

**EXPLANATORY MEMORANDUM TO THE
CONSUMER PROTECTION (DISTANCE SELLING) (AMENDMENT)
REGULATIONS 2005**

2005 No.689

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order amends Regulations 8, 12 and 13 of the Consumer Protection (Distance Selling) Regulations 2000. The purpose is to provide for the cancellation period for services to end once performance begins, if certain written or otherwise durable information has been given to the consumer. At present, the right to cancel only terminates at this point if the information is provided before the contract is agreed. Service providers such as vehicle hire companies have difficulty providing the information prior to contract in situations where orders are made by phone for services consumers want in the near future.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Consumer Protection (Distance Selling) Regulations 2000 implement Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 (OJ No L144, 4.6.97, p19) on the protection of consumers in respect of distance contracts (“the Directive”). A Transposition Note is at Annex A. The Regulations protect consumers when they buy goods or services from businesses over the internet, by mail order, telephone and other forms of distance communication

4.2 Regulation 7(1)(a)(vi) requires the supplier to inform the consumer of the existence of a right to cancel “except in the cases referred to in Regulation 13” (which lists those goods and services for which there is no right to cancel). Regulation 8(3) requires suppliers of services to inform consumers in writing or another durable medium, before the contract is made, that they will not be able to cancel the contract once performance of the services has begun with their agreement. Regulation 12(2) says that where the supplier complies with Regulation 8 on or before the day on which the contract is concluded, the cancellation period ends seven working days after the conclusion of the contract. Regulation 13(1)(a) says that unless the parties have agreed otherwise, the consumer will not be able to cancel the contract if the supplier has complied with Regulation 8(3) and performance has begun.

4.3 Regulation 8(3) creates problems for suppliers who frequently receive orders over the phone, particularly in cases where the consumer wants the service to start in the near future. If the supplier is unable to send the written/durable information to the consumer before the conclusion of the contract (eg because there is not enough time to post it and a courier would be too costly), the consumer is able to cancel the contract without penalty during or after performance.

4.4 Regulation 8(3) is to be deleted. Regulations 12 and 13 are to be amended so that the right to cancel a contract for services will end:

- (i) when performance starts, if by that time the supplier has provided the written/durable information and the consumer has agreed to the service starting within the seven days;
- (ii) seven days after the day after the consumer receives the written/durable information, if the supplier provides it during performance of the service;
- (iii) when performance is completed, if that is within seven clear days of the consumer having received the written/durable information.

4.5 Regulation 12(2) is unchanged: if the supplier provides the written/durable information on or before the day the contract is concluded, the right to cancel ends seven days after the day after the contract is concluded. If none of the above applies, the right to cancel ends three months and seven clear days after the contract was agreed (as in the existing Regulation 12(4)).

4.6 This approach is compatible with Article 6 of the Directive, which says:

- the seven day cancellation period for services runs from the day the contract was agreed, unless the written/durable information is provided after that point, in which case it runs from the day the information is received; and

- the consumer may not exercise the right of withdrawal in respect of services if performance has begun, with the consumer's agreement, before the end of the seven working day period.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Gerry Sutcliffe, Parliamentary Under Secretary of State for Employment Relations, Postal Services and Consumers has made the following statement regarding Human Rights:

“In my view the provisions of the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 are compatible with the Convention rights.”

7. Policy background

7.1 One of DTI's objectives underpinning its vision of “prosperity for all” is to place empowered and protected consumers at the heart of an effective competition regime. This includes protecting consumers when they buy on the internet, by mail order, and using other forms of distance communication. DTI is concerned to minimise the regulatory burden on business and provide a workable regime. The Consumer Protection (Distance Selling) Regulations 2000 include provisions on:

- information to be given to consumers;
- the right to cancel the contract within seven working days of receiving the goods or the conclusion of a contract for services;
- deadlines for the delivery of goods or performance of services;
- protection against fraudulent use of payment cards;
- prohibition of inertia selling.

7.2 The amendments are being made following representations from the vehicle rental and leasing sector, discussions with the Office of Fair Trading and a public consultation. The changes are relatively minor in nature, but should bring worthwhile benefits to certain suppliers of services to consumers. Figures provided by the British Vehicle Rental and Leasing Association (BVRLA), which represents one of the sectors most affected by Regulation 8(3), suggest the changes could save its members £29million.

7.3 There were 43 responses to the consultation, from business organisations, consumer bodies, enforcement authorities and other stakeholders. 13 respondents supported DTI's proposed approach (27 expressed an opinion). Nine preferred a stricter copy out of the Directive provisions. DTI believes its amendments offer a balanced solution. Suppliers who cannot provide the written/durable information prior to contract

will be less exposed to the risk of cancellation, but consumers will still receive it while it is useful.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this Memorandum.

8.2 The impact on the public sector is likely to be limited. The enforcement authorities (the Office of Fair Trading, Trading Standards Departments in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland) will need to assimilate the new rules into their internal procedures and to review and adapt internal and external advice. One of DTI's aims has been to provide a more workable regime and address uncertainties about the application of Regulation 8(3).

9. Contact

9.1 Martin Bond at the Department of Trade and Industry (tel: 020 7215 0340 or e-mail: martin.bond@dti.gsi.gov.uk) can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

Changes to The Consumer Protection (Distance Selling) Regulations 2000

2. PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

2.1 The objective is to amend parts of the Distance Selling Regulations to improve their clarity and workability and to reduce compliance costs. The changes will affect firms supplying goods and services to consumers and other stakeholders including enforcement authorities, advice agencies and consumers themselves.

2.2 We have identified three areas where it may be possible to make improvements:

(i) explanation of right to cancel: Regulation 7(1)(a)(vi), which requires the supplier to inform the consumer prior to contract of the existence of a right to cancel "except in the cases referred to in regulation 13" (which lists those goods and services for which there is no right to cancel). This copies out the corresponding article of EC Directive 97/7 on the protection of consumers in respect of distance contracts (the Distance Selling Directive), which the Regulations implement. The provision in the Directive is however ambiguous and it may be possible to make Regulation 7(1)(a)(vi) clearer.

(ii) curtailment of right to cancel: Regulation 8(3), which requires a supplier of services to inform the consumer in writing or another durable medium, before the contract is made, that he will not be able to cancel the contract (under Regulation 12) once performance of the services has begun with his agreement. This creates problems for some suppliers, such as car hire firms, who receive bookings over the phone for services which consumers want to begin straight away or within a day or two.

(iii) cancellation by the consumer: Regulation 10(4), which requires the consumer who intends to cancel a contract to notify the supplier by letter, fax or e-mail. There is no provision for notification by phone, website or text message.

2.3 Regulations 7 and 8 are linked: the latter requires the supplier to give the consumer written (or otherwise durable) confirmation of the pre-contractual information required by the former. The changes we are proposing to each are not however interdependent. For example there is a case for clarifying Regulation 7(1)(a)(vi) regardless of whether Regulation 8(3) is amended.

2.4 Devolution: the Distance Selling Regulations apply to England, Wales, Scotland and Northern Ireland.

Background

2.5 The Consumer Protection (Distance Selling) Regulations, which came into force in October 2000, transpose into UK law the Distance Selling Directive. A Regulatory Impact Assessment was carried out in August 2000¹.

2.6 The Distance Selling Regulations include provisions on:

- information to be given to consumers;
- the right to cancel the contract within seven working days of receiving the goods or the conclusion of a contract for services;
- deadlines for the delivery of goods or performance of services;
- protection against fraudulent use of payment cards;
- prohibition of inertia selling.

2.7 Following representations from the vehicle rental and leasing sector and discussions with the Office of Fair Trading, DTI has been considering the scope to improve parts of the Regulations. It would be possible to make the proposed amendments using powers in Section 2.2 of the European Communities Act 1972. The changes would be compatible with the EC Directive.

