

The new Consumer Rights Directive

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Topics

- [Consumer protection](#)
- [Commercial](#)

The Consumer Rights Directive increases a consumer's rights where contracts are concluded away from a retailer's shop or premises - for example, where purchases are made online or from a catalogue. It aims to ensure a level playing field across Europe.

The Directive is part of an increasing EU trend to strengthen consumer rights. As initially proposed, it was much more far-reaching. It required retailers to sell their goods to any EU country and to always bear the cost of returns. Had these proposals been adopted it would have been extremely costly for retailers.

Although the Directive was changed at the last minute, retailers should still take notice. The EU will be keen to ensure the remaining protections are fully enforced to give all consumers the same basic rights and protections.

The new laws will need to be implemented in the UK by late 2013.

What are the changes?

The Directive expands the current English Distance Selling Regulations which already provide consumers with protections when shopping online or purchasing goods when not actually in a retailer's store or premises.

Consumers have 14 calendar days to change their minds and return the goods for any reason

Currently under English law consumers have seven working days to cancel a sales contract and change their minds. This is commonly referred to as the 'cooling off period'. This will be extended to a minimum of 14 calendar days. The 14 day period will begin from the time the consumer receives the goods – not at the conclusion of the contract as is currently the case.

This period will be further extended by potentially up to a year if appropriate information is not given at the key stages of the sales process. The existing seven day period is extended in the same circumstances under current law.

As under the current law, this cooling off period will not apply to personalised or customer-specific goods.

The right to cancel will be extended to online auctions, such as eBay, if the goods are purchased from professional sellers. This will impact on retailers using an eBay store as a low-cost route to market.

There will be a model form for a consumer to use when cancelling, although the consumer will not have to use this form.

Period for refunding consumers is cut to 14 days

Retailers currently have up to 30 days to provide a refund. This will be reduced to 14 days from the date of notice of cancellation. The refund must include the costs of delivery. This will cut the time retailers have to check returned stock, meaning retailers' processes will need to be fast.

Retailers pay for returns, unless specified

The Directive is clear that if retailers want the consumer to bear the cost of returning the goods then it must clearly inform the consumer of this in advance and may need to provide an estimate in advance.

For bulky goods the retailer must provide an estimated cost in advance so that the consumer can make an informed decision before purchasing the goods.

Charges for use of credit cards and hotlines

Retailers must not charge more than actual costs for use of credit cards or any other method of payment, or hotlines. This means that a surcharge cannot be added and telephone calls must only cost the standard rate.

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.

Prohibition on pre-ticked boxes

If the retailer offers the consumer additional extras – for example, purchasing batteries with an electronic product – these cannot already be pre-selected on the page. The consumer must positively opt in or tick the box in order to select the relevant products.

Be clear about digital content

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.

When does the Directive come into force?

It is expected that the EU Council of Ministers will approve the text of the Directive in autumn 2011. It will then be published in the Official Journal. Following this the UK will have two years (currently anticipated to be Autumn 2013) to implement the Directive under UK law. This will either be done by amending the current Distance Selling Regulations or repealing them and introducing new laws to cover the elements of the Directive.

What do I need to do?

Businesses should review their current processes to see how many changes will need to be made to comply with the new laws. Where processes or procedures will need to be changed businesses should plan for this now. The online experience and terms and conditions will also need to be updated to ensure the consumer has the right information at the right time and your business is not exposed to claims or a longer cooling off period as information is not given at the correct time.