



EU Consumer Rights Directive

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The [Consumer Rights Directive](#) (CRD) 2011/83/EU was adopted in October 2011 and published in the Official Journal on 22 November 2011. Member states must implement the Directive by December 2013 and apply the legislation to consumer contracts from 13 June 2014. The aim of the Directive is to give consumers improved protection when they purchase goods and services across borders. The CRD does not cover all consumer rights; it focuses on simplifying and harmonising rules in a limited number of key areas, including:

- pre-contract information rights (in particular, on costs and terms of delivery for distance and off-premises contracts but also for on-premises contracts);
- traders obtaining the express consent of consumers for any payments which are additional to the main price for the goods or services provided under the contract;
- cancellation rights for distance and off-premises contracts;
- prohibition of excessive surcharges for consumers' use of payment cards and telephone hotlines to the trader; and
- clarification of the cancellation rights and obligations of buyers and sellers of digital products

The majority of the provisions of the CRD are 'maximum harmonisation'. This means that, subject to certain limited derogations, the UK's implementing law cannot go beyond, or below, the level of consumer protection which the provision in the Directive aims to ensure. In respect of those few areas where application of the CRD is discretionary, the UK Government published a consultation Paper in August 2012, '[Enhancing consumer confidence by modernising consumer law in relation to the implementation of the Consumer Rights Directive](#)'. On 19 September 2011, the Department for Business Innovation and Skills (BIS) outlined its proposal that all existing UK consumer protection laws and regulations should be consolidated, together with the requirements of the new CRD, into a single Consumer Bill of Rights.

This note provides a summary of the background to the CRD and an outline of its main provisions. It also considers how the Directive will be implemented in the UK and its implication for existing legislation. Detailed information on the Government's proposal for a new Consumer Bill of Rights is provided in a separate Library note, [SN/HA/6588](#) dated 21 March 2013.

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1 Introduction and overview

The *Consumer Rights Directive* 2011/83/EU (the 'CRD') was agreed by all Member States of the EU on 11 October 2011.¹ The Directive must be implemented by all Member States by December 2013 and should be applied to contracts from June 2014.² In respect of the UK, BIS has stated in its Business Plan that it would use the proposed Consumer Bill of Rights to implement the provisions of the Directive.³

BIS described the character and scope of the Directive as follows:

Despite its name, the CRD does not aim to be all encompassing with regard to consumer rights. Rather, its focus is on simplifying and harmonising rules in a limited number of key areas, to encourage growth and raise consumer confidence in buying across borders. Consumers will be better able to exercise choice, thus securing better deals. Enhanced competition will reward innovative businesses, who deal with consumers in a straightforward, honest way and strive to offer best value for money.

The CRD focuses on: the importance of transparency of information, in particular with regard to pre-contractual information for distance and off-premises contracts (but also for on-premises contracts); on express consent for any payments; on cancellation rights for distance and off-premises contracts; on prohibiting excessive fees for paying and contacting the trader. It also updates legislation to clarify the cancellation rights and obligations of buyers and sellers of digital products.

Importantly, the CRD seeks to ensure a fair balance of responsibilities between business and consumers when contracts are cancelled or deliveries are made.

¹ [European Commission website, Health and consumers](#), 'Proposal for a Directive on Consumer Rights', with links to the text of the new Directive, an Impact Assessment, and to relevant documents, [online] (accessed 15 April 2013)

² The rules will be applied in all Member States at the latest 6 months after the end of the transposition period (i.e. by approximately mid 2014)

³ Business Plan 2011-15, section 9, Department of Business Innovation and Skills, November 2010

Its focus on transparency, requiring clear information including on costs and terms of delivery, and the consumer's express consent for payments, should ensure that consumers are clear about what they are committing to, thus reducing dispute resolution costs for business, and consumer detriment.⁴

Member States are required to apply the provisions of the CRD to all contracts between traders and consumers, but with some exceptions. In the following sectors application of the CRD is discretionary:

- financial services,
- gambling,
- healthcare by regulated professionals,
- social services,
- package travel,
- timeshare,
- property transactions, and
- most aspects of passenger transport

In brief, the main provisions of the Directive affect the following aspects of the business-to-consumer transaction:

