

A short guide for business on distance selling



Distance Selling Regulations

This guide aims to provide businesses with a brief overview of the Distance Selling Regulations (DSRs). More detailed information can be found on the OFT website at: **http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft698.pdf**.

What are the Distance Selling Regulations?

The Distance Selling Regulations (DSRs) are the rules that apply if you are selling products or services to consumers without face-to-face contact, and where the consumer has not had an opportunity to examine the goods before buying or discuss the service in person. Examples of distance selling include selling via: the internet, text message, phone call, fax and interactive TV or mail order.

One aim of the DSRs is to ensure a minimum level of consumer protection across the European Union (EU) although other EU countries may have implemented them differently. In non-EU countries you may need to take legal advice to ensure that you comply with the legal requirements.

Compliance with the DSRs is a legal requirement and enforcement action can be taken in the courts against businesses that breach them.

Do they apply to your business?

Exceptions to the DSRs

The DSRs do not apply to the following:

- business to business contracts
- contracts for the sale of land, that is the sale of freehold or leasehold interests. They do apply to short term tenancy or leasehold agreements (rental agreements) concluded by distance means
- contracts for the construction of a building where the contract also provides for a sale or other transfer of an interest in the land on which the building is constructed. They do apply where a consumer already has rights over the land and subsequently enters into a distance contract with a builder to construct a building on the land
- contracts relating to financial services to consumers. However these services are likely to be subject to the Financial Services (Distance Marketing) Regulations 2004 and, where relevant, the Consumer Credit Act 1974
- conditional sales and contracts for hire purchase. They do apply to contracts for hire services, for example the hire of electrical items or clothing
- contracts concluded with a telecommunications operator in respect of a telephone call from a public pay phone
- auction sales, including online and interactive TV auctions. They do apply to some activities described as auctions depending on exactly when and how the sale occurs.

There are some exceptions to the requirements to provide pre-contractual information, written and additional information, the right to cancel and the obligation on the supplier to carry out the contract within a maximum of 30 days.

These apply to:

- certain types of contracts for the supply of food, drinks or other goods for everyday consumption delivered to the consumer's home or work place. In the OFT's view this does not include home deliveries by supermarkets or other home delivery grocery businesses
- certain types of contract 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. However, long term residential hotel accommodation agreed under a distance contract may be considered to be rented accommodation and therefore subject to the DSRs.

How to comply with the DSRs

You must give your consumers certain information before they agree to buy from you. We refer to this as pre-contractual information which includes the following:

- sufficient detail for the consumer 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
- if payment is required in advance, you must supply your full geographic address
- the arrangements for delivery or performance of the service, for example when consumers 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 consumers' right to cancel, where applicable
- if consumers have to use a premium-rate phone number, you must specify the inclusive cost of the call (including taxes) before any charges are incurred for the phone call, for example the cost of the call per minute or an indication of the likely cost of the call. You should also advise your consumer 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 duration of the contract where goods or services are to be provided permanently or recurrently, for example, if you are supplying a mobile phone or satellite TV contract or a book club subscription, and
- that you will pay the cost of your consumers returning any products that you supply as substitutes because the goods or services originally ordered are not available.

Information to be provided once consumers have decided to buy

If you provide pre-contractual information in a form that does not allow it to be stored or reproduced by the consumer, such as during a phone call or on a website, then you must confirm in writing, or in another durable medium (such as e-mail or fax) accessible to the consumer that can be kept for future reference and which cannot be edited. We do not consider that information on a website is durable as it can be altered after the consumer has accessed it.

In addition to the above information, consumers should also be told:

- when and how to exercise their rights under the DSRs to cancel including
 - for goods – whether you require goods to be returned by the consumer 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 consumer may direct any complaints. In the OFT's view this means a physical location and therefore excludes a PO Box address
- 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 consumer as both parties have the same information.

When must I supply this information?

Before the conclusion of the contract or in 'good time', this means that the consumer has sufficient time to act on it when they receive it, for example, to cancel the contract if needed.

Carrying out the contract

A contract must be carried out within the time limits agreed with the consumer as stated in the terms and conditions. If no period is set then the statutory time limit is 30 days from the day after the consumer sent the order to you. If this is not possible you must advise the consumer before the deadline. If the goods didn't arrive in time your consumer is entitled to a full refund, including the postage and packaging, unless they agree to a new deadline to give you more time.

Consumers' cancellation rights

The stage at which you provide your consumers with the required written information will affect when the cancellation period ends.

Where the DSRs give consumers the right to cancel an order, this right is unconditional and begins from the moment the contract is concluded. Unlike when buying from a shop the first time that a consumer will have an opportunity to examine

goods purchased by distance means is when they receive them. When a consumer 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 in any way.

