



Department for
Business, Energy
& Industrial Strategy

REPORT ON IMPLEMENTATION

Statutory Report on the Objectives of the
Consumer Contracts (Information,
Cancellation and Additional Charges)
Regulations 2013



Acknowledgements

This Report draws on information provided by the EU Commission in its review of the implementation of the Consumer Rights Directive across the EU Member States¹

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¹ https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

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Introduction

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) set out a requirement in Section 3 for the government to undertake a review of the Regulations and publish a report setting out the conclusions of the review within 5 years of the regulations coming into force. The regulations entered into force on 13th June 2014 and this is the aforementioned report.

Following on from last year's green paper², the government will publish a White Paper on consumer policy. It follows that the White Paper will include any proposals for changes in the consumer landscape or policy to ensure the legal framework meets the needs of the modern world. Accordingly, this report does not seek to prejudge the White Paper or propose any amendments to the CCRs as currently implemented, but feedback received as part of this work including to the Call for Evidence³ will be considered in the context of the White Paper.

The review, has been conducted in line with the Secretary of State's obligations to publish a report that:

- set out the objectives intended to be achieved by the Regulations,
- assesses the extent to which those objectives have been achieved, and
- assesses whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a way that imposes less regulation.

One of the key aspects of the CCRs is meeting our obligations under the single market. In its own review the Commission recognised that the UK had put in place the necessary implementing legislation. At present that obligation continues to apply to the UK and the Consumer Rights Directive was recently reviewed at the EU level. This resulted in a few changes⁴ without any substantive reduction in the obligations applying to traders conducting contract negotiations and agreements on their regular premises.

The CCRs implement most of the EU Consumer Rights Directive (CRD) and cover on-premises contracts (e.g. made in person at the trader's business premises), distance contracts (e.g. by internet, mail order or telephone) and off-premises contracts (such as at those conducted at trade fairs and exhibitions or doorstep sales). The CCRs apply to the whole of the UK (including Northern Ireland). They apply, subject to certain exclusions and exemptions, to contracts for goods, services and digital content agreed between a trader and a consumer. For internet sales this includes products provided by traders outside the UK that are directing sales activities at UK consumers. There are a few types of contract that are excluded altogether (see Section 6 of the regulations⁵) including contracts for gambling, certain financial products and for the creation of property rights including rental. Moreover, there are certain types of contract that are partially exempted, see sections 7, 27, 28.

² Modernising Consumer Markets

³ Consumer Contract Regulations – Call for Evidence issued 8 March 2019

⁴ See New Deal for Consumers

⁵ <http://www.legislation.gov.uk/uksi/2013/3134/regulation/6/made>

The Call for Evidence⁶ (CfE) that ran from 7th March to 1st May 2019 sought input on the above and detailed consideration of specific aspects of the Regulations that relate to:

- the information to be provided pre-contract by traders in a range of circumstances.
- rights to withdrawal from and cancellation of the contract.
- prevention of hidden costs

as well as general questions relating to awareness of rights, the overall objectives and any enforcement challenges faced by the regulators.

The EU itself reviewed the CRD as part of its “Consumer Refit” work on consumer policy⁷ and largely concluded that the Directive remained suitable and appropriate. It did, however, consider that the pre-contractual information rights and right of withdrawal should be extended to online services for which consumers pay with their data. This provision was included in the “New Deal for Consumers⁸” which the EU is currently seeking to finalise.

As a starting point, Article 4 of the CRD provides that Member States must not maintain or make national laws that go beyond or below the provisions in the CRD (“maximum harmonisation”) unless the CRD itself provides otherwise. Broadly these constraints remain in place at present.

⁶ Consumer Contract Regulations – Call for Evidence

⁷ https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

⁸ https://ec.europa.eu/info/publications/factsheets-explaining-new-deal-consumers_en

Objectives of the Regulations

The Regulations are intended to empower consumers by increasing transparency surrounding contracts they are entering into and give them the time to understand the product and consider its price before deciding to enter the contract. The Regulations seek to ensure a fair balance of responsibilities between business and consumers when contracts are cancelled, or deliveries are made. In so doing, they aim to build consumer confidence and willingness to trade remotely (e.g. online), particularly across EU borders and encourage business to broaden their opportunities to meet consumer demand.

The Regulations implement the CRD, which was intended to boost competition and consumer choice and in turn should foster growth by introducing a consistent set of rules across the EU. The UK supported these aims. The UK is committed to a strong regime of consumer protection and the CCRs act as an important part of those protections. The Regulations were introduced to fulfil the UK's obligation to implement the directive within the permitted timeframe and thereby enabling the UK to comply with its international obligations. The UK remains bound by the CRD, implementing which continues to be a key function of the CCRs.

The Regulations seek to do this in the UK by setting out:

- the information which a trader must give to a consumer before and after making a sale;
- how that information should be given;
- the right for consumers to change their minds when buying at a distance or off-premises;
- a prohibition on any additional payments which appear as a default option;
- a prohibition on consumers having to pay more than the basic phone rate for calling post-contract customer helplines.

Providing clear information on costs and obtaining the consumer's express consent for additional payments like delivery, should ensure that consumers are clear about what they are committing to. Having clarity over the terms of contract should have the benefit of reducing consumer detriment and avoid dispute resolution costs for business.

The Regulations do not apply, in general, to contracts for certain goods and services (for example, package travel) and contracts entered into by specific means (for example, through a vending machine).⁹

Since the introduction of the Regulations, consumer confidence has been affected by a number of different influences. Economic slowdowns will naturally impact on the level of consumer confidence in the economy. According to the OECD consumer confidence over the period has been relatively flat, largely mirroring the OECD.

