



## Beginners Guide to Distance Selling Regulations

**Distance selling is ; on-line shopping, telephone shopping or mail-order.** In other words anything that is not face-to-face meeting. The Distance Selling Regulations give consumer rights to anyone who purchases in this way.

Anyone who sells goods or services at a distance is caught by these regulations.

### What are the consumer's rights when distance shopping?

Firstly, the usual consumer rights apply to distance selling. Goods must be of satisfactory quality and fit for purpose; adverts and descriptions must not be misleading.

However, 'Caveat Emptor', or 'buyer beware' still applies to auctions and transactions with private sellers (eg on e-bay) and on business-to-business transactions..

What the Distance Selling Regulations do is to provide additional protection to the consumer e.g. your card company must refund you if your credit, debit, or store card is used fraudulently and, in many cases in the EU, the law allows you time to change your mind, within seven working days of the delivery, and get a refund. But...they don't apply to transactions between businesses, only to transactions with individual consumers.

The regulations can be summarised in 5 bullet points:

- Give information to the consumer before they buy from you (pre-contract information)
- Give durable confirmation of the pre-contract information once they buy
- Give additional information once they buy (eg cancellation and refund rights)
- Refund any returns within 30 days
- Perform the contract within 30 days

### Make sure you give clear information!



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One of the provisions of the Distance Selling Regulations is that consumers must be given clear information about the goods



or services offered. The information you must provide is extensive. It includes:

### Pre-contract information:

- Supplier's name and address;
- Vat number, if applicable
- Details of any trade associations, professional bodies or authorisation schemes that the supplier is part of
- A description of the main characteristics of the goods or services;
- The price - including all taxes;
- Delivery costs, where applicable;
- Arrangements for payment, delivery and performance;
- The right to cancel within a certain time period;
- The length of time the offer or price remains valid.
- If the contract is to be performed continuously or recurrently, the details of this
- Details of whether the consumer or the supplier is responsible for the cost of returning the goods.



Jonathan Vowles  
CHARTERED ACCOUNTANTS

is an independent firm of accountants, tax advisors and business advisors

114 High Street  
Cranfield  
MK43 0DG  
Tel 01234 752566  
Tel 01908 616104  
info@vowles.co.uk  
www.vowles.co.uk

### **Post-contract information is all of the above, plus:**

- When and how to cancel
- Whether the goods are to be returned and who is to pay for carriage
- Details of any guarantees or after-sales services
- Suppliers full geographic address

Most of this information needs to be given before any contract is made...and is referred to as pre-contract information. A convenient way to deal with this is to have a page on your website that is prominent and easy to read. Ideally all customers would have to view this page as part of the ordering process and confirm that they have read the terms and conditions. An important part of the regulations is that the distance selling contract is not enforceable unless this pre-contract information is given!

Also, after the sale is agreed, this information must be confirmed in writing to the consumer – so make sure you have a system in place to do this.

### **You must send an order confirmation**

Once a consumer places an order at a distance, you must provide them with confirmation by post, fax or email of the prior or pre-contract information you gave them and the additional or post-contract information.

### **Can the consumer change their mind if they do not want the goods or services?**

The Regulations provide a 7-day cooling off period and a right to cancel during that period... In most cases! The Regulations allow the supplier to state the conditions and procedures for cancellation, and require details of these to be supplied to the consumer.

Any cancellation must be made in ‘durable medium’ – which means letter, email or fax. However you can amend your terms and conditions to allow cancellation by phone if you want to.

The right to cancel allows the consumer time to examine the goods or services, as they would have when buying in a shop. The cooling off period starts when the contract is concluded and ends 7 working days after the day the goods are received (for services, 7 working days after the order is made). However, if a service starts immediately, before the end of the cooling off period, the consumer must be informed (in a durable medium) that they will not be able to cancel once it starts.

The cooling off period and right to cancel do not apply to contracts for:

- goods made to the customer's specification
- perishable goods (flowers, fresh food)
- CDs, DVDs, and tapes with software, audio or video if unsealed
- newspapers and magazines
- betting, gaming and lotteries

### **Refunds**

The regulations state that the full price paid for the goods, including the cost of delivery, must be refunded. What is more this must be refunded within 30 days even if the goods have not yet been returned.

