

A Guide to Civil & E Commerce Law

This guide highlights some of the laws concerning how you deal with consumers. It also gives you some idea of what your rights are. For in-depth guidance on this legislation please contact your local Trading Standards Service.

Sale of Goods Act 1979 (as amended) by the Sale & Supply of Goods to Consumers Regulations 2002

The Act sets out what are known as "Implied Terms" covering contracts relating to the sale and supply of goods. If you deal business to business, you should seek specific guidance from a Solicitor or trade body you belong to one. Trading Standards does not have expertise in business to business contracts and this guidance deals principally with business to consumer contracts.

The Implied Terms are:

- Of Satisfactory Quality
- Fit for their Purpose
- As Described

The Act also covers issues to do with title (ownership) of goods, namely they must be yours to sell; performance / delivery of goods; statements made by manufacturers which could be binding on the retailer; and finally guarantees – where one is given.

A breach of the applied terms could give rise to a claim for compensation (damages). What effect this has upon your business will depend on a number of factors:

- How long the customer has had the goods prior to realising there is a problem
- Whether the consumer has done something inconsistent with the seller's title: e.g. if a customer has altered the product in some way
- Does anything else which may indicate acceptance of the goods: e.g. if they have eaten an entire meal prior to complaining

Generally the above may limit a customer's right to cancel the contract and claim a refund. They may however be entitled to other remedies such as:

- Repair
- Replacement
- Damages (compensation or partial refund)

Damages

When a breach of contract occurs, it is important to note that a customer can also claim for costs which have arisen from that breach of contract. The law will seek generally to put the customer or trader back in the position they would have been in had the breach of contract not occurred.

Customers can also be held in breach of contract for example if:

- They change their mind
- They do not pay

Selling Goods and Services on the Internet

In addition to Sale of Goods legislation, the Consumer Protection (Distance Selling) Regulations 2000 and E Commerce Regulations 2002 will also be relevant to your business.

Distance Selling Regulations 2002

The above regulations cover contracts concluded by any distance selling means including the Internet, by mail order, telephone and digital television. For the Regulations to apply no face to face negotiations should have been entered into prior to the contract being made.

The Regulations set out that:

- Consumers must be given clear information about the goods or services offered
- Your business name and address must be clear
- Pricing should be inclusive of all relevant taxes – unless you deal solely with business customers
- If a delivery charge applies, this must be clearly stated prior to an order being placed
- When an order is placed, a consumer must receive written confirmation
- Goods must be delivered within 30 days if no delivery time has been specified beforehand
- Consumers have a right to a seven day cooling off period once they are in receipt of the goods
- The right to a cooling off period must be clearly communicated to the customer prior to contract. If it is not, then the cooling off period is extended by three months, unless it is given within that time and then it applies from the date it was given

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Certain contracts are exempted from the Regulations.

These include contracts for:

- Financial services
- Sale of land or buildings
- Auctions, including internet auctions
- Purchases from vending machines
- Public pay phones
- Rental agreements

Contracts for the following goods only need to comply with certain provisions of the regulations and are not cancellable under the Regulations:

- Goods made to a customers specification
- Goods that by the nature cannot be returned
- Goods or services where the price depends on financial market changes outside of the control of the supplier
- Perishable goods like food or flowers
- Audio visual goods which have had their seal broken such as Software, CD's and DVD's
- Newspapers & Magazines
- Betting / Lottery services

An example of goods which are not cancellable under the Distance Selling Regulations are foods which have a use by date and are therefore deemed to be perishables. Foods which have a best before date may not be deemed to be perishable and are therefore caught by the cancellation provisions.

Partial exemptions cover contracts for accommodation, catering, transport and leisure services. For full guidance on these regulations, please contact your local Trading Standards Service

E-Commerce Regulations 2002

These regulations govern the provision of information that must be on a website where a customer can enter into contract. The intention of the regulations is to enhance the quality of information given to customers to improve customer confidence when buying over the Internet. The legislation is born of an EU wide Directive to encourage cross border shopping.

The regulations will apply to you if you sell goods and services to businesses or consumers over the Internet, by email or SMS.

Certain information requirements may already be satisfied by complying with the Distance Selling Regulations.

Information Requirements

You need to provide:

- Full contact details for the business
- Details of any relevant trade body you may belong to along with your registration number (if applicable)
- Your VAT number (if applicable)
- Clear pricing information, inclusive of taxes and setting out what delivery charges may apply

Clear Communications

You need to provide:

- Clear information of any electronic communication which relates to your advertising goods or services (e.g. promotional email)
- If you are sending a promotional email, the criteria of such promotion and how to qualify must be clear
- If you are sending an unsolicited electronic communication (e.g. SMS or email), you must make it immediately clear that the message is unsolicited (e.g. in the subject line) so that the recipient can quickly identify that it is unsolicited

For further information visit the Information Commissioners website

www.ico.gov.uk.

Electronic Contracting

You need to provide

- Clear technical guidance on how to complete a contract online
- Whether the contract will be held by you or accessible to the customer
- Technical guidance on how to correct errors when placing an order
- Immediate confirmation of an order if one is placed.

For in depth guidance on these regulations, please visit:

Department for Business Enterprise and Regulatory Reform

www.berr.gov.uk

Office of Fair Trading

www.off.gov.uk

Trading Standards Institute

www.tradingstandards.gov.uk

For more information and advice please contact
Norfolk Trading Standards

Customer Service Centre on

0844 800 8013