

Enforceability of Engagement Letters – Interim Guidance

CONSUMER CONTRACTS (INFORMATION CANCELLATION AND ADDITIONAL CHARGES) REGULATIONS 2013

This Guidance is only a summary of these Regulations and their requirements and practitioners should form their own views of whether the Regulations will apply to their situation and take steps to comply with them. It is interim guidance only as it will ultimately be encompassed in the update of the Engagement Letters for Tax Practitioners guidance which is currently being conducted by the joint professional bodies' working party.

1. These Regulations may render any engagement letter issued by a practitioner unenforceable by the practitioner against his client (although the clients may still be able to enforce against the practitioner). A failure to comply with the Regulations therefore may mean that, not only will the practitioner be unable to enforce payment of outstanding fees, but also that any limitation of liability included within the engagement letter would not be effective.
2. The Regulations came into effect of 13 June 2014 and supersede the two previous sets of regulations that we have previously provided guidance on:
 - i. The Consumer Protection (Distance Selling) Regulations 2000
 - ii. The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008.

The Regulations only apply to contracts between “traders” (practitioners) and “consumers”.

3. The full Regulations can be found at:
<http://www.legislation.gov.uk/ukxi/2013/3134/made>
4. In short, the Regulations apply where a practitioner acts for a consumer. In practice this means that a practitioner should always consider whether the Regulations apply where he acts for an individual in relation to that individual's personal affairs. Practitioners should be aware that this will include cases where they act for directors of company clients (for example, in relation to the directors' personal affairs as well as for clients who specifically instruct them in relation to their personal affairs).

5. If the practitioner acts for a consumer (as defined) then he must consider whether the Regulations apply. This will require a consideration of where the contract was made and whether the client had met the adviser in person before the contract was entered into. Practitioners should be aware that a contract may well be entered into before the engagement letter is sent to the client. The engagement letter is evidence of the terms of the contract, but not necessarily the contract itself.
6. The Regulations envisage three types of contract:-
 - (1) A distance contract (not face-to-face).
 - (2) An off premises contract (not at the Practitioner's business premises).
 - (3) An on premises contract (neither of the above).

Note that for all contracts, the engagement letter must set out specific information which is set out in Schedules 1 and 2 to the Regulations but that this includes the practitioner's complaints handling policy, confirmation of how the contract may be terminated and the existence of any relevant codes of conduct and how copies of them can be obtained.

In addition, if the contract is a distance or off premises contract then the client must be sent a cancellation notice (an example template from the Regulations is attached).

7. The notice has to be in writing. If the client has not been sent a cancellation notice when he is entitled to then the contract may be unenforceable by the practitioner against the client.
8. The client has 14 days to cancel his contract commencing on the date that the contract is made. Until the cancellation period expires, the client can cancel the contract and may not be required to pay any fees to the adviser for the work done in that period unless he has made a written request for the performance of the contract to begin before the end of the cancellation notice period.
9. The practitioner should consider whether to include in their file opening forms a check list to establish whether a client is a consumer and if so whether the contract is a distance or off premises contract so as to ensure that the appropriate notice is sent to those clients, to preserve the

enforceability of the contract terms (and recovery of fees) against their client.

10. The Regulations introduce key changes to the information which needs to be provided to a consumer and amendments relating to "cooling-off" periods (extended to 14 days – it was previously 7 days). Failing to give the consumer the relevant details about their right to cancel carries serious consequences - the 14 day period is automatically extended to 14 days after the practitioner eventually provides the consumer with details of this right or, if the information is never provided, to 12 months and 14 days. In addition, non-compliance with the Regulations will now be treated as a criminal offence and the practitioner is liable to being fined up to £5,000. Any practitioner who is unsure whether the Regulations apply in a specific matter should take specialist legal advice.

Template 1: Information about the exercise of the right to cancel

Model instructions for providing information to your client about their right to cancel a contract: [Schedule 3](#).

Right to cancel

You have the right to cancel this contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day [See Note 1].

To exercise the right to cancel, you must inform us [See Note 2] of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model cancellation form, but it is not obligatory. [See Note 3]

To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.

Effects of cancellation

If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us).

We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by you.

We will make the reimbursement without undue delay, and not later than –

- (a) 14 days after the day we receive back from you any goods supplied, or
- (b) (if earlier) 14 days after the day you provide evidence that you have returned the goods, or
- (c) if there were no goods supplied, 14 days after the day on which we are informed about your decision to cancel this contract.

We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement. [See Note 4].

[See Note 5]

[See Note 6]

Notes on instructions for completion:

1. Insert one of the following texts between inverted commas:

(a) in the case of a service contract or a contract for the supply of digital content which is not supplied on a tangible medium: "of the conclusion of the contract.";

(b) in the case of a sales contract: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.";

(c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.";

(d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.";

(e) in the case of a contract for regular delivery of goods during a defined period of time: "on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.".

2. Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

3. If you give the option to the consumer to electronically fill in and submit information about the consumer's cancellation from the contract on your website, insert the following: "You can also electronically fill in and submit the model cancellation form or any other clear statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a cancellation on a durable medium (e.g. by e-mail) without delay".

4. In the case of sales contracts in which you have not offered to collect the goods in the event of cancellation insert the following: "We may withhold

reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest."

5. If the consumer has received goods in connection with the contract

(a) insert:

"We will collect the goods."; or,

"You shall send back the goods or hand them over to us or ... [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired."

(b) insert:

"We will bear the cost of returning the goods.";

"You will have to bear the direct cost of returning the goods.";

-If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: "You will have to bear the direct cost of returning the goods, ... EUR [insert the amount]."; or if the cost of returning the goods cannot reasonably be calculated in advance: "You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [insert the amount]."; or

-If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer's home at the time of the conclusion of the contract: "We will collect the goods at our own expense."; and,

(c) insert

"You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods."

6. In the case of a service contract insert the following: "If you requested to begin the performance of services during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated us your cancellation from this contract, in comparison with the full coverage of the contract."

Template 2: Cancellation form

Model cancellation form which you may wish to provide to your client to enable them to cancel the contract within the cancellation period if they choose to: [Schedule 3](#).

To [here the trader's name, geographical address, and where available, fax number and e-mail address are to be inserted by the trader]:

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*]/ for the supply of the following service [*],

Ordered on [*]/ received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate.