

A guide for businesses on distance selling

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1. Introduction

¹ In this guide by consumers we mean anyone who buys goods and services using one of the methods to which the DSRs apply. This excludes anyone buying in the normal course of their business. An explanation of some of the other terms used in the DSRs and in this guide is at paragraph 1.6.

² Please also see paragraph 2.11 for information on contracts to which the DSRs do not apply and paragraph 2.20 for information on contracts to which only part of the DSRs apply.

³ These have been recently amended by the Consumer Protection (Distance Selling) Amendment Regulations SI 689/2005.

⁴ The full name for the E-commerce Regulations is: Electronic Commerce (EC Directive) Regulations 2002 available at www.opsi.gov.uk

⁵ The full name for the Privacy and Electronic Communications Regulations is: Privacy and Electronic Communications Regulations (EC Directive) 2003 available at www.opsi.gov.uk

- 1.1** Many people buy goods and services over the internet, by phone or by mail order. These are all examples of distance selling. An increasing range of goods and services are available to consumers¹ shopping in these ways². Businesses that normally sell by distance means and have systems in place for trading in this way (for example by having standard letters or emails that they send to consumers they deal with at a distance) need to comply with the Consumer Protection (Distance Selling) Regulations 2000 (DSRs)³. An indicative list of selling methods to which the DSRs may apply is at paragraph 2.8
- 1.2** This guidance explains what these regulations are and provides information on how you can comply with them. It also signposts various parts of the regulations. This guidance is also intended to assist consumer organisations and our enforcement partners, principally the Local Authority Trading Standards Services and Consumer Direct (www.consumerdirect.gov.uk) to provide consistent advice to businesses and consumers on their rights and responsibilities under the regulations. It may also be useful to other professional advisors who deal with consumer issues.
- 1.3** Businesses that sell electronically (such as over the internet or via mobile phone texts) also need to know about the:
- Electronic Commerce Regulations (ECRs)⁴ – see Chapter 4 for further information, and the
 - Privacy and Electronic Communications Regulations (PECRs)⁵, where, for example you are engaging in direct marketing activity by phone, fax, automated calling systems, and electronic mail (this means text/video/picture messaging and email). Further information on the PECRs is available at www.ico.gov.uk
- 1.4** Please note that this is only a general guide and you should not regard it 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 the regulations or a legal advisor.
- 1.5** As well as this general guide, we have also produced sector specific guidance on the DSRs, such as for cars and other vehicles sold by

distance means and also IT contracts made at a distance⁶. You can also receive email alerts on a range of topics by registering your interests on our website at www.ofc.gov.uk

⁶ *Cars and other vehicles sold by distance means (May 2005) and IT consumer contracts made at a distance: Guidance on compliance with the Consumer Protection (Distance Selling) 2000 (DSRs) and Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) – both available at www.ofc.gov.uk*

Explanation of some of the terms used in the DSRs and in this guidance

1.6 Below are explanations of some of the main terms in this guidance.

Business includes a trade or a profession.

Consumer means any person who, in buying something to which the DSRs apply, is acting for purposes that are outside their business.

Distance contracts 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 is not defined in the DSRs. Our view is that it 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. We do not consider that information on a website is durable as it can be changed at any time after the consumer has accessed it. Technological advances may change what we regard as durable in the future.

Financial service means any banking, credit, insurance, personal pension, investment or payment service.

Organised distance sales or service provision scheme is not defined in the DSRs. Each case must be considered on its merits. We take the view that where, for example, standard letters, emails or faxes are sent to potential customers who then order by returning them by post, email or fax then it is likely that such an arrangement falls within the definition.

Supplier means any person who is acting in a commercial or professional capacity.

Working days means all days other than Saturdays, Sundays and public holidays.

2. What are the DSRs?

2.1 The DSRs implement European Council Directive (97/7/EC)⁷ 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 consumers cannot inspect goods or services before they buy when they shop at a distance. 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. This made changes to the requirements to provide information when supplying services and to cancellation periods for the supply of services.

2.2 The purpose of the legislation is to:

- give consumers confidence to buy goods and services where there is no face to face contact with the seller, and
- ensure that all traders selling at a distance in the normal course of their business meet certain basic requirements.

2.3 The DSRs say that you must provide consumers with clear information so that they can make an informed choice about whether or not they wish to buy from you. In most cases you must also give consumers the right to a cancellation period.

2.4 The information you give must include details about:

- your business
- the goods or services you are selling
- your payment arrangements
- your delivery arrangements, and
- consumers' right to cancel their orders where appropriate.
See paragraphs 3.22 to 3.36 under 'Cancellation rights'.

