



DISTANCE SELLING

EXPLAINED



Guidance for those selling via websites, telephone or mail order.

Distance  
Selling

hub



# HOW DOES THIS GUIDE HELP ME



*Distance selling explained* is a guide for retailers and their staff on regulations that affect buying and selling goods and services via the internet, by phone or by mail order (the Distance Selling Regulations – DSRs) and electronic means such as the internet, email, interactive TV or phone texting (the E-Commerce Regulations – ECRs).

It explains what information you need to provide to your customers under these regulations, and helps you to understand your customers' rights and deal with customer complaints, refunds and returns.

DSRs and ECRs are the main regulations referenced here and cover a wide range of retailers; however, there are **exemptions** to these and there are also other regulations to keep in mind when selling at a distance. We have provided as much information as possible so that you can decide whether these regulations apply to you and, if so, what your customers' rights are and how to deal with them.

The *Glossary* section of the *Distance selling hub* provides definitions for all **highlighted** words throughout the hub. You will also find additional information and links to the regulations and legislation mentioned throughout the hub and a list of useful organisations to go to for further help and advice.

To ensure this information is easy to read and use, some matters are simplified. For more detailed advice see the *Legislation that applies to distance selling* section.

This guide is intended for **retail businesses** that sell goods and services to **consumers from a distance**; it is not intended for businesses selling goods to other businesses.

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# When the regulations apply

## When the regulations apply to your business

The Distance Selling Regulations (DSRs) apply to your business if you sell goods or services to customers without face-to-face contact, using an organised distance sale or service provision scheme.

Businesses that sell electronically (such as over the internet or via mobile phone texts) also need to know about

➔ E-Commerce Regulations (ECRs) – these apply to provision of **information society services** by means of electronic equipment, for example, the internet, email, interactive TV or phone texting.

Not all **distance contracts** are information society services, for example, mail order from hard copy catalogues where orders are placed by telephone fall within the DSRs but not the ECRs.

If I sell via...	DSRs	ECRs
the internet	Y	Y
Email	Y	Y
Text messaging	Y	Y
Video and picture messaging	Y	
Telephone	Y	
Fax	Y	
Interactive TV	Y	Y
Mail order – catalogues	Y	
Mail order (advertising in newspapers, magazines)	Y	



## When the regulations apply

### Provision of Services Regulations

Businesses that supply services to consumers without face-to-face contact also need to know about the Provision of Services Regulations (PSRs). These apply to services normally provided for payment, other than a contract of employment. The activity may be industrial or commercial in nature, a craft or the activity of a profession. The PSRs apply to services whether supplied to consumers or businesses and whether agreed face-to-face or at a distance. There are some excepted services but those covered include

- ➡ services provided to both business and to consumers, for example, estate agents, construction services, restaurants, storage services, financial advisers
- ➡ consumer services, for example, tourism, leisure services, child minders, private schools and universities, driving instructors, cleaners
- ➡ business services, for example, advertising, waste management, training, professional services such as those provided by lawyers and accountants.

The PSRs impose other requirements on businesses, however, this guide only deals with overlapping provisions.

Where multiple sets of regulations cover similar ground, you must comply with all of them.

### Privacy and Electronic Communications Regulations

Where you are engaging in direct marketing activity by phone, fax, automated calling systems and electronic mail (text/video/picture messaging and email), the Privacy and Electronic Communications Regulations apply. They determine when you will need prior consent to contact consumers and what you must tell consumers about yourself and how to opt out of future communications.

Detailed guidance on these requirements can be found on the website of the Information Commissioner's Office at [www.ico.gov.uk](http://www.ico.gov.uk)

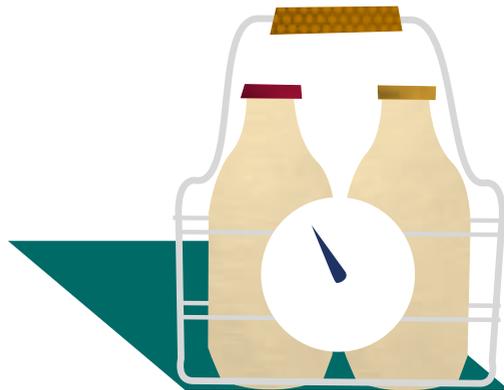
## When the regulations apply



### When only part of the DSRs apply to your business

If you enter into certain contracts then you do not have to provide **pre-contractual** information, written and additional information, nor does the right to cancel or the obligation on the supplier to carry out the contract within a maximum of 30 days apply. Instances where this is the case are

- ➔ contracts for the supply of food, drinks or other goods for everyday consumption delivered to the consumer's home or workplace by a regular roundsman, for example a milkman
  - but this **exemption** does not apply to home deliveries by supermarkets or other home delivery grocery businesses. However, in relation to the right to cancel, such businesses can often rely on some of the exceptions listed in the *When customers do not have a right to cancel* section



- ➔ contracts to provide accommodation, transport, catering or leisure services (for example, hotel accommodation; plane, train, or concert tickets; car hire or sporting events), where you agree to provide the service on a specific date or within a specific period
  - but long-term residential hotel accommodation agreed under a **distance contract** may be considered to be rented accommodation and therefore subject to the DSRs
- ➔ contracts regulated under the Timeshare, Holiday Products, Resale and Exchange Regulations 2010.

Other requirements concerning the carrying out of the contract still apply except in the case of contracts regulated under the Timeshare, Holiday Products, Resale and Exchange Regulations 2010.

Distance Selling Regulations (DSRs) requirements concerning the carrying out of the contract only do not apply to

- ➔ package contracts (as defined by the Package Travel, Package Holidays and Package Tours Regulations 1992).

## When the regulations apply

### When the DSRs do not apply to your business

- ➔ sales by private individuals not acting for business purposes
- ➔ products and services you sell to other businesses
- ➔ products bought from vending machines (for example, bars of chocolate or cans of drink), or automated commercial premises such as pictures taken by automated photo booths
- ➔ contracts concluded with a telecommunications operator to make a telephone call from a public pay phone
- ➔ contracts relating to financial services to consumers
  - however, these services are likely to be subject to requirements to provide information and rights of cancellation contained in the Financial Services (Distance Marketing) Regulations 2004 (SI: 2095 2004) (FSDMR) and, where relevant, the Consumer Credit Act 1974 (CCA)



- ➔ contracts for the sale of land (that is, the sale of freehold or leasehold interests)
  - but the DSRs do apply to tenancy or short term leasehold agreements (rental agreements) when the contract is between a business and a consumer and has been concluded by distance means
- ➔ contracts for the construction of a building (where the contract also includes the transfer of the land on which the building is constructed)
  - but the DSRs do apply where a consumer already has rights over the land and then contracts a builder to construct a building on the land via distance means
- ➔ **conditional sales** and contracts for hire purchase (which are covered by the FSDMR and the CCA)
  - but the DSRs do apply to contracts for hire services, for example, the hire of electrical items or clothing
- ➔ **auction sales**, including online auctions and interactive TV auctions.
  - but the DSRs do apply to fixed price sales (for example, 'buy it now' sales) on internet auction sites because these sales are not concluded by an auction.



