

The Consumer Rights Directive

A guide for traders dealing with consumers

Introduction

Consumers' rights and interests are protected by law. If you do business in Ireland, you must comply with Irish and EU consumer protection laws that are designed to protect the interests and welfare of consumers.

Irish consumer protection law has evolved as a distinct area of law that concentrates on the general protection and promotion of those rights and interests. One of the more current developments in this area concerns the rights a consumer has under the Consumer Rights Directive.

The Consumer Rights Directive

The Consumer Rights Directive (CRD) has been implemented in Ireland by the European Union (Consumer Information, Cancellation and Other Rights) Regulations, S.I. 484 of 2013, (the Regulations). The CRD has introduced a number of important changes to consumer protection law in Ireland that traders need to be aware of.

The Regulations apply to contracts concluded after 14 June 2014. The Regulations provide consumers with increased protection when they enter into distance contracts (such as online sales), off-premises (for example doorstep sales) and on-premises contracts with traders based in Ireland and other EU countries.

A distance contract includes buying something online, over the phone, from a mail order catalogue or from a TV shopping channel. The most significant point being that the consumer and trader are not physically in each other's company at the time the contract is concluded.

An off-premises contract is one that is offered or concluded away from the trader's premises, such as in the consumer's home, workplace or on an excursion organised by the trader.

An on-premises contract is a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract.

The Regulations have introduced a number of new provisions and changes to existing obligations which traders must comply with. These provisions include bans on hidden charges, as well as a new extended withdrawal period of 14 days for off-premises and distance sales, where consumers have the right to cancel without giving a reason or incurring a penalty. Traders are also obliged to refund consumers sooner than required under previous legislation.

Failure to comply with these provisions may constitute a criminal offence. It can also mean that consumers will not be liable for certain costs.

Summary of requirements

These requirements apply to all contracts:

- You cannot take any additional payments without the consumer's express prior consent (e.g., pre-ticked boxes are prohibited);
- You must deliver any goods purchased within 30 calendar days, unless agreed otherwise with the consumer;
- You cannot oblige the consumer to use a premium rate telephone line to contact you about an existing contract;
- You cannot impose excessive payment surcharges when consumers pay by certain means, such as credit or debit cards ;

Provision of Information

These information requirements apply to on-premises contracts and the information must be provided prior to the contract being concluded:

- A description of the goods or service the consumer is buying
- The name of the trader, including any trading names
- The trader's address and telephone number
- The total price, including any taxes
- For contracts for the sale of goods; the trader is legally obliged to inform the consumer of the trader's obligation to provide goods in conformity with the contract

These additional information requirements will apply to on-premises contracts, where applicable:

- Any unavoidable costs associated with the contract, such as delivery or postal charges
- Arrangements for payment and time of delivery committed to by the trader
- The trader's complaint handling policy
- Details of after-sales service and guarantees
- The functionality of digital content, including any technical protection measures
- Details of any operational issues that digital content may have with certain hardware or software

These information requirements apply to off-premises and distance contracts and the information must be provided prior to the contract being concluded:



- A description of the goods or service the consumer is buying
- The name of the trader, including any trading names
- The trader's address and telephone number
- The total price, including any taxes
- In the case of an open ended contract or a subscription, the costs per billing period or, if unknown, how the price will be calculated
- The cost of completing the contract – for example, the cost of a premium rate phone call if the consumer is obliged to order this way
- Arrangements for payment and time of delivery committed to by the trader
- Details of how the consumer can cancel their order
- Notice that the consumer will have to pay reasonable costs to the trader if they cancel their contract but have already used part of the service (for example, a phone or electricity contract)
- Notice of whether and, if so, why the right to cancel does not apply (this is explained further under the 'extended withdrawal period' section)
- For contracts for the sale of goods; the trader is legally obliged to inform the consumer of the trader's obligation to provide goods in conformity with the contract

These additional information requirements will apply to off-premises and distance contracts, where applicable:

