

NEW REGULATIONS FOR BUSINESS TO CONSUMER DISTANCE SELLING

A GUIDE FOR BUSINESS

to

THE CONSUMER PROTECTION (DISTANCE SELLING) REGULATIONS 2000

(SI 2000 No. 2334)



Department of Trade and Industry

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I. INTRODUCTION

do the regulations apply to me?

If you sell goods or services to consumers :

- on the internet
- on interactive digital television
- by mail order, including catalogue shopping
- by telephone
- by fax
- and including by advertising on television or radio, in newspapers or magazines,

The Consumer Protection (Distance Selling) Regulations may apply to your business.

key features of the regulations:

- the consumer must be given clear information about the goods or services offered before he or she buys
- after making a purchase the consumer must be given written confirmation
- consumer has a cooling off period of 7 working days
- changes to the Consumer Credit Act 1974 and Unsolicited Goods and Services Act 1971
- new powers for local Trading Standards Departments and the OFT

This document provides a guide to the Consumer Protection (Distance Selling) Regulations 2000. It is for guidance only and in no way replaces the Regulations.

Those affected by the Regulations should refer to them for a full statement of the legal requirements and in case of doubt seek legal advice on questions of interpretation.

The guide has no legal force but is intended to help businesses, consumers and enforcement authorities understand the main features of the legislation and the circumstances in which it applies. The enforcement authorities may not construe the Regulations in the way that they are interpreted in this guide. Any enquiries on enforcement should be addressed to the relevant enforcement authority. See Part IV paragraphs 21.1 - 21.5 for contact details .

1 foreword

- 1.1 The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000 No. 2334), transpose into UK law the European Directive 97/7/EC on the protection of consumers in respect of distance contracts¹.
- 1.2 The Regulations are published by the Stationery Office and can be obtained from normal suppliers. The complete text of the Regulations is also available on the Stationery Office website www.hmsso.gov.uk/si/si2000/20002334.htm.
- 1.3 The Regulations apply to both goods and services, where the contract is made without any face to face contact between supplier and consumer under an organised distance sales or service provision scheme. The Regulations do not apply to business to business transactions.
- 1.4 Many businesses already meet these Regulations, but all need to check that they do comply. This Guide aims to provide guidance on the questions most frequently asked about the Regulations. The Guide has no legal force; only the Regulations, as interpreted by the courts, have force of law.

2 summary of the regulations

- 2.1 The purpose of the Directive is to increase consumer confidence and so strengthen the single European market by providing an agreed minimum level of consumer protection throughout the EC. The aim of the cooling off period is to give consumers an opportunity to examine the goods or services being offered, as they would have when buying in a shop.
- 2.2 The Regulations apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication, that is any means used without the simultaneous physical presence of the consumer and the supplier (regulations 3 and 4). Schedule 1 contains an indicative list of means of distance communication.
- 2.3 The Regulations do not apply to those distance contracts excluded by regulation 5(1), such as contracts relating to the supply of financial services, nor do they apply to business to business transactions.

¹ The Directive is published in the Official Journal of the European Community (O.J. No. L144, 4.6.97, p.19) and on the internet at: http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397L0007.html

- 2.4 The Regulations have limited application to contracts for the supply of groceries by regular delivery and contracts for the provision of accommodation, transport, catering or leisure services (regulation 6).
- 2.5 The Regulations require the supplier to provide the consumer with the information referred to in regulation 7 (the prior information) before the conclusion of the contract. This includes information on the right to cancel the distance contract, the main characteristics of the goods or services, and delivery costs where appropriate.
- 2.6 Regulation 8 requires the supplier to confirm in writing, or another durable medium which is available and accessible to the consumer, information already given and to give some additional information, including information on the conditions and procedures relating to the exercise of the right to cancel the contract (the written confirmation). Regulation 8(3) requires the supplier to inform the consumer prior to conclusion of a contract for services that he will not be able to cancel once performance of the service has begun with his agreement.
- 2.7 Where the Regulations apply, they provide a "cooling off period" to enable the consumer to cancel the contract by giving notice of cancellation to the supplier. The effect of giving notice of cancellation under the Regulations is that the contract is treated as if it had not been made.
- 2.8 Where the supplier provides the written confirmation to the consumer on time, the cooling off period is 7 working days from the day after the date of the contract, in the case of services, or 7 working days from the day after the date of receipt of the goods.
- 2.9 Where the supplier fails to comply with the information requirement at all, the cooling off period is extended by 3 months.
- 2.10 Where the supplier complies with the requirement for written confirmation later than he should have done but within 3 months the cooling off period will be seven working days beginning the day after the date on which the consumer receives the written confirmation (regulations 10-12).
- 2.11 Certain contracts are excluded from the right to cancel unless the parties agree otherwise, such as a contract for the supply of goods made to the consumer's specifications (regulation 13).
- 2.12 If the consumer cancels, the consumer must be reimbursed as soon as possible and within a maximum period of 30 days (regulation 14). Where the consumer cancels the contract, any related credit agreement is automatically cancelled (regulations 15-16).
- 2.13 On cancellation of the contract, the consumer is under a duty to restore goods to the supplier and in the mean time to take reasonable care of them (regulation 17). The Regulations do not require the consumer to return goods but if he is required to under the contract and does not do so, he must pay the cost to the supplier of recovering them (regulation 14(5)).
- 2.14 The Regulations provide that the contract must be performed within 30 days subject to agreement between the parties (regulation 19-20).
- 2.15 The Regulations provide that where the consumer's payment card is used fraudulently to make a purchase under a distance contract the consumer will be entitled to cancel the payment. If the payment has already been made the consumer will be entitled to a re-credit or to have all sums returned by the card issuer. The Regulations amend the Consumer Credit Act 1974 by removing the potential liability of the debtor under a regulated consumer credit agreement for the first £50 of loss to the creditor from misuse of a credit-token in connection with a distance contract (regulation 21).

