

**EU CONSUMER RIGHTS  
DIRECTIVE: INFORMATION  
REQUIREMENTS AND RIGHT TO  
WITHDRAW FOR DISTANCE  
CONTRACTS**

Impact assessment

AUGUST 2012

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<b>Title: EU Consumer Rights Directive: Information requirements and withdrawal rights for distance contracts</b>  IA No: RPC12-BIS-1440  Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	<b>Impact Assessment (IA)</b>
	Date: 08/06/2012
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Secondary Legislation
	Contact for enquiries: Stella D'Italia

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: Amber</b>
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
NA	NA	NA	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**

Fragmentation of national laws regulating consumer transactions across the EU has meant that business, in particular small and medium enterprises have been more reluctant to explore export opportunities offered in trading across EU borders. This is due in great part to the additional costs of compliance when trading cross-border. Consumers too are reluctant to take part in cross-border shopping, demonstrating lower levels of confidence, thus diminishing their access to wider choice and lower prices. Sales effected through distance selling media, in particular the internet, offer significant potential for cross-border and overall sales growth. The proposed harmonisation and clarification of rules around information and withdrawal rights for such sales will reduce compliance costs, increase legal certainty and help boost trader and consumer confidence.

**What are the policy objectives and the intended effects?**

Clarifying and harmonising pre-contractual information and withdrawal rights will mean businesses know what information they must provide, irrespective of who they sell to or where in the EU they sell. Consumers have clear information to ensure they make good choices. The provisions on withdrawal (cancellation) rights will allow consumers time to make a genuinely considered judgment with regard to their purchases, and to inspect goods, thus reducing the potential for disputes. Traders will be compensated for diminution in value of used returned goods, or for services delivered before cancellation, and businesses can expect return of goods before they refund monies paid. Reduced compliance costs, increased legal certainty and enhanced consumer confidence should facilitate cross-border trade, and a fairer balance between consumer and business rights, should incentivise trade.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Chapter III of the Consumer Rights Directive (CRD) contains provisions applicable to contracts concluded at a distance. As a maximum harmonisation measure, there is very little flexibility in implementation.

**- Option 1 (minimum level of implementation that we must effect to meet our Community obligations)**

Apply pre-contractual information requirements and withdrawal rights only to goods and service providers within the scope of the CRD, and which normally and regularly sell goods and services at a distance. This would have the effect of withdrawing consumer protection from distance selling of healthcare sold by professional healthcare providers and of privately sold social services.

**-Option 2:** Apply pre-contractual information requirements and withdrawal rights to all goods and service providers within the scope of the CRD, and in addition, to healthcare and social services as currently covered by the Distance Selling Regulations (DSRs) 2000, which the CRD is intended to replace.

**Option 2** would, in our view, meet UK Government policy objectives to encourage growth, and minimise burdens on business whilst maintaining high levels of consumer protection. Sector developments in healthcare and social services suggest that such services will increasingly be offered through distance media and there will be no equivalent protections in alternative legislation, when the DSRs are revoked...

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> July 2019					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***



Signed by the responsible SELECT SIGNATORY:

Date: 13/08/2012

Apply pre-contractual information requirements and withdrawal rights to goods and service providers within the scope of the CRD, and which normally and regularly sell goods and services at a distance.

**FULL ECONOMIC ASSESSMENT**

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	NA		NA		NA
<b>Description and scale of key monetised costs by ‘main affected groups’</b>					
NA					
<b>Other key non-monetised costs by ‘main affected groups’</b>					
<p>There will be some familiarisation and transition costs for business, as well as compliance costs resulting from increased information requirements. These are not expected to be significant as they mainly replicate those in the existing distance selling regulations as well as having overlaps with other consumer protection legislation. The withdrawal rights too, broadly mirror existing obligations. Preliminary views from business groups indicate that the extension of the cancellation period from 7 working days to 14 (calendar) days should not result in markedly more cancellations and therefore costs. Exclusion of healthcare goods and services, provided by professionals, impacts on coherency of framework regulating private healthcare market and may lead to uncertainty for business and consumers. We will use the consultation to seek information from stakeholders on these issues, and the associated impact.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	NA		NA		NA
<b>Description and scale of key monetised benefits by ‘main affected groups’</b>					
NA					
<b>Other key non-monetised benefits by ‘main affected groups’</b>					
<p>Reduced compliance costs and legal uncertainty for traders selling across EU. Traders will be entitled to retain money for any diminished value of product returned, beyond the use necessary to check it is fit for purpose, and will be able to retain monies until goods returned. Consumers will have clarity that they can inspect goods purchased before deciding whether to return them. Clarity and certainty for consumers and businesses in relation to minimum information requirements, and to cancellation rights and responsibilities will reduce numbers and costs of disputes. Professional suppliers of healthcare and businesses supplying social services would not longer be bound by distance selling regulations.</p>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
<p>We do not have data on the specific impact resulting from the information and withdrawal requirements. Given that the information requirements have notable overlap with information requirements in other applicable consumer legislation, we do not expect costs to be significant. Neither do we expect the increase in the cancellation period from 7 working days to 14 days, based on initial feedback, to raise costs significantly. Our consultation will test these expectations.</p>					