⁹ See CCRs Regulation 6

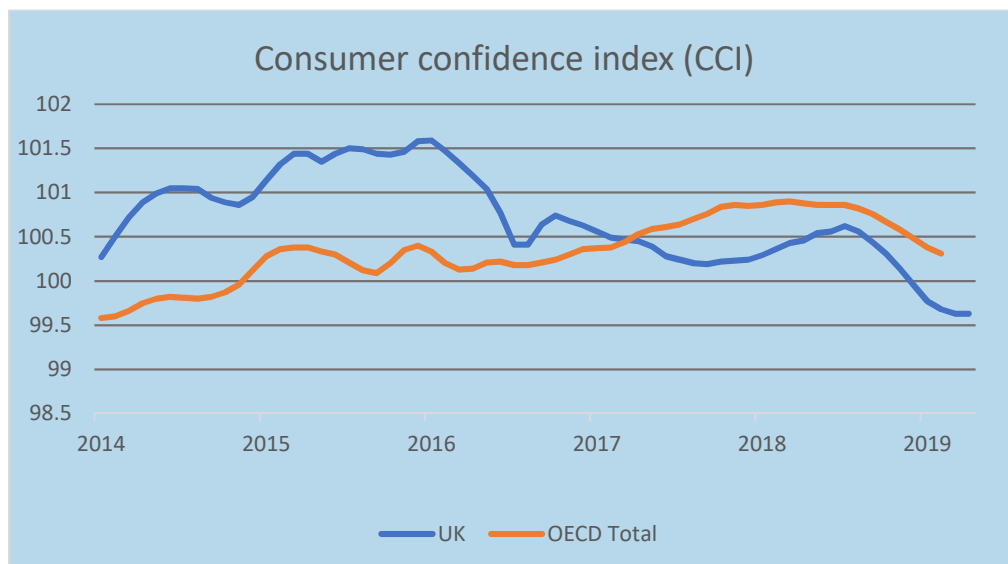


Table 1: Consumer Confidence

To get a measure of the Regulations’ impact, more broadly, the review seeks to consider the overarching objectives behind the regulations and so in the CfE we asked a range of questions:

23. Do you consider that the regulations have achieved their intended objectives (i.e. increasing consumer confidence and ensuring the provision of upfront information)?

Responses were received on these questions from a mix of businesses, trade associations, consumer representatives and enforcement experts. The vast majority of respondents felt the Regulations had made and were continuing to make an important contribution to the availability of information and a consequent impact on consumer confidence. Additionally respondents commented that other factors were also at play, such as wider awareness, consumer education and enforcement. Nearly all felt that they had a good balance between rights for consumers and business responsibility but the range and scope of the information to be provided could confuse consumers. A number suggested further awareness raising with both consumers and businesses would be beneficial. Several organisations made offers to work with the government to promote this.

24. Do you think the objectives remain appropriate? If not, what other objectives should be considered?

Support for the Regulations was received on these questions from a mix of business, trade associations, consumer representatives and enforcement experts. Respondents saw the Regulations as an important part of the consumer protection landscape. As sales via the internet increase as a proportion of overall sales, the role of the regulations grows also. A number of respondents stressed the need to protect more vulnerable consumers who might need more help understanding and asserting their rights particularly when dealing with salespeople that have visited them in their home. The wider question of support for vulnerable consumers is an area of interest for the forthcoming Consumer White Paper. There was also some suggestion that the needs of small business might be explicitly accounted for in terms by offering them greater flexibility (e.g. in the timing of repayments).

25. Could any of the objectives be achieved in a non-regulatory way? If so, how?

Few responses were received on these questions. There was no appetite expressed for removal of the Regulations, although some felt further clarification (e.g. through enhanced guidance or standardisation) would be helpful to build on the legal underpinnings. There was a general view that there was a lack of adequate alternatives to regulation that would give sufficient confidence and protection to consumers.

Information which traders are required to provide consumers

The Regulations set out rules that apply to traders, requiring them to provide certain information to consumers before they are bound by the contract, with certain exceptions (for example, low value off premises contracts). The information required depends upon the how and where the contract is entered into. As a result, different rules apply depending on whether there is an off premises or distance contract or an on premises contract. Nevertheless, there is a considerable degree of overlap between the information requirements. Core pieces of information such as price, the main characteristics of the product and the contact details of the trader are required to be set out in a clear and comprehensible manner in each circumstance.

As part of its “New Deal for Consumers”¹⁰, the EU brought forward its own proposals on changes to the information to be provided by traders. For example, it identified that the requirement for giving the consumer a fax number contact in relation to distance and off premises contracts was out of keeping with today’s technology usage and agreed it would be amended. This then formed part of the draft Omnibus Directive, currently undertaking the jurist linguist process.

Our CfE considered separately the information to be provided where the contract is conducted on the trader’s premises or at a distance or off-premises. These are considered in the sections below.

On-Premises Contracts

Most people will experience an on-premises contract when they go to a shop and buy something. It would also generally include movable premises such as a regular pitch at a local market. The Regulations reflect the terms of Article 5 of the CRD and set out in Schedule 1 the information to be provided (or made available) to the consumer. As well as information on total price (including any additional costs such as for delivery) this should include the main characteristics of the goods or services, the duration of the contract, the arrangements for payment, delivery and performance, the details and terms of any after sales services or guarantee and the trader’s trading name and contact details.