- 2.16 The Regulations prohibit the supply of unsolicited goods and services to consumers. Regulation 24 replaces with amendments section 1 of the Unsolicited Goods and Services Act 1971 and Article 3 of the Unsolicited Goods and Services (Northern Ireland) Order 1976. It also creates an offence in similar terms to section 2 of the 1971 Act but extended to the supply of unsolicited services and limited to supply to consumers. The scope of section 2 of the 1971 Act and Article 4 of the 1976 Order (which apply only to goods) is amended to restrict their application to the unsolicited supply of goods to businesses (regulations 22-24).
- 2.17 The Director General of Fair Trading, Trading Standards Departments in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland are enforcement authorities for the purposes of the Regulations (regulation 3). An enforcement authority must consider complaints about a breach of the requirements of the Regulations (regulation 26). Those bodies are given the power to take proceedings for an injunction against a business to prevent further breaches (regulation 27).

II SCOPE & EXCEPTIONS

3 definitions

- *distance contract*
- *supplier*
- *business*
- *consumer*
- *organised distance sales or service provision scheme:*
- *exclusive use of one or more means of distance communication*
- *working days*
- *prior information & written confirmation*

3.1 We give here definitions and explanations of some of the key terms used in the Regulations.

distance contract

3.2 A distance contract is defined in the Regulations as "any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded."

3.3 A "contract" is simply an agreement to supply and can be made in different ways, including completion by the consumer of a clip-out coupon in a newspaper advertisement, during a telephone conversation or by use of an interactive web site.

supplier

3.4 A "supplier" is defined as "any person who, in contracts to which these Regulations apply, is acting in his commercial or professional capacity". In other words, the business or trader with whom the contract is made.

3.5 A private sale of personal possessions by one consumer to another would not be covered by the Regulations.

business

3.6 "business" includes a trade or profession.

consumer

3.7 "consumer" means any natural person who is acting for purposes that are outside his or her business.

organised distance sales or service provision scheme:

3.8 The Regulations apply only to contracts concluded in the context of organised distance sales or service-provision schemes, so it is probable that the Regulations do not apply if a business:

- a) does not normally sell to consumers in response to letters, phone calls, faxes or e-mails and
- b) does not operate an interactive shopping web site

3.9 If, for example, you do not usually sell goods or services by distance, but you agree to do so in response to a one-off request from a consumer over the phone, you do not need to comply with the regulations. However, if your business regularly handles "one-off" requests from consumers and is organised so that it can deal with such requests (i.e. there is for example a mail order facility), you do need to ensure that you fulfil the regulations. Furthermore, If your business operates an organised scheme to supply other businesses and you agree to supply a consumer, even if this is a one-off request, you will need to take account of these Regulations for that consumer contract.

exclusive use of one or more means of distance communication

3.10 This means that the consumer has no face to face meeting with an employee or representative of your business or someone acting on your behalf, such as in a showroom or a door to door salesman, up to and including the moment when the consumer confirms his order to buy the goods or service offered. Distance selling is also known as "home shopping". More than one means of distance communication may be used. For example, a television or newspaper advertisement could give a website address or telephone number that enables the consumer to place an order. A list of examples of means of distance communication relevant to these Regulations is given at Schedule 1 to the Regulations and is reproduced at the back of this Guide.

