

**Research Briefing**

By Lorraine Conway

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# Distance selling: sale of goods, digital content & services online, by phone, off-business premises etc.



## Summary

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## Summary

Many people shop at a distance. They may order goods, digital content, and services over the internet, by mail order, by telephone, by digital television or even by fax. At the height of the coronavirus pandemic, when consumers had no choice but to shop online for anything other than their essential goods, online shopping surged. Despite the reopening of all non-essential shops in England from 12 April 2021 and the lifting of most restrictions in February 2022, many consumers are still choosing to shop online. Retail commentators predict that online sales will remain high, as people have become accustomed to online shopping.

In the UK, distance selling transactions are covered by normal buying and selling legislation, predominantly the [Consumer Rights Act 2015](#) and the [Consumer Protection from Unfair Trading Regulations 2008](#) (SI 2008 No. 1277). Importantly, consumers are given **additional rights** by the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) (SI 2013 No.3134), known as “the Consumer Contracts Regulations”. The Regulations came into force on 13 June 2014, replacing the “Distance Selling Regulations” (the [Consumer Protection \(Distance Selling\) Regulations 2000](#) (SI 2000 No.2334)).

Under the Consumer Contracts Regulations 2013, traders selling at a distance must design their sales processes to comply with the rules governing distance selling, as well as the general rules for dealing with consumers. In particular, they must give consumers certain specified pre-contract information. The nature of this information varies depending on whether the sale is made at a distance (for example, online or over the phone) or made face-to-face but “off-premises” (i.e., somewhere that is not the store or business premises of the trader).

Brexit and the end of the UK-EU transition period have had little impact on the UK rules which regulate trading with consumers, even though the key legislation in this area is EU-derived. Such legislation remains in force, subject to post-transition changes made by Brexit Statutory Instruments (“Brexit SIs”) to reflect the fact that the UK is no longer in the EU.

Regarding the Consumer Contracts Regulations, the relevant Brexit SI is the [Consumer Protection \(Amendment etc.\) \(EU Exit\) Regulations](#) (SI 2018 No. 1326). [Part 4 section 8](#) of this Brexit SI makes amendments to the Regulations to ensure they continue to be appropriate and effective.

# 1

## Introduction

This paper outlines the main provisions of the Consumer Contracts Regulations. It also outlines other legislation which regulates distance selling, namely, the [Consumer Rights Act 2015](#) (Parts 1 & 2) and the [Consumer Protection from Unfair Trading Regulations 2008](#) (SI 2008 No. 1277).

The [Consumer Contracts Regulations 2013](#) apply to “distance contracts” agreed on or after 13 June 2014 for the sale of goods, digital content, and services. “Distance contracts” are contracts made over the telephone, by post, by mail order or otherwise at a distance. For the purposes of the Regulations, there are two important elements to a distance contract:

- The trader is operating an organised distance sales or service-provision scheme.
- The trader and consumer interact only with one or more means of distance communication up to and including the time at which the contract is concluded.

The 2013 Regulations also cover:

- Online contracts (another form of distance contract).
- Off-premises contracts (these are contracts made on the consumer’s doorstep or at any other location which is not the trader’s premises).

How the consumer sale contract is made determines how the Regulations apply to the contract. For example, depending on whether the contract is made over the telephone, on online or off-business premises will determine what pre-contract information the trader must provide to the consumer, how it must be provided, and whether the consumer has a right to change their mind and cancel the contract without penalty.

The classification of the items sold – whether goods, digital content, or services – will also impact on the information provided to the consumer, the cancellation period, and the consequences of cancelling under the 2013 Regulations. This classification will also impact on the consumer’s statutory rights and remedies under the Consumer Rights Act 2015.

## 2 Consumer Contracts Regulations in detail

### 2.1 Key consumer information

The [Consumer Contracts Regulations](#) require traders to give consumers certain specified information (see **Box 1** below). This information differs depending on whether the sale is made at a distance (for example, online or over the phone) or face-to-face, somewhere that is not the store or business premises of the trader (i.e., off-premises).