## When the regulations apply

### When the PSRs do not apply to your business

- ➔ financial services
- ➔ electronic communications services and network providers
- ➔ transport services, for example, flights, rail travel (however, they do apply to removal services, car rental services, driving instructors, MOT service centres, funeral services and aerial photography services)
- ➔ services of temporary work agencies
- ➔ healthcare services, both public and private
- ➔ audiovisual services, for example, cinemas and broadcast services
- ➔ gambling services
- ➔ social services provided by the State, by providers mandated by the State, or by charities recognised as such by the State (however, they do apply to services provided on a commercial basis by registered charitable organisations or their trading subsidiaries)
- ➔ private security services
- ➔ services provided by notaries and bailiffs.

The PSRs do not affect the manufacture or sale of goods but they do apply where the activity is not exclusively concerned with the sale of goods, for example, where after-sales service or customer advice is provided.



## When the regulations apply

### What if...?

#### ... I don't usually sell by distance means – do the DSRs apply to orders I sometimes get by email, phone or fax?

If you normally do business with customers face-to-face, the DSRs are unlikely to apply to an occasional order that you take by distance means, because the DSRs only apply to **organised distance sales** and **service provision schemes**. The DSRs are likely to apply to contracts concluded by distance means if

- ➡ standard procedures are used for processing orders
- ➡ standard form contracts for distance sales are used
- ➡ standard correspondence is sent out
- ➡ you routinely sell at a distance.

#### ... A contract includes both goods and services?

You need to decide if there are separate contracts for the supply of services and goods, for example, a mobile phone and airtime. If so, the goods and services elements should be separate and the relevant provisions of the DSRs applied to each separately to establish the relevant cancellation periods. The practical problem of course is that a customer may, on this basis, be entitled to cancel one element but not another.

#### ... A customer has examined goods in my shop and then orders the same goods from me via distance means?

The DSRs may not normally apply where a customer examines goods at your premises and then later orders those goods by distance means, as there is not exclusive use of distance means.

The purpose of cancellation is to allow inspection when that has not been available **pre-contract**, and the definition of a **distance contract** envisages that the entire process is by distance means.

However, in practical terms you may not know if the goods have been inspected and, even if they have, this is unlikely to have formed part of the formal contract process. Where an inspection is known to have taken place, the DSRs may not apply.

#### ... I sell gift vouchers?

Providing a gift voucher is a contract for the supply of a service, therefore DSRs do apply. Providing a voucher in the form of electronic money (such as a card with a magnetic strip that may be accepted as a form of payment) may be considered the provision of a 'financial service', and so the Financial Services (Distance Marketing) Regulations 2004 apply.



# Information you are required to provide to customers

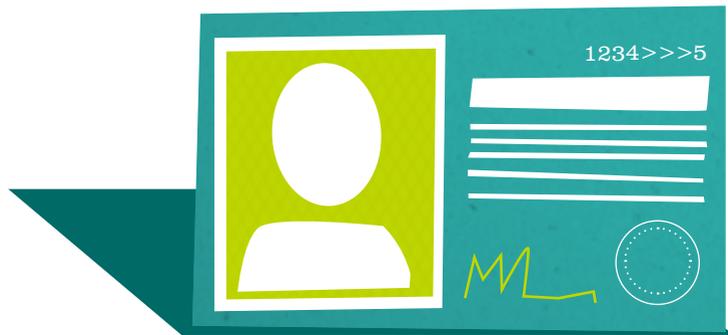
## The information you must provide before customers decide to buy

### Pre-contract information required under the DSRs

You must give your customers certain information, clearly and comprehensibly, before they agree to buy from you so that they can make an informed choice about whether or not they want to buy.

This **pre-contractual** information includes

- ➔ your identity, including enough detail for the customer to be able to identify the business they are dealing with
- ➔ a description of the main characteristics of the goods or services you are offering
- ➔ the price of the goods or services you are offering, including all taxes
- ➔ details of any delivery costs
- ➔ details of how payments can be made
- ➔ your full geographic address, if payment is required in advance, which means your home address if you are trading from home
- ➔ the arrangements for delivery of the goods or the performance of the service, for example, when customers can expect delivery of the goods or the service to start. The contract should be performed within 30 days unless the parties agree to a different period
- ➔ information about your customers' right to cancel, where applicable
- ➔ if customers have to use a premium-rate phone number, you must specify the cost of the call (including taxes) before any charges are incurred for the phone call. This may be the cost of the call per minute (including VAT) or an indication of the likely cost of the whole call (including VAT). You should also tell your customers that the cost of the call may differ from that quoted, depending on their network provider
- ➔ how long the price or the offer remains valid
- ➔ the minimum length of the contract where goods or services are to be provided permanently or recurrently, for example on an ongoing or open-ended basis
- ➔ that you intend to supply substitute goods or services should those ordered be unavailable, if this is the case, and that you will pay the cost of your customers returning any substitute products.



# Information you are required to provide to customers

## How you must supply the pre-contract information under the DSRs

The **pre-contractual** information can be given by any method appropriate to the form of distance communication you are using to agree the contract, providing it is clear and comprehensible.

This information can

- ➡ be provided on a website if you sell goods and services over the internet
- ➡ be sent via email
- ➡ appear in a catalogue for goods and services sold by mail order
- ➡ be sent via fax
- ➡ be provided via phone if you are selling goods and services by phone.



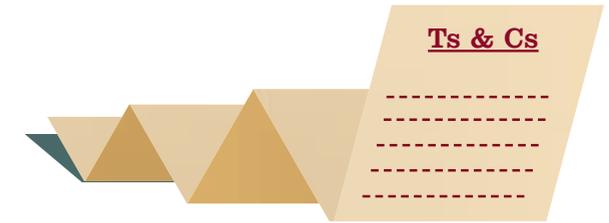
## Pre-contract information required under the ECRs – when providing an information society service

If you are providing an **information society service**, you must supply certain information under the ECRs about your business and the prices you charge when you advertise or sell. This information must be easily, directly and permanently accessible, for example, if it appears on your website. The ECRs do not expressly state when this information should be supplied but we consider that it must be available at the time of concluding a contract.

Some of the information overlaps with the information that you must supply under the DSRs. However, whilst under the DSRs, the pre-contract information can be supplied orally, under the ECRs, this information must be permanently accessible and includes

- ➡ the full name of your business
- ➡ the geographic address of your business, which means your home address if you are trading from home as that is where your business is established
- ➡ your contact details, including an email address, to enable rapid, direct and effective communication with you
- ➡ details of any publicly accessible trade or similar register with which you are registered, including the name of the register and your registration number or other means of identification in the register
- ➡ if your service is subject to an authorisation scheme, details of the relevant supervisory authority

## Information you are required to provide to customers



- ➡ if you are a member of a regulated profession, details of any professional body with which you are registered; details of any professional titles you hold; details of the European Union member states in which the titles have been granted, and a reference to the professional rules and how they can be accessed
- ➡ your VAT registration number if you are subject to VAT
- ➡ where you refer to prices, a clear and unambiguous indication of those prices and whether the prices include taxes and delivery costs (but the DSRs also require you to quote prices inclusive of all taxes if the sale is covered by the DSRs).

Where you provide terms and conditions applicable to the contract you must make them available in a way that allows your customer to store and reproduce them. These terms and conditions must also be fair as per the Unfair Terms in Consumer Contracts Regulations 1999.