- i. Information to be given before a consumer buys goods or services on the trader's premises
- ii. Information to be given before a consumer buys goods or services away from the trader's premises (e.g. at home or at a fair) or at a distance (internet, telesales etc.)
- iii. Cancellation rights and responsibilities where the consumer buys goods or services away from the trader's premises or at a distance.
- iv. For all sales of goods and services within the scope of the Directive, whether or not bought away from the trader's premises or at a distance, the following information:
 - Fees charged for a particular method of payment (e.g. credit card surcharges). Under the CRD these must not exceed the cost to the trader of using that method. (In respect of the UK, this was the subject of a separate consultation, resulting in the [Consumer Rights \(Payment Surcharges\) Regulations 2012](#), which come into force on 6 April 2013.⁵)
 - Delivery times for goods and passing of risk. The CRD clarifies deadlines for delivery of goods and where responsibilities lie if there is a problem.
 - Post-contract customer helplines, under the CRD telephone helplines must be charged to the consumer at no more than the basic rate for the telephone call.
 - Additional payments (i.e. payments additional to the main price for the goods or services) which must, under the CRD, be the subject of active or express

⁵ SI 2012 No.3110

consent by the consumer (for example, pre-ticked boxes which the consumer must 'untick' will no longer be permitted).

Many of the Directive's requirements are already familiar to businesses in the UK. However, the CRD will also introduce a number of important changes to consumer protection rights. These are considered in detail in section 3 below.

2 Background

According to BIS, the differing levels of consumer protection in the laws of Member States have created barriers to cross-border trade for both business and consumers. It is estimated that businesses wishing to export across the EU may be faced with up to 27 different consumer protection regimes.⁶ Consumer confidence to buy across borders is also reduced; unsure of their rights, consumers tend to buy from companies based in their own country, and so lose out on greater choice and lower prices. This in turn means that UK traders with good, competitively priced products lose out on export opportunities.⁷

The CRD is part of an increasing EU trend to unify and strengthen consumer rights. It should be seen in the context of the European Commission's review of existing consumer law, known as the '*Consumer Acquis*'.

The Consumer Acquis, launched in 2004 as part of a broader European Contract law agenda,⁸ was developed by a Commission Green Paper published on 8 February in 2007.⁹ In this Green Paper, the Commission identified eight Directives that would make up the EU *Consumer Acquis*. They are:

- Doorstep selling (Directive 85/577/EEC)
- Package Travel (Directive 90/314/EEC)
- Unfair Contract Terms (Directive 93/13/EEC)
- Timeshare (Directive 94/47/EC)¹⁰
- Distance Selling (Directive 97/7/EC)
- Unit Prices (Directive 98/6/EC)
- Injunctions 98/27/EC
- Sale of Goods and Associated Guarantees 99/44/EC

The Commission outlined inconsistencies between these eight Directives, for example, in their definitions of key terms and in the minimum harmonisation approach adopted. In its view, such inconsistencies have resulted in:

- differences in the rules between Member States;
- reduced confidence in cross-border shopping; and
- unreasonable costs for businesses wishing to trade in other Member States

⁶ '[Consultation on the Implementation of the Consumer Rights Directive 2011/83/EU](#)', Department of Business Innovation and Skills (BIS), 20 August 2012, [online] (accessed 19 March 2013)

⁷ *Ibid*

⁸ COM(2004) 651, 11.10.2004 European Contract Law and the revision of the *Acquis*: the way forward

⁹ COM(2006) 744, 8.2.2007 Green Paper on the Review of the Consumer *Acquis*

¹⁰ The Timeshare Directive was revised in 2008 and was the subject of a Report by this Committee: 3rd Report (2007-08): *Protecting the consumers of timeshare products* (HL 18)

The Commission set out various options for reform and suggested areas that could be revised in order to simplify and complete the existing regulatory framework.¹¹ The ultimate aim is to create an effective ‘business-to-consumer’ internal market that would:

...simplify and complete the existing regulatory framework to improve the functioning of the Internal Market and strike the right balance between a high level of consumer protection and the competitiveness of business.¹²

The Commission’s proposal for a new CRD was published on 8 October 2008.¹³

In November 2008, the UK Government published a consultation paper to gather stakeholder views on the proposals for a CRD.¹⁴ As well as the UK, other Member States and the European Parliament favoured significant changes to the scope of the proposed Directive. Final agreement between the European Parliament and Council was brokered in June 2011, and the European Parliament voted in support of the Directive on 23 June 2011.¹⁵ The CRD was formally adopted on 11 October 2011.¹⁶

The final Directive looks very different from the initial Commission proposal (see below). It is fair to say that as a consequence of last minute changes, the EU is now keen to ensure the Directive’s provisions are fully enforced to give all consumers the same basic rights and protections.

