



REGULATIONS AFFECTING E-COMMERCE BUSINESSES

Key regulations to be aware of

There are legal requirements to comply with that affect e-commerce but yet the majority of businesses trading on the internet are unaware of their obligations.

This guide sheds light on some of the e-commerce regulations with links to important documents.

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Introduction

E-commerce businesses in the UK must comply with a number of regulations covering areas such as online trading, distance selling, privacy and electronic communications. An e-commerce business is a business that advertises or sells goods or services online (via the Internet, interactive television or mobile phone) or transmits or stores electronic content.

This factsheet provides a summary of the main regulations e-commerce businesses need to know about and explains what they must do to comply with them. It also includes hints and tips and sources of further information.

What are the key regulations to be aware of?

Regulations that e-commerce businesses need to be familiar with include:

- The Consumer Protection (Distance Selling) Regulations 2000 implement European Community (EC) legislation into UK law. The aim of the Regulations is to increase consumer confidence where there is no face-to-face contact with a seller, and ensure that all distance sellers meet certain basic requirements. The Regulations stipulate that businesses involved in distance selling must provide consumers with suitable clear information so that they can make an informed choice about a purchase. In most cases, businesses must also give

consumers the right to a cancellation period. For a guide on distance selling for businesses from the Office of Fair Trading (OFT) go to <https://www.gov.uk/online-and-distance-selling-for-businesses>.

- The Electronic Commerce (EC Directive) Regulations 2002 implement the main requirements of the EC E-Commerce Directive into UK law. The Regulations specify the information that online service providers must give consumers, how discounts and offers should be applied and how contracts should be concluded. The Regulations also stipulate that UK-based service providers must comply with UK laws, even if they are providing their services to another EC Member State. For a beginner's guide to the Regulations go to <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file14640.pdf>.

- The Privacy and Electronic Communications (EC Directive) Regulations 2003 govern electronic marketing, including electronic mail (including e-mail, SMS, picture and video messaging) and cookies. The Regulations set standards for the security and confidentiality of communications, and the use of cookies and personal data. The Regulations state that electronic marketing messages may not be sent without the recipient's permission, except where details were obtained through a previous sale or negotiations for a sale, and the messages are about similar products or services, and the consumer has been given the opportunity to opt out of receiving the messages when the details were collected and in every subsequent

communication. Similarly, cookies may not be used unless the consumer is given clear information about their purpose, and is given the opportunity to refuse. For guidance notes on the Regulations from the Information Commissioner's Office (ICO) go to

<https://ico.org.uk/for-organisations/guide-to-pecr/introduction/what-are-pecr/>

- The Electronic Signatures Regulations 2002 define the legal status of electronic signatures, and the way they are communicated, verified and stored. The Regulations establish the supervision of Certification Service Providers (CSPs), which are businesses that issue verification certificates in support of electronic signatures. The certificate links signature verification data to a person and confirms the identity of that person. CSPs must be registered, and are liable to any party relying on the accuracy of information contained in a certificate. For more details go to https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/356786/bis-14-1072-electronic-signatures-guide.pdf
- The Data Protection Act 1998 imposes controls on the management and use of information relating to individuals. It stipulates that information must be fairly and lawfully processed, used only for its clearly intended purpose, and held securely. The ICO has information and links to the full legislation at <http://www.legislation.gov.uk/ukpga/1998/29/contents>.

- The Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 stipulate that goods and services sold must be of satisfactory quality, and must be provided within a reasonable time and at a reasonable charge. They also give consumers the right to a refund or replacement if they are not. See A Guide to the Supply of Goods and Services Act 1982 and <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file25486.pdf> for details.
- The Consumer Protection from Unfair Trading Regulations 2008 aim to simplify consumer law and protect consumers from unfair trading practices. They affect all businesses and contain a general prohibition on unfair commercial practices, misleading actions, misleading omissions and aggressive commercial practices. Go to https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284442/oft1008.pdf for a basic guide to the Regulations.
- The Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) applies to e-commerce businesses that offer credit, requiring them to be licensed by the OFT. The Act also stipulates that credit agreements should be set out in a particular way and should contain certain information. Go to https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422707/bis-10-1053-consumer-credit-directive-guidance.pdf for more information.

What obligations do these regulations impose on businesses?

In general, regulations affecting e-commerce oblige businesses to provide specific information about the business, offer additional cancellation rights, ensure that contracts formed online are legally binding, address commercial communications and avoid unfair trading practices. The key obligations that e-commerce businesses need to be aware of include:

Information provision

E-commerce businesses must provide consumers with certain pre-contractual information before they agree to purchase goods or services. It is usual for an e-commerce business to provide this information on its website. The required information includes details of the business, goods, services, pricing, delivery and returns.

Business details:

- The full name of the business including, for example, any 'trading as' status.
- The full geographic address of the business, which cannot be a PO Box.
- An e-mail address, not just a web contact form.
- The VAT number of the business, if applicable.
- The company number, place of registration and registered office address, if applicable.
- Membership number and details of trade or professional associations if appropriate.

- Particulars of the supervisory body if service is subject to an authorisation scheme.
- Details of any publicly available register in which the company is entered, together with the registration number.

Goods, services and pricing:

- A description of the main characteristics of the goods or services offered.
- The price of the goods or services offered, including all taxes.
- How long the price or offer remains valid.
- The minimum duration of the contract if goods or services are to be provided permanently or recurrently.
- The accepted methods of payment, and any applicable surcharges, for example credit card surcharges.

Delivery and returns:

- The cost of delivery, if applicable.
- The arrangements for delivery of the goods or services.
- Information about the consumer's right to cancel.
- The arrangements for returns.