### Pre-contract information required under the ECRs – when contracts are concluded by electronic means

Where contracts are concluded by electronic means (for example, on a website or interactive television), but not by emails or other individual communication, under the ECRs you must provide the following information to customers

- ➡ the different technical steps to follow to conclude the contract
- ➡ whether or not the contract will be kept by you and whether the concluded contract will be accessible by you

- ➡ how customers can identify and correct input errors prior to placing the order
- ➡ the languages offered for conclusion of the contract
- ➡ any relevant codes of conduct to which you subscribe and information about how they may be consulted electronically.

The information must be provided in a clear, comprehensible and unambiguous manner before an order is placed, for example, on your website.

### Pre-contract information required under the ECRs – when sending any electronic commercial communications

Under the ECRs, any electronic **commercial communication** (anything which promotes goods, services or a business) must clearly identify the following before customers decide to buy

- ➡ itself as a commercial communication
- ➡ you as the person making the communication
- ➡ any promotional offer (including any discount, premium or gift) and ensure that any conditions that must be met to qualify for it are easily accessible and presented clearly and unambiguously
- ➡ any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously.

# Information you are required to provide to customers

## Pre-contract information required under the PSRs

Service providers must also comply with the PSRs, which require information to be provided which overlaps, to some extent, with that required under the DSRs and ECRs.

Under the PSRs, you must make the following information available to customers in a clear and unambiguous way and in good time before the contract is concluded or before the service is provided, if there is no written contract

- ➡ the name of your business
- ➡ the main features of the service, unless apparent
- ➡ your legal status and form (for example, whether you are a sole trader or limited company)
- ➡ the geographic address at which you are established and details of how you may be contacted rapidly and directly (including, where appropriate, an email address or a number for text messages)
- ➡ contact details where customers can request information or make a complaint – this must include a telephone number and one or more of; a postal address, fax number or email address and (if different to your postal address) your official address if applicable
- ➡ your trade or public register name and registration number

- ➡ the particulars of any authorisation scheme in the UK or other EEA state you are covered by or [www.businesslink.gov.uk](http://www.businesslink.gov.uk) for the UK and the single point of contact for another EEA state
- ➡ VAT identification number if applicable
- ➡ if you carry on a regulated profession, your professional title, the professional body or similar institution with which you are registered and the EEA state in which that title has been granted
- ➡ general terms and conditions
- ➡ contractual terms relating to the courts in which claims can be brought and the law applicable to disputes
- ➡ any after-sales guarantee not imposed by law
- ➡ the price of the service, where a price is pre-determined
- ➡ information about any professional liability insurance or guarantee including the contact details of the insurer or guarantor and the territorial coverage
- ➡ how to access details of non-judicial dispute resolution procedures if you are subject to a code of conduct or are a member of a trade association or professional body that gives access to such procedures.

## Information you are required to provide to customers

### Information you must supply under the PSRs if the customer asks

- ➔ where the price is not pre-determined by your business for a given type of service, the price of the service, or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate
- ➔ if you are carrying on a regulated profession, a reference to the professional rules applicable in your EEA state of establishment and how to access them – so recipients can easily find the rules, for example, on a website
- ➔ information on any other activities carried out by you or your business that are directly linked to the service in question, and on the measures taken to avoid conflicts of interest
- ➔ any codes of conduct to which you are subject and the websites from which these codes are available, specifying the language version available.

### How you can make this information available under the PSRs

- ➔ supply it to the customer on your own initiative
- ➔ make it easily accessible to the customer at the place where the service is provided or the **contract concluded**, for example, at your premises
- ➔ make it easily accessible by the customer electronically by means of an address you supply, for example, on a website
- ➔ include it in any information documents that you supply which give a detailed description of the service.



## Information you are required to provide to customers

### The information you must provide once the customer has decided to buy under the DSRs – the written and additional information

Under the DSRs, if the **pre-contract** information was not provided in writing or another **durable medium** available and accessible to the customer, then you must confirm the information outlined in the first eight bullet points in the *Pre-contract information required under the PSRs* list, and also the following information, in a durable medium

- ➔ when and how to exercise customers' rights to cancel under the DSRs including
  - for goods** – whether you require goods to be returned by the customer and, if so, who will pay for their return
  - for services** – the consequence of agreeing to a service starting before the end of the usual seven working day cancellation period
- ➔ details of any guarantees or after-sales services
- ➔ the geographic address of the business to which the customer may direct any complaints. There is no definition of 'geographic address' in the DSRs but our view is that this means a physical location, so a PO box address is not sufficient
- ➔ if a contract lasts more than a year or is open-ended, the contractual conditions for terminating it. This safeguards you as well as the customer, as both parties have the same information.

### How and when you must supply written and additional information

Under the DSRs, you must supply the written and additional information in a **durable medium** before the conclusion of the contract,

or in 'good time' afterwards during performance of a services contract, or, at the latest, at the time of delivery of goods. Information is said to be received in good time if customers have sufficient time to act on it when they receive it, for example, to enable them to exercise their right to cancel.

If you provide pre-contractual information in a form that does not allow it to be stored or reproduced by the customer, such as during a phone call or on a website, then you must confirm in writing, or in another durable medium.

You do not have to send your customers additional information if you have already given it to them, for example, in a catalogue or in another durable medium such as a print advertisement that you have sent to them.

### Requirements for ordering under the ECRs

Customers who place orders through websites or other electronic means need certainty about the terms of their order, so under the ECRs you must

- ➔ acknowledge the receipt of the order electronically without delay
- ➔ provide customers with effective and accessible technical means allowing them to identify and correct input errors before their order is placed.

These requirements do not apply in the case of contracts concluded through email or other equivalent individual communications.

If you do not allow a customer to correct input errors and they enter a contract to which the ECRs apply, they can rescind the contract.

## Information you are required to provide to customers



### What if...?

#### ... I sell by phone?

If you sell by phone you must, in addition to giving the information listed above, also state clearly, at the start of any conversation

- ➡ the identity of your business or the business on whose behalf you are calling
- ➡ the commercial purpose of your call.

Premium-rate phone services also have to advise

- ➡ of the cost of using the phone service (including VAT), before you start charging
- ➡ that the cost of the call may differ from that quoted, depending on their network provider.

#### ... I am a member of a trade association – do I have to display my trade registration number if I'm claiming membership?

The need to display your trade name depends on whether the services you provide are subject to the Provision of Services Regulations (PSRs). If so, then you need to give this information.

If your services are not subject to these regulations, then the answer is likely to lie in the contracts between you and the relevant trade association, for example, is this is a requirement of membership?

We believe that customers do take trade association memberships into consideration and so advertising this fact along with your number helps customers to check if this is accurate.

Falsely claiming to be a member of an association is a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008.

#### ... I don't want to give my home address?

A geographical address means a real address – a PO box will not do. If a business is operated from home, this is likely to be the geographic address at which it is established and you must give this address.

For service providers, requirements under the Provision of Service Regulations (PSRs) are very specific in this respect.

#### ... My trading name and legal entity are different?

If you are a service provider, the PSRs contain a requirement to give information about your legal status.

Under the DSRs and ECRs, we interpret 'give the name of your business' to mean 'give the legal name of your business entity'.