The time limits for cancellation are as follows,

for goods:

- seven working days (not including weekends or bank holidays) after the day on which they receive the goods – provided you give the consumer the required written information no later than the time the goods are delivered
- seven working days from the day after the day on which the consumer received the written information and within three months of the goods being delivered, when the written information is not provided at the time of delivery, or
- three months and seven days from the day after the day the consumer receives the goods if you do not give the required written information at all (or give it after the three month period mentioned above).

for services:

- seven days from the day after the contract was concluded if you give the consumer the required written information on or before the day the contract is concluded, or
- seven working days after the information was received but within three months (beginning the day after the contract was concluded), if the information was received after the contract was concluded.

Different rules apply to services where the consumer agrees that the service starts before the usual cancellation period expires. These are:

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

What must consumers do if they want to cancel?

They must tell you in writing or in another durable medium such as e-mail, if they want to cancel but not by phone unless your terms say this is acceptable. The effective date for cancellations under the DSRs is the date on which the consumer gives notice of cancellation to you.

For more detail on how consumers can give notice of cancellation see the full text version of the 'Guide for businesses on distance selling' on the OFT website at: **http://www.of.gov.uk/shared_of/business_leaflets/general/of698.pdf**

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

- services where you have had the consumer's agreement to start the service before the end of the usual cancellation period and you have provided the consumer with the required written information before you start the service, including information that the cancellation rights will end as soon as you start the service
- goods or services where the price depends on fluctuations in the financial markets which cannot be controlled by the supplier
- the supply of goods made to the consumer's own specification such as custom-made blinds or curtains. This exception does not apply to upgrade options such as choosing alloy wheels when buying a car, or a combination of standard-off-the shelf components when ordering a PC
- goods that by reason of their nature cannot be returned
- 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, and
- gaming, betting and lottery services.

Apart from these exceptions the DSRs give consumers an unconditional right to cancel a contract and legally oblige you to refund all sums due in relation to the contract, this

means the full price of the goods, or deposit or prepayment made including the cost of the delivery. This must be done as soon as possible after the consumer cancels, and within a maximum of 30 days. The DSRs do, however, give suppliers a right of action against consumers for breach of the statutory duty to take reasonable care of the goods.

Refunds

The retailer must refund the full amount including the delivery costs as soon as possible after the consumer cancels, and in any case within 30 days at the latest. You cannot insist on the goods being received by you before you make a refund.

Returning goods

Only if it is covered in the contract and the written information can you require the consumer to pay for the cost of returning the ordered goods. If the consumer 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 consumer's money. You are not allowed to make any further charges, such as a restocking charge or an administration charge.

If you do not include these details in the required written information then you cannot charge anything. You can never require consumers to pay the cost of returning substitute goods. If the goods are faulty or do not comply with the contract, you will have to pay for their return whatever the circumstances.

Further information

The OFT has produced sector specific guidance on the application of the DSRs to the sale of cars and IT contracts made at a distance, copies of which can be found on the OFT website.

Please note that these are only guides and should not be regarded as a statement of how the law applies in every situation. If you are unsure about how the DSRs apply to the circumstances of your particular business then you should consult a legal advisor.

Other legislation

E-Commerce Regulations (ECRs) 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. If you are providing these services, you must supply certain information, some of which overlaps with the information you must supply under the DSRs. This includes:

- the full name of your business
- the geographic address at which your business is established
- your contact details, including e-mail address
- details of any publicly accessible trade or similar register with which you are registered
- if your service is subject to an authorisation scheme or if you are a member of a professional body, details of the relevant supervisory authority or body

- your VAT registration number
- 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).

The ECRs also set out certain conditions for commercial communications. These must be clearly identified as such, provide your identity as the person making the communication, clearly identify any promotional offer or promotional competition or game and ensure that terms and conditions for participation are presented clearly. There are also requirements relating to the storing of the contract and for access to this by the consumer. Also, that provision is made to enable the consumer to correct input errors prior to placing an order. Consumers should receive acknowledgment of the receipt of the order electronically without delay.

If you are uncertain about the application of any of the above law to your businesses activities, you should consult a legal advisor.

Where to go for more information:

The Office of Fair Trading

See **www.offt.gov.uk** for extensive information on different trading laws. As well as more on the DSRs there is information about the Enterprise Act.

The Department of Trade and Industry (DTI)

See **www.dti.gov.uk** for background information on running a business and guidance on ECRs.

Trading Standards

See **www.tradingstandards.gov.uk** for advice on law and details of your nearest Trading Standards office.

Business Link

An independent body funded by DTI.
Visit **www.businesslink.gov.uk** for a variety of business information and pointers for creating online shops and web marketing.

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