Risk assessment

2.8 The proposed changes aim to address the following risks:

- Regulation 7(1)(a)(vi): this provision copies out the corresponding article in the Directive, which is ambiguous. Some suppliers will not understand what is required and compliance will be below 100%. As a result, some consumers will not be informed about the right to cancel, which is one of the key protections of the Directive and Regulations;
- Regulations 8(3) and 12: suppliers of certain kinds of service find it hard to comply. In the car hire sector, for example, a consumer booking a car by phone for the following day could have to be sent the required

¹ A copy may be obtained from the contact named at the end of this document.

information by courier. The information must be sent in writing or another durable medium prior to contract; in some situations there will not be time for it to be mailed and some consumers will not have access to e-mail or fax. In some situations, therefore, compliance is impracticable or disproportionately costly. Some services will be delayed and some will not be viable. These factors apply to a wide range of services which consumers order over the phone and which they want to begin immediately or in the near future;

- Regulation 10(4): the absence of provision for notification by phone may create problems for some consumers such as those with sight problems, and presents difficulties in situations where rapid notification of cancellation is desirable - for example where a service is about to begin.

2.9 In relation to Regulation 8(3), there is a risk that DTI's proposal to allow the information about cancellation rights to be provided later in the contractual process would give consumers less protection in some situations, including energy mis-selling. Specific protection for gas and electricity consumers is contained in Sections 30A (1) of the Gas Act 1986 and 27A (1) of the Electricity Act 1989, which empower the Gas and Electricity Markets Authority to enforce standard licence conditions (SLCs). These cover the provision of contract terms within 5 days, agent training and identification, consumer information about contracting, and audits. In response to the consultation on the Distance Selling Regulations, OFGEM has commented that the protection provided by the SLCs may not be allowed under the proposed EC Directive on Unfair Commercial Practices. In February 2002 OFGEM and energywatch introduced the Erroneous Transfer Customer Charter (ETCC). Suppliers make monthly reports to OFGEM, which may use the data in mis-selling investigations. OFGEM's 2003 report on the ETCC concluded that it continued to be fit for purpose and that suppliers in the main were performing well.

3. OPTIONS

Explanation of right to cancel - Regulation 7(1)(a)(vi)

3.1 Option (i) - the status quo: require the supplier to inform the consumer prior to contract of the existence of a right to cancel "except in the cases referred to in Regulation 13" (which lists those goods and services for which there is no right to cancel). This copies out the Directive.

3.2 Option (ii): amend Regulation 7(1)(a)(vi) to state that: whether or not a right to cancel exists, the consumer must be informed about the situation; and that, in the case of services beginning within seven clear working days, the right may expire once the performance of a service begins.

3.3 Option (iii): publish guidance to clarify the existing rule, ie that the information should where necessary:

- cover situations where the right to cancel exists for less than seven days, such as with services whose performance begins within a day or two of the contract having been made; and
- inform consumers how long they have to cancel (eg seven days, or until performance begins).

Curtailment of right to cancel - Regulations 8(3) and 12

3.4 Option (i) - the status quo: prior to the conclusion of a contract for services, the supplier must inform the consumer in writing or in another durable medium which is available and accessible to the consumer that, unless the parties agree otherwise, he will not be able to cancel the contract under Regulation 10 (which sets out the right to cancel under the Regulations) once the performance of the services has begun with his agreement.

3.5 Option (ii): continue to apply Regulation 8(3) to certain kinds of services contract, such as those of more than three months' duration, or those that follow cold calling by the supplier. In other services cases the written/durable information on the exceptions to the right to cancel would have to be provided in good time during the performance of the contract, in accordance with Article 5 of the Directive. In theory this would retain much of the protection of Regulation 8(3), but in practice provisions of this kind may be vulnerable to circumvention or difficult to enforce.

3.6 Option (iii): amend Regulation 8(3) to require the written/durable information about cancellation rights to be provided prior to performance of the service. As now, the right to cancel would start the day the contract is made; and Regulation 12 would be amended so that the right to cancel would end when performance began, or, alternatively, seven days after the information was received. There would remain the risk that some suppliers would find

compliance problematic, particularly those whose services may not involve personal contact with the consumer or where performance of the service begins before any personal contact takes place.

3.7 Option (iv): require the information on cancellation rights to be provided in good time during the performance of the service. The right to cancel would start the day the contract is made. Regulation 12 would be amended so that the cancellation period would end once performance has begun with the consumer's agreement, if the information was provided before performance began; and that if the information is provided after performance begins, the cancellation period ends seven working days after the information is received. Options (iii), (iv) and (v) could provide less protection than the status quo in some situations. For example when the Regulations were made it was felt that Regulation 8(3) would help protect consumers against erroneous transfers and mis-selling by gas and electricity companies.