**BUSINESS ASSESSMENT (Option 1)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>		
<b>Costs:</b>	NA	<b>Benefits:</b>	NA	<b>Net:</b> NA	NO	NA

# Summary: Analysis & Evidence

# Policy Option 2

Apply pre-contractual information requirements and withdrawal rights to all goods and service providers within the scope of the CRD, and in addition, to healthcare<sup>1</sup> and social services<sup>2</sup> as currently covered by the Distance Selling Regulations 2000, and which the CRD is intended to replace.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	NA		NA		NA
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
NA					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Costs per trader will not diverge from those in option 1, although more traders will be covered. However, as these traders are already covered by information and withdrawal provisions in the Distance Selling regulations, as well as the information provisions in the Consumer Protection from Unfair Trading Regulations, they will be familiar with the broad nature of these obligations.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate	NA		NA		NA
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
NA					

<sup>1</sup> Under current UK legislation, all healthcare which is the subject of a contract between the business and the consumer, is covered by the distance selling regulations 2000. Under the CRD, there is an exemption for healthcare services (and goods) sold by **regulated healthcare professionals** as defined in the Directive 2011/24/EU on patient rights in crossborder healthcare. (doctors, nurses, dentists, pharmacists etc.) (For both the existing legislation, and the forthcoming CRD, where there is no business-consumer contract, e.g. for NHS services, the provisions will not bite). It is clear that the narrow definition of the healthcare exemption in the CRD means that **commercial traders (rather than regulated professionals)** selling healthcare products and services (e.g. mobility aids, vitamin supplements, diet plans etc.) do not fall within the exemption but are squarely within the scope of the CRD. Option 1 would therefore cover such contracts.

<sup>2</sup> Services for particularly disadvantaged or low income persons, services for persons and families in need of assistance in carrying out routine, everyday tasks, and services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase. (include services for children, youths, families, single parents, older persons, migrants, both short-term and long-term home care services, or assisted living facilities and residential homes or 'nursing homes')

**Other key non-monetised benefits by 'main affected groups'**

Healthcare and social services will increasingly be offered through distance media such as the internet. Enhanced legal certainty and confidence for consumers where they conclude healthcare and social services contracts remotely is, therefore, important. There will be potential for fewer disputes for the trader as a result of enhanced clarity with regard to information and consumer obligations, and reduced compliance costs as this option matches our proposal for off-premises contracts. Sectoral exemptions are not always understood by consumers, giving rise to false expectation and disputes. This option would also eliminate the need to work out whether the healthcare contract is in or out of scope, depending on who sells the healthcare product. Option 2 also applies information and cancellation rules to all healthcare providers, not just the non-professionals, so ensuring a level playing field and enhancing competition.

**Key assumptions/sensitivities/risks**

**Discount rate (%)**

We will use the consultation to look more closely at the impacts of this proposal on these growing sectors..

**BUSINESS ASSESSMENT (Option 2)**

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b> NA	<b>Benefits:</b> NA	<b>Net:</b> NA	YES	IN



## Evidence Base (for summary sheets)

This IA is part of a bundle . The bundle consists of a covering IA which sets out the general context, scope and aims of the CRD as a whole, followed by four 'sub-IA's, one on each of the key areas covered by the CRD (bar article 19 on payment surcharges<sup>1</sup>), and which are highlighted in the bullets below.

The CRD provisions covered in this bundle are as follows:

Chapter II:

- precontractual information requirements where traders sell on-premises

Chapter III:

- precontractual information requirements and cancellation rights for consumers where traders sell at a distance, and
- precontractual information requirements and cancellation rights for consumers where traders sell off-premises

Chapter IV:

- 3 additional requirements applicable to all sale and services contracts, however sold.