#### 1 Distance or off-premises sales: key information

For distance or off-premises sales traders must provide consumers with key information, including:

- A description of the goods, digital content, or services including how long any commitment will last on the part of the consumer.
- The total price of the goods, digital content or service or the way in which the price will be calculated if this can't be determined.
- How the consumer will pay for the goods or services and when they will be provided to them.
- All additional delivery charges and other costs (and if these charges can't be calculated in advance, the fact that they may be payable).
- Details of who pays for the cost of returning items if the consumer has a right to cancel and changes his/her mind.
- Details of any right to cancel - the trader also needs to provide, or make available, a standard cancellation form to make cancelling easy (although consumers aren't under any obligation to use it).
- Information about the seller, including their geographical address and contact details and the address and identity of any other trader for whom the trader is acting.
- Information on the compatibility of digital content with hardware and other software that the trader is aware of (or can reasonably be expected to be aware of).

## 2.2

### Delivery of key information

Failure to provide the required information, or to provide it in the way set out in the Regulations, could result in the consumer's cancellation rights being extended by up to a year. **Box 2** below sets out acceptable delivery methods.

#### 2 Delivery of this key information to the consumer

- For the purposes of the Regulations, key information should be given to the consumer in writing in a 'durable medium' such as on paper or by email.
- Alternatively, it can be provided in a way appropriate to the means of communication, so verbally if the contract is made by phone.
- A consumer is entitled to confirmation of the contract and if the information wasn't initially provided in a durable form, the trader must provide it at the point of confirmation.
- In respect of 'on-premises' sales, the trader doesn't have to provide the consumer with as much information, but it must still provide certain information. For example, information about the goods or services being bought, the price, the compatibility of digital content and details of any delivery costs.

## 2.3

### A consumer's right to cancel goods

Crucially, the Regulations give consumers cancellation rights when they enter into contracts with traders at a distance or face-to-face with a trader (or their sales representative) who has visited the consumer at home.

Regarding the purchase of goods, a consumer's cancellation rights are set out in **Box 3** below. The minimum cancellation period that a consumer must be given is **14 days**, but many traders choose to exceed this to promote good customer relations.

#### 3 Cancellation rights: goods

In a nutshell, a consumer has the following cancellation rights:

- The right to cancel an order for **goods** made at a distance starts the moment the consumer makes the order and ends **14 days** from the day they receive the goods.
- If the consumer's order consists of multiple goods, the 14-day period runs when the consumer receives the last item in the batch.

- The right to cancel an order for a **service** made at a distance starts the moment the consumer agrees the contract and lasts **14 days**.

It is important to note that for some types of goods cancellation rights under the Regulations will not apply. These include the purchase of:

- CDs, DVDs, computer games or software if the consumer has broken the seal on the wrapping. Perishable items and tailor-made or personalised items. Goods that have been mixed inseparably with other items after delivery.

## A consumer's right to cancel services

**Box 4** below sets out a consumer's rights to cancel a contract for services under the Consumer Contracts Regulations. Again, it is important to note that for some types of services cancellation rights will not apply. These include:

- Contracts for hotel bookings, flights, car-hire, concerts, and other event tickets. Contracts where the trader is carrying out urgent repairs or maintenance.

### 4 Cancellation rights: services

In a nutshell, a consumer has the following cancellation rights:

- A consumer has **14 days** from agreeing a service contract to cancel it.
- The trader should not start providing the service before the 14-day cancellation period has ended unless the consumer has requested this.
- If the consumer requests that a service starts straightaway, they will still have the right to cancel, but they must pay for the value of the service that has been provided up to the point they cancel. (For example, if a consumer buys gym membership and then changes their mind within this 14-day period they will be entitled to a refund, but a deduction could be made for the time they have spent using the gym).
- The right to cancel can be lost during the cancellation period if the service is provided in full before the 14 days has elapsed.



## 2.5

# A consumer's right to cancel digital downloads

The Consumer Contracts Regulations contain specific provisions for digital content (such as music or software downloads or games). A summary of these rights is set out in **Box 5** below.

## 5 Cancellation rights: digital content/downloads

In a nutshell, a consumer has the following cancellation rights:

- Retailers must not supply digital content within the 14-day cancellation period unless the consumer has given their express consent to waive the cancellation period.
- The consumer must also acknowledge that once the download starts they will lose their right to cancel.
- If a consumer wants to download digital content within the **14-days** cancellation period they must give their express consent to waive their cancellation rights.