3.8 Option (v): follow the approach in the Directive, which requires the supplier to inform the consumer, in writing or another durable medium, about the loss of the right to cancel in good time during the performance of the service. This is already provided for in Regulation 8(1). There would be no right to cancel once performance had begun. In addition, Regulation 8(2) would need to be amended to reflect the first indent of the second paragraph of Article 5, which requires the supplier to provide written information about "the cases referred to in Article 6(3)", ie exceptions to the right to cancel.

Cancellation by the consumer - Regulation 10(4)

3.9 Option (i) - the status quo: a cancellation notice is to be treated as having been properly given if the consumer leaves it at the supplier's address, or posts, faxes or e-mails it.

3.10 Option (ii): amend Regulation 10(4) to allow notice of cancellation to be given by one or more means not currently provided for, eg telephone, website, text message.

4. BENEFITS

Regulation 7(1)(a)(vi)

4.1 Option (i): suppliers would not need to alter their procedures.

4.2 Option (ii): suppliers should find it easier to understand the requirement and hence comply with it, and consumers would receive more accurate information about their cancellation rights. There is however a risk of confusing consumers in cases where no right to cancel exists under the Regulations (which they would have to be told), but where other legislation or the supplier's contract may provide such rights.

4.3 Option (iii): suppliers should find it easier to understand the requirement and hence comply with it, and consumers would receive more accurate information about their cancellation rights.

Regulations 8(3) and 12

4.4 Option (i): compared to the other options, this gives consumers some extra protection, particularly from suppliers who cold call and who may seek to deny consumers the right to cancel, or mislead them about services.

4.5 Options (ii)-(v) will, to varying degrees, reduce the costs some suppliers incur at present as a result of the Regulation 8(3) requirement to inform consumers prior to contract, in writing or another durable medium, about their cancellation rights. Options (iv) and (v) are likely to reduce these costs the most. Option (v) has the advantage, from the supplier's perspective, of giving less scope for cancellation once performance has begun.

4.6 Figures provided by the British Vehicle Rental and Leasing Association (BVRLA), which represents one of the sectors most affected by Regulation 8(3), suggest that options (ii), (iv) and (v) could save its 842 members £29.51m, 29.31m and £30m a year respectively. These are the costs of the requirement to send confirmation letters to consumers who cannot receive fax or e-mail messages. To achieve these savings, businesses would have to incur some one-off implementation costs (see paragraph 5.2), but whether to do this would be their decision.

Estimated cost savings for typical businesses

4.7 The Regulatory Impact Assessment which was produced when the Regulations came into force said one company had estimated that its additional costs arising from the requirement to provide confirmation of contracts would be £250,000 rising to £500,000 (although there was a partial exemption from the requirement for the sector concerned). Options (iv) and (v) would eliminate many of these costs.

Regulation 10(4)

4.8 Option (i): the advantage of this approach (keeping the status quo) is that suppliers would not need to alter their procedures.

4.9 Option (ii): cancellation by (eg) phone could be easier and quicker for those without access to e-mail or fax. It could help those with literacy problems. Compared to postal notification, it could minimise the scope for disputes about the exact time the consumer had decided to cancel; and it could help address the problem of suppliers supplying services in the time between a consumer posting a notice of cancellation and its arrival. However, the burden to prove cancellation had been made would in some situations be on the consumer, who would need to confirm a decision to cancel with a more durable communication such as a letter or e-mail. Cancellation by phone would in many cases still be quicker, but would not necessarily be easier for consumers. The BVRLA believes that cancellation by phone would lead to an increase in vehicle hire cancellations by a sales value of £2.09 million a year. This does not take account of possible re-sales.

Business sectors affected

4.10 In line with the Directive, the Regulations do not apply to certain contracts including those for the sale of land, for financial services and contracts concluded at auction. Some of the provisions, including those on information and the right to cancel, do not apply to contracts for the provision of certain accommodation, transport, catering and certain other goods and services.