3.11 If you advertise to encourage consumers to visit your showroom or to arrange for a salesperson to come to their home, the subsequent sale would not be covered by these Regulations as a meeting will have taken place before or at the time when the consumer places an order to buy the goods or services offered.

3.12 If you cold call consumers by telephone with a view to concluding a distance contract, irrespective of whether the contract may be made over the phone or by other distance means, you must comply with the requirement in the Regulations that the caller identify the business and say what the purpose of the call is, at the start of the conversation. Note also that under the Telecommunications (Data Protection and Privacy) Regulations 1999 ([SI 1999 No. 2093](#)) it is an offence to use cold calling for direct marketing purposes to subscribers who have notified the caller that unsolicited calls should not be made or notified the Telephone Preference Service² that they do not wish to receive unsolicited calls for direct marketing purposes

working days

3.13 "Working days" means all days other than Saturdays, Sundays and public holidays. You will need to take account of the different public holidays in the United Kingdom and in other EU and EEA Member States.³

prior information & written confirmation

3.14 The Guide uses the term "prior information" to refer to the information required by regulation 7 before the consumer makes a purchase and "written confirmation" or "confirmation" to refer to the confirmation of that information and further detail required by regulation 8 after the purchase has been made.

² Telephone Preference Service, 5th Floor, Haymarket House, 1 Oxendon Street, London SW1Y 4EE
tel. 0845 070 0707; www.tpsonline.org.uk

³ The meaning of public holidays in the Regulations depends on a list published in the Official Journal of the European Communities in accordance with Council Regulation 1182/71

4 exceptions to these regulations

- *Financial services*
- *Sale of land or buildings*
- *Sale of land plus construction of buildings*
- *Vending machines*
- *Public pay phones*
- *Auctions*

4.1 In principle, the Regulations apply to all distance contracts, including unwritten contracts, between business and consumer for the sale of goods and services. However, there are some specific exceptions:

4.2 The Regulations do not apply to -

(a) Contracts relating to financial services⁴, a list of examples of financial services is given at Schedule 2 to the Regulations and is reproduced at the back of this Guide. However, the Regulations do have implications for credit provided to consumers for the purchase of goods and services (see below, sections 12 & 13).

(b) Contracts for the sale or other disposition of an interest in land or buildings except for a rental agreement; - this exception covers the sale of freehold or leasehold interests. However, short term tenancies or leasehold agreements (“rental agreements”) are subject to the Regulations. Rental agreements are defined in the Regulations by reference to the legislation within the UK that governs the need for lease agreements to be made in writing. In England and Wales, these are agreements for a lease for 3 years

⁴ Separate Regulations will be introduced for financial services when negotiations have been completed on a new European Directive on distance marketing of financial services .

or less. In Scotland, they are agreements for a term of one year or less. In Northern Ireland, this means a rental agreement that does not have to be in writing.

(c) Contracts for the construction of a building where the contract also provides for a sale or other disposition of an interest in land on which the building is constructed.

However, if the consumer already has rights over the land and subsequently enters into a distance contract with a builder to construct a building on it, that contract would be covered by these Regulations.

(d) Purchases from an automated vending machine or automated commercial premises.

This exception would include, for example, vending machines for cans of soft drinks, bars of chocolate, or for rail tickets, automated photo booths, juke boxes, etc.

(e) The use of a public pay-phone;

(f) Sales at Auctions, including Internet auctions.

5 exceptions to the information and cancellation provisions

- *Accommodation*
- *Transport*
- *Catering*
- *Leisure services, including out door sporting events*
- *Package travel, timeshare*
- *“regular roundsmen”*

5.1 The requirements for prior information, written confirmation and the right to cancel (Regulations 7 -19(1)) do not apply to –

Accommodation, transport, catering or leisure services, where these services are to be provided for a specific date or within a specific period.

5.2 Examples of the types of purchase excluded from the statutory information and cancellation provisions are tickets for air or rail travel, theatre or concert performances, sporting events or hotel accommodation (however, long term residential hotel accommodation that is agreed under a distance contract may be considered as rented accommodation and therefore be subject to the Regulations).

Package travel; timeshare

5.3 In addition, timeshare agreements are specifically excepted from Regulations 7 - 20 and package travel from Regulations 19 (2) - (8) and 20. These agreements are subject to other legislation (the Timeshare Act 1992 and the Package Travel, Package Holidays and Package Tours Regulations 1992, S.I. No.1992/3288).