- Any unavoidable costs associated with the contract, such as delivery or postal charges
- The trader's complaint handling policy
- Notice that the consumer will have to bear the cost of returning the goods, unless they are faulty
- Details of after-sales service and guarantees
- In the case of an open ended contract or a contract that is automatically extended, the duration of the contract or the conditions for terminating it
- The minimum duration of the consumer's obligations under a contract they have entered into
- Details of any deposit to be paid by the consumer
- information on the functionality of digital content, including any technical protection measures
- Details of any operational issues that digital content may have with certain hardware or software
- Where applicable, the option of an out of court complaint mechanism which the trader can avail of, for example the Small Claims process

Traders must also provide further information either before the order is delivered, or when it is delivered, including (but not limited to):

- Confirmation of the order in a durable form



- Details on what to do if the consumer changes their mind, and a copy of the model cancellation form for cancelling their contract. The trader must inform the consumer about the withdrawal period, or inform them if the withdrawal period doesn't apply (see extended withdrawal period' section for exclusions)
- A postal address that the consumer can send complaints to – not a PO box number
- Details of how and when to end a contract, if there is no end date or if it is to be extended automatically

The Regulations do not apply in some cases. The following contracts are not covered:

- The sale of land
- Constructing new buildings or substantial conversions
- Gambling contracts
- Residential property rental
- Healthcare contracts
- Contracts for food and drink regularly delivered to the consumer (for example, milkmen). Once-off transactions are covered.
- Package travel
- Timeshares
- Off-premises contracts for which the payment made by the consumer does not exceed €50. Off-premises contracts for repair or maintenance must meet a threshold of €200 to be covered by the Regulations.

The Regulations apply to a limited extent to the following:

- Financial services, like banking or insurance products
- Passenger transport

If you operate in one of these areas, you should familiarise yourself with the specific provisions of the Regulations that apply to you.

Extended withdrawal period

Where goods are purchased, consumers can withdraw from an off-premises or distance selling contract and seek a full refund at any time up to 14 days from the date on which they received the goods. In the case of the purchase of a service, the withdrawal period ends 14 days from the day the contract was concluded. If digital content has been purchased other than on a durable medium (CD, etc.), the withdrawal period expires as soon as the digital content is downloaded or streamed, provided the consumer has consented to the beginning of the performance of the digital content and has consented to the loss of a right to cancel.

This period of withdrawal has been extended from the previous 7 day withdrawal period that previously existed in law. The trader is responsible for informing the consumer of this

right to withdraw. The consumer does not have to give a reason for cancelling the contract, but is responsible for the cost of returning the goods (as long as this cost was made clear to them beforehand).

Under the Regulations, the trader must provide consumers with access to the model cancellation form which can be found in [Schedule 3](#) to the Regulations. You do not have to send a hard copy with each delivery, but you must make the form available to consumers online. If the trader wishes a sample withdrawal form can be provided on the trader's website, making it easier for consumers to avail of this right.

There are consequences for not providing information on the right of withdrawal. If the trader does not inform the consumer of the right of withdrawal, the cancellation period will be extended to twelve months from the date it would have expired if the information had been provided. If the trader provides the information within this 12-month period, the withdrawal period expires after 14 days from the date the consumer receives it.

The trader does not have to accept the cancellation of a contract in certain circumstances, for example if:

- The goods are personalised for the consumer who purchased them
- The goods are perishable or will deteriorate quickly
- The price of the goods depends on fluctuations in financial markets
- The service contracted for has already been fully performed, with the consumer's agreement
- The seal on the goods have been broken by the consumer and cannot be resold, for example for hygiene or health reasons
- The seal on audio or video recordings or computer software seals have been broken by the consumer
- The goods are newspapers or magazines
- The goods were purchased at a public auction

Remember, however, that consumers need to be informed in advance if they do not have a cancellation right.

A full list of exclusions from the right to cancel off-premises or distance contracts is laid out in Regulation 13 of the [Regulations](#).