This pre-contractual information and some additional information, outlined at paragraphs 3.1 and 3.10 must be confirmed in writing or another durable medium.

⁷ The intention behind the Directive was the minimum harmonisation of the laws, regulations and administrative provisions of member states in respect of distance contracts. The Directive allows member states to introduce more stringent provisions into their domestic legislation in order to provide a higher level of consumer protection than that referred to in the Directive.

- 2.5** The texts of the DSRs and the changes made by SI 669/2005 can be downloaded from www.opsi.gov.uk

Where do the DSRs apply? (Jurisdiction)

- 2.6** One aim of the Directive is to ensure that consumers enjoy the same minimum level of protection no matter where a supplier is based in the EU. If you are making distance sales to consumers in other member states you should be aware that the Directive may have been implemented differently elsewhere in the EU. You may therefore have to take advice to ensure that you meet your legal obligations in other member states. The Private International Law (Miscellaneous Provisions) Act 1995 is also relevant to cross-border transactions and disputes relating to e-commerce, for example, issues of jurisdiction and identifying the law of which State applies to a particular dispute. The full text of the act can be downloaded from www.opsi.gov.uk
- 2.7** If you sell goods or services by distance means outside the EU you may need to take legal advice to ensure that you comply with the legal requirements in non-EU countries.

When do the DSRs apply?

- 2.8** The DSRs apply to your business if you sell goods or services without face-to-face contact with your consumer using an organised distance sale or service provision scheme for instance via:
- the internet
 - text messaging
 - phone calls
 - faxing
 - interactive TV, or
 - mail order – via catalogues, mail order advertising in newspapers or magazines.

For a fuller explanation of what we mean by organised distance sale or service provision scheme please see paragraph 1.6.

Why must I comply with the DSRs?

- 2.9** Compliance with the DSRs is a legal requirement. The consequences of not complying are outlined in Chapter 6 of this guide.
- 2.10** Businesses using standard terms in contracts with consumers must also comply with the Unfair Terms in Consumer Contract Regulations 1999 (UTCCRs). Further information on the UTCCRs is available at www.offt.gov.uk

Contracts to which the DSRs do not apply (Regulation 5)

- 2.11** The DSRs **do not** apply to the following contracts.
- Contracts for the sale of land, that is the sale of freehold or leasehold interests. The DSRs do, however, apply to short term tenancy or leasehold agreements (rental agreements) provided 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 provides for a sale or other transfer of an interest in the land on which the building is constructed. However, the DSRs 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 information giving and cancellation provisions contained in the Financial Services (Distance Marketing) Regulations 2004 (SI: 2095 2004) (FSDMR) and, where relevant, the Consumer Credit Act 1974 (CCA).
 - Conditional sales⁸ and contracts for hire purchase⁹ (which are covered by the FSDMR and the CCA). However contracts for hire services, for example the hire of electrical items or clothing, are covered by the DSRs.
 - 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.

⁸ A conditional sale is where a consumer becomes bound to purchase the goods from the outset, but they do not own the goods until they have fulfilled all the conditions of the contract (usually paid all the instalments).

⁹ Hire Purchase is hiring of goods with an option for consumers to purchase at the end if they want to.

- Contracts concluded with a telecommunications operator in respect of a telephone call from a public pay phone.
- Products and services you sell to other businesses (these are business-to-business contracts).
- Auction sales, including online and interactive TV auctions. However, some activities described as auctions may not necessarily result in sales at auction, so will not fall within this exemption. This will depend on exactly when and how the sale occurs. For further information see paragraph 2.16.

Do the DSRs apply to public bodies selling products and services by distance means?

2.12 If the public body is acting in a commercial or professional capacity and not exercising a statutory function, it is likely to be considered to be acting as a supplier for the purpose of the DSRs.

Would the DSRs apply where a consumer has examined goods in my shop and then orders the same goods from me via distance means?

2.13 This depends on the circumstances, but we consider the DSRs would not normally apply where a consumer examines goods at your premises and later orders those goods by distance means, even if the goods are slightly different, for example, ordered in a different colour from those actually examined.

If I generally do not sell by distance means do the DSRs apply to orders I sometimes get by email, phone or fax?

2.14 If you normally do business with consumers face-to-face, the DSRs are unlikely to apply to an occasional order that you take in these ways. However, if the contract is concluded by distance means under an 'organised distance sales or service provision scheme' (see paragraph 1.6 for what we consider this term means) then the DSRs are likely to apply. Such schemes are not defined in the DSRs and the facts in each case need to be considered but the DSRs may apply if

you use standard procedures for processing orders including standard correspondence sent out to customers which they then return.

Do the DSRs apply to the sale of gift vouchers?