The supply of food, beverages or other goods intended for everyday consumption supplied to the consumer's residence or to his workplace by regular roundsmen

- 5.4 An example would be if the consumer telephones the local dairy or supplier of domestic heating oil to arrange regular deliveries. The “regular roundsmen” will make deliveries at agreed intervals.
- 5.5 This exception will not generally apply to the growing market for home deliveries by supermarkets. Such deliveries are normally ordered specifically on each occasion by telephone, on the internet or by fax. The consumer must be informed of the price and delivery arrangements etc in accordance with regulation 7 at the time he places the order and receive a written confirmation of the order, at the latest at the time of delivery. There is, however, a specific exception to the right to cancel in respect of the supply of perishable goods (see paragraph 6.1).

premium rate service

- 5.6 If you sell a service that is delivered and charged for by means of a premium rate telephone service (PRS), you must ensure that the consumer has had the prior information, including the cost of using the service, before the charge is applied. This could be provided in an advertisement, but the supplier would need to check that the consumer has seen it, for example by asking before the charge is applied. You do not need to provide written confirmation of the service provided, but you must ensure that the consumer is able to obtain the postal address of your place of business where complaints can be sent.
- 5.7 In the case of premium rate web sites the prior information, including the cost of using the premium rate service, must be provided clearly before the charge is applied. This can be done on the website before switching the consumer to the premium rate service or in other forms of advertising.
- 5.8 If you sell goods or services that are ordered and paid for by means of a premium rate telephone or internet service you are subject to all the normally applicable requirements of these Regulations such as those relating to prior information, written confirmation and the right to cancel.

6 exceptions to the right to cancel

- *Services that begin, by agreement, before the end of the cooling off period*
- *goods made to the consumer's specification*
- *goods that cannot be returned*
- *perishable goods (flowers, fresh food)*
- *cd, dvd, tapes with software, audio or video if unsealed*
- *newspapers & magazines*
- *betting, gaming & lotteries*

6.1 Unless the parties have agreed otherwise, the cooling off period and the right to cancel do not apply to contracts for -

(a) services that begin before the end of the cooling off period, but this exception only applies from the moment performance of the service has begun and on condition that the consumer has been clearly informed in writing or another durable medium that the right to cancel will not apply and has agreed to early delivery of the service;

(b) the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier; financial services themselves are not governed by the Regulations.

(c) goods made to the consumer's specifications or clearly personalised; this exception is not intended to apply to options which may be selected by a consumer when placing the order - such as up-grading the specification of some components when ordering a personal computer, or choosing alloy wheels when buying a car.

(d) goods that due to their nature cannot be returned or that are liable to deteriorate or expire rapidly; such as fresh flowers and fresh or frozen food and other perishable goods;

(e) the supply of audio or video recordings or computer software if they are unsealed by the consumer;

(f) the supply of newspapers, periodicals or magazines; or

(g) gaming, betting or lotteries.

III KEY FACTS

- 7 *before making a purchase, the consumer must be given clear information about the goods or services offered (prior information)*
 - *Telephone selling*
- 8 *after making a purchase the consumer must be sent confirmation in writing or another durable medium (written confirmation)*
- 9 *consumer has a cooling off period of 7 working days*
- 10 *variations to the cooling off period*
- 11 *notice of cancellation*
- 12 *refunding the money after cancellation*
- 13 *cancellation of related credit*
- 14 *recovery of the goods after cancellation*
- 15 *return of part exchange goods in the event of cancellation*
- 16 *performance*

7 before making a purchase, the consumer must be given clear information about the goods or services offered (prior information)

7.1 The supplier must provide clear and comprehensible information to enable the consumer to decide whether to buy. This information must include:

- (i) the supplier's name and, if payment is required in advance, his address.
- (ii) a description of the goods or services
- (iii) the price including all taxes
- (iv) delivery costs where they apply
- (v) arrangements for payment and for delivery of goods or performance of services (if no date is specified delivery of goods or the start of performance of a service must be within 30 days of the order)
- (vi) the right to a cooling off period during which the consumer may cancel the order for any reason, unless the sale is covered by one of the exceptions to the right to cancel
- (vii) if the consumer is to use a premium rate telephone number the cost of the call must be specified

- (viii) how long the offer or the price remains valid
- (ix) the minimum duration of the contract in the case of a contract to supply goods or services continuously (e.g. mobile phone, cable or satellite television, gas or electricity) or recurrently (e.g. a monthly book or CD club)
- (x) if the supplier wants to be able to offer substitute goods or services if those ordered are no longer available, the consumer must be told of this in advance and informed that in this case the cost of returning substitute goods would be borne by the supplier.

7.2 This information can be given in any form that is appropriate to the means of distance communication being used. For example the prior information could be included in a printed advertisement that the consumer has seen – see remarks at paragraphs 5.7 and 5.8 above, in a mail order catalogue, on a website for e-commerce sales, or given over the phone in the case of telephone selling.