In the CfE we asked a number of questions. About 20 respondents provided answers in this section as follows:

Q1. Do you consider that the information requirements relating to on-premises contracts are clear and comprehensible? Please highlight any areas you believe are unclear.

Most respondents answered this question. Some thought the information requirements were too complex and impractical for a trader to provide. As a result, the consumer receives information which they do not feel they need (e.g. trader’s identity versus trading name) to make decisions and so consequently do not read it anyway. Consumer bodies, whilst accepting the appropriateness of the legislation felt business had scope to better inform

¹⁰ Ibid https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

consumers about their statutory rights. For example, Which? research published in December 2017 reported that 52% of those surveyed wrongly thought they had the right to request a full refund for a product they had bought in a shop but then decided they did not want it.

Q2. Do you consider that all the information which traders are required to provide for on-premises contracts is appropriate to achieve the objectives of the CCRs? Please explain.

Respondents to the CfE that answered this question all agreed that the information remained appropriate for the purposes of the Regulations.

There was some suggestion that a standard information sheet might better meet consumer and trader needs but others felt that in order to comply with the directive it would end up being quite long and the benefit probably lost. Otherwise, nearly all respondents felt that the information requirements were appropriate to the purposes of the Regulations.

Q3. Are there any requirements in relation to on-premises contracts that you consider are no longer needed to meet the objectives?

Not all correspondents answered this question, but of those that did so, nearly all responded in the negative. Most recognised that requirements that are contained in the Regulations accurately reflect the obligations for information as set out in Article 5 of the CRD. Information on price, main characteristics of the product and contact details for the trader were considered fundamental to consumer protection.

Q4. Are there other requirements in relation to on-premises contracts that should be added to reflect changes in the way the market operates?

Some felt more details about consumer rights would be beneficial, but this seemed to be as much a general observation about the value of consumers understanding their rights as a commentary on the Regulations. Similarly, there were suggestions that vulnerable consumers may need additional help and assistance. We agree that consumer education and awareness of their rights are important for consumers and this is especially true for vulnerable consumers.

Q5. Do you have any views about the time the information should be required for on-premises contracts and format by which it is delivered?

Those that commented agreed that the information should be provided at a time when it enables a consumer to make an effective, informed choice, prior to entering a contract. Some have suggested that in addition to the information “being provided in a clear and comprehensible manner” it should be provided in a durable medium so that it can be referred to later by the consumer if they wish.

Q6. Do you have any other views on the information requirements for on-premises contracts and the impact on business and consumers (e.g. in terms of the appropriateness and balance of burdens or the usability of the information)?

There were some who questioned whether it was sufficiently clear in the Regulations what amounted to the business premises of a trader. This is covered in S5 of the Regulations along with a number of other definitions. In particular, there was a question as to what might constitute “*any movable retail premises where the activity of the trader is carried out on a usual basis;*” and how “usual basis” should be understood.

The Regulations state that an “on-premises contract” means “a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract”. The government believes that if a trader wishes to assert that a contract has been conducted “on- premises” then it is up to them to demonstrate that if conducted at “movable retail premises” that this is somewhere that they commonly conduct business. Some business respondents expressed concern at this being a very wide interpretation of “on-premises”, albeit the information requirements in this situation were fewer and therefore less onerous than for distance or off-premises contracts.

Q7. Bearing in mind the objectives of the CCRs are there any additional forms of contract or trade that you believe should be covered (or existing ones where the rules are not necessary, where possible)?

Some respondents noted that Financial Services were exempt from the Regulations and whilst there were other rules that applied to the sector that were largely equivalent, there was some suggestion that certain product related insurance those related to travel, mobile phones or consumer goods or services should additionally be covered.¹¹

¹¹ Read across to new Sale of Goods Directive

Distance and Off-Premises Contracts

The Regulations include a set of definitions in Regulation 5 which define these two terms. Here it is stated that:

“‘distance contract’ means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;”

And an

“‘off-premises contract’ means a contract between a trader and a consumer which is any of these -

- (a) a contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- (b) a contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader;
- (c) a contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer;
- (d) a contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer;”

Common examples of a “distance contract” would be web-based or telephone sales, whilst an “off-premises contract” might be a contract conducted in the consumers own home or at an exhibition or show. The information requirements that a trader must comply with for these types of contract are specified in Article 6 of the CRD and as set out Regulations 10 -14 and 16 and in Schedule 2 of the CCRs. The Regulations use the same or very similar terminology as the CRD and this has caused some to ask questions about interpretation e.g. what does “bound by a contract” mean in relation to the timing of information to be delivered to a consumer. Official guidance¹² says the information has to be provided by a trader in a durable medium “before making a sale”. In the case of disputes, the onus is on the trader to demonstrate that the necessary information has been provided.

As part of the CfE we asked:

Q8. Do you consider that the information requirements relating to distance and off-premises contracts are clear and comprehensible? Please highlight any areas you believe are unclear.

Most respondents felt that the legislation was sufficiently clear, and that business was also clear about its obligations. A typical comment was that Schedule 2 was detailed, lengthy and complex but included everything that was required by a consumer. However, there was a view that consumers might need help identifying the key pieces of information for them. There was a suggestion that grouping the information in a standard format might help consumers to use and navigate the information better.

¹² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/429300/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf

Q9. Do you consider that the information which traders are required to provide for distance and off-premises contracts is relevant and appropriate in light of the objectives of the CCRs?