2.15 Yes. In our view, the **provision** of gift vouchers is a contract for the supply of a service. The provision of vouchers that are 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 FSDMRs will apply.

Auctions and the DSRs

What is an auction?

2.16 Whether something is an auction depends on how the selling process occurs and whether the contract is concluded at an auction. 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, and
- the winning bidder being bound by contract to pay for the items.

2.17 How a contract is concluded determines whether the method of sale is an auction and so falls outside the DSRs. Fixed price sales, including 'buy it now' type transactions on internet auction sites, **are** covered by the DSRs because such sales are not concluded by auction.

2.18 Sales by private individuals not acting for business purposes **are not** covered by the DSRs.

How do the DSRs apply to auction sites on the internet?

2.19 This depends on specific circumstances, for example:

- the contractual relationship between the website provider and the seller
- whether the seller is acting as a supplier within the meaning of the DSRs
- whether the seller is operating under an organised distance sales or service provision scheme, and
- whether the buyer is a consumer within the meaning of the DSRs.

Contracts to which only part of the DSRs apply (Regulation 6)

2.20 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 do not apply to the following types of contract.

- Contracts for the supply of food, drinks or other goods for everyday consumption delivered to the consumer's home or workplace by regular roundsmen, for example milkmen. In our view 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 under paragraph 3.38.
- Contracts to provide accommodation, transport, catering or leisure services (for example hotel accommodation; plane, train, or concert tickets; car hire;¹⁰ 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.

¹⁰ The European Court of Justice has decided that car hire contracts constitute 'contracts for the provision of... transport... services' within the meaning of the Directive and the implementing Regulations (EasyCar v UK OJ 2005 C115/4, EU: Case C – 336/03 ECJ) and are therefore partially exempted from the DSRs.

2.21 Specific requirements concerning the carrying out of the contract do not apply to:

- timeshare agreements (as defined by the Timeshare Act 1992), and
- package travel (as defined by the Package Travel, Package Holidays and Package Tours Regulations 1992)

since they include their own requirements about how the service should be carried out.

When is a contract concluded?

2.22 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. If you are selling in a way that comes within the definition of an information society service in the ECRs, you are also required to explain the technical steps that the consumer has to follow to conclude the contract. For more information on the ECRs see Chapter 4 of this guidance.

3. How do I comply with the DSRs?

There is some information that you must give your consumers before they decide to buy from you (Regulation 7)

3.1 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.

- (i) Your identity including sufficient detail for the consumer to be able to identify the business they are dealing with.
- (ii) A description of the main characteristics of the goods or services you are offering.
- (iii) The price of the goods or services you are offering, including all taxes.
- (iv) Details of any delivery costs.
- (v) Details of how payments can be made.
- (vi) If payment is required in advance, you must supply your full geographic address¹¹.
- (vii) 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. There is more information on this at paragraph 3.16 under 'Carrying out the contract'.
- (viii) Information about your consumers' right to cancel, where applicable – see paragraphs 3.22 to 3.36 under 'Cancellation rights'.

¹¹ This applies before goods or services are received by the consumer

- (ix) If consumers 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 call (including VAT). You should also advise your consumers that the cost of the call may differ from that quoted, depending on their network provider.
- (x) For how long the price or the offer remains valid.
- (xi) The minimum duration of the contract where goods or services are to be provided permanently or recurrently and
- (xii) 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.

3.2 The Electronic Commerce Regulations (ECRs) may be relevant where you are conducting business by electronic means – that is by selling on the internet, by email or by text message. If you are selling in this way you also need to be aware of the information-giving provisions in the ECRs. See Chapter 4 for more information.

3.3 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. For example, this information can:

- be provided on a website if you sell goods or services over the internet (in which case the ECRs also apply – see also Chapter 4)
- appear in a catalogue for goods or services sold by mail order, or
- be given over the phone if you are selling goods or services by phone.

In whichever way you give this information, you must make the purpose of your communication clear. Depending on how you have provided this information to the consumer, you may need to confirm it in writing together with some additional information which must be given in all cases. See paragraph 3.10 for more information.

Are there businesses that do not have to give this 'pre-contractual' information?

3.4 Yes. Please see the list at paragraph 2.20 under 'Contracts to which only part of the DSRs apply'.

Do I have to give all the pre-contractual information if I cold-call potential consumers over the phone?

3.5 Yes. You must give this information if you operate an organised distance sales or service provision scheme under which your consumer is entering a contract over the phone. If you sell by phone you must also state clearly, at the start of any conversation:

- the identity of your business or the business on whose behalf you are calling, and
- the reason for your call.

Do I have to give the pre-contractual information if I sell via a premium-rate phone service?

