



The Consumer Contracts Regulations

The **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013** (the Consumer Contracts Regulations) implement the remaining parts of the **Consumer Rights Directive** into **UK law**.

When do they come into force?

The Consumer Contracts Regulations come into force on **13 June 2014**. They replace existing UK legislation on distance and doorstep selling, including the **Consumer Protection (Distance Selling) Regulations 2000** (the Distance Selling Regulations).

How will the Consumer Contracts Regulations apply to SOLT / UK Theatre members?

The Consumer Contracts Regulations apply to three types of contracts: (i) “distance contracts” which are contracts conducted where the trader and consumer are not physically together; (ii) “off premises contracts” which are contracts between a trader and a consumer, when they are together but are not at the premises of the trader; and (iii) “on premises contracts” which are all other contracts – this would cover contracts conducted at a trader’s place of business. Of these categories, both distance contracts and on-premises contracts will be of relevance to members.

The key provisions of the Consumer Contracts Regulations which will be relevant to members relate to:

1. information a trader must give a consumer before and after making a sale;
2. new consumer cancellation rights;
3. rules on delivery and risk;
4. new prohibition on additional payments as a default option; and
5. new prohibition on consumers having to pay more than a basic rate to call post contract consumer helplines.

These requirements are summarised below, together with guidance on how they may affect members and guidance on how to implement them.

Key changes

1. New information requirements

1.1 For on-premises contracts

The rules for “on-premises contracts” apply to contracts conducted between a trader and a consumer **in person on a trader’s premises** (e.g. a consumer purchasing

tickets from a theatre box office). They do not apply to day to day contracts for immediate performance e.g. a purchase of drinks at the theatre bar.

Information to be provided for all “on-premises contracts” before a consumer places an order: A trader must give or make available to a consumer the following information in a clear and comprehensible manner, if it is not already apparent from the context, before a consumer enters into a contract.

- The main characteristics of the contract (i.e. in the case of ticket sales, the name of the production, the date and time of the performance booked and the seat number purchased. In certain circumstances this may include the face value price of a ticket).
- The trader’s name (or trading name), geographical address and, where available, their telephone number, fax number and e-mail address.
- The total price (i.e. inclusive of booking and transaction fees).
- If applicable, all delivery costs and other charges.
- Payment, delivery, performance arrangements (although this will be implicit in the “main characteristics” of the purchase as set out in (a) above).
- Where applicable, the trader’s complaint handling policy.
- Where applicable, the existence and the conditions of after-sale consumer assistance, after-sales services and commercial guarantees.

Although the information requirements set out above may seem lengthy, the Government guidance is that providing the required information is unlikely to differ materially from what a trader already does. A trader is only required to provide this information where it is not obvious (e.g. if the transaction is conducted on premises, the geographic location of the trader should be obvious).

Cancellation rights do not apply to on-premises contracts.

How to provide pre-contract information: The information must either be given to the consumer (e.g. the trader tells the customer the inclusive price of a ticket and the seat number) or “made available”. Information is made available to a consumer only if the consumer can reasonably be expected to know how to access it (e.g. the trader refers the consumer to the trader’s website to review the trader’s complaint handling policy).

1.2 For distance contracts

The rules for “distance contracts” apply to contracts conducted where the trader and consumer are not physically together (e.g. so **online and telephone ticket sales** will be distance contracts).

Information to be provided for all distance contracts before a consumer places an order: A trader must give or make available to a consumer the following information, in a clear and prominent manner, before the consumer places an order.

