

CANCELLATION OF CONTRACTS MADE IN A CONSUMER'S HOME OR PLACE OF WORK ETC. REGULATIONS 2008

From **1 October 2008**, new regulations will extend the existing law on cooling-off periods and cancellation rights for consumers. They will cover contracts made **both during both solicited visits made by traders - ie visits made at the consumer's request - and unsolicited visits** by traders. The visits could take place in a consumer's home or workplace, or another individual's home, or on an excursion organised by the trader away from the trader's business premises in the UK. Certain exceptions may however apply.

The regulations will apply to sales of goods and services. This includes - but is not limited to -

- businesses providing goods and services such as:
- home improvement
- repair and maintenance services
- energy efficiency products or installations
- consumer goods and home ware

The regulations will affect a very wide range of businesses and you are advised to check whether yours is likely to be one of them. If it is, you must be ready to apply the new regulations when they come into force on 1 October 2008. You and your staff must read the guidance and understand the new requirements, which may include making **changes to your sales contracts**.

Important points to note:

- Traders **must** provide a minimum cooling-off period of **seven calendar days** starting with the date of receipt by the consumer of a notice of the right to cancel from the trader
 - The right to cancel, within the cancellation period applies to contracts with a total payment value of **more than £35**
 - The **cancellation rights must be clearly and prominently displayed** in any written contract, or given in writing if there is no written contract
 - For certain 'specified' contracts listed in Regulation 9 (see Q6 below, but includes *the supply of services*), the trader must include, in the 'Notice of the Right to Cancel', information that **the consumer may be required to pay for goods or services received** before the end of the cancellation period.
 - If you are likely to begin work on a 'specified' contract, before the end of the seven day cancellation period, you should obtain written agreement from the customer. Otherwise the customer would **not** be under any obligation to pay for goods and services provided up to the point of cancellation.

A suggested layout of the Notice of the Right to Cancel and associated forms is attached at the end of this handout.

Frequently Asked Questions

Q1. Which types of business will be affected by the Regulations?

All traders who enter into a contract with the consumer (whether written or verbal) in the consumer's home; place of work; the home of another individual; or

an excursion organised by the trader away from the trader's business premises are likely to be affected.

These include traders that provide:

- Home improvement, repair and maintenance services (including the construction of extensions, conservatories, driveways, patios and the supply and/or fitting of double glazing);
- Gardening services;
- Personal items (including cosmetics, toiletries, jewellery & clothes);
- Household items (kitchenware, decorative and household cleaning items);
- Family items (including books & leisure items);
- Nutrition and health products;
- Energy Suppliers;
- Mobility products (including stair lifts, scooters and buggies);
- Disability aids (including hearing aids)

The Regulations will also apply to businesses in other sectors.

There are exceptions. The new Regulations do not apply to the list of 'Excepted Contracts' included in Schedule 3 of the Regulations and to contracts made during solicited visits relating to regulated consumer credit agreements and regulated mortgages, home purchase plans etc.

Q2. What are the main requirements on business?

- The trader must give the consumer a right to cancel a contract to which the Regulations apply;
- The trader must give the consumer a cooling-off period of **at least** seven calendar days in which to exercise the right to cancel the contract starting from the date of receipt of the notice of the right to cancel;
- The trader must give the consumer **written** notice of his right to cancel the contract (whether the contract is a written contract or an verbal contract);
- The 'Notice of the Right to Cancel' must be given at the same time the contract is made;
- Where the contract is wholly or partly in writing, the 'Notice of the Right to Cancel' must be incorporated in the same document;
- If incorporated in the written contract (or other document) the notice must be set out in a separate box with the heading "Notice of the Right to Cancel", and be as prominent as any other information in the contract or document (apart from the heading and the names of the parties to the contract and any other information inserted in handwriting);
- The 'Notice of the Right to Cancel' must contain the information set out in the Regulations (see Q3) and a cancellation form (see Q4) provided as a detachable slip (for use by the consumer if he wishes to cancel the contract);

- For 'specified' contracts listed in Regulation 9 (see Q6), the trader must include, in the 'Notice of the Right to Cancel', information that the consumer may be required to pay for goods or services received before the end of the cancellation period; and
- Where applicable, the trader must include information that a related credit agreement will be automatically cancelled if the contract for goods or services is cancelled.

Q3. What information must be included in the 'Notice of the Right to Cancel'?