3.6 Yes. You should provide consumers with all the information referred to above, plus the cost of using the phone service (including VAT), before you start charging. You should also advise consumers that the cost of the call may differ from that quoted, depending on their network provider.

What if I supply goods or services on an ongoing basis over a minimum term?

3.7 You must also tell consumers 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.

What if I want to supply substitute goods if the ones I agreed to supply are not available?

3.8 You must:

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

Written and additional information (Regulation 8)

3.9 Once consumers decide to buy you must provide them in writing with some of the information at paragraph 3.1 and some additional information (Regulation 8)

3.10 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 medium¹² available and accessible to the consumer, the information given at paragraph 3.1(i) to (viii).

In all cases you **must also give** your consumers the following information in a durable medium:

- 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 more information on this see paragraph 3.55
 - for services – the consequence of agreeing to a service starting before the end of the usual seven working day cancellation period. See paragraph 3.22 under ‘Cancellation rights’
- details of any guarantees or after-sales services
- the geographic address of the business to which the consumer 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 P O Box address is not sufficient, and

¹² For examples see the reference to ‘durable medium’ at paragraph 1.6 under ‘Explanation of some of the terms used in the Regulations and this guide’.

- 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.

3.11 You do not have to send your consumers this durable information if you have already given it to them, for example in a catalogue or in another durable medium such as in an advertisement.

When must I supply the durable information?

3.12 Before the conclusion of the contract or in 'good time'. Information is said to be received in good time if consumers have sufficient time to act on it when they receive it, for example to enable them to exercise their right to cancel. The applicable cancellation periods will depend on when this information is provided. Please see paragraphs 3.22 and 3.23 for more information.

Do all businesses have to give the pre-contractual and the written additional information?

3.13 No, there are exceptions. Please see paragraph 2.20.

Can I provide this information by email?

3.14 Yes. This information must be in a 'durable medium', which includes email, post or fax. Please see paragraph 1.6 on what is meant by 'durable medium'.

Do I need to provide written and additional information for any free after-sales service and guarantees I provide with the goods?

3.15 Yes. 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 written or durable information. This information should include:

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

Carrying out the contract (Regulation 19)

How long do I have to carry out the contract?

3.16 A contract must be carried out within the time limits agreed with the consumer 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 consumer sends the order to you.

What if I am unable to deliver the goods or start a service in the time agreed or within the 30 days statutory limit?

3.17 If you cannot meet the 30 day deadline to deliver the goods or perform the service, you must inform the consumer before the expiry of the deadline. You and the consumer may agree a revised date for delivery of the goods or performance of the service. But the consumer 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 consumer has under it as the result of the non-performance.

3.18 If you are unable to meet the deadline and have not agreed an alternative delivery date with the consumer, you must refund all money paid in relation to the contract including the postage and packaging. Please see paragraph 3.49 for information on additional services that may have been provided under a different contract. The refund should be made as quickly as possible and within a maximum of 30 days.

3.19 Any credit agreement associated with the purchase is also automatically cancelled. For more information about refunds see paragraphs 3.46 to 3.54.

Can I charge the consumer the cost of insuring items that I send out?

3.20 No. These items belong to you until they have been accepted by your consumer. So you cannot charge your consumers for carrying risks that you should bear. See paragraph 3.36 for more information.

When providing services, when does a service begin?

3.21 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 before the service starts does not mean that the service has begun.

Cancellation rights (Regulation 10)

What cancellation rights do consumers have?

3.22 The stage at which you provide your consumers with the required written information (see paragraph 3.10) will affect when the cancellation period ends.

3.23 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 typically have an opportunity to examine goods purchased by distance means is when they receive them. The DSRs give consumers who buy by distance means more rights than consumers who shop in person. When a distance 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. Please also see paragraph 3.46 for further information.

The time limits for cancellation are as follows.

For goods:

- provided you give your consumer 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 consumer the required written information by the time the goods are delivered, but do so within three months from the day after the day the consumer receives the goods, the cancellation rights will end after seven working days from the day after the day on which the consumer received the required written information, or
- if you do not give the required written information at all (or give it after the three month period mentioned above), the consumer's cancellation rights will end after three months and seven working days from the day after the day the consumer received the goods.

For services:

- if you give your consumer 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, or
- 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 consumer agrees that the service starts before the usual cancellation period expires. These rules are as follows.

- 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** provide it **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.

Can I offer a longer cancellation period under my own contract terms?

3.24 Yes. If you do, you need only inform consumers about the longer period you are offering.

How do I make sure consumers do not cancel a service contract after I have started work?

3.25 Once you have started work or begun to provide a service the consumer is contractually bound to honour his part of the contract so long as you:

- had their agreement to start the service
- provided them with the required written information in advance of your starting, and
- told them that their cancellation rights will end as soon as you do start carrying out the contract.

