which point, the trader must reimburse payments without undue delay (42).

Sales contracts are to be treated as including certain provisions regarding passing of risk as contract terms. Goods remain at the trader’s risk until they are transferred to the consumer or a person nominated by the consumer. Where the goods are delivered to a carrier designated by the consumer and not named as an option by the trader, risk passes on delivery to the carrier (43).