Telephone selling:

7.3 If a business cold calls consumers by telephone with a view to concluding a distance contract, irrespective of whether the contract may be made over the phone or by other distance means, the caller must clearly identify the business he represents and the commercial purpose of the call at the beginning of the conversation.

7.4 Note also paragraph 3.12 concerning the provisions of the Telecommunications (Data Protection and Privacy) Regulations 1999 (SI.1999 No. 2093)

8 after making a purchase the consumer must be sent confirmation in writing or another durable medium (written confirmation)

- *confirmation in writing or another “durable medium” of the prior information*
- *how to exercise the right to cancel & if consumer is responsible for return of the goods*
- *any guarantees & after-sales service*
- *how to end an open-ended service contract (gas, telephone, cable or satellite television, etc)*

8.1 When a contract has been made the supplier must send to the consumer confirmation of the main items of prior information (items (i) to (vi) in paragraph 7.1). This confirmation must be provided in writing or another durable medium, such as fax or e-mail, unless it has already been provided in writing, e.g. in a catalogue or advertisement that the consumer has seen.

8.2 In addition, this confirmation should include details about when and how the consumer can exercise the right to cancel, a geographical address where he can contact the supplier and details of any after-sales services and guarantees. A post office box number is not sufficient for this purpose.

8.3 The consumer must be informed if the contract includes a term that will require that the consumer return the goods in the event of cancellation and whether the consumer or supplier will be responsible for the cost of return. If the contract is for a service with no specified end date or for a period of more than one year, for example a mobile phone, satellite or cable television or gas & electricity supply, he must also provide details about when and how the consumer can terminate the contract.

8.4 The supplier must provide this written confirmation at the latest by the time that the goods are delivered or, in the case of services, before or at an early stage during the performance of the contract.

9 consumer has a cooling off period of 7 working days

- 9.1 The Regulations provide a cooling off period and an unconditional right to cancel during that period. The purpose of the cooling off period is to allow the consumer the opportunity he would have had in a conventional shop to examine the goods or to reflect on the nature of the service before deciding to buy. There are some exceptions to the right to cancel as described above in Sections 5 & 6.
- 9.2 The cooling off period begins as soon as the order has been made and ends, in the case of services, seven working days after the day the order was made or, in the case of goods, seven working days after the day of receipt of the goods.
- 9.3 The definition of working days excludes Saturdays, Sundays and public holidays (see paragraph 3.13). In other words if the contract is made on Monday, Tuesday will be the first working day of the cooling off period and the seventh working day will be Wednesday of the following week (unless there are any public holidays during this period). If the sale is agreed on Thursday the seventh working day will fall on Monday in the second week following the sale to allow for the two intervening weekends.

10 variations to the cooling off period

- 10.1 If the supplier has not complied with requirements for written confirmation, and for example has not informed the consumer in writing about the right to cancel and how to exercise that right, the cooling off period is automatically extended by up to 3 calendar months more. This means that if the supplier delays in providing the consumer with the necessary written confirmation, the cooling off period is likewise extended by an additional period of up to three months and will end 7 working days after the day that it is received by the consumer.
- 10.2 If the supplier fails to provide the written confirmation the cooling off period will last for the full period of 3 months plus 7 working days beginning, in the case of services on the day after the placing of the order or, in the case of goods, on the day after the day they are received.

11 notice of cancellation

11.1 The Regulations require the consumer to send a notice of cancellation in writing, including fax or e-mail. A telephone call is not enough. The notice may be given either to the supplier or to a person notified to the consumer by the supplier as a person to whom the consumer may send the cancellation notice.

11.2 The effective date of cancellation for the purposes of the Regulations is the date on which the notice is sent. This ensures that the consumer has the full cooling off period.

11.3 The Regulations set out different methods of delivering the notice. The consumer has a choice between the following options to:

(a) leave it at the address last known to the consumer and addressed to the supplier or other person by name (in which case it is to be taken to have been given on the day on which it was left);

(b) send it by post to the address last known to the consumer and addressed to the supplier or other person by name (in which case, it is to be taken to have been given on the day on which it was posted); this provides for the fact that the supplier may have moved premises. If the supplier has moved and has not bothered to arrange for mail to be forwarded the consumer should not suffer a loss of rights.

(c) send it by facsimile to the business facsimile number last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent); or

(d) send it by e-mail, to the business e-mail address last known to the consumer (in which case it is to be taken to have been given on the day on which it is sent).

12 refunding the money after cancellation

12.1 When a consumer cancels the order all money paid must be returned within 30 days of the date the notice of cancellation is given. Normally this will mean recrediting the consumer's credit card (or other payment card) account if that was the method of payment used, or repaying the lender if some other form of credit was used for payment.