What must my consumers do if they want to cancel?

3.26 They must tell you in writing, or in another durable medium, if they want to cancel. This includes letter, fax or email. A phone call is not enough unless you say in your terms and conditions that you will accept cancellations by phone.

From what date would the notice of cancellation become effective?

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

What does 'give notice of cancellation' mean?

3.28 The DSRs say that a notice of cancellation will be properly given if the consumer gives notice in one of the following ways:

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

3.29 You may ask your consumers 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.

How do the cancellation provisions apply to linked contracts for goods and services, for example a mobile phone and an associated airtime contract, or a modem and broadband service?

- 3.30** There are normally two contracts in such situations – one for goods (the mobile phone or modem, for example) and the other for a service (such as the airtime or internet connection).
- 3.31** In both cases the cancellation period starts when the contract is made. The time limits for cancellation of the goods and service contracts are explained at paragraph 3.22. With these types of contract it is possible to have cancellation periods running at different times and for the service contract to remain cancellable after the goods have been provided.
- 3.32** With service contracts, if you fail to give consumers 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 though they may have started using the service.
- 3.33** Where a service contract is cancelled the DSRs require you to refund all the money paid in relation to the contract. So if a consumer 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.

How do the cancellation provisions apply where a consumer agrees to spend a minimum sum over a defined period to purchase a set number of goods offered at a discount?

- 3.34** It depends on the required written information you provide and the terms and conditions of the contract with the consumer. Consumers must be given cancellation rights when they agree to their initial commitment to buy goods from you. Thereafter, if the terms say that a new contract is entered into each time the consumer orders goods, then each of those contracts is cancellable. However, the consumer's right to cancel may apply only to that particular purchase rather than to the entire commitment to purchase in future.

Can a consumer cancel an order before they receive the goods or where goods are lost in transit?

- 3.35** Yes. Where the DSRs give consumers rights to cancel, this right is unconditional. If consumers cancel before they have received the goods you must refund the total price of the goods, including any delivery charges. Consumers who have cancelled under the DSRs may refuse to accept delivery of the goods. Refusal in such a situation cannot be treated as a breach of contract.
- 3.36** Where goods are lost in transit from you to the consumer you will need to either send new goods or offer the consumer a full refund, including delivery charges. See paragraph 3.20 for more information.

Instances where cancellation rights do not apply (Regulation 13)

Can consumers cancel an order in any circumstances?

- 3.37** No. The cancellation provisions do not apply to contracts referred to at paragraph 2.20. There are also statutory time limits for consumers to exercise their rights to cancel, as explained at paragraph 3.22.
- 3.38** 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. 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, for example
- 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.

Do downloads of electronic books or music from a website, or the purchase of ring tones and screen savers for mobile phones fall within the cancellation exceptions referred to above?

3.39 We consider that these examples are likely to constitute services, rather than goods as the consumer does not receive physical goods. The right to cancel are therefore those that apply to services.

Do the exceptions at paragraph 3.38 referring to, for example, computer software apply generally to products that may be the subject of copyright, for example books or sheet music?

3.40 No. There is no general exception for copyright products and in our view the exception would not extend to other products that may lend themselves to being copied such as books or sheet music. But this does not stop you from specifying in your terms and conditions what you consider to be reasonable care in examining such goods. However, if the consumer has done no more than examine the goods as they would have in a shop and if that requires opening the packaging and trying out the goods then they would not have 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.

I sell items that may raise health and safety concerns if returned unsealed. How are such products treated under the DSRs?

- 3.41** The first question to consider is whether such items fall under the exceptions listed at paragraph 3.38, for example goods that by reason of their nature cannot be returned. The DSRs do not define this category any further but we consider this exception 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. This exception may apply, for example, to items such as latex or nylon clothing which could become distorted once worn.
- 3.42** We are conscious of concerns about reselling items which may raise concerns about hygiene. However, the DSRs do not link cancellation rights with a supplier's ability to resell items as new.
- 3.43** With items that fall outside the exceptions, cancellation rights will apply, but the consumer has a duty under the DSRs to take reasonable care of the goods throughout the cancellation period.
- 3.44** What constitutes reasonable care depends on a number of things. It may be reasonable for the supplier to stipulate what they consider to be reasonable care, such as not removing hygiene seals on garments or only trying out shoes indoors. But these stipulations cannot restrict a consumer's reasonable opportunity to inspect and assess the product. Consumers have the right to cancel even if they fail to take reasonable care of the goods; however the DSRs do give suppliers a right of action against consumers for breach of the statutory duty to take reasonable care.

What is a breach of statutory duty?

- 3.45** 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.