4.11 Subject to these exceptions, the proposed changes to Regulations 7(1)(a)(vi) and 10(4) could affect all suppliers of services covered by the Regulations. The proposed change to Regulation 8(3) will particularly affect firms which frequently take orders or bookings over the phone for services which consumers want to start straight away or in the near future. DTI has received representations from the vehicle rental and leasing sector, but other sectors which could be affected include commercial emergency services (eg vehicle recovery), telecommunications, home maintenance and other domestic services (eg skip hire) and suppliers of electricity and gas.

Issues of equity and fairness

4.12 In improving the clarity and workability of Regulations, the proposed changes to Regulations 7 and 8 should improve compliance and create a more level playing field between suppliers. This should benefit suppliers who are complying with the Regulations.

5. COSTS

Regulation 7(1)(a)(vi)

5.1 Option (i) is the status quo².

5.2 Option (ii) represents a more stringent interpretation of the EC Directive. Consultation responses suggest a high number of firms would need to make changes. They could incur implementation costs arising from (eg) training and the need to amend web-based information. The BVRLA estimates that the costs to the vehicle hire sector of the proposed changes to Regulations 7(1)(a)(vi) and 8(3) would be £120,000 for training and publication, plus £80,000 for changes to websites, contracts and marketing material. Telephone sales would take longer under Option (ii), as operators would have to give consumers more information. In some cases this may lead to confusion and the need for further explanation, making some calls significantly longer; estimates varied from ten seconds more to five minutes more. The Direct Marketing Association said it would be five minutes more, adding £1 to the costs to firms of every call received. The Direct Selling Association (DSA) has commented that the proposed changes to Regulations 7(1)(a)(vi) and 8(3) would be cost neutral for its members, because they operate to higher standards under the DSA consumer code.

5.3 Option (iii) probably represents the minimum required by the Directive and many suppliers are likely to be following this approach already. Those which are not will incur implementation costs.

Regulations 8(3) and 12

5.4 Option (i) is the status quo. Options (ii)-(v) will give rise to implementation costs, eg arising from adjusting information provision procedures (see paragraph 5.2).

Regulation 10(4)

5.5 Option (i) is the status quo. Under option (ii) some suppliers are likely to incur implementation costs, such as informing employees about procedures for receiving

² Option (i) fulfils the requirements of the Directive because it copies out the relevant provision; but as we have noted, the Directive is unclear.

consumers' cancellations by phone. The BVRLA has told us it believes these costs would be negligible for its members.

5.6 There is a possibility that allowing cancellation by phone would lead to an increase in the number of consumers canceling. The BVRLA believes there would be an increase in vehicle hire cancellations by a sales value of £2.09 million a year (although some of these contracts would be capable of being re-sold). There would still be administrative costs, although these would be costs associated with consumers legitimately exercising their rights, and should probably not be brought into the equation.

5.7 Option (ii) would require suppliers to accept cancellation by phone. Suppliers would need appropriate equipment including, possibly, means of logging or recording customers' calls. The Direct Selling Association believes the proposal to allow cancellation by phone could impose significant extra costs which it said were not possible to quantify. It said independent, home based sellers would face particular problems, one of which could be the difficulty of establishing whether or not a message of cancellation had been received.

5.8 Shop Direct said it regarded cancellation by website as the only robust method (compared with phone or text) but that the technical work could involve a one-off cost of £250,000.

Estimated costs for typical businesses

5.9 In relation to Regulation 7, a large company said the cost of on-line changes would be negligible, but that costs of re-printing literature and notifying consumers would be about £100,000 and £50,000 respectively. In relation to Regulation 10, one firm thought the costs of altering cancellation notices would be in the region of £10-£50,000 and that there would be additional costs in training call centre and customer service staff.

6. SMALL FIRMS IMPACT TEST

6.1 We have carried out stage 1 of the impact test. Small businesses selling by distance means (other than those in sectors excluded from all or part of the Regulations) could be affected by the recommended changes. We undertook preliminary soundings with the following small firms representative organisations: Federation of Small Business, British Chambers of Commerce, Forum for Private Business and the Institute of Directors. None of these drew our attention to possible significant impacts on small firms.

6.2 In March and April DTI held focus group meetings with stakeholders to hear their views about the proposed changes. Those who attended included trade associations with SME members such as the Direct Selling Association (DSA) and the BVRLA. The DSA has commented that amending Regulation 10(4) to require suppliers to accept cancellation by phone would impose significant extra costs on small firms. The BVRLA has around 600 small firms amongst its membership.