## 2.6

# Right to a refund

On cancelling a contract, the consumer may seek a refund. A consumer's right to a refund on goods bought at a distance or off-business premises is set out in **Box 6** below.

## 6 Right to a refund

- A consumer should receive a refund of the price paid within **14 days** of either the trader getting the goods back, or the consumer providing evidence of having returned the goods (for example, a proof of postage receipt from the post office), whichever is the sooner.
- A deduction can be made by the trader if the value of the goods has been reduced due to the consumer handling the goods more than was necessary.

A consumer's right to a refund of the cost of delivery:

- In addition to the price paid, the trader must refund the basic delivery cost of sending the goods to the consumer in the first place.

This means, for example, that if a consumer elected to pay for an enhanced delivery service (e.g., guaranteed next day delivery), the trader must only refund the basic delivery cost.

## 2.7

### Pre-ticked boxes

Under the Consumer Contracts Regulations, traders are prohibited from using pre-ticked boxes to charge consumers for additional items selected for them as part of the purchasing process. Consumers can only be charged for items that they have actively chosen to add to their “online” basket. **Excessive call charges**

The Consumer Contracts Regulations prohibit traders from using premium rate telephone numbers in respect of customer helplines. If a consumer telephones a trader to make a complaint, check on the whereabouts of their order, or to cancel an order, the trader cannot use a premium rate number. The trader must provide a basic rate number for consumers to call.

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## 3 Consumer Rights Act 2015

It is important to note that consumer rights under the Consumer Contracts Regulations 2013 are in addition to rights under the [Consumer Rights Act 2015](#) (CRA 2015).

The CRA 2015 came into force on 1 October 2015. The main provisions of [Part 1](#) of the Act (Consumer contracts for goods, digital content and services) and [Part 2](#) (unfair terms) are summarised below. More detailed information is provided in a separate briefing paper.<sup>1</sup>

### 3.1 Delivery of goods

The [CRA 2015](#) deals with the delivery of consumer goods. Specifically, it provides:

- A trader must deliver ordered goods to the consumer within **30 days** unless a longer period has been agreed.
- If delivery is later than agreed and it was essential to the consumer that the item was delivered on time (i.e., delivery is time sensitive), then the consumer may have the right to cancel the contract and get a full refund.
- If the delivery is not time sensitive but another reasonable delivery time cannot be agreed, then the consumer may also be entitled to cancel the contract and seek a full refund.
- The trader is responsible for the condition of the goods until the goods are received by the consumer.

### 3.2 Faulty goods, digital content & services

[Part 1](#) of the CRA 2015 creates new consumer rights in respect of contracts for goods, digital content and services. These new rights are summarised in **Box 7** below.

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<sup>1</sup> [Consumer Rights Act 2015](#). Commons Library briefing, CBP-6588, 12 June 2017

## 7 Consumer Rights contained in Part 1 of the CRA 2015

A consumer's legal rights when purchasing **goods** include:

- Right to get what you pay for - all information about the main characteristics of the goods (including statements made in advertising or on labels) to form part of the contract.
- The right that goods be of satisfactory quality (the test is what a reasonable person would consider satisfactory for the goods in question and the price paid).
- The right that goods be fit for purpose (i.e., the goods should be fit for the purpose they are supplied for, as well as any specific purpose the consumer made known to the retailer at the time of purchase).
- The right that goods match their description (i.e., the goods supplied must match any description given by the retailer, or any models or samples shown to the consumer at the time of purchase).

A consumer's legal rights when purchasing **digital content** include:

- The right that digital content be of satisfactory quality, fit for purpose, and as described by the seller. Digital content has its own separate regime of rights and remedies to be applied both to paid-for content (including where paid for with 'virtual' currencies) and content that is provided free with paid goods, services, or other digital content (e.g., apps and in-app purchases and open-source software).
- In addition, the trader must have the legal right to provide digital content to the consumer.