### **Who pays to return the goods?**

If the contract has been cancelled before the goods are delivered then this is not in point. If the goods have been received then, when consumers exercise their right to cancel they are under a duty to take reasonable care of the goods and to “restore” them to the supplier. The term “restore” does not permit the supplier to demand that the consumer send back or deliver the goods, but only that the goods are made available to the supplier for collection.

If the supplier fails to make a durable request for the goods to be returned within 21 days of cancellation then the consumers obligation to take reasonable care of the goods ceases.

However, there is no obligation to offer free returns - the Regulations permit the supplier to include in the contract a term requiring the consumer to return the goods to the supplier at their own cost.

The supplier may charge for the direct costs of recovering the goods if, on request, the consumer does not return them; this must not be more than the direct costs of recovery, such as postage or, for larger items, the cost of a van collection.

The business is not entitled to charge for recovery of the goods if the consumer also has a statutory right to cancel the contract under other legislation, (for example because they are defective, faulty or do not comply with the contract for some other reason) or if the term requiring the consumer to return the goods is an ‘unfair term’ within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 and The Unfair Terms in Consumer Contracts (Amendment) Regulations 2001.

### **What if the goods are faulty?**

The Consumer Protection (Distance Selling) Regulations 2000 give consumers an unconditional cancellation right, in addition to their rights under the Sale of Goods Legislation. This means that where a consumer



is an independent firm of accountants, tax advisors and business advisors

114 High Street  
Cranfield  
MK43 0DG

Tel 01234 752566  
Tel 01908 616104  
info@vowles.co.uk  
www.vowles.co.uk

claims goods are faulty after having had a reasonable time to examine them (which could be after the expiry of the cooling off period above) the consumer's rights under the Sale of Goods Act apply.

The Sale of Goods Act makes it clear that if the goods do not conform to contract and the consumer exercises his or her right to reject them, they can ask for their money back, providing they do so quickly. Alternatively, they can request repair and replacement or claim compensation.

### **Who is liable for non-delivery?**

According to the Sale and Supply of Goods to Consumer Regulations 2002 the goods remain at the seller's risk until they are delivered to the consumer. The supplier is therefore liable should the goods not arrive and should consider insuring against this risk...but also ensure that proofs of delivery are obtained and retained!

### **What about part-exchange deals?**

Just as with any other sale contract, you can do part exchange sales at a distance. If the customer then cancels, this also cancels the part exchange side of the contract and you have to return the px goods within 10 days of cancellation in as good a condition as when they were received. If the goods cannot be returned then the seller must pay the consumer a cash amount equal to the part exchange value in the original contract.

### **What about customer gifts?**

Some sellers provide gifts to customers as part of a deal. When a contract is cancelled these gifts do not have to be returned unless the seller's contract terms require them to purchase goods in order to gain the free gift.

### **Anything else that might be important?**

There might be quite a lot of other things that are important when you are distance selling. For example: There are VAT distance selling regulations and if you are selling goods outside the UK you need to be aware of them.

If you collect information that will be used later for marketing purposes make sure that that you obtain permission to do so ... by getting the consumer to tick a box on your website or order form, for example.

There are different regulations that apply to financial services sold at distance. If you need to know more, check out the Financial Services (Distance Selling) Regulations.

### **What is the Relevant Legislation?**

- Distance Selling Regulations (DSR) 2000.
- Consumer Protection (Distance Selling) Directive 97/7/EC.
- Electronic Commerce Directive 2000.

- Sale and Supply of Goods to Consumer Regulations 2002
- Electronic Commerce regulations 2002
- Consumer Protection (Distance Selling) (Amendment) Regulations 2005
- And there are other consumer legislation that may apply according to circumstances, particularly the Trade Descriptions Act and the Sale of Goods Act 1979.

The UK Consumer Protection (Distance Selling) Regulations came into force on 31 October 2000 and implemented the EU's Distance Selling Directive...and anyone not complying has absolutely no excuse for not knowing or not complying with the regulations. But also, these are the UK versions of EU directives – so they apply across Europe...but if you are selling into the rest of Europe you need to check the rules in each country you sell to as the specifics of the regulations may well be slightly different.

### **CAVEAT**

This Beginners Guide is no substitute for proper specific professional advice and no liability can be accepted for any acts or omissions taken as a result of reading it. Tax law is complex, changes frequently and much will depend upon your individual, precise and detailed circumstances.

### **NEXT STEPS**

Check what your terms and conditions are and decide if they need to change to reflect the regulations. You might need to consult an advisor for help...in which case ask us!

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