3 The Directive’s main consumer protection provisions

The CRD is much reduced in scope from the original proposal which aimed at full harmonisation of consumer rights within the EU. It primarily focuses on off-premises and distance consumer contracts. When implemented in December 2013, the final CRD will replace two current Directives. They are:

- Directive 97/7/EC *on the protection of consumers in respect of distance contracts*;¹⁷ and
- Directive 85/577/EEC *to protect consumers in respect of contracts negotiated away from business premises*.¹⁸

It was initially proposed that a new CRD would also repeal two other existing European consumer Directives and replace them with a single horizontal Directive, namely: Directive 1999/44/EC *on certain aspects of the sale of consumer goods and associated guarantees*¹⁹ and Directive 93/13/EEC *on unfair terms in consumer contracts*.²⁰ However, both Directives will now remain in force.

¹¹ The results of the consultation are available from the, [Europa website](#), on the Health and Consumer pages, under the heading ‘Proposal for a Directive on Consumer Rights’, [Online] (accessed 27 March 2013). Also see the ‘[UK Government’s response to the EU Commission’s Green Paper on the Review of the Consumer Acquis](#)’, URN 07/1070, May 2007

¹² Commission of the European Communities, [Green Paper on The Review of the Consumer Acquis](#), 08.02.2007, COM (2006) 744 final

¹³ COM(2008) 614, 8.10.2008, Proposal for a Directive on consumer rights

¹⁴ Consultation on EU proposals for a Consumer Rights Directive- Nov 2008

¹⁵ [MEMO/11/450](#)

¹⁶ [Directive of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council](#), PE-CONS 26/11

¹⁷ OJ No. 144, 04.06.1997, p.19

¹⁸ OJ No. L 372, 31.12.1985, p.31

¹⁹ OJ No. L 171, 07.07.1999, p.12

²⁰ OJ No. L95, 21.04.1993, p.29

The ultimate aim of the CRD is to give consumers improved protection when they purchase goods in a shop or online from any seller in the EU. Specifically, the Directive will:

- ensure that consumers are given clear information on price, fees and any other additional charges before they sign a contract, wherever they shop in the EU;
- establish in one set of rules consumer rights on issues ranging from cooling off periods, returns, refunds, repairs and guarantees, late or non-delivery of goods and unfair contract terms; and
- help remove barriers to cross-border trade

In respect of the UK, it is fair to say that many of the Directive's requirements reflect principles which are similar to those contained in existing legislation. Specifically:

- the *Consumer Protection (Distance Selling) Regulations 2000*; and
- the *Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008*

Both sets of Regulations are to be revoked when the CRD comes into effect.

- The CRD requirements also build on the information requirements currently contained in the *Consumer Protection from Unfair Trading Regulations 2008* and the *Provision of Services Regulations 2009*.

However, the CRD will also introduce significant changes, including the following:

- Introduction of pre-contract information rights (in particular for distance and off-premises contracts but also for on-premises contracts). Before entering a contract with a consumer, distance and off-premises sellers must provide certain information, which will form part of the contract. This information includes details on the 'main characteristics' of the goods and services being sold and contact information (i.e. the name and geographical address of the business). In addition, online businesses must ensure that when placing orders, consumers explicitly acknowledge their obligation to pay, by inserting an 'order with obligation to pay' button or similar. (Non-compliance means the consumer is not bound to pay anything). For all contracts, consumers must be reminded of the legal guarantees of conformity (e.g. satisfactory quality) for goods.
- Clarification of rights for digital content (e.g. specific information requirements regarding functionality and interoperability, and the scenarios where cancellation rights do not apply). In short, for distributors of digital content the Directive states that retailers must be clear about compatibility with hardware and software and the application of any technical protection measures.
- Cost transparency - Retailers must ensure that the total cost of a product or service is disclosed including any extra fees or charges. If shoppers are not informed in advance they will not have to pay these fees. Any services which attract a fee must clearly set this out before purchase so consumers are not tricked into paying for a service which they thought was free.
- Traders must seek the express consent of the consumer for any payments which are additional to the main price for the goods or services provided under the contract. In practice, this means that if the retailer offers the consumer additional extras (such as purchasing batteries with an electronic product) these cannot already be pre-selected on the page. The consumer must not be required to take some action to avoid

payment (such as un-ticking a pre-ticked box); the consumer must actively opt in or tick the box in order to select the relevant products.

- Consumers have 14 calendar days to change their minds and return goods bought at a distance or off-premises and receive a full refund. This 14 day cooling off period begins from the date the consumer receives the goods. For services, consumers will be able to cancel within 14 days from when the contract was agreed. Where the consumer is not informed of their right to cancel, the 14 day cancellation period is extended for a period of up to one year. Importantly, the right to cancel will be extended to online auctions (such as eBay), if the goods are purchased from professional sellers. However, this cooling off period will not apply to customer-specific goods (i.e. bespoke goods).