**This IA relates to Chapter III provisions for traders selling at a distance (internet/telesales etc).**

### What is the problem under consideration? Why is government intervention necessary?

1. The European Commission has identified the fragmentation of national consumer legislation across Member States as a significant barrier to cross-border trade. Divergent consumer legislation can act as an impediment to businesses wishing to explore export opportunities across EU Member States. For example, the additional costs of compliance with different national laws regulating consumer transactions are seen by 60% of traders as a fairly or very important obstacle to business-to-consumer cross-border trade.<sup>2</sup> Such compliance costs are rated as being more important than additional costs arising from language differences, costs in ensuring an efficient cross-border after-sales service, delivery costs or cross-border complaint resolution.<sup>3</sup>

2. A recent survey by the EC of business attitudes towards cross border trade and consumer protection, found that only 25 percent of UK businesses sold in at least one other EU country.<sup>4</sup> The benefits of harmonisation of consumer law across Member States were highlighted in a follow-up question, with 41 percent of businesses stating that they would make cross-border sales with at least one other EU country if laws regulating transactions were the same across the EU.<sup>5</sup> The benefits from standardisation to businesses are likely to be significant in relation to the effect on turnover, since, for those businesses operating in distance sales, cross-border trade can be a valuable source of revenue, as shown in Figure 1 below.

**Figure 1:** Proportion of sales from cross-border trade

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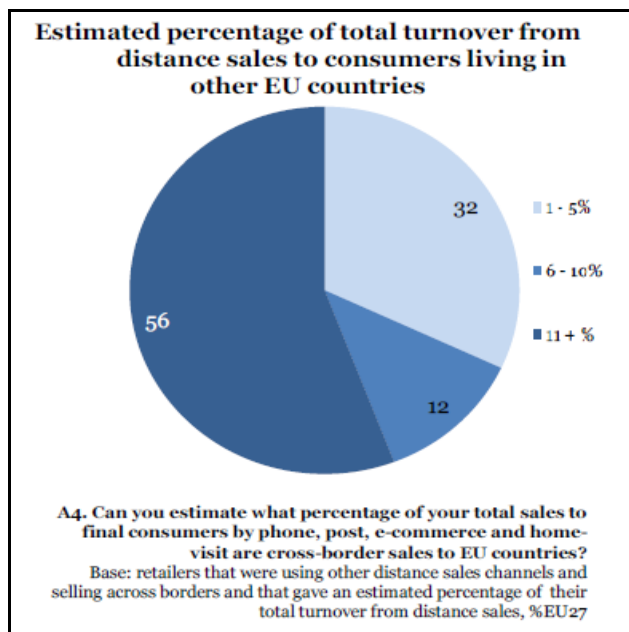
<sup>1</sup> A separate IA and consultation is being carried out on the Chapter IV (article 19) provision on payment surcharges

<sup>2</sup> EC Flash Eurobarometer 224 (2008), 'Business attitudes towards cross-border sales and consumer protection', Available here: [http://ec.europa.eu/public\\_opinion/flash/fl\\_224\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_224_en.pdf).

<sup>3</sup> Ibid.

<sup>4</sup> EC Flash Eurobarometer 300 (2011), 'Retailers' attitudes towards cross-border trade and consumer protection', Available here: [http://ec.europa.eu/consumers/strategy/docs/retailers\\_eurobarometer\\_2011\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/retailers_eurobarometer_2011_en.pdf).

<sup>5</sup> Ibid.



Source: EC Flash Eurobarometer 300

3. Consumers also demonstrate lower levels of confidence when shopping across EU borders, thus reducing their choice and potentially resulting in consumers not taking advantage of improved offers from businesses operating in other Member States. According to Eurobarometer 252, 71% of Europeans think it is harder to resolve problems when purchasing from providers located in other EU countries compared to the ones based in their home country.<sup>6</sup> The uneven level of consumer protection also makes it difficult to conduct pan-European education campaigns on consumer rights, which could help increase awareness and therefore confidence.