Whilst most respondents agreed the information specified was necessary, some business representatives felt that a greater steer might be given at a sectoral level on what constituted the main characteristics of a product.

There were some that suggested a stronger distinction should be drawn between “off-premises” and “distance” contracts as this could be confusing for both consumers and business.

Some felt the information requirements set out in Regulation S11 regarding repair and maintenance work were confusing and contradictory as to what information is required. The aim is to enable urgent repairs costing less than £170 to take place, without all the information having been provided up front, but key information still needs to be given to the consumer before they are bound by the contract.

Several respondents noted that some of the pieces of information had dated and could be updated. Few consumers would consider contacting a business by fax but an SMS or Textphone number would be useful.

Q10. Are there any requirements that you consider are not necessary to meet the objectives? If so why?

The main ask from business and consumer representatives was for greater guidance and simplification rather than the removal of any information requirements. Small business, in particular, wanted to comply with the rules but could struggle to be clear what applied when and so were liable to give consumers information in a way it was difficult to make good use of.

Q11. Are there other requirements that you would like to see added? If so what and why?

In some cases, respondents believed the cost of exercising a cancellation right needed to be better highlighted (e.g. where the consumer is responsible for the return costs of a large or bulky item).

Other suggestions included having a list of standard information to be given to vulnerable consumers; making it clearer who a contract was with such as credit hire company rather than agent; providing a “maximum appointment length” be added as regards home visits, to manage expectations and to help a consumer to assess whether this is likely to be suitable for their needs.

Q12. Do you have any views about how the objectives are being met by the rules on the time the information is required and format by which it is delivered?

There were few substantive comments on this question, though consumer representatives noted that few consumers take the opportunity to read terms and conditions and often feel under time pressure to complete a transaction. Some enforcement practitioners asked detailed questions of interpretation, including when a consumer is deemed to be “bound” by a contract, which is something we will consider further in relation to guidance.

Q13. Our approach under the CCR's has generally been to leave it to traders to determine and specify the main characteristics of the goods or services, to the extent appropriate to the medium and goods and services. Do you think this is the right approach?

Business respondents were supportive of this approach and it is not unreasonable for business to be expected to know what they are selling. A few respondents referred back favourably to the detailed characteristics defined by the Consumer Rights Act in relation to secondary ticketing but most reflected favourably on the approach recognising the wide reach of the regulations and the many different products affected.

Q14. Do you have any other views on the information requirements for off-premises contracts and the impact on business and consumers?

This question attracted relatively few responses. There was some suggestion that a layout for the information might be prescribed so that the consumer had a consistent experience when accessing information or that it should be grouped into sections to aid understanding.

Some suggested that the grouping of off-premises and distance contracts was unhelpful and that it could be better to separate the two, having a section of the regulations for each. The approach taken in the Regulations mirrors that in the directive which makes no distinction between the two types of contract.

Cancellation Rights

Under the terms of the CRD implemented by the Regulations, consumers have up to 14 days to cancel distance or off-premises contracts for any reason and receive, subject to certain exceptions, a full refund. Certain types of contract are exempt from these cancellation rights. General exemptions are set out in regulation 6 and there are additional exemptions to the cancellation provisions set out in regulation 27 and regulation 28. For off-premises contracts only there is an exemption from cancellation rights where the payment being made by the consumer is not more than £42. This only applies to off-premises contracts, not to distance contracts such as online sales where there is no price exemption from the right to cancel. In practice, it is likely only to affect one-off sales of goods. We have not sought to review this payment level at this time, because the EU has not changed the figure contained in the CRD.

This is an area where the Regulations introduced a change particularly, regarding doorstep sales. Previously a 7 day withdrawal period was provided for¹³ but under the CRD this was extended to 14 days. However, this CCR right to cancel does not apply to goods made to a consumer's specification or otherwise clearly personalised. This meant that some products that can often feature in door to door selling such as double glazing were no longer subject to a cancellation period. In that context, the government welcomes the fact that some businesses (e.g. members of FENSA¹⁴ and GGF¹⁵) are voluntarily offering 7 day cancellation periods to their customers.

The government is aware that consumers have expressed dissatisfaction with some other areas that may be excluded from the right to cancel, particularly as regards regulation 28(h), which removes from scope services related to leisure activities, if the contract provides for a specific date or period of performance. This measure reflects exemptions set out in Article 16 of the CRD and partly for this reason, the government has no plans to change the wording or the areas exempted at this time.

We note that the CMA has taken and is continuing enforcement action on wider consumer policy grounds to drive compliance in areas such as secondary ticketing. The government, along with others, will consider the course and outcomes of these investigations in relation to further potential changes to the CCRs.

The Hotels and hospitality industry have responded strongly to the CfE (see question 18 below) and support the balance of responsibilities, rights and transparency inherent in the existing Regulations which they believe are working well. The trade group UKHospitality¹⁶ have been working with the CMA on the latter's "Small Print, Big Difference"¹⁷ campaign aimed at securing compliance with consumer law so as to bolster consumer confidence in what is a competitive sector.

¹³ Through The Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 as amended

¹⁴ FENSA

¹⁵ GGF

¹⁶ UKHospitality is a trade body representing the hospitality sector

¹⁷ <https://www.gov.uk/government/news/cma-calls-on-holiday-industry-to-give-customers-clearer-ts-cs>

15. Do you think that 14 Days is an appropriate withdrawal period in light of the objectives of the Regulations for:

(a) off-premises contracts?

(b) distance contracts for goods?

(c) distance contracts for services?