- 12.2 If goods have been delivered and the consumer has paid a separate charge for delivery, the supplier must also return the delivery charge unless it was provided under a separate contract.
- 12.3 If the contract requires the consumer to return the goods at the consumer's own expense in the event of cancellation, the supplier will be able to deduct the cost of recovering the goods if the consumer fails to return them following cancellation. The consumer must have been told about this term of the contract in advance as part of the written confirmation relating to the right to cancel.
- 12.4 Charging for delivery and recovery in the event of cancellation are commercial decisions for the business and will be a factor in a consumer's choice between competing suppliers. The business must not charge more than the direct costs of recovery of the goods, such as the cost of postage or, for larger items, the cost of a van making a routine trip to the consumer's home, nor can the business charge for any consequential loss.
- 12.5 If the supplier has delivered substitute goods, the consumer cannot be charged for the return of these goods if he decides not to accept them. The possibility that substitute goods or services may be supplied must have been stated to the consumer in the prior information (see Section 7 of this Guide).
- 12.6 The supplier is not entitled to charge for recovery of the goods if the consumer also has a statutory right to cancel the contract, (e.g. because they are defective) or if the term requiring the consumer to return the goods is an "unfair term" within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999. (S.I. 1999 No. 2083). Note that a term is unfair under those regulations if, contrary to the requirements of good faith, it subjects the consumer to a significant detriment. We do not expect that a term which requires a consumer to be responsible for return of goods would normally be "unfair" under the Regulations.
- 12.7 If the consumer has provided any property as security, it must be returned immediately.

13 cancellation of related credit

- 13.1 If payment for the goods and services was under a related credit agreement, the cancellation notice has the effect of cancelling the credit agreement also.
- 13.2 However, if payment was made by a credit card or other payment card the consumer's "agreement" with the card issuer is not itself cancelled. All that must happen is that money be recredited as noted above.

14 recovery of the goods after cancellation

- 14.1 When a consumer exercises the unconditional right to cancel under the cooling off provision ownership of the goods will revert to the supplier. The Regulations impose a responsibility on the consumer to take "reasonable care" of any goods that have been supplied. This obligation applies before as well as after the consumer has given a notice of cancellation. This provision is designed to ensure that returned goods can be sold again as new.
- 14.2 The consumer also has a duty to restore the goods to the supplier. The term "restore" does not permit the supplier to demand that the consumer send back or deliver goods, but only that he make them freely available to the supplier for collection. However, the regulations do permit the supplier to include in the contract a term requiring the consumer to return the goods to the supplier.
- 14.3 The supplier must make two things clear in the written confirmation. First, if the contract provides for it, that the consumer must return the goods on cancellation. Secondly whether return/recovery will be at the expense of the consumer or the supplier. If the consumer fails to return the goods where he has agreed to do so under the contract he can be charged the supplier's cost of recovering them. If the consumer agreed in the contract to return the goods, the supplier can invite him to do so - and it may well be in the consumer's interest to do so since the supplier has the legal right to charge for the direct costs of recovery if he does not do so and it may well be more expensive for the supplier to collect the goods than if the consumer sends them back (see paragraphs 8.3 and 12.3).
- 14.4 However, to ensure that the consumer will be under a duty to take care of the goods until he sends them back the supplier must inform the consumer within 21 days when the supplier will collect the goods from him. Otherwise the consumer will be relieved of the responsibility to take reasonable care of the goods, but the supplier will still be obliged to refund the money paid. The purpose of this provision is to ensure that consumers are not overly inconvenienced when they exercise the right to cancel.
- 14.5 If at any time during the period of 21 days the consumer receives a notice requesting that the consumer hand over the goods at his home address but he does not hand them over in accordance with the notice, his duty to take care of the goods remains open-ended.
- 14.6 if the contract provided for the consumer to return the goods and this was explained in the written confirmation already supplied to the consumer, the responsibility to take care of the goods will continue for up to 6 months and will be open-ended if within that period the supplier serves the notice requiring the consumer to hand them over.

14.7 These last two provisions ensure that if the consumer unreasonably refuses to restore the goods, he does not escape the legal responsibility to take care of them.

14.8 If the consumer does not take care of the goods when he is under an obligation to do so, the supplier can claim against him or her for the resulting loss in value.

15 return of part exchange goods in the event of cancellation

15.1 If the cancelled contract involved a part exchange the supplier must return the part-exchanged goods, in similar condition to when they were received, within 10 days of the date of cancellation. Otherwise, the supplier must give the consumer the part-exchange value of the goods.

16 performance

16.1 The terms of contract must either specify a date for delivery of the goods or the service or be subject to the statutory performance period within 30 days (beginning with the day after the order was placed).

