

COMPLYING WITH THE E-COMMERCE REGULATIONS 2002

You should read this guide if you....

- ◆ advertise goods or services online (i.e. via the Internet, interactive television or mobile telephone)
- ◆ sell goods or services to businesses or consumers online
- ◆ transmit or store electronic content or provide access to a communication network.

Action you may need to take

If the Regulations apply to you, you may need to make textual or structural changes to the medium you use to advertise or sell your goods or services online, e.g. your website, in order to comply with the new requirements.

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INTRODUCTION

What are the Electronic Commerce Regulations 2002?

The Electronic Commerce (EC Directive) Regulations 2002 (SI 2002 No.2013) ("Regulations") transpose the main requirements of the E-Commerce Directive (2000/31/EC) into UK law.

What are the Regulations intended to achieve?

The purpose of the Directive (and therefore the Regulations) is to encourage greater use of e-commerce by breaking down barriers across Europe and boost consumer confidence by clarifying the rights and obligations of businesses and consumers.

It also seeks to promote the single market in Europe by ensuring the free movement of "information society services" (essentially all commercial online services) across the European Economic Area (i.e. the 15 Member States of the European Union and Iceland, Norway and Liechtenstein).

Who do the Regulations apply to?

The Regulations may apply to you if you do any of the following:

- ◆ advertise goods or services online (i.e. via the Internet, interactive television or mobile telephone)
- ◆ sell goods or services to businesses or consumers online
- ◆ transmit or store electronic content or provide access to a communication network.

What are the key features of the Regulations?

The Regulations include provision for:

- ◆ the national law that will apply to online services
- ◆ the information an online service provider must give a consumer, including discounts and offers in online advertising and how to conclude contracts online
- ◆ limitations on service providers' liability for unlawful information they unwittingly carry or store.

What is the legal status of this guide?

This guide to the Regulations is designed to help you to identify the steps you may need to

take to ensure that you comply with their requirements and minimise any resulting compliance costs.

This guide has no legal force but is intended to help you understand how the main features of the Regulations will impact on you. It is intended as a general overview only and should not be taken as legal advice.

If you are affected by the Regulations you should refer to them for a full statement of the requirements and, in case of doubt, seek legal advice on questions of interpretation.

Reference

The official text of the Regulations is available in hard copy from normal suppliers and on the HMSO website at

<http://www.hmso.gov.uk/si/si2002/20022013.htm>.

More substantive guidance on the Regulations is available on the DTI website at

www.dti.gov.uk/cii/ecommerce/europeanpolicy/ecommerce_directive.shtml

What happens to businesses that do not comply?

Non-compliance with the Regulations could have serious implications for a business. Depending on the exact nature of the non-compliance, end users may

- ◆ cancel their order
- ◆ seek a court order against you
- ◆ sue you for damages for breach of statutory duty if they can demonstrate that they have suffered a loss as a result of your failure to comply with your obligations under the Regulations.

As of 23 October 2002, the consumer-protection aspects of these Regulations will also be subject to the Stop Now Orders (EC Directive) Regulations 2001.

This extension will permit the Director General of Fair Trading and Trading Standards Departments to apply to the courts for a Stop Now Order if your failure to comply with the Regulations “harms the collective interest of consumers”. The courts will also have the power to order you to publish corrective statements with a view to eliminating the continuing effects of past infringements.

If you fail to comply with a Stop Now Order you may be held to be in contempt of court and could face a fine and/or imprisonment.

Who enforces the Regulations?

The definition of enforcement authorities in the Regulations includes any body able to impose a sanction for failure to observe or comply with any provision of UK law.

Examples include Trading Standards Departments, the Office of Fair Trading and the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS).

Whose law will apply to cross-border trade?