If incorporated in the written contract (or other document) the notice must be set out in a separate box with the heading "Notice of the Right to Cancel", and have as much prominence as any other information in the contract or document (apart from the heading and the names of the parties to the contract and any other information inserted in handwriting). Whether the contract is a written contract or a verbal contract, the written 'Notice of the Right to Cancel' must:

- be dated;
- indicate the right of the consumer to cancel the contract within the cancellation period;
- be easily legible;
- contain the identity of the trader including trading name if any;
- contain the trader's reference number, code or other details to enable the contract or offer to be identified;
- contain a statement that the consumer has a right to cancel the contract if he wishes and that this right can be exercised by delivering, or sending (including by electronic mail) to the person mentioned at any time within the period of 7 days starting with the date of receipt of the notice of the right to cancel the contract;
- contain the name and address, (including any electronic email address as well as the postal address), of a person to whom a cancellation notice may be given;
- contain a statement that notice of cancellation is deemed to be served as soon as it is posted or sent to a trader or in the case of electronic communication from the day it is sent to the trader;
- indicate – if applicable – that the consumer may be required to pay for goods and services supplied if performance of the contract has begun with his written agreement before the end of the cancellation period;
- indicate – if applicable – that a related credit agreement will automatically be cancelled if the contract for goods and services is cancelled;
- contain a statement that the consumer can use the cancellation form provided only if he wishes;

contain a cancellation form (for use by the consumer to cancel the contract) provided as a detachable slip and completed by or on behalf of the trader in accordance with the notes in the Regulations.

Q4. How should the 'Cancellation Form' be set out?

The cancellation form (for use by the consumer (if he so wishes) to cancel the contract) should be set out in the form below (and capitalised where indicated):

'If you wish to cancel the contract you **MUST DO SO IN WRITING** and deliver personally or send (which may be by electronic mail) this to the person named below. You may use this form if you want to but you do not have to.

(Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THE CONTRACT.**)

To: _____ [trader to insert name and address of person to whom notice may be given.]

I/We (delete as appropriate) hereby give notice that I/We (delete as appropriate) wish to cancel my/our (delete as appropriate) contract _____ [Trader to insert reference number, code or other details to enable the contract or offer to be identified]. He may also insert the name and address of the consumer.]

Signed Name and Address Date

Q5. How will businesses be protected against non payment for goods or services provided before the end of the cooling off period?

A consumer who has acquired possession of any goods or received any services by virtue of a contract **specified** in Regulation 9 (see Q6) will be required to pay in accordance with the 'reasonable' requirements of the cancelled contract for goods or services provided up to the point of cancellation provided that:

- the trader included in the 'notice of the right to cancel' a statement that the consumer may be required to pay for the goods or services supplied if performance of the contract has begun before the end of the cooling-off period; and
- the consumer provided the trader with a written request for performance of the contract to begin before the end of the cooling off period.

A consumer who has acquired possession of goods by virtue of a contract - **not** specified in Regulation 9 shall – on cancellation of the contract – be under a duty to restore those goods to the trader and meanwhile to retain possession of the goods and to take reasonable care of them.

Q6. What are the types of 'specified' contract listed in Regulation 9?

The types of 'specified' contract listed in Regulation 9 are those contracts for:

- the supply of goods to meet an emergency;
- the supply of goods or services relating to a funeral;
- the supply of services of any other kind;
- the supply of goods made to a customer's specifications or clearly personalised;
- the supply of goods, which by their nature are consumed and before the cancellation, were so consumed;
- the supply of goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract;
- the supply of perishable goods;
- the supply of newspapers, periodicals or magazines;
- advertising in any medium; and
- the supply of goods the price of which is dependent on fluctuations in the financial market which cannot be controlled by the trader.

Q7. What happens if the consumer fails to provide written agreement for a specified contract (listed in Regulation 9) to begin before the end of the cooling off period?

In the event that a consumer did **not** provide written agreement for performance of a **specified** contract listed in Regulation 9 (see Q6) to begin before the end of the cooling-off period then the trader would not be under any obligation to begin performance before the end of the cooling-off period.

However, in the event that a trader began performance of a specified contract (listed in Regulation 9) before the end of the cooling-off period, and the consumer had **not** provided his **written** agreement for performance of the **specified** contract to begin before the end of the cooling-off period, the consumer would be able to cancel the contract

AND would **not** be under any obligation to pay for goods and services provided up to the point of cancellation.

In these circumstances the trader would be commencing performance of the contract at his own risk (i.e. the risk of non payment). The onus would be on the trader to ensure that he had the written permission of the consumer before commencing work.

Q8. Is the consumer required to provide written agreement for performance of a contract not listed in Regulation 9 to begin before the end of the cooling off period?

No. There is **no** requirement under these Regulations for the consumer to provide written agreement to receive goods before the end of the cooling off period for the types of contract **not** 'specified' in Regulation 9.