6.3 In the light of the consultation and our assessment of the likely impact on stakeholders, we have amended the proposals set out in the consultation document published in January 2004. We do not plan to make the amendments originally proposed to Regulation 7(1)(a)(vi) on pre-contractual information on cancellation rights, or 10(4) on the means consumers may use to notify suppliers of intention to cancel. The consultation demonstrated that the changes would have imposed transitional and continuing costs on suppliers in return for little clear benefit for consumers. There is scope for guidance on how Regulation 7(1)(a)(vi), which copies the Directive, is to be interpreted.

6.4 We now propose that legislative changes should be confined to Regulation 8(3) and necessary consequent changes to Regulation 12. These changes will save some suppliers of services considerable sums and the transitional costs should be minimal. Suppliers who are complying with the existing Regulation 8(3) will comply with the revised version, and will be able to decide whether it is more economical to move to the new regime.

7. COMPETITION ASSESSMENT

7.1 The competition filter test has been carried out. The Regulations apply to suppliers of goods and services to consumers through distance contracts (any contract under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded). Certain contracts are excluded, including sales of land, financial services and auctions. The provisions on information, right to cancel and performance do not apply to contracts for timeshare, certain food and drinks, and contracts for accommodation, transport, catering or leisure services on specific dates.

7.2 The anticipated cost to firms of implementing any of the policy options is unlikely to be sufficient to change the existing structure of competition within any

specific affected market. In relation to Regulation 8(3), some consultees said DTI's preferred option would present problems to firms selling by phone, because they might only be able to provide the information by posting it to the consumer. (In other words, they might be at a disadvantage compared to firms whose operations involved face to face contact with the consumer, during which written information could be handed over.) However, this stems from the Directive. The CBI and OLSWANG said the Directive approach would improve the viability of lower margin business models.

8. ENFORCEMENT

8.1 The arrangements for enforcing the Regulations will be unchanged. The enforcement authorities are the Office of Fair Trading, Trading Standards Departments in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland.

9. MONITORING AND REVIEW

9.1 It is intended to monitor the impact of the proposed changes in conjunction with the Office of Fair Trading and other stakeholders including interested business organisations. More generally, there is an obligation on the European Commission to review the Directive and to submit a report to the European Parliament and the Council no later than four years after its entry into force. We understand that this review is now to be subsumed into a wider review of European consumer legislation as part of the Commission's current work programme.

10. CONSULTATION

10.1 Within government:

Cabinet Office
Scottish Executive
Welsh Assembly
Department of Enterprise, Trade and Investment in Northern Ireland
Office of Fair Trading
Small Business Service
Local Authorities Coordinating Office on Regulatory Services (LACORS)

10.2 Public consultation

We carried out preliminary consultations with the organisations listed in paragraph 6.1, Vodafone and British Telecommunications plc. A public written consultation exercise started in January 2004 and ended in April. In March and April the Department held focus group meetings with stakeholders to hear their views about the proposed changes. We received 43 written responses, from:

businesses	13
trade associations/bodies	14
consumer organisations	2
regulatory/enforcement bodies	7
law firms	2
professional institutions	6

A summary of the responses to the consultation is being published and will be available on the DTI website at www.dti.gov.uk.

11. SUMMARY AND RECOMMENDATIONS

Regulation 7(1)(a)(vi)

11.1 Given the ambiguities in the Directive and the potential for confusing consumers, we do not think the benefits of amending the provision as in Option (ii) would be sufficient to justify the transitional and continuing costs suppliers would incur.

11.2 We recommend Option (iii): publish guidance to clarify the existing version of the regulation, ie that the information should where necessary:

- cover situations where the right to cancel exists for less than seven days, such as with services whose performance begins within a day or two of the contract having been made; and
- inform consumers how long they have to cancel (eg seven days, or until performance begins).

Regulations 8(3) and 12

11.3 Most consultees favoured either Option (iv) or Option (v). The former (DTI's proposal) has the advantage of ensuring consumers receive written or otherwise durable information about the right to cancel before it expires. We recommend Option (iv), combined with the following measures to address the issue of services being cancelled after performance has begun:

- make it clear that suppliers are entitled to charge for services performed before cancellation;
- provide for the cancellation period to end, at the latest, once performance has been completed.