The Regulations seek to liberalise the provision of online services in two key ways:

- ◆ first, they require UK-established service providers to comply with UK laws even if they are providing those services in another Member State. In other words, UK-established service providers will have to comply with UK law even if they are providing their services to, for example, French recipients; and
- ◆ second, they prevent the UK from restricting the provision of information society services from another Member State in the EEA.

These basic rules are subject to a number of qualifications and exclusions, which include in particular the freedom to choose the law applicable to a contract and contractual obligations concerning consumer contracts. In addition, the Regulations permit UK enforcement authorities (and in certain cases courts) to take proportionate measures against given services on a case-by-case basis in limited circumstances (e.g. if such restrictions are necessary to protect public policy or consumers).

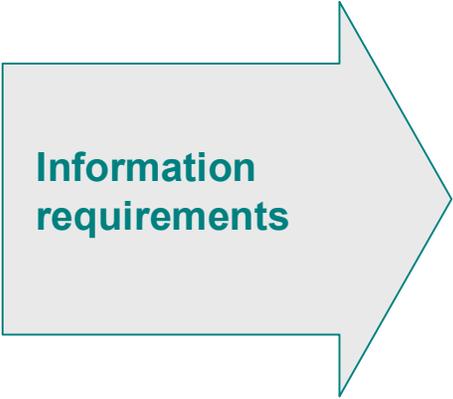
The Regulations do not deal with the jurisdiction of the courts (i.e. which court will hear a cross-border trading dispute) but a Guidance Note from the DTI is available on this issue.

Reference

The DTI website at www.dti.gov.uk/cacp/ca/policy/jurisdiction/index.htm

NEW INFORMATION REQUIREMENTS

The new information requirements contained in the Regulations can be divided into three categories, as seen below.



Information requirements

These requirements include providing your end users with:

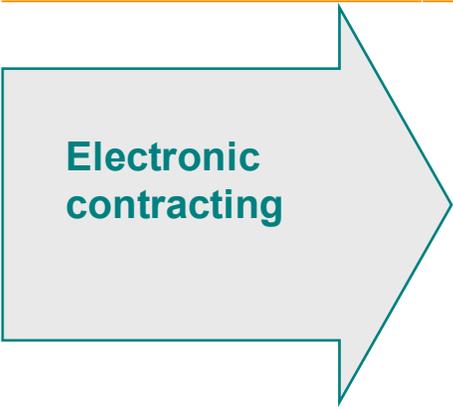
- ◆ the full contact details of your business
- ◆ details of any relevant trade organisations to which you belong
- ◆ details of any authorisation scheme relevant to your online business
- ◆ your VAT number, if your online activities are subject to VAT
- ◆ clear indications of prices, if relevant, including any delivery or tax charges.



Commercial communications

These requirements include providing your end users with:

- ◆ clear identification of any electronic communications designed to promote (directly or indirectly) your goods, services or image (e.g. an e-mail advertising your goods or services)
- ◆ clear identification of the person on whose behalf they are sent
- ◆ clear identification of any promotional offers you advertise e.g. any discounts, premium gifts, competitions, games
- ◆ clear explanation of any qualifying conditions regarding such offers
- ◆ clear indication of any unsolicited commercial communications you send.



Electronic contracting

These requirements include providing your end users with:

- ◆ a description of the different technical steps to be taken to conclude a contract online
- ◆ an indication of whether the contract will be filed by your business and whether it can be accessed
- ◆ clear identification of the technical means to enable end users to correct any inputting errors they make
- ◆ an indication of the languages offered in which to conclude the contract.

Information Requirements

Does this category of the Regulations apply to you?

This category of Regulations applies to anyone who advertises or sells goods or services online (e.g. via the internet, mobile phone or interactive television).

What must you do?

You must ensure you provide end users with:

- ◆ the full name of your business
- ◆ your geographic address
- ◆ contact details, including an e-mail address, to enable direct and rapid communication with you.

Other information requirements

These requirements may apply depending on the nature of your business.