A consumer's legal rights when purchasing **services** include:

- Right that traders perform services with reasonable care and skill, within a reasonable time, with the consumer obliged to pay a reasonable price. The consumer has the right to ask for a repeat performance of services not performed properly or, if that is not possible or done within a reasonable time, a right to a price reduction.
- Any spoken or written voluntary statement made by the trader (about the trader or the trader's service) may be a binding contractual term where the consumer relies on it when deciding to enter into the contract or making any decision about the service after entering into the contract.<sup>2</sup>

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<sup>2</sup> [Section 50\(1\) - \(2\) Consumer Rights Act 2015](#)

## Statutory remedies for a faulty good

What the consumer can claim by way of redress would largely depend on how much time has passed since the good was purchased.

### If the faulty good is returned within 30 days of purchase

Under the CRA 2015, a consumer has a legal right to reject a good that is faulty (i.e., not of satisfactory quality, unfit for purpose or not as described) and obtain a full refund. However, the consumer must act quickly once the fault is discovered. This right to reject the good and obtain a refund is limited to **30 days** from the date of purchase.<sup>3</sup> This is commonly referred to as the “**short term right to reject**”. Time is paused if the consumer agrees to the repair or replacement of the faulty good, with a final right to reject the good if still faulty (known as the “**final right to reject**”).

### If the faulty good is returned after 30 days

After 30 days, the consumer will not be legally entitled to a full refund if the good develops a fault. If the consumer is outside the 30-day right to reject period, they must give the retailer **one opportunity** to repair or replace any good which is of unsatisfactory quality, unfit for purpose or not as described. In practice, the retailer can normally choose whichever option would be cheapest or easier for it to do.

Under Part 1 of the CRA 2015, a consumer is entitled to a full or partial refund instead of a repair or replacement if:

- The cost of the repair or replacement is disproportionate to the value of the good.
- A repair or replacement is impossible.
- A repair or replacement would cause the consumer significant inconvenience.
- The repair would take an unreasonably long time to complete.

In circumstances where a repair or replacement is not possible, or an attempt at repair fails, or the first replacement is also faulty, the consumer has a right to reject the good and claim a full refund (or a price reduction if they wish to keep the product). Alternatively, the consumer has the right to insist on another attempt at repair or a second replacement.

## Statutory remedies for faulty digital content

Where digital content does not conform to the terms implied into the contract by the CRA 2015 (i.e., that digital content be of satisfactory quality, fit for purpose, and as described by the seller), the consumer can call upon the following statutory remedies:

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<sup>3</sup> The 30-day period is shorter for perishable goods, and will be determined by how long it is reasonable to have expected the goods to last

- repair or replacement of the digital content; or
- a price reduction if a repair or replacement is impossible.

In contrast to the sale of goods, there is no statutory limit on the number of repairs or replacements undertaken by the trader to make the digital content conform, but they cannot do so indefinitely as the repair or replacement must be done within a 'reasonable' time and without causing 'significant' inconvenience to the consumer. A price reduction can be up to the full amount of the price paid for the digital content.

Unlike with the sale of goods, there is no right to reject non-conforming digital content and obtain a refund of the price. The only exception is where the trader has no right to supply the digital content (e.g., pirated content). When drafting the CRA 2015, the Government thought it impractical to impose a requirement for the return of digital content.

In certain circumstances, the retailer may have to compensate the consumer (i.e., pay damages) if any device or other digital content owned by the consumer is damaged due to the faulty digital content (even where that content was provided free of charge). This would apply in situations where the damage would not have occurred had 'reasonable care and skill' been used in the provision of the digital content.

## Statutory remedies for non-conforming service

Where services do not conform to the contract, the following statutory remedies are available to consumers:

- right to require "repeat performance"; or
- right to a reduction in price.

In respect of a repeat performance, the trader must either repeat the element of the service that is inadequate or perform the whole service again at no extra cost to the consumer, within a reasonable time and without causing the consumer significant inconvenience.

The consumer can claim a price reduction when:

- The service is not performed in line with information given about the trader.
- The service has not been performed within a reasonable time.
- It is impossible to re-perform the service.
- The consumer has requested a repeat performance, but the service has not been re-performed within a reasonable time or without significant inconvenience to the consumer.

Depending on the severity of the problem, a refund might be the full original price. Regarding the provision of services, the CRA 2015 provides specific statutory remedies where none previously existed.

