

Corporate Department

New Distance Selling Regulations

Date: 25 January 2014

Is it time to health check your contracts?

The implementation of new regulations last December dealing with Consumer Information, Rights of Cancellation and Other Rights in relation to certain contracts means that those businesses that contract with consumers may need to overhaul their existing contracts to ensure that any relevant contracts effective after the 13 June, 2014 are compliant and enforceable.

EU Member States were required to adopt and publish by 13 December, 2013, the laws, regulations and administrative provisions necessary to comply with Directive 2011/83/EU of the European Parliament and of the Council on Consumer Rights ("Directive 2011/83/EU"). On the 11th December, 2013 Ireland unveiled Statutory Instrument No. 484 of 2013 European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (the "Regulations"). The Regulations give effect to Directive 2011/83/EU.

Background

The Regulations apply to specified contracts as listed in the Regulations between "traders" and "consumers" meaning contracts between individuals and businesses who are acting for purposes related to their trade, business, craft or profession (and includes any person acting in the name, or on behalf, of the trader) and a consumer (being a natural person as against a company who is acting for purposes which are outside the person's trade, business, craft or profession) and will apply to relevant contracts concluded after the 13 June, 2014.

What do they do?

Subject to specified exclusions, the Regulations –

- specify the substance and form of the information that traders must provide to consumers before consumers are bound by on-premises, off-premises, distance contracts or sales contracts;
- give consumers the right to cancel off-premises and distance contracts within fourteen days of the delivery of the goods in the case of sales contracts and fourteen days of the conclusion of the contract in the case of service contracts; These time periods can be extended in certain specified circumstances
- amend the provisions of the Sale of Goods Act 1893 on the passing of risk, and certain of the Act's rules on delivery, in contracts of sale where the buyer deals as consumer and amend the provisions of the Sale of Goods and Supply of Services Act 1980 on the supply of unsolicited goods or services to a consumer.
- regulate the fees charged by traders in respect of the use of a given means of payment, the cost of calls by consumers to customer helplines, and payments by consumers additional to the remuneration agreed for the trader's main obligation under the contract;
- The Regulations also provide model instructions for cancellation of a contract and contain a model cancellation form.

Contracts which are impacted

Subject to a number of specified exclusions the Regulations apply or partially apply to certain contracts concluded between a trader and a consumer such as:

This document is intended to provide a general overview and guidance on a particular topic. It is provided wholly without any liability or responsibility on the part of Eugene F. Collins and does not replace the necessity to obtain specific legal advice.

© Eugene F. Collins 2014

- sales contracts, including
- contracts for the supply of digital content on a tangible medium, and
- contracts for the supply of water, gas, or electricity in a limited volume or set quantity;
- service contracts;
- contracts for the supply of digital content not supplied on a tangible medium;
- contracts for the supply of electricity, gas, or water not supplied in a limited volume or set quantity; and
- contracts for the supply of district heating.

Excluded contracts

The Regulations also specify a list of contracts between a trader and a consumer to which the Regulations do not apply including:-

- contracts for social services;
- contracts for healthcare;
- contracts for gambling.

This is not the full list and the Regulations should be read in detail to see the full list of contracts to which the Regulations do not apply or only partially apply.

Some of the provisions of the Regulations apply exclusively to on-premises contracts, some exclusively to off-premises contracts, some exclusively to distance contracts, and some exclusively to sales contracts all as defined in the Regulations.

Impact for Businesses

The new measures are to be applied from 13 June 2014 and will apply to relevant contracts concluded after the 13 June, 2014.

Failing to comply with provisions of the Regulations can render a contract unenforceable and a person found guilty of an offence under the Regulations shall be liable (a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment to a fine not exceeding €60,000 or to imprisonment for a term not exceeding 18 months or to both.

Those traders that are unsure as to whether or not they will comply with the Regulations may need to carry out a health check on their business practices, to ensure that as of the 13 June, 2014 they will be in full compliance with their legal obligations under the Regulations.

For further information on this topic please contact: Joy Compton, Associate, Corporate Department, E: jcompton@efc.ie

Information taken from the Regulations and DJEI.