Refunds (Regulation 14)

When do I have to refund a consumer's money if they cancel an order?

3.46 As soon as possible after the consumer cancels, and in any case within 30 days at the latest. You must refund the consumer's money even if you have not yet collected the goods or had them returned to you by the consumer. You cannot insist on the goods being received by you before you make a refund. See also paragraph 3.64.

Can I withhold a refund if a consumer fails to take reasonable care of the goods?

3.47 No. Other than for the exceptions at paragraph 3.38 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 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.

What specifically do I have to refund to the consumer if they cancel?

3.48 The DSRs require you to refund any money paid by or on behalf of the consumer in relation to the contract to the person who made the payment. This means the full price of the goods, or deposit or pre-payment made, **including the cost of delivery**. The essence of distance selling is that consumers buy from home and receive goods at home. In these circumstances, almost every case of home shopping will involve delivery of the goods ordered and so delivery forms an essential part of the contract.

3.49 If you provided additional services such as gift wrapping or express delivery that a consumer specifically requested, then you may withhold the additional charges incurred by the consumer for these services only if:

- the additional services were provided under a separate contract
- you had the consumer's agreement to start the additional services before the end of the cancellation period, and
- you provided the consumer 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.

I sometimes provide gifts with the goods or services I sell. If a consumer cancels the contract where I have provided such gifts, am I entitled to recover them?

3.50 This depends on the terms of the contract. For example, where a gift was supplied with goods the consumer purchased then, so long as they expected to receive the gift when they placed an order, they may be under a contractual duty to return that gift on cancellation.

3.51 But you must make sure consumers have agreed to receive the gift by placing an order. Otherwise the consumers can treat the gift as unsolicited and can keep it as though it were an unconditional gift.

I sell goods by accepting goods from the consumer in part exchange. In the event of a cancellation what happens to the part exchanged goods I have accepted as part of the contract?

3.52 You must return the part exchanged goods within **ten days** of the consumer 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 to the consumer a sum equal to the value you allowed for the goods.

What happens on cancellation to related credit agreements that a consumer has used to finance a purchase?

- 3.53** If a consumer has entered into a related credit agreement specifically to finance the purchase of the goods or services and if the loan is from you or from a lender with whom you have arrangements, then that loan agreement is automatically cancelled when the consumer cancels the order. Any money paid to you by the consumer or by the lender on the consumer's behalf in relation to the agreement with you will need to be refunded to the person who made the payment.
- 3.54** Where a consumer uses a credit, debit or store card to buy the goods or service, the consumer's agreement with the card issuer is not cancelled. All that happens is that the money should be credited back to the consumer's account.

Return of goods following cancellation (Regulation 17)

Who pays for returning the goods if the consumer cancels an order?

- 3.55** If you want the consumer 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 – see paragraph 3.10. 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.
- 3.56** If you did not include these details in the required written information then you cannot charge anything. See paragraph 3.10. You can never require consumers to pay the cost of returning **substitute** goods – see paragraph 3.1 for more information.
- 3.57** If the goods are faulty or do not comply with the contract, you will have to pay for their return whatever the circumstances.

Can I insist that consumers who cancel an order within the cancellation period return the goods as new or in their original packaging?

3.58 No. Consumers are under a duty to take reasonable care of the goods while in their possession as discussed in paragraph 3.44. The DSRs allow consumers 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 consumers return the goods as new or in their original packaging. You may ask consumers to return goods **with** the original packaging, but you cannot insist on this. In the case of goods such as earrings that have hygiene seals, you may require consumers to exercise reasonable care by not removing the seals when examining them.

How can I resell the goods as new if they have been opened and tested by the customer?

3.59 The DSRs do not provide any general exception to the right to cancel on this point. Unless one of the specific exceptions referred to above at paragraph 3.38 applies, consumers can exercise their right to cancel a contract and return the goods to you. The DSRs do not link cancellation rights with a supplier's ability to resell items as new.

Whose responsibility is it to look after the goods if an order is cancelled?

3.60 Consumers have a statutory duty to take reasonable care of the goods while in their possession. Where a consumer cancels an order under the DSRs they have a duty to return the goods to you or make them available for collection. The DSRs do not require the consumer to return the goods but if the contract says the consumer must return them and they do not, you can charge them for the direct cost of recovery.

How do I ensure that the consumer must return the goods to me following the cancellation of an order?

- 3.61** By saying in your terms and conditions that consumers must return the goods to you if they cancel a contract under the DSRs. If you do not say this in the contract and you want to collect the goods from the consumer, you should make this request in writing or in another durable medium available and accessible to the consumer.
- 3.62** When a consumer returns the goods to you in accordance with the contract, the consumer must take reasonable care to ensure that you receive the goods and that the goods are not damaged in transit. If the consumer does not exercise reasonable care and the goods are damaged, you may have a claim against them for breach of this statutory duty.