There was wide support for the existing 14 day cancellation period as it currently applies and for the need for as much clarity as possible for both consumers and businesses. It was widely considered to be key to maintain consumer confidence when shopping online. Most respondents felt that the general cancellation period was essential so that consumers had time to reflect on a contract and if they chose to withdraw without penalty and receive a refund.

There was some challenge that where a contract is a mix of goods and services then it needed to be clearer when the 14 day cancellation starts from and that this should recognise the practical circumstances (e.g. when goods are delivered for installation by a service provider.

16. Do these timescales create any issues for consumers or traders? Please give details.

Whilst the time period was considered reasonable, some respondents noted that there were particular challenges for more vulnerable consumers. For example, some respondents suggested a degree of additional flexibility on cancellation should be considered for those with mental health problems.

There also seemed to be some issues where businesses are wrongly interpreting the 14 days as starting from the entry into the contract rather than from the delivery itself.

The main other area attracting comment was how the Regulations work with mixed contracts which can be confusing. For example, where a kitchen is delivered and fitted within a day or two, does the cancellation period still apply to it after installation and would it be treated differently if installation was delayed?

We recognise that how the rules apply to mixed contracts can be complex and will reflect on these issues with regulators and enforcers to see whether there is further scope for interpretation or any clarifications that can be made to the guidance.

17. Do you consider the extension of the cancellation period to 12 months, where the trader fails to provide the consumer with information about their cancellation rights, is appropriate? If you think it is disproportionate, please explain.

Those that commented on this saw it as important to provide proper incentives for business to give consumers the information they need. Businesses recognised this also though some felt that once the information about cancellation had been properly provided that should mean a normal 14 day period would start rather than the 12 month extension continuing until completion.

18. Do you agree that the existing sectoral exemptions to the right of return are appropriate?

This was the question that attracted most comment in the call for evidence. There was a significant level of response from accommodation providers, concerned that if the exemption from cancellation of leisure accommodation for specific period was removed, this would have a

severely detrimental impact on the industry. Smaller hoteliers have also faced increased competition from those with a different business model. Allowing cancellations would risk creating a scenario where there were consumers shopping around at the last minute, threatening hotels with cancellations if they could not match other prices thereby making it very hard for providers to forecast occupation and demand. The government acknowledges these concerns and also notes that in many cases the industry allows for cancellation up to a period very close to the arrival date notwithstanding the date of the original booking. The industry is also cooperating with the work of the CMA¹⁸ to address any consumer detriment arising from unfair terms.

The entertainment industry also felt the exemption was appropriate and necessary particularly for those organising open air events who might otherwise risk wholesale cancellations on the back of an unfavourable weather forecast.

The other area where respondents have sought more clarity was in relation to the exemption in regulation 28 (1) (b) regarding the personalisation of products or ones that are made to a consumer's specifications. Some asked for a better steer regarding the degree of specification required for the exemption to apply.

The exemptions reflect the wording of the CRD and based on the evidence provided, the government does not plan to bring forward proposals to amend the exemptions set out in the Regulations. We will, however, consider whether any further clarifications can be made to the guidance so that parties can be more confident as to what to expect.

19. Consumers have no rights to cancel when they have requested an urgent call out from a trader, (for example for urgent repairs or maintenance). Do you think that it is sufficiently clear what constitutes an urgent call out? Do you have concerns that this leads to the no cancellation right?

Consumer representatives, whilst recognising that the exemption was necessary to cope with genuine emergency repairs, were concerned that this measure was open to manipulation by unscrupulous suppliers particularly those that operate using door to door sales.

Many respondents felt there was scope for further clarification in guidance as to what constitutes an urgent repair and that it should be construed narrowly. The government was urged by consumer representatives to consider what might be done to inhibit those that are seeking to exploit consumers and cause detriment and we will reflect on this.

20. Do you have any views about the rights and responsibilities to:

(a) return of goods in the event of cancellation?

(b) supply of services in the cancellation period?

(c) supply of digital content in the cancellation period?

Those that replied on any of these questions emphasised the need for clarity and certainty for consumers and business alike. This was especially so with regards to return delivery, the costs of which could be considerable where the goods involved are bulky or difficult to pack.

¹⁸ CMA – Small Print Big Difference Campaign - <https://www.gov.uk/government/news/cma-calls-on-holiday-industry-to-give-customers-clearer-ts-cs>

Preventing Hidden Costs

An important aspect of the CCRs was the rules it introduced to prevent consumers facing unexpected additional charges. This is important if consumers are to compare products and costs effectively. This meant that charges for delivery had to be made clear before a customer committed to an order. Similarly, the use of pre-checked tick boxes for services that attract additional charges was effectively banned by the CCRs as the consumer would not be liable for any payment arising from this practise. Under regulation 40 of the Regulations traders must obtain express consent for any extra services that are to be charged for so that consumers did not find themselves facing unexpected extra costs and not required to make payments unless they have expressly agreed to do so. Also, regulation 39 discourages the use of the unfair practice of inertia selling by giving the consumer the ability to treat any product so provided as a gift to be used as they choose.¹⁹

Ofcom introduced new guidance²⁰ on basic rate calls to supplement the rules in regulation 41 that prohibit customer helplines charging more than the basic telephone charge rate.

In the CfE we asked:

21. Do you think that these measures are effective to ensure that consumers do not incur unexpected additional costs?

Most respondents who commented on this section felt the measures were working well, enabling consumers to properly assess the costs that they were facing. The rules on helplines have been widely welcomed and other bodies such as those in the public sector have adopted similar principles to the benefit of consumers.