4. Therefore, both businesses and consumers are not reaping the benefits of the Single Market.

5. Distance selling (especially internet sales) offers significant potential for cross-border growth and the proposed interventions impact particularly on these areas. An EC survey found that cross-border internet sales accounted for 6 percent of overall distance sales in 2005. In contrast 23 percent of all respondents had transacted with domestic sellers through the internet.<sup>7</sup> These findings were confirmed in 2008, with domestic internet transactions conducted by 30 percent of respondents, while cross-border internet transactions had grown by one percentage point only, to account for only seven percent of distance purchases.<sup>8</sup> As Figure 2 below shows, while the UK has a relatively high rate of distance shopping, cross-border distance shopping is low even relative to other countries and to overall distance shopping rates.<sup>9</sup>

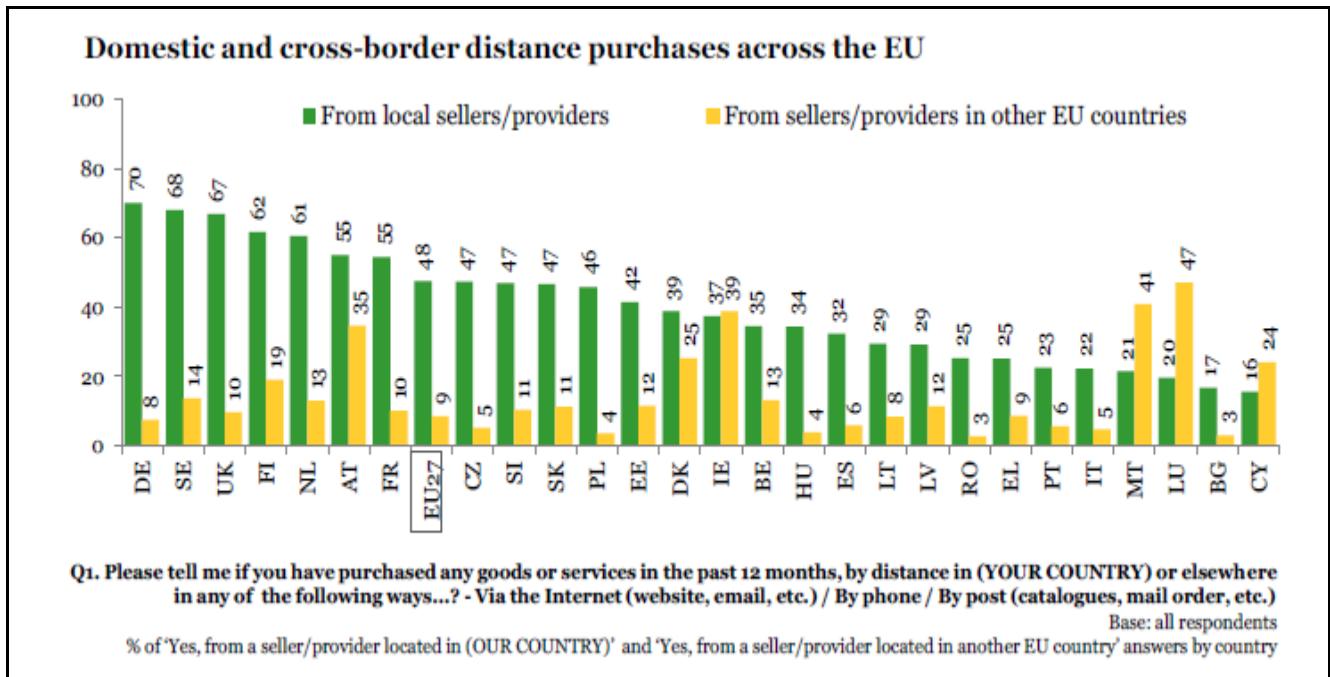
**Figure 2: Distance shopping across Member States (2010)**

<sup>6</sup> EC Special Eurobarometer 252 (2006), 'Consumer protection in the Internal Market', Available here: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs252\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs252_en.pdf).

<sup>7</sup> EC (2008), 'Impact assessment report accompanying the proposal for a Directive on consumer rights', pp. 9, Available here: [http://ec.europa.eu/consumers/rights/docs/impact\\_assessment\\_report\\_en.pdf](http://ec.europa.eu/consumers/rights/docs/impact_assessment_report_en.pdf).

<sup>8</sup> Ibid.

<sup>9</sup> EC Flash Eurobarometer 299 (2011), 'Consumer attitudes towards cross-border trade and consumer protection: Analytical Report', Available here: [http://ec.europa.eu/consumers/strategy/docs/consumer\\_eurobarometer\\_2011\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/consumer_eurobarometer_2011_en.pdf).



Source: EC Flash Eurobarometer 299 (2011)

6. Cross-border distance transactions across the EU can play an important role in consumer welfare as they allow consumers to take advantage of price differences across Member States. The EC has found that price differentials across Member States can be significant. For example, a small scale survey of price differences across three products sold online, found that the maximum price difference was nearly 60 percent (that is the difference between the cheapest and most expensive price).<sup>10</sup> For a range of electrical products, UK prices<sup>11</sup> were found to be 27 percent above the cheapest alternative (the cheapest offer being offered in Lithuania).

