Draft consumer contracts (information, cancellation and additional payments) regulations 2013

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Where: The United Kingdom

Law as stated as at: 6 August 2013

What happened

The BIS has recently published the draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013 (the ‘Draft Regulations’), which implement parts of the Consumer Rights Directive 2011/83/EU (the ‘Directive’).

The Directive came into force on 13 December 2011 and the United Kingdom is required to adopt measures by 13 December 2013 to implement it. It replaces the Distance Selling Directive (97/7/EC) and the Doorstep Directive (87/577/EEC) and is being implemented through the Draft Regulations, the Consumer Rights (Payment Surcharges) Regulations 2012 and the Consumer Rights Bill.

The Draft Regulations focus on the information traders should provide to consumers, consumers’ cancellation rights and measures to prevent hidden costs. Some of the main provisions are summarized below.

Information traders should provide to consumers

Traders are required to provide certain information to consumers before making a contract. This includes the main characteristics of the goods or services; the trader’s identity, phone number and geographical address; the total price of the goods or services inclusive of taxes; and, where applicable, all additional delivery charges, among others (Regulations 8–13 and Schedules 1 and 2). The requirement to provide certain pre-contractual information is not a change from the existing law under the Distance Selling Regulations and the E-commerce Regulations.

A new obligation under the Draft Regulations is that when making distance contracts that are concluded by electronic means and under which the consumer has an obligation to pay, there is a requirement that ‘the trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay’. Furthermore, ‘if placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words “order with obligation to pay” or a corresponding unambiguous formulation’ (see Regulation 14).

Consumers' cancellation rights

Under the current law, the Distance Selling Regulations and the Doorstop Selling Regulations provide for cancellation periods of 7 working days and 7 calendar days, respectively. However, the Draft Regulations extend and align consumers' cancellation rights by standardizing the cancellation period to 14 days (see Regulation 29). This cancellation period applies if the consumer has been provided with the required information discussed above and is extended to 12 months if that information is not provided (see Regulation 30). This uniform approach provides more certainty and clarity for traders and consumers.

On another note, in what appears to be a fairer position for traders and a change from the current law, traders are not required to provide a refund under a contract for the sale of goods until the goods are returned (see Regulation 33).

Measures to prevent hidden costs

The Draft Regulations introduce provisions that aim to prevent hidden costs in consumer contracts. They include a provision requiring express consent from the consumer for any additional payments to the remuneration agreed for the trader's main obligations (eg an additional payment for an extended guarantee when purchasing an electrical item — see Regulation 38). The Draft Regulations clarify that express consent will not be achieved where the default option is to include the additional payment (eg a pre-ticked box on a website).

BIS has commented that the Draft Regulations seek to stamp out such hidden costs as they 'prevent consumers from understanding fully the cost of what they buy and penalise fair dealing businesses whose offers do not appear competitive next to those involving hidden costs' ('Reform of Consumer Law: Draft Regulations', August 2013, BIS).

Why this matters

The Draft Regulations create more certainty for consumers on their rights when entering into contracts, thereby increasing consumer confidence. They also aim to increase certainty for traders, by standardizing requirements in consumer contracts and thereby creating a level playing field across Europe.

Traders should take note of the changes presented by the Draft Regulations and other legislation implementing the Directive. Care should be taken to ensure that traders' order processes are in compliance with the new requirements on information and cancellation and enable consumers to provide express consent where necessary.

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ICO fuels nuisance call debate

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