22. Do you have any suggestions that could make them more effective?

Please provide details.

We received some detailed submissions seeking to clarify the existing guidance on basic rate phone lines and will consider whether this might be improved, accordingly.

¹⁹ Regulation 39 does this by amending the Consumer Protection from Unfair Trading Regulations 2008 to insert a new rule on the consequences where a trader engages in the unfair practice of inertia selling.

²⁰ Ref to guidance

Developments in UK E-Commerce

Consumers' willingness and propensity to engage in e-Commerce has increased since the Regulations came into force and so arguably, they are more important to UK consumers than ever. They would also appear to be providing the reassurance consumer need to operate and purchase online. Accordingly, online sales have grown strongly over the period since the Regulations came into force. The UK is now one of the biggest users of e-commerce in the world, with some measures²¹ showing the proportion of internet users who bought something online at 81%, level with Germany and ahead of South Korea, (79%) and the US (77%). Figures from January 2019, almost 13% of UK retail sales were made online²². But it is not just in volume terms that e-commerce is growing. According to research published in January 2018²³ 95% of the UK population, (63.4m) are internet users, a growth of 5.7% (up 3.4m) from January 2017. ONS figures show around 77% of adults bought goods or services online in 2017, up from 53% in 2008²⁴.

A similar proportion (77%) have smart phones that can access the internet along with 74% that have laptop or desktop computers²⁵. This has been on a consistent upward trend both before and since the Regulations came into force in 2014. The same survey suggests half the population now prefers to complete tasks digitally whenever possible. Total monthly visits to the Amazon and eBay shopping sites totalled 836,400,000 in 2017.²⁶

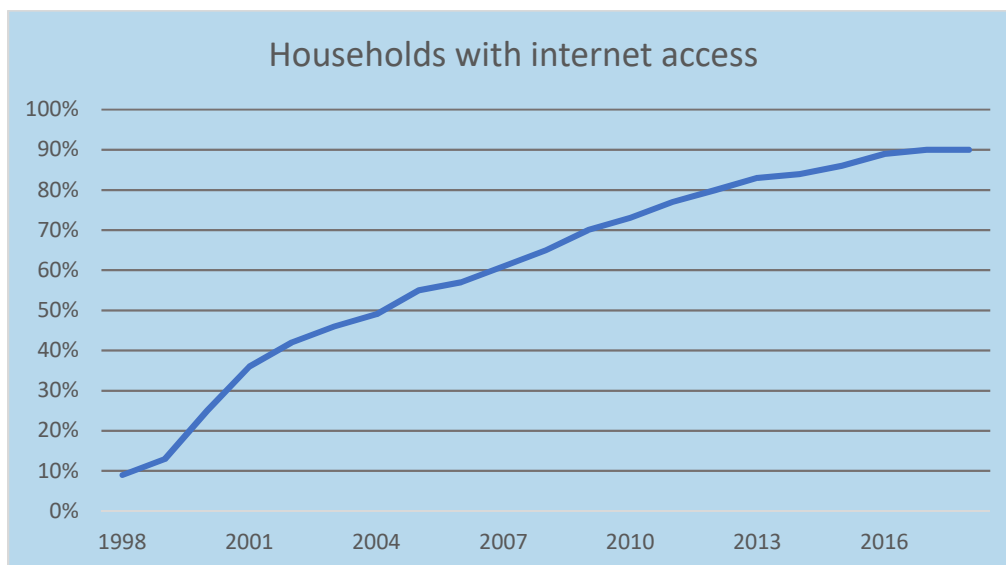


Table 2: UK internet access

People do use the rights to return in the Regulations. A Which? survey in early 2018 found that around half of those surveyed have returned an item (shop bought or online) to a retailer in the last 3 months, most often because an item did not fit them. The research showed that 71% of these received a refund with a further 18% accepting a replacement and 5% a store credit.

²¹ Digital in 2019; <https://wearesocial.com/uk/digital-2019>

²² Digital in the UK; <https://wearesocial.com/uk/digital-in-the-uk>

²³ Digital in the UK 2019

²⁴ See: ONS, [Internet Access – households and individuals. Great Britain: 2017](#), (Feb 2019)

²⁵ Digital in the UK 2019.

²⁶ *ibid*

Enforcement

The CfE also asked questions about the enforcement of the Regulations. Enforcement is by local trading standards and the CMA (and other regulators) can also choose to bring enforcement proceedings. The Advertising Standards Authority (ASA) is also involved in setting obligations upon traders when marketing their goods and services.

Analysis of complaints recorded by Citizens Advice²⁷ suggest that just over a fifth (22%) relate to internet sales or apps. A further 12% relate to telephone sales and 11% relate to doorstep selling. However, most complaints (37%) originate from sales initiated on the traders' own premises.

In proportionate terms, these are fairly consistent with the situation in 2014²⁸, however the absolute volume of cases has fallen. Complaints relating to Internet sales have reduced by approximately 25%, whilst telephone sales complaints have fallen by about 15%. Similarly, doorstep selling which can particularly impact the more vulnerable consumer has reduced by around 22%.