The Companies (Trading Disclosures) Regulations 2008 contain detailed requirements of where companies must display their registered name(s) and address(es) and not only their trading names.

# Information you are required to provide to customers

## What if...?

### ... I supply goods or services on an ongoing basis over a minimum term?

You must tell customers the minimum time that they will be bound to continue to buy from you; for example, if you are supplying a mobile phone or satellite TV contract or a book club subscription. If the minimum period is over a year or the contract is open-ended, the DSRs require you to provide information to customers on how to terminate the contract.

### ... I want to supply substitute goods where the ones I agreed to supply are not available?

You must

- ➔ explain in the **pre-contractual** information that this could happen
- ➔ make it clear that you will meet the cost of returning any substitute goods if the customer does not want them.

### ... I provide free after-sales service and guarantees with the goods?

If you offer free after-sales service and product guarantees that do not constitute service contracts in their own right, you have to provide details of these services or guarantees as part of the DSRs' written or durable information. This information should include

- ➔ the cost of using any premium rate phone lines to obtain the after-sales service advice
- ➔ whether repairs will be carried out on site or, if not, who will be responsible for the cost of transporting goods for repair.

### ... I am caught by all the regulations

You need to supply all the information required under each. The PSRs and ECRs can be complied with by having the information on a website which is easily and permanently accessible to consumers before a contract is concluded and at the time of advertising or the provision of **information society services**. However, you would still need to supply information in a **durable medium** to comply with the DSRs. You can comply with both the PSRs and the DSRs by supplying the information in a durable medium before the contract is concluded, if this is practical.



# Your customers' rights under the DSRs – delivery and performance

## Delivery

A contract must be carried out within the time limits agreed with the customer, as stated in your terms and conditions. If no period has been agreed, the statutory time limit is 30 days from the day after the day the customer sends the order to you.

## When does a service begin?

This depends on the circumstances. Generally a service is said to have started once you start supplying the service you have promised. Many services require administrative or other preparatory work (such as setting up an account) before a supplier is able to provide the service promised. Often this work is underway when a contract is being agreed. In our view, such work does not mean that the service has begun.

## Not meeting the deadline

If you cannot meet the 30 day deadline to deliver the goods or perform the service, you must inform the customer before the expiry of the deadline.

You and the customer may agree a revised date for delivery of the goods or performance of the service, but the customer does not have to agree to a revised date. If they do not agree to a revised date, the contract must be treated as if it had not been made, apart from any rights that the customer has under it as the result of the non-performance.

If you are unable to meet the deadline and have not agreed an alternative delivery date with the customer, you must refund all money paid in relation to the contract including the postage and packaging.

The refund should be made as quickly as possible and within a maximum of 30 days.

Any credit agreement associated with the purchase is also automatically cancelled.

## Insuring items

You cannot charge the customer the cost of insuring items that you send out. These items belong to you until they have been accepted by your customer, so you cannot charge your customer for carrying risks that you should bear.



# Your customers' rights to cancel under the DSRs

## When customers have a right to cancel

The Distance Selling Regulations (DSRs) give customers who buy by distance means more rights than customers who shop in person.

Unlike buying from a shop, the first time that customers will typically have an opportunity to examine goods purchased by distance means is when they receive them.

Where the DSRs give customers the right to cancel an order, this right is unconditional and begins from the moment the **contract is concluded**.

The stage at which you give your customers the required written information will affect when the cancellation period ends.

When a distance customer cancels a contract to which the cancellation provisions apply, they are entitled to a refund of any money they have paid in relation to the contract, even if the goods are not defective.



## Your customers' rights to cancel under the DSRs

### When customers do not have a right to cancel

The cancellation provisions do not apply to contracts for the supply of food, drinks or other goods for everyday consumption delivered to the home or workplace by regular roundsmen, or to contracts to provide accommodation, transport, catering or leisure services on a specific date or period.

Unless you have agreed that they can, your customers cannot cancel if the order is for

- ➔ services once you have started the service, provided you had the customer's agreement to start the service before the end of the usual cancellation period and you have provided the customer with the required written information before you started the service, including information that the cancellation rights would end as soon as you started the service
- ➔ goods or services where the price depends on fluctuations in the financial markets that cannot be controlled by the supplier
- ➔ the supply of goods made to the customer's own specification, such as custom-made blinds or curtains. But this exception does not apply to upgrade options, such as choosing alloy wheels when buying a car, or opting for add-on memory or choosing a combination of standard off-the shelf components when ordering a PC

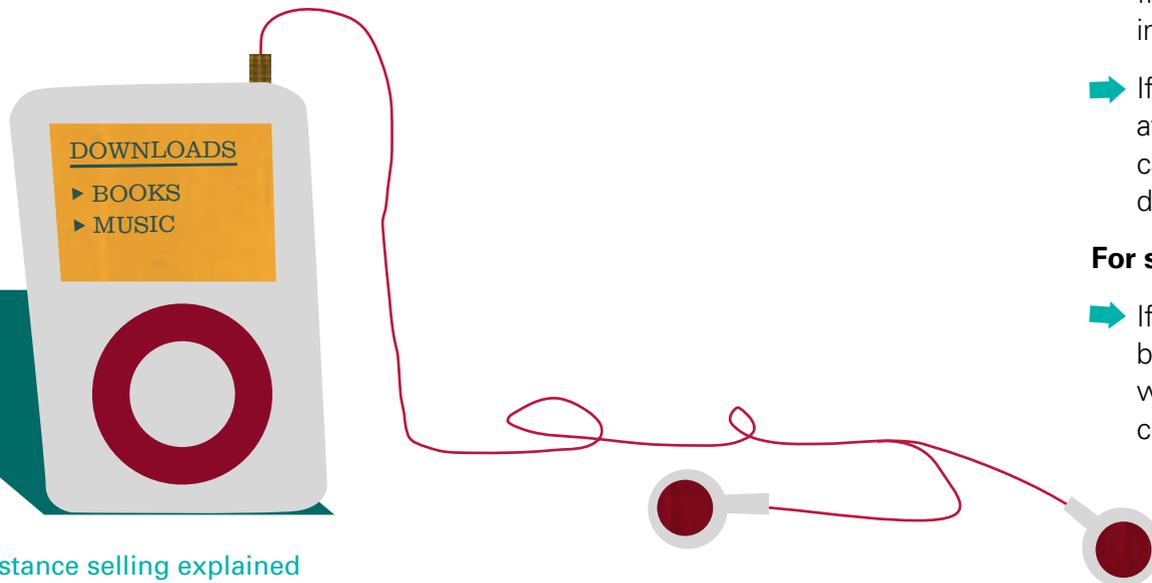
- ➔ goods that, by reason of their nature, cannot be returned, for example, where returning the goods is a physical impossibility or goods that cannot be restored to the same physical state they were supplied in, such as nylon tights that become distorted once worn. Hygiene related goods do not fall within this category – see the *Items that raise health and safety concerns* section for more information.
- ➔ perishable goods like fresh foods or fresh cut flowers
- ➔ audio or video recordings or computer software that the customer has unsealed
- ➔ newspapers, periodicals or magazines
- ➔ gaming, betting and lottery services.



