

Legally Online

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The growth of online shopping shows no sign of abating. The Centre for Retail Research (CRR) expects a 14% increase in UK online sales to reach £57.39 billion in 2012. This means that in the UK, 13.2% of retail sales will be online.

The attractions of buying online are many. One downside is that you cannot actually see and feel the goods until you have already paid for them and they have been delivered. This is why the Consumer Protection (Distance Selling) Regulations (DSRs) - which have been in force since October 2000 - give legal rights to consumers who buy online. In fact, these legal rights place the consumer in a much stronger position than they would be buying goods in store. And they can be seriously disadvantageous to the trader. However, to some extent online traders can re-dress the balance and improve the default position through their terms and conditions.

When do the DSRs apply?

The DSRs apply to 'distance contracts'. This means a contract for supply of goods or services made by a form of 'distance communication'. This includes selling via the internet, mobile, email, SMS, telephone, TV and mail order. So, if you sell goods or services to consumers (B2C) in any of these ways, without face-to-face contact, then the DSRs will apply.

Sales to other businesses, B2B, are not subject to the DSRs. And not all B2C sales are covered by the DSRs; for example, if you mainly sell in-store, but occasionally make a distance sale, then the DSRs may not apply to the distance sale if it is not made in an organized and systematic way. Also, some B2C sales are specifically excluded from the DSRs; for example, contracts relating to financial services are excluded but are covered by a specific similar regulation for distance selling financial services.

What do the DSRs require?

The DSRs require that traders provide certain key information to the customer; deliver the goods within no more than 30 days; give the customer a right to cancel the contract for any reason during a 'cooling-off' period and to a full refund.

We'll look at each of these in more detail.

Pre-contract information

Traders must provide certain information, clearly and comprehensibly, before a customer agrees to buy. This pre-contract information includes:

- your identity, including enough detail for the customer to be able to identify the business they are dealing with;
- a description of the main characteristics of the goods or services you are offering;
- the price of the goods or services you are offering, including all taxes, details of any delivery costs and how payments can be made;
- the arrangements for delivery of the goods or the performance of the service, for example, when customers can expect delivery of the goods or the service to start;
- information about the right to cancel, where applicable;
- if customers have to use a premium-rate phone number, you must specify the cost of the call (including taxes) before any charges are incurred for the phone call.

This information can be given in any appropriate way, providing it is clear and comprehensible. For online sales, the information is typically set out on the website.

Written and additional information

If the pre-contract information was not provided in writing or in a form which can be retained by the customer (for example, if the information was given only on a webpage), then you must confirm the pre-contract information referred to above, and also provide the following additional information, in a durable medium (such as in writing or by email):

- when and how to exercise the right to cancel;
 - details of any guarantees or after-sales service;
 - the geographic address of the business to which the customer may direct any complaints (a PO box is not sufficient);
 - if a contract lasts more than a year or is open-ended, the contractual conditions for terminating it.
- This safeguards you as well as the customer, as both parties have the same information.

So, if you provide pre-contractual information in a form that does not allow it to be saved by the customer, such as during a phone call or on a website, then you must confirm in writing (including

email), or in another durable medium. This written and additional information must be supplied before the contract is made, or, at the latest, at the time of delivery of the goods.

Delivery obligations

You must deliver the goods or services within the time limits stated in your terms and conditions. If no period is stated, the statutory time limit is 30 days from the day after the order. If you cannot meet the 30-day deadline, you must inform the customer.

The right of cancellation

The main right the customer has is to cancel the order and return the goods for any reason. To do this, the customer must inform the trader within seven working days (not counting weekends and bank holidays) after the day following delivery of the goods. Many businesses offer a longer cancellation period.

It is important to ensure that you have provided the required written information as referred to above because if you have not, the cancellation period can be extended up to three months and seven working days from the day after the customer received the goods.

In relation to services, the cancellation right is lost once the service has started, provided you have the customer's agreement to start the service before the end of the cancellation period and you informed the customer that the cancellation rights would end as soon as you started the service.

The cancellation right does not apply to contracts for accommodation, transport, catering or leisure services on a specific date or period. Also, the cancellation right does not apply to certain contracts such as goods made to the customer's own specification (such as custom-made curtains), to perishable goods (like fresh foods or fresh cut flowers) or to audio or video recordings or computer software that the customer has 'unsealed'. Digital downloads (such as electronic books or music) are treated as services rather than goods as the customer does not receive physical goods. The right to cancel these items is the same as applies to services.

The right to a refund

If the customer cancels, then you must then refund the customer as soon as possible after cancellation and in any case within 30 days at the latest. You have to refund the full price paid, including delivery charges.

The customer has a duty to take 'reasonable care' of the goods while still in their possession. However, the DSRs do not provide for goods to be returned in a fit state for resale and you cannot

insist that customers return the goods 'as new'. So, the customer can cancel a contract and return the goods to you even if they have opened and tested the goods and, as a result, you are unable to resell them.

Even if the customer fails to take 'reasonable care' of the goods, the customer does not lose the right to cancel and the trader still has to make the refund. However, the DSRs give the trader a right of action against the customer for breach of statutory duty. This is unhelpful as it is very unlikely that a trader would refund the price and then pursue a claim against the customer through the courts.

While it's not possible to require that the customer returns the goods 'as new', the trader can improve its position somewhat by specifying in its terms and conditions what it considers to be 'reasonable care' according to the type of goods concerned (for example, that labels or hygiene seals must not be removed).

Returning the goods

Under the DSRs, if the customer cancels, the customer does not have any obligation to return the goods. It is advisable, therefore, to state in your terms and conditions that customers must return the goods in the event they cancel the contract. You can also specify that the customer must pay the costs of the return, although some traders chose to cover the cost by providing a pre-paid postage label. The trader can also state that, if customer fails to return the goods, the trader can charge the customer for the cost of recovering the goods.

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

Other regulations

A number of other Regulations apply to sales over the internet or mobile:

- The E-Commerce Regulations 2002 require certain information to be provided to customers, some of which overlaps with the DSRs but there are additional requirements as well;
- The Provision of Services Regulations 2009 may also apply if you supply services. These regulations include a non-discrimination clause, which means that you cannot normally refuse to supply services on the grounds of where the customer lives, for example, you should not be refusing to supply to EU customers. They also impose requirements relating to complaints handling.

- The Privacy and Electronic Communications Regulations 2003 regulate direct marketing by email, SMS, phone, and fax. These regulations include a prohibition on unsolicited e-marketing without opted-in consent, and also a requirement for consent to drop a cookie on the user's computer or device.
- The Unfair Terms in Consumer Contract Regulations 1999 require that standard terms you use in contracts with consumers are fair and balanced and written in plain language.
- The Data Protection Act 1998 applies to the personal information that you collect about customers. You must provide a privacy statement to explain clearly how you will use that information.
- The 2011 EU Consumer Rights Directive will bring in new EU-wide rules for online shopping and make changes to these Regulations. For example, customers will have a longer cancellation period of two weeks. It is expected that the changes will take effect from 2013.

Enforcement

Trading online brings with it an array of rules and regulations that traders need to comply with or face action from the Office of Fair Trading or local authority trading standards departments. These bodies are under a duty to consider any complaint received and can apply to the courts for an injunction against any person who is considered responsible for a breach of the Regulations. Most importantly, any regulatory enforcement action can lead to adverse publicity, wasted management time, damage to the brand and loss of goodwill. As always, prevention is better than cure.

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