What if a consumer fails to return the goods to me despite this being required by the contract?

- 3.63** Then you may have a claim against the consumer for breach of their statutory duty.

Can I include a term in the contract that states that the consumer must return goods within a certain number of days in order to obtain a refund?

- 3.64** No. Under the DSRs such terms have no legal effect. The DSRs 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. For example, a term making cancellation conditional on the return of goods would be inconsistent with consumers' rights to receive a refund – see paragraph 3.46. However, you may request that goods are returned within a certain period or as soon as practicable as long as it does not link the receipt of the goods to the giving of a refund.

I sell self-assembly products. Can I say that if a consumer cancels the contract for the provision of such goods then they should be returned unassembled?

- 3.65** No. If disassembly is not possible, because for example, doing so will damage the item, then it can be returned or collected as it is. Consumers are under a duty to take reasonable care of the goods while in their possession. If you consider that by assembling the product the consumer has not taken reasonable care of it, then you may have a claim against the consumer for breach of their statutory duty.
- 3.66** You may also advise consumers what you consider to be reasonable care, but you need to be careful that any restrictions you place on consumers are not so stringent that they are prevented from properly examining the goods. See paragraph 3.44.

After the deadline for cancellation has passed, a consumer claims that goods are faulty or services do not conform to the contract. Do I have to refund the consumer's money?

- 3.67** In general the DSRs do not affect the consumer's rights under other legislation, for example the Sale of Goods Act 1979 or the Supply of Goods and Services Act 1982. If the goods or services do not conform to the contract and consumers exercise their rights to reject them, you will have to refund their money.
- 3.68** 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. You should not charge return costs for goods that have been rejected because they are faulty.
- 3.69** If you offer a replacement for faulty goods that have been returned by the consumer, the cancellation rights under the DSRs will run for seven working days from the day after the day the consumer receives the replacement goods, provided you have previously complied with the information giving provisions in the DSRs – see paragraph 3.10 for more information'.

Protection for consumers paying by payment card (Regulation 21)

Protection from payment card fraud

- 3.70** The DSRs say that if fraudulent use is made of a consumer's payment card when buying goods or services the consumer is entitled to cancel the payment and be reimbursed by the card issuer.
- 3.71** Similar protection exists under the Consumer Credit Act 1974 however the DSRs extend this protection in relation to distance contracts so that card issuers cannot charge the consumer for the first £50 of loss arising from fraudulent use of the card.

Inertia selling (Regulation 24)

- 3.72** Unsolicited goods may be treated as a gift and consumers have a right to retain or dispose of them as they see fit.

I want to send out some goods as a marketing exercise, is that allowed?

- 3.73** Yes, provided you do not ask for payment. Asking for payment for any unsolicited goods or services is a offence under the DSRs.
- 3.74** Asking for payment for goods where there is no reasonable cause to believe that there is a right to payment is also a criminal offence under the Unsolicited Goods and Services Act 1971 (as amended).

4. Complying with the E-Commerce regulations

4.1 The 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. It includes, for example, any marketing or selling of services to consumers and businesses on the internet. The ECRs also apply if you market or sell using interactive TV or phone texting.

General information to be provided by a person providing an information society service (Regulation 6)

4.2 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. Some of the information overlaps that which you must supply under the DSRs and includes:

- the full name of your business
- the geographic address at which your business is established, which means your home address if you are trading from home
- 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
- 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, and
- 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).

Commercial communications (Regulation 7)

- 4.3** The ECRs set out certain conditions for commercial communications. 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.
- 4.4** Any commercial communication that you send or require someone else to send electronically on your behalf must:
- be clearly identifiable as a commercial communication
 - clearly identify you as the person making the communication
 - clearly identify 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, and
 - clearly identify any promotional competition or game and ensure that any conditions for participation are easily accessible and presented clearly and unambiguously.

Information to be provided where contracts are concluded by electronic means (Regulation 9)

- 4.5** Where contracts are concluded by electronic means (other than by exchange of emails or by equivalent individual communications), you must provide the following information to consumers in a clear, comprehensible and unambiguous manner before an order is placed:
- 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
 - the technical means to enable consumers to identify and correct input errors prior to placing the order

- the languages offered for conclusion of the contract, and
- any relevant codes of conduct to which you subscribe and information about how they may be consulted electronically.

4.6 Where you provide terms and conditions applicable to the contract you must make them available in a way that allows the consumer to store and reproduce them.