16.2 If the supplier is unable to meet the deadline he must inform the consumer before the performance deadline and refund any money paid within a further period of 30 days. It is however, with the consumer's agreement, open to the supplier to offer substitute goods or services or to propose a revised delivery date. The consumer cannot be obliged to agree to a revised date, however, and if he does not agree the contract is thereby cancelled and any money paid must be returned within 30 days.

16.3 If the supplier wants to be able to offer substitute goods or services, he must make this clear in the prior confirmation the consumer receives before conclusion of the contract. The Regulations do not affect any rights the consumer has to claim compensation for non-performance of the contract under general law.

IV FRAUD AND CONSUMER CONFIDENCE

- 17 *fraudulent use of consumers' credit and debit cards*
- 18 *inertia selling*
- 19 *no contracting out*
- 20 *new powers for local Trading Standards Departments and the OFT*

17 fraudulent use of consumers' credit and debit cards

17.1 The Regulations provide that if fraudulent use is made of a consumer's credit, debit or store card for distance selling purposes the consumer is entitled to cancel the payment and to be reimbursed in full by the card-issuer. Most credit cards have similar protection already under the Consumer Credit Act 1974 (section 83) but the Regulations amend the Act to remove the ability of the card issuer to charge the consumer for the first £50 of loss arising from fraudulent use in connection with a distance contract.

18 inertia selling

18.1 The Regulations amend the Unsolicited Goods and Services Act 1971 and the Unsolicited Goods and Services (Northern Ireland) Order 1976 to remove any rights of the sender in respect of unsolicited goods or services, as defined in these Regulations, and any obligations on the consumer.

18.2 The consumer has the right to retain or dispose of the goods as if they were an unconditional gift. It is an offence to demand payment from consumers in respect of unsolicited goods or services.

19 no contracting out

19.1 The provisions on "no contracting out" are aimed at ensuring that suppliers refrain from inserting contractual terms that deny consumers rights under the Regulations or impose obligations on consumers that are inconsistent with the Regulations. Such terms would be void i.e. having no legal effect. For example, a term like "you must return the goods within 7 days in order to obtain a refund" would be void.

19.2 A term that requires consumers to return goods to the supplier on cancellation is not in itself inconsistent with Regulation 25(3), but such a term has a limited effect because the supplier would still be bound by the Regulations to refund the money within 30 days even if the consumer has failed to comply with that contract term. The supplier's only remedy if the consumer does not comply within a reasonable time is to deduct the cost to him of recovering the goods (see paras 8.3 and 12.3). The Directive does not allow for a greater penalty on the consumer.

19.3 The Regulations will apply even if the contract provides for the law of a non-Member State to apply to the contract, if the contract has a 'close connection' with the territory of a Member State, e.g. both the supplier and the consumer are situated in the UK.

20 new powers for local Trading Standards Departments and the OFT

20.1 The Office of Fair Trading, Local Authority Trading Standards Departments in England, Scotland and Wales and the Department of Trade, Enterprise and Investment in Northern Ireland are the designated enforcement authorities for these Regulations.

20.2 They have a duty to consider any complaint, unless they consider it to be frivolous or vexatious, and have new powers to apply to the court for an injunction against any person who is considered to be responsible for a breach of the Regulations.

V FURTHER INFORMATION

- 21.1 This is a summary of the Regulations and you should not rely on it for an authoritative statement of your legal position. The official text of the Regulations is available on the HMSO website at: www.hmso.gov.uk/si/si2000/20002334.htm
- 21.2 You can contact the DTI Distance Selling Unit via the DTI's Distance Selling Bulletin Board at: <http://www.dti.gov.uk/CACP/ca/dsdbulletin.htm>,
by e-mail: distance.selling@dti.gov.uk,
in writing to: Department of Trade and Industry
Consumer Affairs Directorate
Room 416
1 Victoria Street
London SW1H 0ET
by telephone: 020 7215 0420,
by fax: 020 7215 6198
- 21.3 You'll find the address and telephone number of your local Trading Standards Department for England Scotland or Wales in the phone book under 'Local Authority', or on the internet by visiting www.tradingstandards.gov.uk and entering your postcode.
- 21.4 The address for Northern Ireland is:
Trading Standards Service
Department of Enterprise, Trade and Investment
176 Newtownbreda Road
BELFAST BT8 6QS

E-mail: tss@detini.gov.uk
advice line number: (028) 9025 3900
fax number: (028) 9025 3953
- 21.5 You can contact the Office of Fair Trading through their web site, www.oft.gov.uk
or in writing to: The Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

by e-mail: enquiries@oft.gov.uk

by telephone: 020 7211 8000

by fax: 020 7211 8800

SCHEDULE 1

Regulation 3

Indicative list of means of distance communication

1. Unaddressed printed matter.
2. Addressed printed matter.
3. Letter.
4. Press advertising with order form.
5. Catalogue.
6. Telephone with human intervention.
7. Telephone without human intervention (automatic calling machine, audiotext).
8. Radio.
9. Videophone (telephone with screen).
10. Videotext (microcomputer and television screen) with keyboard or touch screen.
11. Electronic mail.
12. Facsimile machine (fax).
13. Television (teleshopping).