(Currently in the UK, consumers have the right to return or cancel goods and services within 7 calendar days for off-premises sales and within 7 working days for distance sales; both cooling off periods beginning at the conclusion of the contract.)

- Distance and off-premises consumers to be provided with a 'model withdrawal form' to use when cancelling the contract, although the consumer will not have to use this form.
- Period for refunding consumers is cut to 14 days - Distance and off-premises traders must refund monies within 14 days of receipt of a cancellation notice, as opposed to the current period of 30 days. The refund must include the costs of delivery.
- Retailers pay for returns, unless specified - The Directive is clear that if a retailer wants the consumer to bear the cost of returning the goods then it must clearly inform the consumer of this in advance. For certain goods (e.g. bulky goods) the retailer may need to provide an estimate in advance so that the consumer can make an informed decision before purchasing the goods.
- Distance and off-premises contracts for services can be cancelled by the consumer where the service has started within the usual cancellation period, provided that the consumer pays for the proportion of services performed. Under the current UK regime once a service has started (with the consumer's consent) cancellation is not possible.
- There must be no excessive surcharges for consumers' use of payment cards and telephone hotlines.²¹ Retailers must not charge more than actual costs for use of credit or debit cards or any other method of payment. (In the UK, *the Consumer Rights (Payment Surcharges) Regulations 2012* have already come into force). In addition, retailers must not charge consumers extra for using customer service help lines for post-contract queries, complaints or cancellation requests. In those circumstances the consumer should only have to pay the 'standard rate' call charge.
- All traders, however they sell, will generally be expected to deliver goods to consumers within 30 days of an order being placed. If the trader does not deliver on time, consumers will be entitled to terminate the contract and receive a refund if the business does not deliver the goods during 'an additional period of time'

²¹ In the UK, the provisions regarding surcharges will be implemented ahead of the other provisions of the Directive, and were the subject of a separate consultation

appropriate to the circumstances. In some cases the right to terminate will arise without allowing this 'additional time period'.

4 Implementation of the Consumer Rights Directive in the UK

4.1 Copy out provisions

In line with Government policy for transposing European Directives, the Government has stated that it intends to 'copy out'²² provisions from the CRD unless this would not offer sufficient certainty or there are other overriding reasons not to do so.²³

4.2 Revocation and amendment of existing legislation

As outlined above, the majority of the provisions in the CRD are maximum harmonisation measures. This means that, subject to certain limited derogations, the UK's implementing law cannot go beyond, or indeed below, the level of consumer protection which the provision in the Directive aims to ensure. As a result, any requirements in other UK legislation which conflict with the maximum harmonisation requirements in the CRD will need to be amended, to ensure that the UK does not breach its CRD obligations.²⁴

The CRD will replace both the *Distance Selling Regulations 2000* (DSRs) and the *Off-Premises Regulations 2008* (OPRs), both will be revoked in June 2014. However, BIS has acknowledged that the scope of the CRD, as set out in Article 3, does not precisely mirror the scope of either Regulations and the change in coverage may result in some changes to the rights and obligations of traders and consumers. For example:

- one key change is the exclusion of financial services from the CRD (some limited aspects of financial services are currently covered by *Off-Premises Regulations* but not by *Distance Selling Regulations*);
- the inclusion in the CRD of online auctions where the seller is a trader (currently such auctions are excluded from the *Distance Selling Regulations*); and
- social services and healthcare services which are excluded from the CRD but are currently covered by both the *Distance Selling* and *Off-Premises Regulations*

It is also likely that implementation of the CRD will include some amendments to:

- the *Sale of Goods Act 1979* (relating to the delivery of goods); and
- the information requirements in estate agency legislation

The Government is also considering what changes may be needed to the *Supply of Extended Warranties on Domestic Electrical Goods Order 2005*.

4.3 Consultation on extended contractual rights

Member States are required to apply the provisions of the CRD to all contracts between traders and consumers. However, there are some exceptions where application of the CRD is discretionary. They include contracts for:

- financial services,

²² 'Copying out' means keeping closely to the wording of the Directive, rather than elaborating upon it or adding substantively to the provisions of the Directive

²³ ['Consultation on the Implementation of the Consumer Rights Directive 2011/83/EU'](#), Department of Business Innovation and Skills (BIS), 20 August 2012, [online] (accessed 19 March 2013)

²⁴ Article of the CRD 6(8) allows a derogation from this, permitting additional requirements which are in accordance with the *Services Directive 2006* and *E-Commerce Directive 2000*

- gambling,
- healthcare by regulated professionals,
- social services,
- package travel,
- timeshare,
- property transactions,²⁵ and
- most aspects of passenger transport²⁶