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| If you belong to a trade association whose register is open to the public (e.g. CORGI) | → | Provide end users with <ul style="list-style-type: none"> ◆ the name of the register ◆ your registration number or other means of identification on the register |
| If your online service is subject to an authorisation scheme (e.g. an authorisation to advertise or sell financial services) | → | Provide end users with <ul style="list-style-type: none"> ◆ the details of the relevant supervisory authority which has granted the authorisation |
| If your business is part of a profession whose qualifications are recognised across Europe (e.g. the Institute of Chartered Accountants) | → | Provide end users with <ul style="list-style-type: none"> ◆ details of any professional body or institution with which you are registered ◆ details of any professional titles you hold ◆ details of the Member State in which such titles were granted ◆ a reference to professional rules and how end users can access them |
| If your online business activities are subject to VAT | → | Provide end users with <ul style="list-style-type: none"> ◆ details of your VAT number |

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| If you refer to prices | → | Provide end users with <ul style="list-style-type: none">◆ a clear indication of prices◆ details of any associated taxes and delivery costs |
|-------------------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Technological constraints

The Government recognises that technological constraints (e.g. the 160-character limit on a mobile text message) may mean that you may not be able to provide the information by the same means by which you transact with your customers. The Government believes that the information requirements outlined above will be met if the information is accessible by other means. For example, if a customer purchases one of your products or services via their mobile telephone, you should be able to satisfy the requirements if you put the relevant information on your website.

Temporary interruptions

Similarly, the Government believes that temporary interruptions to the availability of information that are essential (e.g. for maintenance purposes) or unavoidable (e.g. if your computer system crashes because of a virus) will not place you in breach of your legal obligations.

Other relevant legislation

The information requirements outlined above are in addition to existing requirements, including those under the Consumer Protection (Distance Selling) Regulations 2000. These, amongst other things, require you to provide a description of your goods or services, details of any after sales services and guarantees and details of your customers' rights to cancel orders.

Reference

The official text of the Consumer Protection (Distance Selling) Regulations is available in hard copy from normal suppliers and on the HMSO website at www.hmso.gov.uk/si/si2000/20002334.htm.

Commercial communications

Does this category of the Regulations apply to you?

This category of Regulations applies to anyone who actively promotes their goods or services through any form of electronic communication (e.g. an e-mail advertising your goods or services).

What must you do?

Any form of electronic communication designed to promote your goods, services or image, such as an e-mail advertising your goods or services, must:

- ◆ be clearly identifiable as a commercial communication
- ◆ clearly identify the person and/or organisation on whose behalf it is sent.

Other requirements

These requirements may apply depending on the nature and content of your electronic commercial communications:

| | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>If your electronic commercial communications contain discounts, promotional offers, premiums, gifts, promotional competitions or games</p> | <p>→</p> | <p>You must</p> <ul style="list-style-type: none"> ◆ clearly identify them as such ◆ ensure that any qualifying conditions for such offers, promotions or games are easily accessible and presented clearly and unambiguously. |
| <p>If you send <i>unsolicited</i> commercial communications by e-mail (e.g. an e-mail advertising your goods or services which is sent to a recipient who has not requested it)*</p> | <p>→</p> | <p>You must</p> <ul style="list-style-type: none"> ◆ ensure that recipients are able to identify them as such as soon as they receive them |

* Possible ways of meeting this requirement include placing the words "unsolicited advertisement" or "unsolicited commercial communication" in the title of the e-mail.

The purpose of this requirement is to ensure that recipients or their Internet service providers can block or delete the e-mail without the need to open and read it.

The definition of commercial communications in the Regulations does not cover domain names and e-mail addresses themselves, independent audits of your products, statutory reports or reports compiled by independent regulators. Certain specific types of communications, such as mobile text “welcome messages” and electronic greetings cards, may not be “designed” to promote your business and may not fall within the definition. Such matters of interpretation will be addressed on a case-by-case basis by the relevant enforcement authority.

