**Portable Sanitation Europe**

**Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**

**Members’ Guide**

**Background**

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the “**2013 Regulations**”) came into force in June 2014 and replace previous legislation such as the Distance Selling Regulations and the Doorstep Selling Regulations. The 2013 Regulations are the United Kingdom’s implementation of the Consumer Rights Directive and the legislation is in force in England, Wales, Scotland and Northern Ireland.

In short, the 2013 Regulations place obligations on traders[[1]](#footnote-1) who deal with consumers[[2]](#footnote-2) and who provide goods and/or services (including rentals) to such consumers. The 2013 Regulations require traders to provide certain information to the consumer when contracts are made at a distance (such as by phone, internet or e-mail) or face-to-face but away from a trader’s premises (e.g. at the consumer’s home) (together, the “**Locations**”).

**Pre-contract requirements from all Locations**

When a consumer purchases goods or services from one of the Locations defined under the 2013 Regulations, they need to be given numerous pieces of pre-contractual information by the trader before the consumer can be bound by the terms of the contract.

In all circumstances, it is for the PSE member (as the trader) to ensure that they have complied with such requirements under the 2013 Regulations. One of the easiest ways for a trader to ensure that consumers have been provided with all the necessary pre-contractual information is to include such information either as part of the ordering process or in their terms and conditions.

Whilst the following is a non-exhaustive list[[3]](#footnote-3), this information is likely to be required to be given to consumers by PSE members in most situations. We have indicated where the PSE Terms and Conditions already contain certain aspects of the required pre-contractual information:

|  |  |
| --- | --- |
| **Pre-contract requirement under the 2013 Regulations** | **Is this information currently covered by PSE standard terms?** |
| 1. the main characteristics of the goods to be hired and services to be provided; | No – this should be provided by the PSE member. |
| 1. the identity of the PSE member (including any trading names); | No – this should be provided by the PSE member. |
| 1. the geographical address at which the PSE member is established and, where available, the PSE member’s telephone number, fax number and e-mail address, to enable the consumer to contact the PSE member quickly and communicate efficiently; | No – this should be provided by the PSE member. |
| 1. if different from the address provided in accordance with paragraph 3 above, the geographical address of the place of business of the PSE member, and, where the PSE member acts on behalf of another PSE member, the geographical address of the place of business of that other PSE member, where the consumer can address any complaints; | No – this should be provided by the PSE member. |
| 1. the total price of the rental and services inclusive of taxes, or where the nature of the services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, | No – this should be provided by the PSE member. |
| 1. where applicable, all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; | No – this should be provided by the PSE member. |
| 1. the arrangements for payment, delivery, performance, and the time by which the PSE member undertakes to deliver the rental goods and perform the associated services; | No – this should be provided by the PSE member. |
| 1. the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; | No – this should be provided by the PSE member. |
| 1. where applicable, the minimum duration of the consumer's obligations under the contract. | No – this should be provided by the PSE member. |
| 1. where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the PSE member; | Yes – condition 5.7. |
| 1. the conditions, time limit and procedures for exercising cancellation rights under the 2013 Regulations; | Yes – condition 6.1. |
| 1. where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods; | Yes – condition 6.1.1, although the amount is to be specified in the Model Cancellation Notice (see below). |
| 1. where there is no right to cancel or the right to cancel may be lost because of the nature of the goods and/or services, the information that the consumer will not benefit from a right to cancel, or the circumstances under which the consumer loses the right to cancel; and | Yes – condition 6.1.2. |
| 1. that, if the consumer exercises the right to cancel after having made a request once the services have been partially performed, the consumer is to be liable to pay the PSE member reasonable costs; | Yes – condition 6.1.3. |

You will note that paragraphs 10 to 14 of the requirements are already contained within your PSE Terms and Conditions (such as the consumer’s cancellation rights).

The rest of the information (such as the full description of the goods, including for how long they are being provided and the services being provided, such as installation, cleaning and removal) will need to be communicated either in the Contract Term Sheet or in another ‘durable form’ (see below for what constitutes ”durable”).