7. The continuation of significant price variations across the EU, which go beyond that which can be explained by differences in taxes such as VAT, and other regulatory effects, suggests that increased cross-border retail trade would have a significant effect. It would be likely to increase competition and reduce prices, benefitting consumers and stimulating economic growth. In addition to the Single Market growth, the CRD is designed to clarify existing laws and ensure a fair balance of rights and obligations between business and consumers. For example, business should benefit from the provision which allows them to delay issuing refunds until the consumer supplies evidence that the goods have been returned.

### What are the policy objectives and the intended effects?

8. The aim is to enhance single market growth opportunities for business and choice for consumers for distance selling transactions (e.g. via the internet, by phone), whilst maintaining high levels of consumer protection. By harmonising and clarifying information and withdrawal provisions where consumers buy remotely, we aim to give business and consumers greater certainty and clarity over respective obligations and entitlements, thus reducing burdens on business, in particular SMEs, who wish to trade cross-border. Standardising these consumer protection measures across the EU makes it easier to trade across boundaries and boosts competition, with retailers having a stronger incentive to improve their offering when faced with well-informed and active consumers, and choice of competing suppliers. The measures should raise consumer confidence and stimulate export opportunities for UK traders. Consumers will be armed with clear information on the product or service they wish to buy, and on any withdrawal rights and obligations they may have before they commit to buy. The Directive means consumers will have key information, at point of sale, to make good choices.

9. Very importantly, the provisions are also directed at developments in distance selling, covering digital content which has not previously been clearly addressed in consumer protection legislation. The CRD clarifies the rights and obligations of traders and consumers where digital content is sold, in terms of pre-contractual information obligations and post-contractual withdrawal rights.

<sup>10</sup> EC Impact Assessment Report (2008).

<sup>11</sup> Final consumer process including sales taxes, but excluding delivery costs.

**Key requirements relating to Distance contracts – ('Costs and Benefits of Option 1' below, outlines which of these constitute material changes to existing regime)**

**10. Information provisions:**

To give information to the consumer in a clear and comprehensible manner, before the consumer is committed to the contract, on:

- Main characteristics of product or service as appropriate
  - Contact details of trader
  - Total price and additional costs, or indication of how this will be calculated
  - Cost of using the means of distance communication to conclude the contract if not at basic rate
  - Arrangements for payment, performance and delivery (and any available complaints procedure)
  - Withdrawal rights and obligations on consumer and indication of cost of return where consumer is to pay, and any restrictions on those rights
  - Reminder of legal guarantee of conformity of goods
  - Existence of any after-sales care, and of any codes of conduct adhered to
  - Duration of contract, and ways to terminate the contract
  - Any deposits or financial guarantees to be paid
  - Functionality and interoperability of any digital content
  - Existence of any ADR scheme
- 
- This information to be provided in a way appropriate to the means of communication and in plain, intelligible language.
  - This information shall form part of the contract<sup>12</sup>
  - Where there is an obligation to pay, the trader must make this clear, with important elements of the contract made prominent directly before an order is placed, and any obligation to pay requiring explicit acknowledgement. Where payment obligation is not explicitly acknowledged, the consumer is not contractually bound.
  - Any restriction on delivery or payment methods must be made clear at the beginning of the ordering process.
  - If the distance communication method has limited time or space, key information only<sup>13</sup> need be provided, with other information to be provided in an appropriate way.
  - Telephone trader must disclose their identity and commercial purpose of call.
  - Contract confirmation should be on a durable medium and provided to the consumer within a reasonable time but no later than delivery of goods or start of service
  - Confirmation must contain pre-contractual information unless already supplied on durable medium, as well as any confirmation that consumer waives right to cancellation where a digital download begins.
  - Trader must gain express consent for the start of services within the withdrawal period.
  - These requirements are applicable to contracts for the supply of water, gas and electricity, and to digital content, including downloads. (Water, gas and electricity of limited volume and digital content on a tangible medium are all treated as goods).

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<sup>12</sup> Both parties must expressly agree to any alteration to these terms

<sup>13</sup> Description of good/service, trader identity, total price, withdrawal rights, duration of contract and any conditions for termination.