Cancellation rights

Consumers buying goods or services from distance sellers have additional cancellation rights, which allow them to inspect goods when

they receive them. Businesses must give consumers the unconditional right to cancel, and offer the right to a full refund, even if the goods are not defective.

Time limits for cancellations depend on when consumers receive the required information listed above. For e-commerce businesses, the information will usually be provided at the time of purchase. In this case, cancellation rights will end seven working days after the consumer receives the goods or, in the case of services, seven working days from the day after the contract was concluded (although if the customer agrees that the services can start before expiry of this cooling-off period, the right to cancel ends on commencement of the services). Failing to provide the information upfront may result in an extension of the cancellation period. Businesses are entitled to extend their cancellation period so long as consumers are informed.

In order to cancel a contract, consumers must notify the business in writing, including via e-mail. Businesses can also accept cancellations via telephone if they inform consumers of that option.

Once a customer cancels a contract, a refund must be made as soon as possible, and in any case within 30 days. Businesses cannot withhold refunds until goods are returned. The refund must be for the full amount paid by the consumer, including the cost of delivery. If the goods are faulty or not as described the business must also pay for return delivery.

The order process

E-commerce businesses must fulfil several obligations during the order process. For example they must:

- Allow the consumer to correct errors, for example by providing a 'clear' button on online order forms.
- Incorporate terms and conditions, ensuring they are brought to the consumer's attention, for example by including a check box confirming that the consumer has read and accepted the terms and conditions. The terms and conditions must be capable of being saved and printed.
- State the amount to be paid, and that the amount will be refunded if the offer to purchase is refused.
- Acknowledge receipt of payment with an acknowledgement page and acknowledgement e-mail.
- Make it clear that receipt of payment does not mean acceptance of the offer to purchase.
- Provide confirmation of the consumer's right to cancel.
- Deliver the goods or services. At this point the consumer's offer to purchase is accepted.

Contracts

In order to ensure that contracts formed online are legally binding, an e-commerce business must make sure that the following elements are present:

- An offer, for example from a consumer to purchase goods or services.
- Acceptance, for example where a retailer accepts the offer.
- Intention, by both parties that the contract will be legally binding.
- Consideration, for example money exchanged for goods or services.

There is no requirement for contracts to be in writing. In order to ensure that the business' terms and conditions are incorporated into the contract, they must be brought to the customer's attention before he makes the offer to purchase goods or services.

The customer must also be able to print and store a copy of the terms and conditions.

Commercial communications

Any commercial communication sent electronically by a business or on the business' behalf must clearly:

- Identify itself as a commercial communication.
- Identify the business making the communication.
- Identify any promotional offer, competition or game and related conditions.

Businesses must obtain prior consent before sending unsolicited commercial communications, or spam, which can include e-mails, SMS text, picture and video messages. Consent can be obtained by having users opt-in to receive messages, or via a positive action such as when users click a 'submit' button or send an e-mail. Businesses must also make it clear

that details such as e-mail addresses are being collected, and must provide the opportunity to opt out at the point that details are collected and in every subsequent communication.

Similarly, businesses must obtain prior consent and provide the opportunity to opt out where cookies or other Internet tracking tools are used.

Privacy policies

E-commerce businesses should clearly and comprehensibly display a data protection statement, a privacy policy and information about security issues, and a cookie or Internet tracking tool policy.

Unfair trading

Business must not use unfair commercial practices. Unfair practices are those that are likely to harm the economic interests of the average consumer, and include:

- General low-level or dishonest conduct.
- Misleading information such as false or deceptive messages.
- Aggressive sales techniques, such as harassment or coercion.

Specific banned practices include:

- Falsely claiming accreditation.
- Bait advertising.
- Faking limited time offers.

- Stating that goods are sold legally when that is not the case.
- Using advertorials dishonestly.
- Falsely describing a product as 'free'.
- Creating no-win situations in competitions.
- Pestering a customer, including by e-mail.
- Misleading after sales information.

Who regulates businesses in this area and what are the penalties for non-compliance?

Regulations affecting e-commerce are supervised by organisations including the OFT, Trading Standards and the ICO.

Failure to comply with the regulations could cause an online contract to be invalidated, and may lead to a claim for damages.

If the failure to comply affects the collective interest of consumers, the OFT or Trading Standards can take action, which may include applying to the courts to issue an injunction.

Severe breaches of the regulations could lead to individuals and businesses facing unlimited fines, prosecution, and possible imprisonment.

Hints and tips

- Encourage consumer confidence. Complying with e-commerce regulations and providing clear information can help increase

consumer confidence and encourage sales.

- Take payments securely. Providing a secure e-commerce environment will increase consumer confidence and reduce business costs, for example from charge backs related to fraudulent credit card use.
- Avoid pricing errors, which can cause financial loss and bad publicity. Including a clause in the terms and conditions, stating that the business will inform consumers in the event of pricing errors and offer them the option of cancelling or confirming their order, can help to avoid having to fulfill mis-priced orders.
- Age restricted products. In order to avoid possible prosecution, e-commerce businesses should incorporate a system to prevent the sale of age restricted products to underage people.

Small Business Resources

Add value to your brand by generating catch business and product names like Amazon, Google, Coca Cola, Yahoo, Blackberry and many more using the same business name generator used by top business and product naming companies: <http://www.businessnameidea.com>

Generate more leads, cash flow and profits for your business and pay only based on results. This web site connects small businesses with top traffic web sites like Google, Facebook, Youtube to generate constant flow of traffic and leads: <http://www.intelwebsolutions.com>

Information and tools for small business to help entrepreneurs develop and market their business and ideas: <http://www.2-small-business.com>