- The main characteristics of the contract (i.e. in the case of ticket sales, the name of the production, the date and time of the performance booked and the seat number purchased. In certain circumstances this may include the face value price of a ticket).
- The trader's name (or trading name).
- The trader's geographical address and, where available, telephone number, fax number and e-mail address.
- Where the trader is acting on behalf of another trader, the name and address of that other trader.
- If different, the business address of either trader referred to above where the consumer can address any complaints.
- The total price (i.e. inclusive of all booking and transaction fees).
- All delivery costs and other charges.
- If the contract is of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where the cost is a fixed rate) the total monthly costs. By way of example, this might be relevant where a consumer has purchased from a member an annual subscription or membership.
- The cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate (e.g. the cost of a premium rate telephone call).
- Payment, delivery, performance arrangements (although this will be implicit in the "main characteristics" of the purchase as set out in (a) above).
- Where applicable, the trader's complaint handling policy.
- If cancellation rights do not apply (see paragraph 1.2(b) below for examples of the limited circumstances in which consumer cancellation rights may apply and associated information requirements), traders should notify consumers that they will not benefit from a right to cancel the ticket purchase.
- Where applicable (this will only apply where the contract relates to the sale of goods), a reminder of trader's legal duty re the quality of goods (e.g. this may be relevant where a contract covers the sale of production merchandise).
- Where applicable, details of any after-sale consumer assistance, after-sales services and commercial guarantees.
- The existence of relevant codes of conduct which the trader has undertaken to comply with.
- Where applicable, the duration of the contract, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract (e.g. this may be relevant in the case of subscriptions and memberships).

- Where applicable, the minimum duration of the consumer's obligations under the contract.
- Where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.
- **How to provide pre-contract information:** As for on-premises contracts, a trader can either **give** pre-contract information to the consumer (e.g. in a telephone contract, the trader could read out the information) or can **make available** the information to the consumer in a medium appropriate to the means of distance communication used (e.g. by directing the consumer to an automated telephone message or to the trader's website). Something is made available only if the consumer can reasonably be expected to know how to access it.

Pre-contract information relating to consumer cancellation rights: Ticket sales (where the contract provides for a specific date or period for performance) are exempt from the consumer cancellation rights set out in the Consumer Contracts Regulations (as summarised in paragraph 2 below). Also exempt from the consumer cancellation provisions are contracts for the supply of accommodation, catering or services related to the supply of leisure services where the contract provides for a specific date or period for performance. **This exemption would therefore seem to apply to most transactions which might be conducted by members** as part of a distance contract (e.g. pre-ordering intermission drinks and snacks or hotel and transport packages).

There are however a small number of transactions conducted by our members which are either connected to the purchase of tickets (e.g. the purchase of ancillary insurances) or are stand-alone transactions (e.g. for the purchase of subscriptions and memberships or for the sale of production merchandise) where the cancellation provisions set out in the Consumer Contracts Regulations will apply. These provisions will also apply to the sale of theatre tokens or gift vouchers by members as, although these are contracts for leisure services, they are not linked to a specific date for performance.

In the case of contracts to which consumer cancellation rights apply, members should be aware that there are additional pre-contract information requirements. These include provision of information relating to: (i) the conditions, time limit and procedures for exercising a consumer's cancellation right in accordance with the Consumer Contracts Regulations; (ii) the consumer's obligation to pay for return of goods in case of cancellation; and (iii) the consumer's obligation to pay for services received if he agrees to their supply during cancellation period; and (iv) how a right to cancel may be lost. In the case of (i) – (iii) above, this information may be provided using optional model instructions on cancellation contained in the Consumer Contracts Regulations.

Failure to provide this pre-contract information will extend the cancellation period and prevent the trader from charging for services provided during the cancellation period. Failure to give notice is also a criminal offence liable to a fine on summary conviction.

1.3 Additional requirements for online contracts

Information to be provided by no later than the beginning of the order process:

The trader must, by no later than the beginning of the order process, clearly indicate any delivery restrictions and the means of payment which are accepted.

Information to be provided directly before the consumer places the order: If the contract places the consumer under an obligation to pay, the trader must make the consumer aware of the pre-contract information relating to:

- the main characteristics of the contract;
- the inclusive price;
- any delivery costs;
- any costs where contract is of indeterminate duration;
- contract duration and conditions for terminating; and
- the minimum duration of the contract,

(as set out in paragraph 1.2(a) above), in a clear and prominent manner, **directly before the consumer places the order.**

Consumers must acknowledge that ordering implies an obligation to pay:

Order buttons should be clearly labelled with “pay now” or similar type wording. Failure to do this will mean that the consumer is not bound by the contract.