#### 11. Provisions on rights and obligations in relation to cancellation of contract:

- Consumer has 14 days (rather than current 7 working days) from receipt of goods, agreement of service contract or notification of withdrawal rights, whichever is the later, to change mind
- If trader does not inform of withdrawal rights, right expires after 12 months
- Trader must supply model withdrawal form (provided in Directive) which consumer may use
- Withdrawal by consumer within the period, terminates obligations under the contract
- Ancillary contracts are automatically terminated where the consumer withdraws from the main contract

#### 12. Contracts where cancellation not possible: –

- fully performed service contracts (provided the consumer consented, acknowledging they would lose the right to withdraw)
- Goods delivered sealed, subsequently unsealed, for health or hygiene reasons, or because they are CDs, DVDs or software.
- Newspapers, magazines, periodicals (not including subscriptions)
- Goods and services subject to fluctuations in financial market and which would affect price in withdrawal period
- Goods which after delivery cannot be separated from other materials
- Personalised, and goods to consumer's particular specification
- Perishable goods
- Supply of alcohol where price agreed but value may fluctuate after contract concluded
- Request by consumer to trader for visit to carry out urgent home repairs or maintenance
- Contracts concluded at public auctions
- Provision of accommodation, transport of goods, car rental, catering or leisure activities, where the contract is for a specific date or period
- Digital downloads (where consumer expressly consented and knew of loss of withdrawal right)

#### 13. Rights and obligations of trader:

Trader must reimburse all payments no later than 14 days after receipt of withdrawal, and in manner paid, unless consumer agrees otherwise. However, where the consumer is to return goods, trader may await return or proof of return.

Trader need not reimburse the additional cost of delivery where the consumer specifically elected to have express delivery

Trader must tell consumer if consumer is to bear the cost of any return. If such information has not been provided, the trader must bear the cost of the return.

#### 14. Rights and obligations of consumer:

Consumer must return goods within 14 days of withdrawal

Where the consumer has expressly requested the commencement of service within 14 day period, consumer must pay for proportion of service delivered.

However, where there was not express consent, or where the consumer was not told of their withdrawal rights, or that they would have to pay a proportionate amount for services delivered, then no cost is payable.

Consumers are liable for diminished value of any item, beyond usage necessary to test that it works (and provided they have been told of their withdrawal rights)

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option.**

15. As an agreed European Directive, the 'do nothing' option is not available. As a maximum harmonisation Directive, there is little flexibility in how we implement.

**Option 1** - Apply pre-contractual information requirements and withdrawal provisions to goods and service providers within the scope of the CRD, and which normally and regularly sell goods and services at a distance.

**Option 2:** - Apply pre-contractual information requirements and withdrawal provisions to all goods and service providers within the scope of the CRD, and in addition, to healthcare and social services as currently covered by the Distance Selling Regulations (DSRs) 2000, and which the CRD is intended to replace.

**Option 2** would, in our view, meet UK Government policy objectives to encourage growth, and minimise burdens on business whilst maintaining high levels of consumer protection. Sales of healthcare goods and services, and social services online are likely to continue to grow. When the DSRs are revoked (unless we implement in line with option 2) buyers of such goods and services, who are likely to be, by the nature of the sectors, more vulnerable will no longer have any right to change their mind, contrasting with buyers of often less essential or costly products and services, who will continue to enjoy those rights. The exemption for such services was made to allow member states to put in place higher, not lower protections, than the CRD would allow.

**Discarded options**

16. The CRD permits extension of the application of the requirements to distance contracts which are not concluded under an organised distance sale or service provision scheme. In practice, this would mean we could apply the requirements to traders who do not as a rule sell at a distance, but may occasionally, for instance at the request of a customer, do so. We consider that the additional compliance costs on traders who do not normally trade in this manner, would not be warranted, and could deter some from offering valuable customer service flexibility. Existing consumer protection<sup>14</sup>, applicable to such contracts, should ensure such exemptions do not lead to consumer detriment.

17. The CRD also permits Member States to impose a requirement that a consumer only becomes bound by a telephone order, once they have given written consent, and/ or that confirmation of the contract be on a durable medium. This would represent a change from current practice and would therefore place a new burden on business, as well as on consumers who might feel that verbal consent should be sufficient. This is understandable, given that businesses which normally trade on the phone would have recording systems set up to verify any discussions. Even where an agreement or consent is not on a durable medium, this would not affect the consumer's right to cancel the contract.. We, therefore, see little added benefit in imposing additional burdens and have discarded this option.