In addition to the pre-contractual information, the PSE member must give or make available to the consumer the model cancellation form[[4]](#footnote-4). A copy of the model cancellation form prepared for PSE members is attached to this note.



**Additional requirements for electronic means contracts only[[5]](#footnote-5)**

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

If a distance contract is concluded by electronic means (such as via the internet), you must (no later than the beginning of the order process) indicate clearly and legibly:

* any delivery restrictions; and
* which means of payment are accepted.

**Information to be provided directly before the consumer places the order**

PSE members must also make the consumer aware of the following pre-contract information required (and as detailed above) in a "clear and prominent manner" and "directly before" the consumer places the order:

1. main characteristics of the goods, services or digital content;
2. total price or how it will be calculated;
3. additional delivery charges and other costs or how they will be calculated;
4. contract duration and conditions for terminating; and
5. minimum duration of contract.

This information could be displayed on an “order summary” or “final checkout” page on your website before the consumer authorises payment.

**Consumer acknowledgement that ordering implies an obligation to pay**

PSE members must also ensure that:

* the consumer, when placing their order, explicitly acknowledges that the order implies an obligation to pay you; and
* if placing an order entails clicking a button or similar function, that button or function is labelled in an easily legible manner only with the words "order with obligation to pay" or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the PSE member.

The Department of Business Innovation and Skills (“**BIS**”) suggests in their guidance in respect of the 2013 Regulations the following:

**Sufficient:** phrases such as "pay now", “buy now” or “confirm purchase”.

**Insufficient:** phrases such as “register”, “confirm”, “order now” and unnecessarily long phrases that may conceal the message about the obligation to pay.

**Additional requirements for telephone contracts only[[6]](#footnote-6)**

When you make a telephone call with a view to concluding a distance contract, you must at the beginning of the conversation with the consumer disclose:

* your identity and (if applicable) the identity of the person on whose behalf you are making the call; and
* the commercial purpose of the call.

Since it would be practically impossible to provide the model withdrawal form in a written form when contracting by telephone, the contents of the form should be explained to the consumer orally. After the contract is concluded, the model withdrawal form should be included in the confirmation of the contract provided on a durable form.

**Providing information in a durable form**

Whenever a consumer places an order via one of the methods above, you should confirm all such pre-contractual information with them in a “durable form”. This is so the consumer can have its own copy of all the important information which will apply to the contract they have entered into.

A “durable form” means paper or e-mail – referring to information on your website is insufficient as this could be changed without the consumer’s knowledge.

The most efficient ways to confirm pre-contractual information is to provide it as (a) a part of a confirmation e-mail to the consumer that their order has been made successfully; or (b) in the form of a paper order confirmation/invoice with your terms.

**Failure to provide the correct information**

It is important for PSE members to comply with the 2013 Regulations. Failure to do so can give the consumer additional rights and powers to claim money from the PSE member. It also can cause reputational damage to your company and PSE as a whole.

Below is a table showing the specific areas of the 2013 Regulations that can be breached and the consumer’s power when it happens:

|  |  |
| --- | --- |
| **2013 Regulations rule** | **Consequence of breach** |
| **Delivery charges** – charges needs to be communicated to the consumer where known. | The consumer is not liable for those charges or costs. |
| **Right to cancel** – where a right to cancel exists, the PSE member should give or make available pre-contract the conditions, time limit and procedures for exercising that right.  *This is in PSE’s terms and conditions and therefore should not apply if terms are provided to the consumer before the contract is formed.* | Failure to provide this pre-contract information will:   * extend the cancellation period from 2 weeks to 12 months; * prevent you from making a deduction for use; and * prevent you from charging for services provided during the cancellation period. |
| **Costs of returning the goods in case of cancellation**. Where applicable, the PSE member should give or make available pre-contract the information that the consumer will have to bear the cost of returning the goods in case of cancellation.  *This is in PSE’s terms and conditions and therefore should not apply if terms are provided to the consumer before the contract is formed* | The consumer is not liable for those charges or costs. Instead there will be an implied term that the trader must bear the direct cost of the consumer returning the goods. |
| **Acknowledgement of obligation to pay** (electronic only). The PSE member should obtain consumer's acknowledgement that placing the order implies an obligation to pay. | If you do not comply the consumer is not bound by the contract or order. |
| **Requirement for prominent payment point** (electronic only). If placing an order entails activating a button or similar function, the PSE member must ensure that button or function is labelled in an easily legible. | If you do not comply the consumer is not bound by the contract or order. |