## 3.3

# Unfair contract terms

[Part 2](#) of the CRA 2015 (including [Schedule 2](#), [Schedule 3](#) and [Schedule 4](#)) clarifies and consolidates the legislation on unfair terms in “business-to-consumer” contracts and notices.<sup>4</sup> In effect, the law is now set out in one place.<sup>5</sup> The main points to note are as follows:

- Under [section 62](#) there is a requirement for consumer contract terms and notices to be fair. Terms will only be binding upon the consumer if they are fair. It defines ‘unfair’ terms as those which put the consumer at a disadvantage, by limiting the consumer’s rights or disproportionately increasing their obligations as compared to the trader’s rights and obligations.

This section also sets out factors that a court should consider when determining whether a term is fair, notably that it should consider the specific circumstances existing when the term was agreed, other terms in the contract and the nature of the subject matter of the contract. This assessment is known as the “**fairness test**” (see also [section 63](#) as regards the “**grey list**” of terms that may be used to assist a court when considering the application of the fairness test).

- “Relevant terms” are terms specifying the main subject matter of the contract or setting the price. These terms are not subject to the “fairness test” provided they are:
  - **transparent:** in plain and intelligible language and, if in writing, legible; **and**
  - **prominent:** brought to the consumer’s attention in such a way that the average consumer (who is well informed, observant, and circumspect) would be aware of the term.

The fact that a relevant term does not meet these requirements does not make it automatically unfair, but it does expose that term to additional scrutiny.

- [Schedule 2](#) of the CRA 2015 sets out an ‘indicative and non-exhaustive’ list of terms in consumer contracts which may be regarded as unfair, the so-called “**grey list**”. Terms on the grey list are not automatically unfair but may be used to assist a court when considering the application of the fairness test to a particular case. Equally, terms not

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<sup>4</sup> A **consumer notice** is a notice that relates to rights or obligations between the trader and the consumer or seeks to restrict the trader’s liability

<sup>5</sup> From 1 October 2016, the Unfair Contract Terms Act 1977 was replaced by the [Part 2 of the Consumer Rights Act 2015](#) in respect of **business-to-consumer contracts**. The Unfair Terms in Consumer Contracts Regulations 1999 were repealed altogether and replaced by [Part 2 of the Consumer Rights Act 2015](#).

found on the list may be found by a court to be unfair by application of the fairness test.

- A court is under an obligation to consider contractual terms for fairness, even if neither party to the proceedings raises fairness as an issue. This means that terms may be held to be unfair by the court even when the consumer has not complained of unfairness.



## 4

# Consumer Protection from Unfair Trading Regulations 2008

The [Consumer Protection from Unfair Trading Regulations 2008](#) (the “CPRs”), which came into force on 26 May 2008, also play a role in regulating distance selling. In a nutshell, the CPRs consist of:

- A general prohibition of unfair commercial practices - for a practice to be unfair, it must harm, or be likely to harm, the economic interests of the average consumer. Prohibitions of misleading actions and omissions and aggressive practices. A blacklist of commercial practices prohibited in all circumstances (as outlined in [Schedule 1](#) to the Regulations).

In effect, the Regulations introduce a **general duty on all traders not to trade unfairly** and seek to ensure that traders act honestly and fairly towards their customers. The CPRs apply to any act, omission or other conduct by businesses directly connected to the promotion, sale, or supply of a product to or from consumers (whether before, during or after a commercial transaction, if any).

Included within the specific trading practices banned outright in the Regulations ([Schedule 1](#)) are the following practices:

- Faking credentials – for instance, a trader claiming to be a signatory to a code of conduct when he is not. A trader pestering the consumer, by making persistent and unwanted contact by telephone, fax, email, or other remote media. Using guilt to make sales, explicitly informing a consumer that if he/she does not buy the product or service, the trader’s job or livelihood will be in jeopardy. Asking for payment when the recipient did not ask for the good. Providing misleading after sales information, and so on.

Traders must act in a manner consistent with the “reasonable” expectations of the “average” consumer. The aim is for consumers to make free and informed purchasing decisions.

A wide range of sanctions are available for a breach of the Regulations depending on the seriousness of the offence, from guidance on codes of conduct to unlimited fines and prison sentences. On 1 October 2014, amendments were made to the Regulations to give consumers rights of redress if they have been the victim of misleading actions, omissions, or aggressive selling. For a trader, there is a defence of due diligence and innocent publication of advertisements.

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