## Your customers' rights to cancel under the DSRs

Downloads of electronic books or music from a website, or the purchase of ring tones and screen savers for mobile phones are likely, in our view, to be seen as services rather than goods as the customer does not receive physical goods. The rights to cancel these items are the same as those that apply to services.

There is no general **exemption** for goods that may be the subject of copyright, for example, books or sheet music. However, you can specify in your terms and conditions what constitutes reasonable care when customers examine such goods, providing it does not prevent them from properly inspecting the goods. However, if the customer has done no more than examine the goods as they would have in a shop, for example, opening the packaging and trying out the goods, then they have not **breached their duty** to take reasonable care of the goods. In a shop, books and sheet music are usually displayed unsealed and therefore opening such seals does not invalidate the right to cancel.



### Time limits for cancellation

The rationale behind the cancellation provisions in the DSRs is to allow the customer to inspect what they have purchased.

The time limits for cancellation are as follows.

#### For goods

- ➔ Provided you give your customer the required written information no later than the time the goods are delivered, their cancellation rights end seven **working days** after the day on which they received the goods.
- ➔ If you do not give your customer the required written information by the time the goods are delivered, but do so within three months from the day after the day the customer receives the goods, the cancellation rights will end after seven working days from the day after the customer received the required written information.
- ➔ If you do not give the required written information at all (or give it after the three month period mentioned above), the customer's cancellation rights will end after three months and seven working days from the day after the customer received the goods.

#### For services

- ➔ If you give your customer the required written information on or before the day the **contract is concluded**, their cancellation rights will last for seven working days, counting from the day after the contract was concluded.

## Your customers' rights to cancel under the DSRs

- ➔ If the required written information is provided after the contract is concluded, but within three months (beginning the day after the contract was concluded), cancellation rights will last for seven **working days** after the information is received.

Different rules apply to services where the customer agrees that the service starts before the usual cancellation period expires. These rules are as follows.

- ➔ Where you have supplied the required **lasting** information before the service starts and the customer agrees to the service starting before the end of the usual cancellation period, their cancellation rights will end when performance of the service starts.
- ➔ If the customer agrees that the service can start before the usual cancellation period ends and you do not provide the required written information until after the service has started, but still provide it in time for it still to be useful, cancellation rights will last for seven working days after the day the customer receives the information. But if you finish providing the service within seven working days after the day the customer receives the required lasting information, cancellation rights will end on the day of completion.
- ➔ If you do not provide the required lasting information at all, your customer's right to cancel ends after three months and seven working days from the day after the contract was concluded. This applies whether or not the customer agrees that you can start the service before the cancellation period ends.



## Your customers' rights to cancel under the DSRs

### What customers must do if they want to cancel

A customer must tell you in writing, or in another **durable medium**, if they want to cancel. The customer can give notice by

- ➔ leaving a notice addressed to you at your last address known to the customer, in which case notice is said to have been given on the day on which it was left at your address
- ➔ posting the notice to you at the address last known to the customer, in which case notice is said to have been given on the day it was posted
- ➔ faxing or emailing the notice to you on the last fax number or email address known to the customer, in which case notice is said to have been given on the day it was sent.

A phone call is not enough unless you say in your terms and conditions that you will accept cancellations by phone.

The effective date for cancellations under the DSRs is the date on which the customer gives notice of cancellation to you. This ensures that the customer can take advantage of the full cancellation period provided for in the DSRs.

You may ask your customers to keep some evidence of having given you the cancellation notice, such as a certificate of posting or confirmation of fax transmission, but you cannot insist on this.

### Working days

The period is **working days**, which do not include weekends and bank holidays.

### Longer cancellation period

You can offer a longer cancellation period under your own contract terms. If you do, you need only inform customers about the longer period you are offering.



# Your customers' rights to cancel under the DSRs

## What if...?

### ... The customer wants to cancel after the work is started?

Once you have started work or begun to provide a service, the customer is contractually bound to honour their part of the contract so long as you

- ➡ had their agreement to start the service
- ➡ provided them with the required **durable** information in advance of your starting, including that their cancellation rights would end as soon as you started carrying out the contract.

### ... A customer cancels before the seven working days have ended – can I charge for any service already provided?

With service contracts, if you fail to give customers the required written information before you start the service, or fail to obtain their consent to starting the service early, they will have a right to cancel their contract, even if they have started using the service.

Where a service contract is cancelled, the DSRs require you to refund all the money paid in relation to the contract. So, if a customer cancels an airtime or internet contract before the cancellation period has expired, you must refund all charges (including, for example, call charges) incurred under the contract.

### ... There are linked contracts for goods and services, for example, a software/hardware bundle?

You need to assess whether there are two separate contracts or not, for example, one for goods (a mobile phone or modem) and the other for a service (such as the airtime or internet connection). If so, the contracts are treated separately. The relevant provisions of the DSRs should be applied to each of them.

In both cases, the cancellation period starts when the contract is made. It is possible to have cancellation periods running at different times, for example, the service contract may remain cancellable after the goods have been provided.

In this case, the customer may be entitled to cancel one element but not another.

### ... I am selling downloads or software?

Currently, tangible products like hardware, CDs and DVDs are goods, but intangible products, such as downloads and software, are more likely to be considered services.

You should ensure that all the written information is given to the customer before the download starts, that the customer has agreed to early provision of services and that they understand that, as soon as the download starts, they will not be entitled to cancel.

## Your customers' rights to cancel under the DSRs

### What if...?

#### ... A customer agrees to spend a minimum sum over a defined period to purchase a set number of goods offered at a discount?