18. Finally, the CRD permits Member States to extend the application of the requirements in the CRD to sectors exempted from the obligatory scope of the Directive. Option 2 takes advantage of this flexibility with regard to two of the exempted sectors. The option to apply the requirements to the other exempted sectors which are covered by the existing Distance Selling Regulations<sup>15</sup> has been discarded on the basis that adequate consumer protection is already provided, or could be better provided, through alternative consumer protection or sector specific legislation.

**Costs and benefits of Option 1**

19. Traders are already subject to information and withdrawal provisions when selling at a distance, and the requirements in articles 6 and 8 of the Directive are, in the main similar to existing obligations.

*The key changes introduced by the CRD are as follows:*

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<sup>14</sup> Sale of Goods Act 1979, Supply of Goods and Services Act 1982, Consumer Protection from Unfair Trading Regulations 2008, Provisions of Services Regulations 2009.

<sup>15</sup> Gambling (Information provisions only), rental of residential property, notary-approved contracts

#### Additional pre-contractual information:

- any complaints handling policy
- more prescriptive information on withdrawal rights, including on timing and costs. For instance, where the trader does not agree to bear the cost of return delivery, they must specify the estimated cost of return delivery to the consumer<sup>16</sup>.
- Consumer obligation to pay proportion of services delivered if the consumer expressly requests commencement of service within cancellation period] [under existing law, the trader must instead inform of loss of right to withdraw once service has commenced]
- Exclusions to right to withdraw
- Reminder of requirement for legal conformity of goods
- Functionality, technical protection measures, and interoperability of digital content (the latter as far as the trader can reasonably be expected to be aware of it)
- Any deposits or guarantees the consumer may have to pay

#### Obligations on traders

- Consumer must explicitly acknowledge any obligation to pay in order for this to be enforceable
- Any payment or delivery restrictions should be indicated at the beginning of the ordering process
- Key information<sup>17</sup> must be displayed immediately prior to conclusion of the contract effected electronically
- The period during which the consumer may cancel is increased from 7 working days to 14 days.
- The withdrawal period, where the consumer has not been informed of their withdrawal rights, extends (as a maximum) from three months to one year.
- The trader must provide the consumer with the model withdrawal form although the consumer is not obliged to use it.
- Trader must refund costs within 14 days of receiving notice of withdrawal (30 days under current regime). However...
- Trader is entitled to wait for return of goods or proof of return before effecting a refund. This is a significant new right for traders.
- Ancillary agreements linked to the main contract are automatically cancelled without cost to the consumer (under the current regime, only credit agreements are cancelled)

#### Obligations on consumers

- The consumer can cancel a service commenced within the cancellation period. Provided the consumer gave express consent for the service to start, they must pay for services delivered before cancellation.
- Consumer must pay for any diminished value in returned good beyond use needed to ensure fit for purpose<sup>18</sup> [Under DSR 17 the 'duty of care' imposed on the consumer is similar in effect. However CRD gives enhanced clarity with regard to the consumer's obligation.]
- Consumer must return goods within 14 days of cancellation. (The current regime is less clear on when the consumer must return goods [DSR 17])

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<sup>16</sup> Where the goods by their nature cannot normally be returned by post

<sup>17</sup> Nature of goods or service, total price and duration of contract including minimum duration of any consumer obligations

<sup>18</sup> Not applicable where trader fails to notify consumer of withdrawal rights

- Explicit obligation on consumer to pay for return of goods unless otherwise stated.
- Traders need not refund non-standard rate delivery costs

### **Benefits**

20. Benefits to business include reduced compliance costs when trading across the EU, clarity of obligations and enhanced legal certainty. Responsibilities between traders and consumers are now more fairly balanced. Consumers are given clear comprehensive information to allow them to make informed choices, enhancing competition and reducing the potential for disputes. Consumers will understand: what they are committing to; where withdrawal rights may be lost; the total cost of the contract; and the potential return cost of delivery, which the consumer will incur, should they cancel; all before committing to the contract. This in itself should reduce the number of contracts which are subsequently cancelled. Rights and obligations on consumers are made more transparent so that a consumer is clear when they must return goods by, that they may be liable for the cost of returns, and that they must pay a proportion of any service received before cancellation.

21. In addition, consumers are given a reasonable time to assess a service purchase or inspect goods, before deciding whether to retain them. There is no ambiguity about when consumers must return goods and traders can await the return of the goods, before effecting refunds. This should greatly help traders, in particular small businesses, to manage assets and cash flow, and to avoid the cost of chasing for the return of goods, when refunds have already been made. We know from business representatives that this was a sought for and very welcome provision, as was that which allows traders to deduct for any diminution in value beyond the usage by the consumer reasonable to check the item. Delivery costs are more fairly shared, with traders responsible for outgoing delivery costs and consumers for the cost of returns, although traders retain the flexibility to pay for both should they wish. Traders need not refund the additional cost where the consumer has selected an express service. Again, traders have welcomed these small but useful changes.