Placing the order (Regulation 11)

4.7 Consumers who place orders through technological means, such as through a website or by email, need certainty about the terms of their order:

- Consumers must receive acknowledgement of the receipt of the order electronically without delay, and
- you must provide consumers with effective and accessible technical means allowing them to identify and correct input errors before their order is placed.

4.8 If a consumer enters a contract to which the ECRs apply and has not been allowed to correct input errors, they can rescind the contract (unless a court orders otherwise).

What if my business sells via mobile phone texts?

4.9 Our view is that if you are marketing or selling goods or services to consumers by sending messages in electronic form then you are likely to be providing information society services and commercial communications as set out in the ECRs.

If I sell products electronically, do I also have to comply with the DSRs?

4.10 Yes. If you are a supplier for DSRs purposes, the ECRs will apply in addition to your obligations under the DSRs. Where the two sets of Regulations cover similar ground, you must comply with both.

5. Other consumer protection legislation

What do I do if things go wrong?

5.1 It is important to know what rights consumers have and try to deal with complaints as quickly and as helpfully as possible. As well as reading this guidance, you will also need to know about other legislation such as:

■ Trade Descriptions Act 1968

For goods: this requires a trader to only supply or offer to supply goods that are accurately described

For services: this requires a trader to accurately describe any service, accommodation or facilities being supplied.

■ Sale of Goods Act 1979

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

■ Supply of Goods and Services Act 1982

This 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.

■ Control of Misleading Advertisements Regulations 1988

These provide protection against misleading advertisements and also set out requirements for advertisements that make comparisons with competitors.

■ The Consumer Protection Act 1987

Among other things this covers product safety and product liability and prohibits the use of misleading price indications.

■ Unfair Terms in Consumer Contract Regulations 1999

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

■ 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.

5.2 You can get information about these and other laws from the addresses listed under 'Where to go for more information'.

6. Who enforces the DSRs and ECRs?

- 6.1** Under the Enterprise Act 2002 the OFT, the Local Authority Trading Standards Services and other designated enforcers have powers to take enforcement action through the courts against businesses that breach these regulations.

- 6.2** However, the OFT is committed to ensuring that any enforcement action is necessary and proportionate and that businesses are given a reasonable opportunity to put matters right before we take court action. To this end the OFT follow the guiding principles set out in the Cabinet Office enforcement concordat, which you can find at www.cabinetoffice.gov.uk

Where to go for more information

Background information, legislation and advice

The Office of Fair Trading

www.oft.gov.uk contains extensive information about different trading laws and how they affect businesses. As well as more on the DSRs there is information about the Enterprise Act.

The Department of Trade and Industry

See www.dti.gov.uk for comprehensive background information and guidance on all aspects of running a business. It also provides guidance on the ECRs.

Trading Standards

Advice on the law, local information and details of your nearest Trading Standards office can be found at www.tradingstandards.gov.uk

Business Link

An independent body funded by the DTI. Visit 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.

Small businesses and business support

Small Business Service (SBS)

1 Victoria Street
London SW1H 0ET
Phone: 020 7211 5000
Website: www.sbs.gov.uk

Federation of Small Businesses (FSB)

Sir Frank Whittle Way
Blackpool Business Park
Blackpool Lancashire FY4 2FE
Phone: 01253 336000
Fax: 01253 348046
Website: www.fsb.org.uk

Chambers of Commerce

Website: www.chamberonline.co.uk

Trade associations

Direct Marketing Association (DMA)

For businesses involved in direct marketing, the DMA also offers a conciliation and adjudication service on disputes. Find out more at www.dma.org.uk

Direct Marketing House
70 Margaret Street
London W1W 8SS

Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS)

www.icstis.org.uk

ICSTIS regulates the content and promotion of premium rate phone services.

4th Floor, Clove Building
4 Maguire Street
London SE1 2NQ
Phone: 020 7940 7474
Fax: 020 7940 7456

Mail Order Traders' Association (MOTA)

The trade association for mail order companies. Offers an arbitration service to members.

PO Box 51909
London SW 99 0WZ
Phone: 020 7735 6689
Fax: 020 7735 9592

Advance payment protection schemes

Safe Home Ordering Protection Scheme (SHOPS)

www.shops-uk.org.uk

18a King Street
Maidenhead
Berkshire SL6 1EF
Phone: 01628 641930

The Newspaper Society

Regional and local newspapers' advance payment protection scheme

www.newspapersoc.org.uk

Bloomsbury House
74-77 Great Russell Street
London WC1B 3DA
Phone: 020 7636 7014
Fax: 020 7631 5119

Periodical Publishers' Association

Magazines' advance payment protection scheme.

www.ppa.co.uk
Queens House
28 Kingsway
London WC2B 6JR
Tel: 020 7404 4166

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