11.4 There could be substantial savings to business: in the vehicle hire sector they could be £29 million a year on a turnover of about £368 million a year.

Regulation 10(4)

11.5 Were we to amend the Regulations to require suppliers to accept cancellation by (eg) phone, some suppliers - particularly smaller firms - could face significant transitional and continuing costs. The benefits would be limited because consumers might often need to write, e-mail or fax to confirm their phone calls. Therefore we recommend Option (i), retention of the status quo. This will not prevent suppliers from accepting cancellations by phone, website or text message if they wish.

Summary of options, benefits, costs, and recommendations

	Benefits	Costs	Recommended Option
Regulation 7(1)(a)(vi)			
Option (i) do nothing: consumers must be told about the right to cancel except where exclusions apply.	No need for suppliers to alter their procedures.		
Option (ii) consumers must be told whether or not a right to cancel exists.	Suppliers should find it easier to understand the rule.	Implementation costs and continuing costs. Vehicle hire sector estimates one-off costs from this <u>and</u> Option (iv) of Regulation 8(3) = £200k. A large firm said one-off costs would be about £150k. Consumers could be confused about statutory or contractual rights.	
Option (iii) state (in guidance) that consumers must be told about right to cancel including curtailed rights.	Suppliers should find it easier to understand the rule. More likely that consumers will receive useful information about their rights.	Implementation costs for firms not already doing this.	Option (iii)
Regulation 8(3) and 12			
Option (i) do nothing: written/durable information about cancellation rights to be provided prior to contract.	No need for suppliers to alter their procedures.		
Option (ii): apply Option (i), but only to longer term or cold called contracts; otherwise as in (iv).	Extra protection for consumers, eg from suppliers who cold call. Reduces suppliers' costs. Estimated annual savings to vehicle hire	Implementation costs.	

	sector = £29.5m.		
Option (iii): information to be provided before performance.	Reduces suppliers' costs.	Implementation costs.	
Option (iv): information to be provided before or during the performance of the service, with incentive to provide earlier.	Further reduces suppliers' costs. Estimated annual savings to vehicle hire sector = £29.3m.	Implementation costs. Vehicle hire sector estimates one-off costs from this <u>and</u> Option (iv) of Regulation 8(3) = £200k.	Option (iv)
Option (v): information to be provided during performance.	Reduces suppliers' costs. Est. annual savings to vehicle hire sector = £30m.	Implementation costs.	
Regulation 10(4)			
Option (i) do nothing: suppliers to accept cancellation by letter, fax or e-mail.	No need for suppliers to alter their procedures. They can accept notification by other means if they want to.		Option (i)
Option (ii): suppliers also to accept cancellation by, eg, phone, website, text message.	Easier and quicker for consumers. Fewer problems stemming from gap between issue and receipt of notification.	Implementation and continuing costs for some firms, which could be significant for SMEs. Estimates of one-off costs ranged from £10-250k.	

12. DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed *Gerry Sutcliffe*

Date: 14th March 2005

Gerry Sutcliffe

Parliamentary Under Secretary of State for Employment Relations, Consumers and Competition
Department of Trade and Industry

Contact:

Linda Prosper
Consumer and Competition Policy Directorate
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Phone: 020 7215 3880

Fax: 020 7215 0339

e-mail: linda.prosper@dti.gsi.gov.uk

DISTANCE SELLING (AMENDMENT) REGULATIONS 2005

Transposition Note for Directive 97/7/EC on the protection of consumers in respect of distance contracts

NOTE: References to “the principal Regulations” mean the Distance Selling Regulations 2000 (S.I. 2000/2334) and to “the amending Regulations” mean the Distance Selling Amendment Regulations 2005.