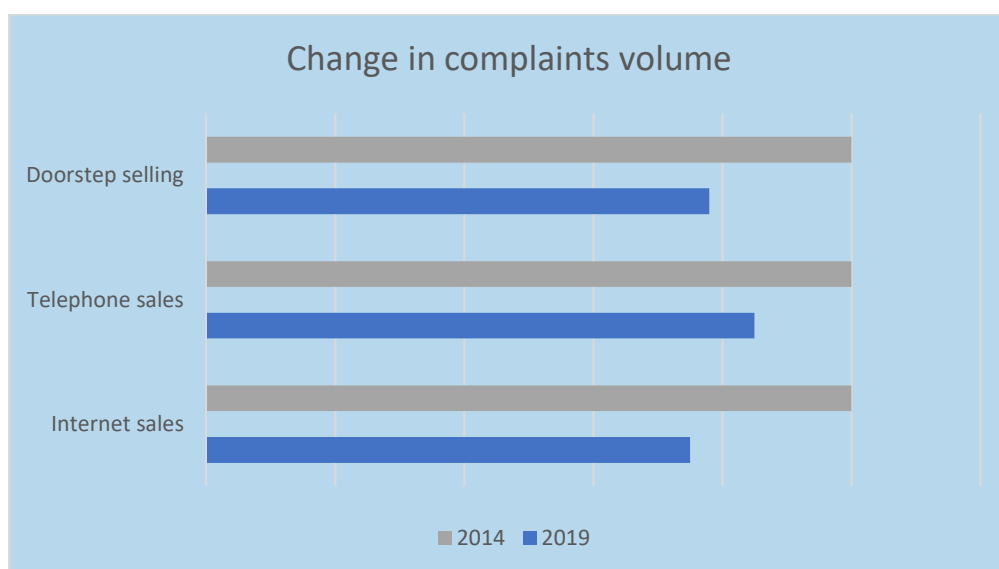


Table 3: Change in CACS complaints volume

Whilst a reduction in complaints is welcome, this cannot be clearly attributed to the Regulations, and they still need to be properly enforced if consumers are to receive the proper benefit from their protections. As the Green Paper²⁹ recognised for those that experience a problem, getting satisfactory resolution can sometimes be difficult. The system of public enforcement has been under considerable pressure, with the capacity of Local Trading Standards departments to fund and take enforcement action having been reduced. We are developing proposals in response to the Green Paper to address some of the main enforcement issues and will present them in the forthcoming White Paper.

To further inform this work we asked a number of questions relating to enforcement in the CfE.

²⁷ CACS Case Analysis

²⁸ There are some slight differences in recording methodology

²⁹ <https://www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets>

26. Are there any areas where you believe there could be better enforcement of the Regulations? Please explain and provide evidence.

There were few detailed comments on this beyond a general wish for improved enforcement of consumer law and an observation that there was only one criminal offence contained in the Regulations.

27. Are there any particular issues or difficulties for enforcers of the Regulations? Please explain.

Several correspondents mentioned that clarity of application and requirements is necessary for enforcers as well as business and consumers. The other area of comment was in relation to the time period of 6 months to bring prosecutions from the commission of the offence which could prove challenging for enforcers. Others noted that enforcement authorities will often have options to pursue action through other consumer law such as “The Consumer Protection from Unfair Trading Regulations 2008”

28. Are there specific concerns of consumer detriment, in particular concerning transparency of information when purchasing goods and/or services in the context of unsolicited visits by a trader to a consumer’s home or commercial excursions organised by a trader? Please give details.

Citizens Advice noted this can be an issue for more vulnerable consumers who, for example, are not given information on their cancellation rights when visited by salesmen in their home.

29. Do consumers understand their rights and where to go to complain when things go wrong?

Most respondents recognised that there was an improving picture regarding the knowledge of consumer rights but that many consumers remained unclear about their precise rights and when they are applicable. Citizens Advice and their equivalents in Scotland and Northern Ireland provide guidance and assistance to individual consumers who call for advice. Consumer web-based advice is also widely available and regulators and ADR providers are also a source of advice for those able to seek it. Again, here there was a concern as to whether more might be done to support vulnerable consumers.

30. Are there any other comments on the Regulations (e.g. on the additional areas of UK application) that you would like to make that have not been captured above?

Those that commented here reinforced earlier comments e.g. about the benefits from the Regulations in terms of bolstering consumer confidence and the importance of clarity for consumers about the contracts they are entering into.

Implementation in the EU and Other Member States

The EU undertook an assessment of the CRD including the implementation in each of the member states. As it is, in general, a maximum harmonisation measure, there is little scope for variation between the national implementations. Where there has been variation it has tended to be as regards enforcement measures.³⁰

In their report, the Commission noted where Member States had made use of the choices provided by the CRD. These were summarised in the report as follows:

The most used regulatory choices are:

- 20 Member States do not apply the provisions of the Directive to those off-premises contracts for which the payment to be made by the consumer does not exceed 50 euros (or lower values laid down in national legislation) (Article 3(4) CRD);
- 15 Member States impose language requirements regarding the contractual information for distance and off-premises contracts, in order to ensure that such information is easily understood by the consumer (Article 6(7) CRD);
- 7 Member States opted for a simplified information regime for off-premises contracts concerning repair or maintenance works not exceeding €200 explicitly requested by the consumer (Article 7(4) CRD);
- 16 Member States require a written confirmation of contracts concluded by telephone (Article 8(6) CRD)

As noted earlier, the UK was one of the member states that chose to not to apply the cancellation provisions to off-premises contract costing less than €50 (£42). We have also used the option to simplify the information regime for urgent maintenance or repairs costing less than €200 (£170).