**Consumer Right to Cancel**

Consumers have certain rights to cancel the contract free of charge. The time within which a consumer may exercise their cancellation right for a contract for the provision of services is within 14 days of the day following the date on which the contract is entered into.

If a consumer validly exercises its right to cancel then you must refund any sums that they have already paid under the contract within 14 days after the day on which you are informed of the consumer’s decision to cancel the contract.

However, where the consumer requests in writing that the services be provided within the 14 day cancellation period then they will lose their right to cancel free of charge once the performance of the services is completed. If the consumer cancels the contract once the performance of the services has begun then you may charge them for any costs you have reasonably incurred in performing the services thus far. You will still be required to refund the consumer any sums they have already paid under the contract in excess of the costs you have incurred.

Consumers will not have a right to cancel where:

the contract is for the supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities; and

the contract provides for a specific date or period or performance.

Where a consumer exercises their right to cancel and goods have already been provided to them, the PSE Terms and Conditions provide that the consumer must return the goods to you at their own cost.

**Worth remembering – post contract helplines**

Once the contract has been made between you and the consumer, you must ensure that they do not incur any further costs when telephoning you to enquire about the services or discuss their order with you.

The 2013 Regulations state that where you operate a telephone line so that a consumer can contact you about a contract entered into with you, the consumer cannot be made to pay more than the basic rate for that call.[[7]](#footnote-7)

The rule has certain key components:

* the consumer must have already entered a contract with the trader;
* the rule applies where the trader offers such a telephone line. However, there is no requirement on traders to introduce one if they do not otherwise have one;
* the rule applies to both landline and mobile numbers provided by the trader; and
* the consumer can only be charged the basic rate.

Rather unhelpfully, there is no definition for what constitutes a basic rate number, although the BIS guidance suggests the following:

**Basic rate:**

* Geographic numbersor numbers which are always set at the same rate (usually beginning with 01, 02 or 03;
* Calls which can be free of charge to call: 0800 and 0808 numbers; and
* Mobile numbers: beginning with 07.

**Not basic rate:**

* Premium rate numbers (beginning with 09);
* Revenue sharing numbers: these usually have the prefix 084 or 0871, 0872 or 0873\*; and
* Numbers with the prefix 0870.

\*BIS has suggested that Ofcom will ensure that those wishing to change from a 0845 number have access to 03 numbers where the only change will be the substitution of the digit 3 instead of the 8 in the prefix. Contact Ofcom for more information in this regard.

**Questions?**

Should you have any questions in respect of this PSE guide, please contact [NAME] who will either respond to your query or refer your question to our legal partners.

1. Defined under the 2013 Regulations as “a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf” – see regulation 4. [↑](#footnote-ref-1)
2. Defined under the 2013 Regulations as “an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession” – see regulation 4 [↑](#footnote-ref-2)
3. The full list can be found in Schedule 2 of the 2013 Regulations. [↑](#footnote-ref-3)
4. Regulation 13(1)(a) 2013 Regulations. The model cancellation form is set out in Part B of Schedule 3 of the 2013 Regulations and is also provided with this guide. [↑](#footnote-ref-4)
5. These do not apply to doorstop contracts and contracts made by phone. [↑](#footnote-ref-5)
6. These do not apply to doorstop contracts and contracts made by electronic means. [↑](#footnote-ref-6)
7. Regulation 41(1) of the 2013 Regulations. [↑](#footnote-ref-7)