1.4 Post contract confirmation

Once the contract is concluded, a trader must give a consumer confirmation within a reasonable time (and in any event before the performance date) on a “**durable medium**” which includes all the pre-contract information set out in paragraph (1) above, unless already provided on a durable medium. The Government’s guidance on this confirms that sending an email to the email address given by the consumer is provision of confirmation in a durable medium. However, information contained via a link to a website which may change, and which is embedded in an email is not.

1.5 Consequences of non-compliance

Where a trader fails to comply with the pre-contract information requirements set out above, a consumer may bring an action for breach of contract. The burden of proof will be on the trader to prove that it complied with all the requirements for information provision.

2 Consumer cancellation rights

Cancellation rights apply to distance and off premises contracts only. As set out in paragraph 1.2 above, contracts relating to the supply of accommodation, catering or services related to leisure services (which would include ticket sales) **if the contract specifies a date or period for performance** are exempt from these rules.

Where consumer cancellation rights apply, consumers will have a 14 day “cooling off” period to change their mind. Consumers will have to return goods within such 14 day period. Traders will be able to withhold refunds until goods are returned. Traders must provide a refund within 14 days of cancellation or from receipt of returned goods (as the case may be). If any services are to commence within the 14 day

cancellation period, a trader should obtain the consumer's explicit consent and explain they will need to pay for services delivered until the point at which they cancel. In the event that a contract is cancelled, any ancillary contract will also be cancelled.

3 Delivery and risk

Rules set out in the Consumer Contracts Regulations relating to delivery and risk will only apply to contracts for the sale of goods (e.g. where a consumer buys an item of merchandise from a trader. A contract for leisure services such as a ticket sale would not be a sales contract). In these circumstances, there is an obligation on a trader to deliver the goods within 30 days. Risk will pass to the consumer from the trader on delivery to the consumer unless the courier is arranged by the consumer in which case it passes when the item is delivered to the courier.

4 New prohibition on additional payments as a default option

As set out in previous Legal Updates, when the Consumer Contracts Regulations come into force, it will be a requirement that a trader obtain **express consent** from a consumer in respect of the making of any payment in addition to the remuneration agreed for the trader's main obligation (i.e. charitable donations or insurance payments in addition to the main ticket price). This means that a trader will no longer be able to use a pre-ticked box **or other default options** in order to obtain a consumer's consent. If a trader receives an additional payment from the consumer in breach of these rules, the consumer will be able to claim reimbursement of such additional payment.

5 New prohibition on phone charges in excess of basic rate for post-contract phone queries

If a trader offers a telephone helpline for post contract queries and such helpline is a premium rate telephone number and this is the only means by which a consumer can contact the trader, the consumer cannot be made to pay more than the basic rate for the call.

There is no obligation on traders to offer a helpline, and the Government's guidance on the implementation of the Consumer Contracts Regulations clarifies that the requirement does not apply to sales lines. That said, the boundaries may be blurred here as in many cases a trader may operate a single telephone line for sales queries as well as for post contract queries. If a trader offers more than one helpline number, the requirement will also not apply so long as at least one helpline number is charged at no more than the basic rate and that number is communicated to consumers as prominently as the one that is not basic rate. Government guidance confirms that a basic rate call will cost no more than a geographic or mobile call rate and that premium rate numbers, revenue sharing numbers and numbers with the prefix 0870 will not satisfy the requirement for a basic rate.

If a consumer pays more than the basic rate to call a helpline in breach of these rules, the consumer will be able to claim reimbursement of the difference from the trader.

6. Enforcement

Failure by a trader to comply with the Consumer Contracts Regulations will confer certain rights on the consumer as set out above. These can be enforced by the consumer privately or can be taken by the relevant enforcement authority (Trading Standards) on the consumer's behalf.

7. Implementing Guidance

The Government has produced guidance on how to implement the Consumer Contracts Regulations. You can access this guidance at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310044/bis-13-1368-consumer-contracts-information-cancellation-and-additional-payments-regulations-guidance.pdf

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