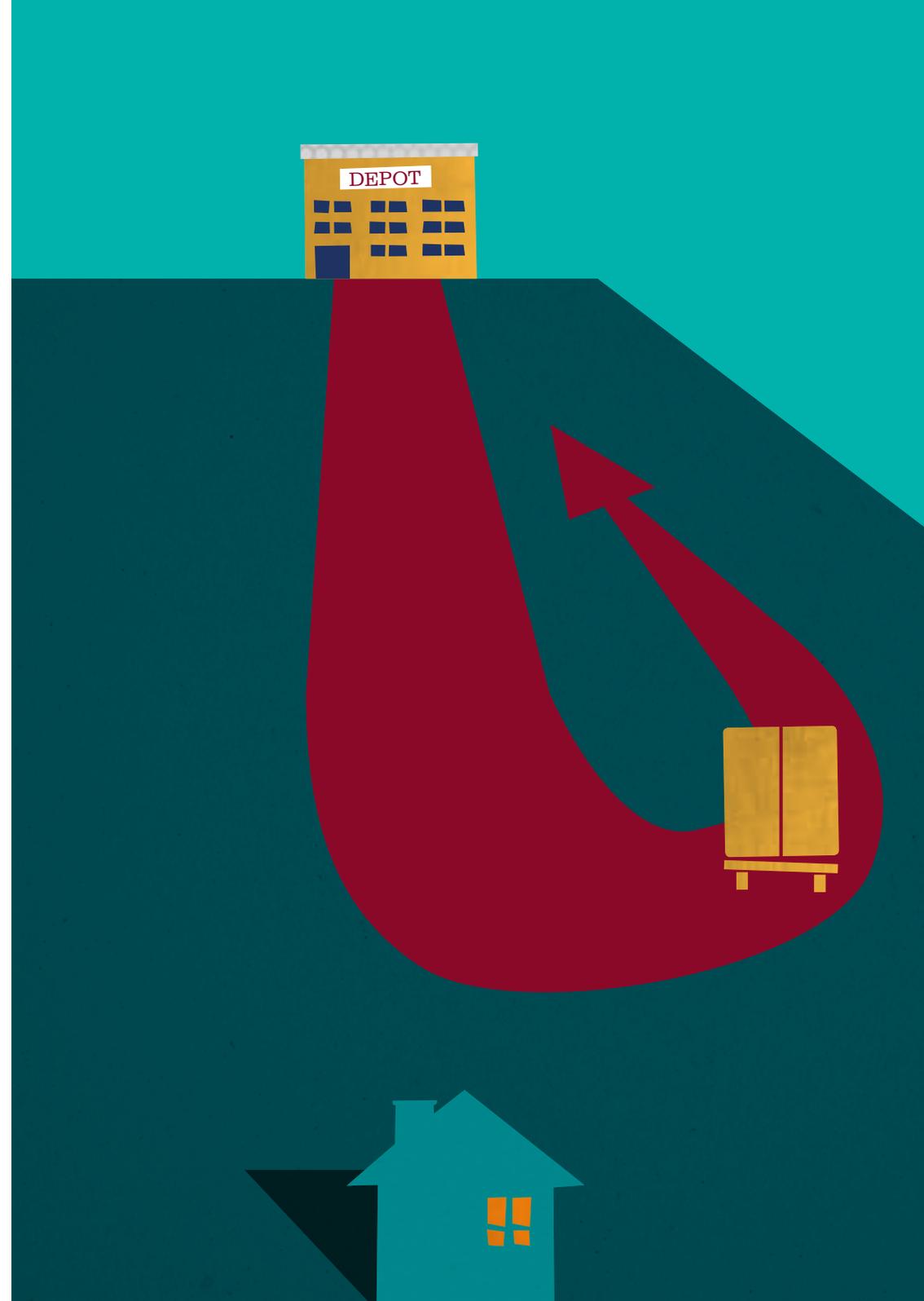
Customers must be given cancellation rights when they agree to their initial commitment to buy goods from you. Then, if the terms say that a new contract is entered into each time the customer orders goods, each of those contracts is cancellable. However, the customer's right to cancel may apply only to that particular purchase rather than to the commitment to purchase in the future.

#### ... A customer wants to cancel an order before they receive the goods or where goods are lost in transit?

Under the DSRs, a customer's right to cancel is unconditional.

- ➡ If customers cancel before they have received the goods, you must refund the total price of the goods, including any delivery charges.
- ➡ If they cancel, they can refuse to accept delivery of the goods. This cannot be treated as a breach of contract.

Where goods are lost in transit from you to the customer, you will need to either send new goods or offer the customer a full refund, including delivery charges.



# Your customers' rights on refunds and returning goods

## Return and collection of goods

Under the DSRs, when a customer cancels a contract but has already received the goods, they are under a duty to take reasonable care of the goods and to return them to you. However, this only means that they have to make them available for collection by you from their premises, following a request from you in writing or on a  **durable medium**  available and accessible to the customer.

If you want your customers to return the goods to you and to pay for returns when they cancel a contract under the DSRs, you must include this in your terms and conditions. This information must also be given to the customer as written information (see *The information you must provide once the customer has decided to buy under the DSRs*).

The DSRs do not require the customer to return the goods but if the contract says the customer must return them and they do not, you can charge them for the direct cost of recovery.

## Your customers' duty to take care of goods

When a customer returns the goods to you in accordance with the contract, the customer must take reasonable care to ensure that you receive the goods and that the goods are not damaged in transit. If the customer does not exercise reasonable care and the goods are damaged, you may have a claim against them for breach of this duty. If a customer fails to return the goods despite being required to by the contract, then you may have a claim against the customer for breach of contract.

If you have not provided the required information, you cannot charge anything, even if it is in your contract.

You cannot charge for returns if the goods are faulty or do not comply with the contract or order.

Under the DSRs, customers are under a statutory duty throughout the period of cancellation to retain possession of the goods and take reasonable care of them.

DSRs do not link cancellation rights with your ability to resell items as new. Unless the item falls under the cancellation  **exemption,**  customers can cancel a contract and return the goods to you even if they have opened and tested the goods and, as a result, you are unable to resell them.

You may provide instructions to the customer about how to take care of the goods and packaging, however, any instructions cannot restrict a customer's reasonable opportunity to inspect and assess the product. Customers have the right to cancel even if they fail to take reasonable care of the goods, however, you do have a right of action against customers for any breach of their  **statutory duty**  to take reasonable care.



## Your customers' rights on refunds and returning goods

### Packaging

The purpose of the DSRs is to allow customers to examine goods they have ordered as they would in a shop. If that requires opening the packaging and trying out the goods, then they have not breached their duty to take reasonable care of the goods.

In these circumstances, you cannot insist that customers return the goods as new or in their original packaging. You may ask customers to take care when they open the package or return goods with the original packaging, but you cannot insist on this.

The DSRs do not provide for goods to be returned in a fit state for resale.

You should think carefully about your packaging and how easy it is to open and put back together so that the integrity of the product can be maintained to enable resale.



### Self-assembly

With self-assembly products, the customer is entitled to cancel the contract, even if the goods have been assembled. You cannot insist that the product is disassembled if disassembly is not possible, because, for example, doing so will damage the item. In that case, it can be returned or collected as it is.

You may advise customers on what you consider to be reasonable care. If you consider that, by assembling the product, the customer has not taken reasonable care of it, then you may have a claim against the customer for **breach of their statutory duty**. However, if it is necessary to assemble the goods to inspect them, you cannot stop the customer from doing this.

### Made to order

There is no right to cancel goods that are made to the customer's own specification. Therefore, products may not be returned if they are genuinely tailor-made products. If they are put together by combining off-the-peg options, then they may be returned.

## Your customers' rights on refunds and returning goods

### Items that raise health and safety concerns

Unless they fall under one of the **exemptions** (see *When customers do not have a right to cancel*), such goods can be returned. The right to cancel is not linked to the ability to resell goods. The right to cancel does not apply to goods which by their nature cannot be returned. We consider this to apply only where returning the goods is a physical impossibility or where they cannot be restored in the same physical state as they were supplied, for example, items such as latex or nylon tights that could become distorted once worn.

You may give clear instructions to customers requiring them to exercise reasonable care, if they still allow inspection. For example, in the case of goods such as earrings that have hygiene seals, you may state that the seals should not be removed when examining them. If selling such items, you should factor this into packaging, instructions and price. Failure by the customer to follow the instructions will not prevent them returning the goods, but will give you a claim for **breach of duty**.



### Refunding a cancelled order

You should refund a customer's money as soon as possible after they cancel an order, and in any case, within 30 days at the latest.

The right to a refund is not connected either to the return of the product nor the customer's duty to exercise reasonable care of the goods. Even if the customer fails to take reasonable care of the goods, you must make a full refund. You can bring a claim for damages separately.

You must refund the customer's money even if you have not yet collected the goods or had them returned to you by the customer.

You cannot insist on receiving the goods before you make a refund.