Articles	Objectives	Implementation	Responsibility
2	Defines 'distance contract', 'consumer', 'supplier', 'means of distance communication' (by reference to Annex I) and 'operator of a means of distance communication'	These definitions are reproduced in regulation 3(1) of the principal Regulations, Schedule 1 reproducing Annex I of the Directive	Secretary of State
3	Exempts certain contracts from the scope of the Directive and certain other contracts from the information, cancellation and performance requirements in Articles 3 to 6 and 7(1)	Contracts wholly exempted from the principal Regulations are listed in regulation 5 and those exempted from the information, cancellation and performance requirements are listed in regulation 6.	Secretary of State
4	Requires traders to provide consumers with particular information in good time prior to concluding a distance contract	Regulation 7 of the principal Regulations transposes this requirement in almost identical terms.	Secretary of State
5	Requires traders to provide consumers with confirmation (either in writing or in another durable medium available and accessible to the consumer) of certain information provided under Article 4 in good time during the performance of the contract, together with certain other information, including as to the Article 6 right of withdrawal. This requirement does not apply to "one-off" services performed through the use of a means of distance communications	Regulation 8 (now amended by the amending Regulations) of the principal Regulations transposes this requirement. Regulation 9 applies the exception for "one-off" services performed through the use of a means of distance communication.	Secretary of State
6(1)	Requires consumers to be given at least seven days in which to cancel a distance contract without penalty. This cancellation period begins when the consumer receives the goods being supplied. If the contract is for services, it begins when the contract is concluded or (if this is later) when the consumer receives the information required by Article 5. In either case a failure to comply with Article 5 means that the cancellation period is extended to three months, but if the supplier	Regulation 10 sets out the right to cancel. Regulation 11 sets out the cancellation period where goods are supplied and regulation 12 (now amended by the amending Regulations) sets out the cancellation period where services are supplied.	Secretary of State

	complies with Article 5 during that time, the cancellation period ends seven days after the information required by Article 5 is supplied.		
6(2)-(4)	Requires that ,where a consumer cancels in accordance with Article 6(1), the supplier reimburses monies paid (except for direct cost of returning any goods). Lays down exceptions to the right to cancel. Requires that consumers cancelling in accordance with Article 6(1) should not incur penalties in withdrawing from related credit arrangements.	Regulation 13 (now amended by the amending Regulations) reproduces the exceptions to the right to cancel. Regulation 14 deals with the recovery of sums paid by the consumer. Regulations 15 and 16 deal with cancellation of related credit agreements. Regulations 17 and 18 deal respectively with the return of goods by a consumer and with goods given by the consumer in part-exchange	
7	Unless parties agree otherwise, distance contracts must be performed within 30 days of agreement. If goods or services are not available, consumer must be informed and be able to obtain a refund. Supplier may provide alternative goods or services of equivalent quality and price, provided the consumer is informed of this in the contract or prior to its conclusion.	Regulation 19 of the principal Regulations transposes this requirement and regulation 20 deals with the effect of non-performance on a related credit agreement.	Secretary of State
8	Requires appropriate measures to ensure a consumer can cancel (and have refunded) a payment made through fraudulent use of his credit card in a distance contract.	Regulation 21 of the principal Regulations transposes this requirement.	Secretary of State
9	Requires prohibition of unsolicited supply of goods or services to a consumer, where a demand for payment is involved and requires consumers to be exempted from providing contractual consideration in such cases	Regulation 24 of the principal Regulations imposes the required prohibition, coupled with an exemption for consumers from providing contractual consideration.	Secretary of State
10	Use of automated calling systems or fax machines to contact consumers only to be allowed with consumer's prior consent. Use of other means of distance communication to contact consumers only to be	Privacy and Electronic Communications (EC Directive) Regulations 2003, regulations 19 - 22 of which prohibit the use of automated calling systems or fax machines without	Secretary of State

	allowed if the consumer does not object.	the recipient's prior consent and the use of unsolicited direct marketing communications where the recipient has notified the caller or is registered as not wishing to receive such communications.	
11	Adequate and effective means should exist for ensuring compliance with the Directive in the interests of consumers, including ability of designated bodies to take action before courts or competent authorities.	Regulation 26 of the principal Regulations tasks the OFT and other enforcers with considering complaints of breaches of the principal Regulations and regulation 27 enables the OfT and other enforcers to seek injunctions for compliance	Secretary of State
12	Consumer should not be able to waive the rights conferred by the Directive, including through choice of law clause applying the law of a non-Member State	Regulation 25 of the principal Regulations renders void contractual terms inconsistent with the consumer protection provisions imposed by the Regulations, including terms applying the law of a non-Member State	Secretary of State