The exercise of discretion in these areas was addressed in a Government consultation paper published on 20 August 2012, '[Enhancing consumer confidence by modernising consumer law in relation to the implementation of the Consumer Rights Directive \(CRD\) 2011/83/EU](#)'. The consultation closed on 1 November 2012, however, the Government has not yet published its response.²⁷

This consultation paper focuses on the relatively few areas in which the Government has some flexibility. In those areas its key proposals include:

- Extending certain of the Directive's provisions to healthcare services, package travel, timeshare contracts and social services.
- The Government also proposes not to apply pre-contract information requirements and cancellation rights to off-premises contracts under 50 Euros, or pre-contract information requirements to on-premises 'day-to-day' transactions where payment is made straight away (for example, in the purchase of a cup of coffee).

4.4 Proposed Consumer Bill of Rights

BIS has stated in its Business Plan that it intends to include the provisions of the CRD in a new Consumer Bill of Rights.²⁸ The Government's proposals for a new Consumer Bill of Rights would set out in one place a clear code of consumer rights and simple standardised remedies for when things go wrong. At the moment, existing consumer rights are found in 12 different Acts or regulations, which the Government has said is '*complex and confusing*' and creates detriment for both consumers and businesses.²⁹

In July 2012, BIS published, '[Enhancing consumer confidence by clarifying consumer law in relation to the supply of goods, services and digital content](#)'.³⁰ This consultation paper sets out proposals to overhaul and strengthen core consumer rights and remedies in relation to faulty goods and poor services, and update and clarify consumer rights and remedies in relation to 'digital content'. A new Consumer Bill of Rights would consolidate these rights and remedies into a single, accessible statute, and repeal (in whole or in part) certain consumer legislation including:

- the *Sale of Goods Act 1979*,
- *Unfair Contract Terms Act*, and
- *Unfair Terms in Consumer Contracts Regulations*

²⁵ Estate agency services are not exempt

²⁶ Article 3(3) sets out the full list of exemptions

²⁷ '[Consultation on the Implementation of the Consumer Rights Directive 2011/83/EU](#)', Department of Business Innovation and Skills (BIS), 20 August 2012, [online] (accessed 19 March 2013)

²⁸ [Business Plan 2011-15, section 9, Department of Business Innovation and Skills, November 2010](#), [online] (accessed 19 March 2013)

²⁹ Department of Business Enterprise and Regulatory Reform (BERR), *Consumer Law Review 2008*, quoted at paragraph 4.8 of '[Enhancing Consumer Confidence by clarifying consumer law – consultation on the supply of goods, services and digital content](#)', URN 12/937, July 2012, [online] (accessed 19 March 2013)

³⁰ *Ibid*

The consultation ended on 5 October 2012. The Government is expected to publish its response shortly. A separate Library standard note provides detailed information on the proposed Consumer Bill of Rights.³¹

5 Views of stakeholders and interested parties

The Directive has generally been well received. In large part this is because although many of the Directive's provisions favour consumers, there are also a number of changes that benefit businesses, for instance, stricter controls regarding the return of goods by consumers exercising their cancellation rights and the timing of refunds. In the event of cancellation, consumers may also be liable for the diminished value of a product where their handling of the product went beyond what was necessary to examine it, which is clearer than the existing obligation to take 'reasonable care'.

Commentators generally agree that the maximum harmonisation principle of the CRD should lead to a more consistent consumer protection regime across all EU Member States. However, BIS proposals to implement the Directive in the UK by 'copying out' have led some commentators to argue that this approach will result in ambiguity in some areas which will need to be addressed by supplementary guidance.³²

Concerns have also been raised over the possibility that the Directive will be implemented in the UK through secondary legislation rather than within a new Consumer Rights Bill itself. There is also concern over the retention of existing consumer regulations which will continue to apply, as this seems contrary to BIS' stated aim of a simplified and consolidated consumer law regime. Of particular note, the Office of Fair Trading (OFT), in its responses to the consultation, stated that the Government should provide even greater protection to consumers, over and above what it is currently proposing.³³

³¹ ['Proposal for a new Consumer Bill of Rights'](#), Library note SN/HA/6588, 21 March 2013, [online] (accessed 27 March 2013)

³² ['Making consumer law fit for purpose'](#), by Jon Bartley, *Solicitors Journal*, vol.156 No.46, 4 December 2012, [online] (accessed 27 March 2013)

³³ Office of Fair Trading (OFT), ['Consultation on the implementation of the Consumer Rights Directive 2011/83/EU – The OFT's response to the Government's consultation'](#). November 2012, [online] (accessed 15 April 2013)