## Your customers' rights on refunds and returning goods



### What has to be refunded?

You have to refund any money paid in relation to the contract by, or on behalf, of the customer, to the person who made the payment. This includes the

- ➔ full price of the goods
- ➔ deposit or prepayment made
- ➔ cost of delivery.

Standard delivery costs must be refunded, but the costs of additional services that a customer specifically requested, such as gift wrapping or express delivery, may be withheld if

- ➔ the additional services were provided under a separate contract
- ➔ you had the customer's agreement to start the additional services before the end of the cancellation period
- ➔ you provided the customer with the required written information before you started the additional services, including information that the cancellation rights would end as soon as you started to carry out the additional services.

Refunding the costs of return depend on what a customer has been told and agreed to at the time of sale. The customer can be made to bear these costs if this is included in your contract terms and forms part of the information required to be given to customers (see *Information you are required to provide to customers*).

Remember, you are liable for a product until it is delivered to the customer and your insurance will need to cover this. On cancellation, if your customer can prove they returned an item in an appropriate way, they will not have to bear the cost of any loss or damage to the goods in transit.

### Who pays for returning the goods if the customer cancels an order?

If you want the customer to return the goods and to pay for that return, you must make it clear in the contract and as part of the required written information. If you did not include these details in the required written information then you cannot charge anything.

If you have included it and the customer then fails to return the goods, or sends them at your expense, you can charge them the direct cost to you of the return, even if you have already refunded the customer's money. You are not allowed to make any further charges, such as a restocking charge or an administration charge.

In all circumstances, you will have to pay for the return of

- ➔ substitute goods
- ➔ goods that are faulty or do not comply with the contract.

## Your customers' rights on refunds and returning goods

### What happens once the deadline has passed?

If the deadline for cancellation has passed and a customer claims that goods are faulty or services do not conform to the contract, the customer may be able to exercise their rights to reject the goods or terminate a contract for services (under other legislation, for example, the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982) and you will have to refund their money.

If goods develop a fault within the first six months of being sold, the law presumes that the fault was there when you sold the goods – unless you can show otherwise. The customer may also have the right to a replacement or a repair. You should not charge return costs for goods that have been returned because they are faulty.

If you offer a replacement for faulty goods that have been returned by the customer, the cancellation rights under the DSRs will run for seven **working days** from the day after the customer receives the replacement goods, provided you have previously complied with the information giving provisions in the DSRs.



## Your customers' rights on refunds and returning goods

### What if...?

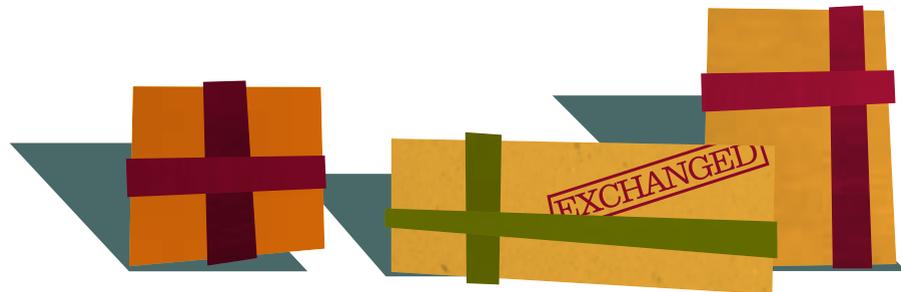
#### ... I provide gifts with the goods or services – am I entitled to recover them?

This depends on the information supplied to and agreed by the customer. If the customer has agreed to receive the gift by placing the order, then they may be under a contractual duty to return that gift on cancellation. Otherwise, the gift can be treated as unsolicited and kept as though it were an unconditional gift.

#### ... I send free or unsolicited goods?

Unsolicited goods may be treated as an unconditional gift and customers have a right to retain or dispose of them as they see fit.

Asking a customer for payment for any unsolicited goods or services, for example, goods sent for marketing purposes, is an offence under the DSRs and is also a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008. We suggest you make the nature of the gift clear to customers prior to purchase.



#### ... I sell goods by accepting goods from the customer in part exchange?

In the event of a cancellation, you must return the part-exchanged goods within 10 days of the customer cancelling. The part-exchanged goods must be returned in as good a condition as when you received them. If you cannot do this, you must pay the customer a sum equal to the value you allowed for the goods.

#### ... A customer has used a credit agreement to finance a purchase they wish to cancel?

On cancelling, any money paid to you by the customer or by a creditor on the customer's behalf in relation to the agreement must be refunded to the person who made the payment.

If the purchase was financed by a fixed loan from you or from a lender with whom you have arrangements, then that loan agreement is automatically cancelled when the customer cancels the order.

Where a customer uses a credit, debit or store card to buy the goods or service, the customer's agreement with the card issuer is not cancelled. All that happens is that you credit the money to the customer's account.

# Legislation that applies to distance selling

## The Consumer Protection (Distance Selling) Regulations 2000 (DSRs)

The DSRs implement European Council Directive (97/7/EC) and, for most goods and services, provide additional rights to consumers buying at a distance to encourage confidence in this method of buying.

The protection the DSRs offer is important because customers cannot inspect goods or services before they buy when they shop at a distance.

The DSRs also contain provisions aimed at ensuring that businesses do not use contractual terms that deny consumers their rights under the DSRs, or impose obligations on consumers that are inconsistent with them.

All member states of the European Union (EU) must implement the Directive in their national legislation. The DSRs came into force on 31 October 2000 and were amended by SI 689/2005 effective from 6 April 2005.

[www.legislation.gov.uk/ukSI/2000/2334/contents/made](http://www.legislation.gov.uk/ukSI/2000/2334/contents/made)

The way in which the Directive is implemented may differ in member states. Therefore, applying the DSRs will not ensure that you are complying with the relevant law in another member state.

If you're delivering to consumers

- ➔ **in the EU** – you'll need to meet your legal obligations in the consumers' member states
- ➔ **outside the EU** – you'll need to comply with the legal requirements in those non-EU countries.

## Legislation that applies to distance selling

### The Electronic Commerce (EC Directive) Regulations 2002 (ECRs)

Businesses that sell electronically (such as over the internet or via text) also need to know about the ECRs. These govern the provision of **information society services**, which are any services normally provided on request for payment, at a distance, by means of electronic equipment. It includes, for example, any marketing or selling of goods or services to consumers and businesses on the internet or by email. The ECRs also apply if you market or sell using interactive TV or phone texting.

The ECRs set out certain conditions for **commercial communications** which are or form part of an information society service. A commercial communication is any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person who is carrying out a commercial, industrial or craft activity or regulated profession. It does not include independent reviews that have not been paid for, or communications that only give direct access to the activity of the trader, such as a domain name or web address.

[www.legislation.gov.uk/uksi/2002/2013/contents/made](http://www.legislation.gov.uk/uksi/2002/2013/contents/made)

It is important to know what rights consumers have, and try to deal with complaints as quickly and as helpfully as possible. You will also need to know about other legislation set out on the following pages.

### Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECRs)

These cover activities where you are engaging in direct marketing activity by phone, fax, automated calling systems and electronic mail (including text/video/picture messaging and email).

[www.legislation.gov.uk/uksi/2003/2426/contents/made](http://www.legislation.gov.uk/uksi/2003/2426/contents/made)

### Sale of Goods Act 1979

This requires that traders must sell goods as they are described and of satisfactory quality. It also sets out remedies available to consumers if the goods do not meet these requirements.