For these types of contract the consumer retains his cancellation rights and would be under a duty to restore any goods acquired before cancellation to the trader and meanwhile to retain possession of the goods and to take reasonable care of them.

Q9. Are mortgages or other home purchase plans or credit agreements covered by these Regulations?

The current cancellation regime under the Consumer Credit Act 1974 provides consumers with effective protection in the consumer credit market where agreements are negotiated face to face and signed away from the creditor's business premises. We believe that duplicating cancellation provisions for consumer credit agreements under these regulations as well as under the Consumer Credit Act 1974 would generate a series of technical problems and would also potentially confuse consumers and business.

These Regulations do **not** generally apply to cancellable agreements under the Consumer Credit Act 1974 or to **solicited** contracts for regulated consumer credit agreements under that Act. These Regulations do **not** apply to mortgage, home purchase plans, or home revision plan regulated under the Financial Services and Markets Act 2000 - made as a result of a **solicited** visit by a trader

Q10. What happens when a contract which has a related credit agreement attached is cancelled?

Where any contract for goods and services is cancelled under the Regulations, any related credit agreement is automatically cancelled. If the agreement was a cancellable agreement under the Consumer Credit Act 1984 the consequences of cancellation would flow as under that Act. In the case of any other regulated credit agreement, payment made by a consumer in relation to the credit agreement must be reimbursed unless otherwise provided in the Regulations. The consumer must repay credit and interest received in accordance with the related credit agreement but the agreement otherwise ceases to be enforceable. Any security provided under the related credit agreement must be immediately returned to the consumer.

Q11. What do you, as a trader, have to do when a contract which has a related credit agreement is cancelled?

A cancellation notice which cancels a contract for goods and services shall have the effect of cancelling any related credit agreement. The trader must (if he is not the same person as the creditor under that agreement) immediately on receipt of the cancellation notice inform the creditor that the notice has been given. The trader or creditor must take the appropriate steps to recover payment of credit and interest from the consumer if the whole of the credit repayable by instalments is not repaid before the date on which the first instalment is due.

Q12. What are the consequences for a trader who fails to comply with the Regulations?

Failure to provide a written 'Notice of the Right to Cancel' a contract - or to provide the information required - or failure to do so in accordance with the Regulations - would result in the trader being unable to enforce the contract against a consumer.

Another consequence is a maximum penalty of a level 5 fine (of up to £5000) imposed on a trader.

APPENDIX A

Suggested layout for Cancellation Rights notice. (Must be in separate box with heading 'Notice of the Right to Cancel' if incorporated into a contract or another document) See FAQ - Q2, Q3 & Q4 above.

APPENDIX B

Suggested wording for obtaining written permission of the consumer if commencing work before the end of the seven day cooling-off period See FAQ - Q5, Q6, Q7 & Q8.

APPENDIX A

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'If you wish to cancel the contract you **MUST DO SO IN WRITING** and deliver personally or send (which may be by electronic mail) this to the person named below. You may use this form if you want to but you do not have to.

(Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THE CONTRACT.**)

To: _____ [trader to insert name and address of person to whom notice may be given.]

I/We (delete as appropriate) **hereby give notice that I/We** (delete as appropriate) **wish to cancel my/our** (delete as appropriate) **contract**

_____ [Trader to insert reference number, code or other details to enable the contract or offer to be identified]. He may also insert the name and address of the consumer.]

Signed Name and Address

Date

Notice of the Right to Cancel

Trader details: (name/ postal address/ contact details/ including email address if applicable)

Customer details: (name /address)

Contract details (reference number/ details etc. sufficient to identify the contract or offer)

Date

You (the customer) have the right to cancel this contract if you wish. This right can be exercised by delivering, or sending notice to (trader) at any time within the period of 7 days starting with the date of receipt of this notice. The notice of cancellation is deemed to be served as soon as it is posted or sent or in the case of electronic communication from the day it is sent.

If work on the above contract has begun, *with your written agreement*, before the end of the cancellation period, you may be required to pay for any goods or services supplied.

You may use the cancellation form provided below only if you wish to do so.

Appendix B

Trader Name.....

I (**consumers name & address**) understand that by accepting commencement of the contract for:

(details of contract & start date)

prior to the end of the seven day cooling-off period beginning on (**date of consumer receiving the 'Notice of the Right to Cancel'**) that I may be required to pay for goods and services provided up to the point of cancellation and/or may be under a duty to restore any goods acquired before cancellation and meanwhile to retain possession of the goods and to take reasonable care of them.

Signed (**Customer signature**)