SCHEDULE 2

Regulation 5(1)(c)

Non-exhaustive list of financial services

1. Investment services.
2. Insurance and reinsurance operations.
3. Banking services.
4. Services relating to dealings in futures or options. Such services include in particular:
 - investment services referred to in the Annex to Directive 93/22/EEC; services of collective investment undertakings;
 - services covered by the activities subject to mutual recognition referred to in the Annex to Directive 89/846/EEC;
 - operations covered by the insurance and reinsurance activities referred to in: Article 1 of Directive 73/239/EEC; - the Annex to Directive 79/267/EEC; - Directive 64/225/EEC; - Directives 92/49/EEC and 92/96/EEC.

FREQUENTLY ASKED QUESTIONS

Q1 Won't the unconditional right to cancel damage new dot.com home shopping businesses?

A Many home shopping web sites already offer a no-quibble money back guarantee - and they are still in business. If you are selling a good product or service at a competitive price, very few consumers are going to cancel.

Q2 I provide a gift-wrapping service and the option of express delivery - do I have to refund the cost of these services if the consumer cancels after delivery?

A Where delivery or gift-wrapping constitutes a separate and additional service, it cannot be cancelled once it has been carried out but in our view normal delivery costs do have to be refunded following cancellation.

Q3 What about rogue consumers who use the goods and then cancel at the end of the cooling off period, and send the goods back in poor condition?

A The Regulations are quite clear that the consumer is responsible for taking care of the goods if they decide to cancel. If the goods are damaged and not saleable as new, the supplier is entitled to seek recompense.

Q4 What if the consumer does not return the goods?

A The consumer has a duty to restore the goods to the supplier ie return them or make them available for collection. If he does not he is in breach of the law and the supplier can seek recompense. The Regulations do not require the consumer to return the goods but if the contract says he must and he does not, the supplier can charge the consumer for the direct costs of recovery.

Q5 I sell mobile phone contracts by mail order, these include a service and the phone - the cooling off periods are different for goods and services so how will this work?

A The Directive does not provide expressly for this situation. Our guidance is that if the hardware is given away or sold at a significantly discounted price the contract could be treated as one for service provision and cancellation would mean the phone must be returned too. So, the cooling off period would run for 7 working days from the date of the contract.

If a phone is sold at full price with limited additional elements then probably the cancellation period for goods would apply, so that it ends 7 working days after delivery of the phone.

Q6 Would the electronic purse type of card be covered under the “payment card” definition?

A We understand that this type of card is like carrying cash in your pocket - if you lose it you have no more security than if you lose cash. The same applies to transactions made on the Internet using these cards.

Q7 What other laws apply to distance selling?

A: All existing consumer legislation applies to distance selling, whether online or off-line, just as it does to conventional shopping.

Some of the main consumer laws in force in the UK are:

Consumer Credit Act 1974 (as amended by the Distance Selling Regulations)

Consumer Protection Act 1987 -

Consumer Protection (Distance Selling) Regulations 2000

Fair Trading Act 1973

General Product Safety Regulations 1994

Package Travel, Package Holidays and Package Tours Regulations 1992

Sale of Goods Act 1979

Supply of Goods and Services Act 1982

Timeshare Act 1992

Trade Descriptions Act 1968

Unfair Contract Terms Act 1977

Unfair Terms in Consumer Contracts Regulations 1994

Unsolicited Goods and Services Act 1971 (as amended by the Distance Selling Regulations)

Further information about these and other consumer law can be found on the DTI website at: <http://www.dti.gov.uk/cacp/ca/regs.htm>

In addition, the Government is encouraging self-regulation: TrustUK was launched with Government backing in July 2000 to approve e-commerce codes of practice. The TrustUK hallmark will help consumers to shop safely.

Other future legislation or proposals under discussion include:

- E-commerce Directive, due to come into force in 2001
- Draft directive on the distance marketing of financial services: currently in negotiation.
- Draft directive on General Product Safety: currently in negotiation.
- Directive on consumer credit: under review.
- Brussels Convention on jurisdiction: under review.
- Worldwide agreement on jurisdiction: under discussion in the Hague Conference on private international law.