Other relevant legislation

The Regulations do not define what is meant by 'unsolicited commercial communications by e-mail', but mobile text messages are not considered to be within the scope of this requirement.

The Information Commissioner, however, treats such messages as “calls” for the purposes of the provisions regarding unsolicited direct marketing in the Telecommunication (Data Protection and Privacy) Regulations 1999; you should refer to these Regulations for a full statement of those requirements.

Reference

The official text of the Telecommunications (Data Protection and Privacy) Regulations is available in hard copy from normal suppliers and on the HMSO website at www.hmso.gov.uk/si/si1999/19992093.htm.

Electronic contracting

Does this category of the Regulations apply to you?

This category applies to anyone who enables end users to place orders online.

What must you do?

You must provide end users with the following information in a “clear, comprehensive and unambiguous manner” *prior* to an order being placed:

- ◆ the different technical steps to follow in order to conclude the contract so that end users are made aware of what the process will involve and the point at which they will commit themselves to the contract*
- ◆ whether or not the concluded contract will be filed by you and whether it will be accessible*
- ◆ the technical means for identifying and correcting input errors made by an end user prior to placing an order so that end users know how to correct any mistakes they make*
- ◆ the languages offered for the conclusion of the contract.*

If you subscribe to codes of conduct



You must

- ◆ supply details of any relevant codes of conduct and details of how end users can access them.*

(The Government believes that the codes in question are those relevant to the particular order and not to your business as a whole.)

If you supply end users with the terms and conditions applicable to their contract



You must

- ◆ make them available in a way which allows them to store and reproduce them.

(You should be able to satisfy this requirement if end users are able to save the terms and conditions onto their computer and subsequently print them out.)

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| <p>If an end user places an online order with you</p> | <p>You must</p> <ul style="list-style-type: none"> ◆ acknowledge receipt of the order without undue delay and by electronic means * ◆ make available appropriate, effective and accessible technical means which will allow them to identify and correct input errors <i>prior</i> to the placing of the order. * |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Regulations state that the order and the acknowledgement of receipt are deemed to have been received when the parties to whom they are addressed are able to access them. Receipt of the order need not be acknowledged by the same means used by your customer to place their order

* These requirements do not apply to

- ◆ online transactions between two businesses (i.e.B2B transactions) if both parties agree to opt out of them
- ◆ contracts concluded *exclusively* by exchange of e-mail or by equivalent individual communications.

Limited liability for service providers

The Regulations limit the liability of service providers who unwittingly carry or store unlawful content provided by others in certain circumstances. You should refer to Regulations 17 - 22 for a full statement of the requirements you will have to meet in order to qualify for these limitations and in case of doubt you should seek legal advice on such issues.

Reference

The official text of the Regulations is available in hard copy from normal suppliers and on the HMSO website at

<http://www.hmso.gov.uk/si/si2002/20022013.htm>.

OTHER SOURCES OF INFORMATION

DTI

You can contact the DTI at:
Department of Trade and Industry
International Communications
Bay 206
151 Buckingham Palace Road
London SW1W 9SS
Tel: (020) 7215 1806 Fax: (020) 7215 4161 E-mail: ecom@dti.gsi.gov.uk

Trading Standards Offices

You will find the address and telephone number of your local Trading Standards Department for England, Scotland or Wales in the telephone book under "Local Authority" or on the Internet by visiting www.tradingstandards.gov.uk and entering your postcode.

The address for Northern Ireland is:
Trading Standards Service
Department of Enterprise, Trade and Investment
176 Newtownbreda Road
Belfast BT8 6QS
Tel: (028) 9025 3900 Fax: (028) 9025 3953 E-mail: tss@detini.gov.uk

You can contact the Office of Fair Trading through its website, www.offt.gov.uk, or at:
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX
Tel: (020) 7211 8000 Fax: (020) 7211 8800 E-mail: enquiries@oft.gov.uk