Main provisions that traders need to be aware of

- **Ban on pre-ticked boxes**

Under the Regulations, traders are prohibited from having boxes pre-ticked during the booking process, as this may cause some consumers to inadvertently pay for extras that they do not require. Consumers must explicitly indicate that they opt-in to any extra costs (such as insurance or car hire).

- **Ban on hidden fees and charges**

Traders must disclose the total cost of the product or service, including any unavoidable additional fees (e.g. taxes or delivery charges), before the order is confirmed. Consumers will not have to pay extra charges if the trader does not inform them of these costs in advance.

- **Obligation to make it clear when a consumer incurs a charge**

Under the Regulations, a trader that sells online or over the phone must get the consumer's express consent to pay the trader – whether at the point of ordering or a later date. If placing an order online or over the phone involves pushing a button, or some similar automated function, a trader must make it abundantly clear to a consumer if placing that order puts the consumer under an obligation to pay. If a trader fails to comply with these obligations, the consumer is not bound by the contract or order.

- **Right to quicker refunds**

Previously, online traders were obliged to refund consumers who withdrew from a contract within 30 days. Under the Regulations, this period has been shortened to 14 days from the day on which the trader is informed of the consumer's decision to withdraw. The only circumstances in which a trader can postpone refunding a consumer is to wait to receive returned goods or proof of their return. Once the trader receives either of those, the consumer must be refunded.

- **Ban on surcharges**

The Regulations prohibit traders from imposing credit or debit card charges which exceed the actual cost borne by the provider of offering this method of payment. If the trader operates a hotline, it is prohibited to charge more than the basic telephone rate for calls.

- **Clearer information on the cost of returning unwanted goods**

Consumers who avail of the fourteen 14 day withdrawal period have to pay for the cost of returning unwanted goods, as long as the trader has informed them of this before concluding the contract. If the trader does not inform the consumer of this, he will have to cover the cost of the consumer returning the item. (The trader will also have to cover the costs of return if goods are being returned because they are faulty.) In the case of distance contracts, traders are also obliged to provide an estimate of return costs in advance if the item is bulky or difficult to transport, so the consumer may make an informed choice before buying the goods.

- **Protection for digital purchases**

Consumers must be clearly told about the compatibility of digital content with hardware and software. They must also be told if there are any technical protection measures on an item, such as a limit on making copies. The right of withdrawal applies to digital content not supplied on a durable medium, as for other purchases, unless consumers

have given their express consent to the download, and acknowledged that they will lose their cancellation rights once they access its content. Where digital content, such as computer software, is supplied on a sealed CD there is no right of cancellation where the product is unsealed after delivery.

Check if you are in compliance with the Regulations

In order to comply with the Regulations, traders should review their marketing and ordering processes to ensure that they are in line with the requirements listed above. It is important in particular to note:

- The requirement to provide consumers with all of the information specified in the Regulations in a plain, intelligible, accurate and timely manner
- The extended 14-day withdrawal period and when they should apply
- The requirement to provide a cancellation form
- The ban on additional payments being displayed as a default option (automatic opt-ins)
- The addition of payment surcharges that cannot be directly attributed to the cost of providing that payment method
- The requirements of the Regulations in relation to digital products

What sanctions and penalties may be imposed if you are found to be in breach of the Regulations?

The Competition and Consumer Protection Commission has a range of powers to ensure traders comply with consumer protection law. These are:

- Prosecution
- Compliance notices
- Undertakings
- Prohibition orders
- Fixed payment notices (€300 fine)

If found guilty of an offence, a trader will be liable on summary conviction to a fine up to a maximum of €5,000, or up to 12 months' imprisonment, or both. A trader will be liable on conviction on indictment to a fine up to a maximum of €60,000, or up to 18 months' imprisonment, or both.

Additional information is included in the [enforcement](#) section.

Disclaimer

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While we have made every attempt to ensure that the information contained in this guidance document is accurate and reliable, the Commission is not responsible for any errors or omissions, or for the results obtained from the use of this information. All traders are directed to the Regulations themselves for more detailed particulars as to their obligations under these provisions.