The Commission reported that Member States chose different transposition techniques: some Member States transposed the CRD by incorporating it into existing laws (for example their civil codes), others adopted a new piece of legislation transposing the CRD almost verbatim, and some chose a combination of the two. The Commission has expressed concerns over the effectiveness of the transposition in some Member States and issued further implementation guidance in June 2014. However, a comparative analysis of the legislative situation in all Member States before and after the Directive was transposed has also highlighted that consumer protection has been strengthened in most, if not all, Member States and the benefits of this are likely to be felt by traders and consumers across borders.

³⁰ https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

Conclusions

The government welcomes the contributions from those replying to the CfE. The generally held view of those responding to the CfE has been that the Regulations continue to meet the objectives for which they were established and that these remain appropriate five years on from them coming into force. The evidence suggests the information and cancellation provisions in the Regulations have provided important reassurance to consumers to engage with the market. This in turn is an important aspect of the economy, although there are other uncertainties that may be acting to undermine consumer spending.

Our assessment is that there is little scope to change the substantive content or scope of the Regulations themselves whilst the UK continues to be bound by the EU law. The EU itself has proposed amendments to the CRD (which the CCRs implement) through its “New Deal for Consumers” programme and some changes requiring implementation by the UK will follow that work through the Omnibus Directive.

The Modernising Consumer Markets Green Paper made clear that the challenges facing vulnerable consumers will be a key area for future consumer policy to focus on. Many respondents to the CfE endorsed and emphasised the importance of that work. This can materialise through hidden costs that might see vulnerable consumers feeling pressured to sign up to contracts by visitors to their homes or through experiences such as the loyalty penalty for established business customers. Work on the loyalty penalty has been conducted separately following the CMA response to the Citizens Advice super-complaint. The Government response will be published in due course. [DN – confirm publication]

A number of respondents mentioned that in some cases it is difficult for consumers to assess the information being provided or identify those aspects of key importance to the contract. The department announced in the Green Paper that it was undertaking research into how business could ensure the better understanding of their Terms and Conditions and we published a guide for business on the subject on [DN - insert date].

Separately, we will work with the providers of guidance to consumers, business and enforcers with a view to clarifying or better illustrating material where possible, so that a common understanding of rights and requirements can be achieved.

A recurring theme across the consumer representative responses was the challenge of consistent enforcement. This is an issue identified across the range of consumer protections and the Consumer White Paper will be the vehicle through which the government considers this aspect.

Annex - Responders to the Call for Evidence

Around 150 people and groups responded to the government's CfE, with the hotel and hospitality sector strongly represented.

Respondents to the Call for Evidence included

Association of Scotland's Self Caterers

Bath Area Self Catering Association

British Beer and Pub Association

British Destinations

British Holiday & Home Parks Association Ltd

British Vehicle Rental and Leasing Alliance

Bude Area Tourist Board

Chartered Trading Standards Institute

Citizens Advice

Concert Promoters Association

Consumer Council Northern Ireland

Dispute Resolution Ombudsman

Fan Fare Alliance

Law Society of Scotland

Northern Ireland Trading Standards Service

Pewsey Vale Tourism Partnership

Professional Association of Self Caterers UK

Robinson Bloomfield & Meek

Scottish Power

Society of Chief Officers of Trading Standards in Scotland

Society of Ticket Agents and Retailers

South West Tourism Alliance

Suffolk County Council Trading Standards Service

Thomas Cook

Trading Standards North West

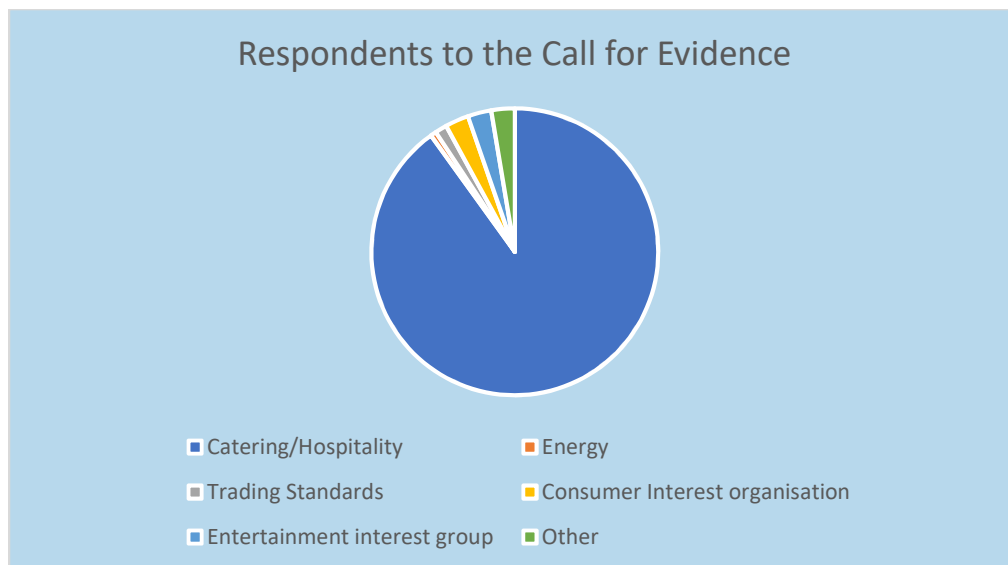
UKHospitality

UK Music

Welsh Liberal Democrats

Which?

Wolverhampton Trading Standards



Annex – The Regulations

Text of Consumer Contract (Information,
Cancellation, Additional Charges)
Regulations 2013

This publication is available from: www.gov.uk/beis [replace with direct URL if known]

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