[www.oft.gov.uk/saleofgoodsact](http://www.oft.gov.uk/saleofgoodsact)

[www.legislation.gov.uk/ukpga/1979/54](http://www.legislation.gov.uk/ukpga/1979/54)

### Supply of Goods and Services Act 1982

This imposes similar requirements as the Sale of Goods Act in relation to goods supplied, for example, in contracts for work and materials, but also requires a supplier of a service acting in the course of a business to carry out that service with reasonable care and skill and, unless agreed otherwise, within a reasonable time and for a reasonable charge.

[www.legislation.gov.uk/ukpga/1982/29/contents](http://www.legislation.gov.uk/ukpga/1982/29/contents)

# Legislation that applies to distance selling

## Consumer Credit Act 1974

This regulates all consumer credit activities, including what is required in documentation, advertising and the calculation of the cost of credit. It sets out rules, not just for credit providers, but also for others involved in the credit industry.

[www.legislation.gov.uk/ukpga/1974/39/contents](http://www.legislation.gov.uk/ukpga/1974/39/contents)

## Unfair Terms in Consumer Contract Regulations 1999

These require that standard terms you use in contracts with consumers are fair and balanced.

[www.legislation.gov.uk/uksi/1999/2083/contents/made](http://www.legislation.gov.uk/uksi/1999/2083/contents/made)

## Financial Services (Distance Marketing) Regulations 2004

This applies in relation to contracts for financial services made on or after 31st October 2004 under an **organised distance sales or service-provision scheme** run by the supplier or by an intermediary who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

[www.legislation.gov.uk/uksi/1999/2083/contents/made](http://www.legislation.gov.uk/uksi/1999/2083/contents/made)

## Timeshare, Holiday Products, Resale and Exchange Regulations 2010

This provides for consumers' information and cancellation rights under certain holiday accommodation contracts, including agreements for timeshare and holiday clubs.

[www.legislation.gov.uk/uksi/2010/2960/contents/made](http://www.legislation.gov.uk/uksi/2010/2960/contents/made)

## Package Travel, Package Holidays and Package Tours Regulations 1992

These regulations apply to travel and holiday packages sold or offered for sale in the territory of the United Kingdom.

[www.legislation.gov.uk/uksi/1992/3288/contents/made](http://www.legislation.gov.uk/uksi/1992/3288/contents/made)

## Companies (Trading Disclosures) Regulations 2008

These regulations deal with trading disclosures to be made by a company, including disclosure of its registered name.

[www.legislation.gov.uk/uksi/2008/495/contents/made](http://www.legislation.gov.uk/uksi/2008/495/contents/made)

## Legislation that applies to distance selling

### **The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

These protect consumers from unfair, misleading or aggressive trading practices.

[www.legislation.gov.uk/uksi/2008/1277/contents/made](http://www.legislation.gov.uk/uksi/2008/1277/contents/made)

### **Business Protection From Misleading Marketing Regulations 2008**

These prohibit businesses from advertising products in a way that misleads traders and sets out conditions under which comparative advertising is permitted.

[www.legislation.gov.uk/uksi/2008/1276/contents/made](http://www.legislation.gov.uk/uksi/2008/1276/contents/made)

### **The Provision of Services Regulations 2009**

The regulations contain provisions relating to the supply of information, which you will need to comply with if you supply services. Many goods retailers will also supply services in supplying goods and, therefore, need to comply with these regulations as well. It also includes a non-discrimination clause, which means that you cannot normally refuse to supply services on the grounds of where the customer lives, for example, you should not be refusing to supply to EU customers. It also imposes requirements relating to complaints handling.

[www.legislation.gov.uk/ukdsi/2009/9780111486276/contents](http://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents)

# A list of useful organisations

## The Office of Fair Trading

[www.offt.gov.uk](http://www.offt.gov.uk) contains extensive information about different trading laws and how they affect businesses.

The Office of Fair Trading is not able to intervene in individual disputes.

## The Department Business, Innovation and Skills

See [www.bis.gov.uk](http://www.bis.gov.uk) for comprehensive background information and guidance on all aspects of running a business.

## Trading Standards

Advice on the law, local information and details of your nearest Trading Standards office can be found at [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)

## Business Link

An independent body funded by the Department for Business, Innovation and Skills.

Visit [www.businesslink.gov.uk](http://www.businesslink.gov.uk) for guides to the Sale of Goods Act, consumer credit and more about fair trading and trade descriptions. It has useful pointers for creating online shops and web marketing.

# Glossary

## Auction sales

Whether a contract is concluded at an auction depends on how the selling process occurs. An auction has no statutory definition but is generally held to be a manner of selling property by bids, usually to the highest bidder, by public competition, and has a number of characteristics, including

- ➡ a unique item or collection of items for sale
- ➡ each bid being an offer to buy
- ➡ the auction ending in a pre-arranged manner, such as on the fall of a hammer or the expiry of a deadline, after which bids are no longer accepted
- ➡ the winning bidder being bound by contract to pay for the items.

## Breach of statutory duty

Breach of a duty set out in legislation. Under the DSRs, consumers are under a statutory duty throughout the period of cancellation to retain possession of the goods and take reasonable care of them. If the duty is breached, the business may be entitled to compensation.

## Commercial communication (under the ECRs)

Any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person who is carrying out a commercial, industrial or craft activity or regulated profession. It does not include independent reviews that have not been paid for, or communications that only give direct access to the activity of the trader, such as a domain name or web address.

## Conditional sales

A contract where a customer buys goods, paying by instalments, but does not own the goods until all payments have been made and any other conditions met.

## Contract concluded

A contract is concluded when the consumer becomes bound to buy something and the business becomes bound to supply it. The conclusion of a contract is determined by the facts in each case. It is in your interest to make clear to your consumers exactly when a binding agreement will be reached. For example, you need to explain if the contract becomes binding when the customer places the order or only when you confirm that you have accepted their offer to buy.

# Glossary

## Distance contract

Distance contract means any contract concerning goods or services between a supplier and a consumer under a distance sales or service provision scheme that makes exclusive use of distance communication up to and including the moment at which the contract is made.

## Durable medium

We consider this means a form in which information can be retained and reproduced but cannot be edited, such as an email that can be printed or a letter, fax or brochure that can be kept for future reference. Information on a website is not durable as it can be changed at any time after the consumer has accessed it.

## Information society service

Any services normally provided on request for payment, at a distance, by means of electronic equipment for the processing and storage of data. It includes, for example, any marketing or selling of goods or services to consumers and businesses via the internet, email, text messaging and interactive TV.

## Exemption

When you are not bound by all of or certain aspects of a regulation.

## Notary

A lawyer or person with legal training who is licensed by the State to perform notarial activities, in particular authenticating and witnessing legal documents.

## Organised distance sales or sales provision scheme

This applies where your business has arrangements to sell at a distance. This is likely to be the case where you have standard procedures and standard letters, emails or faxes which are sent to potential distance customers who then order by returning them by post, email or fax.

## Pre-contract

The period before the customer is committed to purchase goods or services by agreeing a contract.

## Working days

All days other than Saturdays, Sundays and public holidays.