22. Independent healthcare and social care services are currently subject to the pre-contractual information and withdrawal provisions in the Distance Selling Regulations which the CRD will replace. Excluding these from implementation of this part of the Directive would have the effect of liberating them from existing legal constraints and reducing consumer protection in these areas.

### **Costs**

23. There is evidence from the Commission's research and from informal consultation with business groups in the UK that suggests that withdrawal rates may not increase much as a result of an extended withdrawal period. The codes of practice of many online retailers already allow for 14 days withdrawal period (e.g. SafeBuy web-retailer code of practice). And although traders now have less time within which to refund (14 rather than 30 days from receipt of withdrawal notice), they need not refund until goods are returned. (See benefits above)

24. There will be some one-off set up costs as online traders redesign web-pages to ensure that relevant information is properly and prominently displayed (e.g. labelling of any payment buttons), and that the model withdrawal form is included and accessible.

25. Where ancillary services are sold, traders may need to ensure that their processes are adapted to ensure that consumer need do no more than cancel the main contract.

26. For large and bulky items, not normally returnable by post, where the consumer will be responsible for the cost of return delivery, the trader may incur some initial costs in identifying and displaying likely costs to consumers in returning such items. This is a new information obligation.

27. Businesses failing to provide information on delivery charges up-front will not be entitled to recover those costs from the consumer. Consumers will not be obliged to pay for any diminution in value of goods or for proportion of services delivered during the cancellation period where the business has failed to provide information on withdrawal rights, and not gained express consent to start a service in the cancellation period.



28. This option, which limits the application of the provisions to healthcare goods and services provided by non-regulated healthcare professionals and traders could also lead to significant risk of confusion for both consumers and traders. They will need to understand the distinction between supply by a healthcare professional and supply by a business (which might include professionals), as well as what can be a fine line between what is a healthcare service (covered by mandatory requirements of CRD if provided by a non-regulated business but not if provided by an individual who is a regulated professional) and what is a social care service (e.g. a care assistant to help with cleaning in the home, but possibly also with more 'nursing' type responsibilities etc.) which is excluded from the mandatory terms of the CRD whether supplied by a regulated professional or not.

29. Although we do not expect transition and familiarisation costs to be high, we plan to use the consultation to test this assumption and obtain estimates of the costs of this option, as well as the incremental impact arising from the greater scope of the proposals under option 2.

## **Costs and Benefits of Option 2**

29. The costs and benefits in option 1 will also be applicable for this option. The cost per trader will not increase but more traders will be covered. As these additional contracts are already covered by information and withdrawal provisions in the Distance Selling Regulations, as well as in the Consumer Protection from Unfair Trading Regulations, traders in these sectors will be familiar with the broad nature of these obligations.

30. In the financial year 2011/2012, Consumer Direct received 9,141 queries related to medical goods and services. Of these 31% (2838) related to distance sales. Although it is not possible to easily break these figures down into those which were sold by regulated professionals and those by commercial traders, these figures do demonstrate that distance sales of such services are the subject of frequent concern.

31. Of benefit to business will be the enhanced legal certainty for business and confidence for consumers where they conclude healthcare and social services contracts remotely. The greater transparency which the information provisions will engender and alignment with consumer protection in distance selling more generally, and which is likely to be familiar to both traders and consumers will both serve to decrease the potential for disputes. Importantly there will be coherency across the healthcare sector, and consumers will not need to distinguish between identical goods and services, depending on who they are provided by Paragraph 28 above highlights the real potential for confusion.. In addition, there may be some competition issues if businesses trading in the same market are subject to more onerous requirements than exempted professionals.

32. Healthcare and social care services are sectors in which selling direct to the consumer is expected to expand significantly as a result of changes to the way we pay for care and support services. Government is encouraging greater independent choice for consumers of these services, by providing individuals who are eligible for publicly funded care, with a personal budget (sometimes in the form of a direct payment to their bank account) in order to purchase the care they want. Of course, this has historically been one way that people funding their own care choose to make purchases too. The number of providers of care and support services, offering their services direct to the individual, is therefore likely to increase.

33. Distance sales of such goods and services are increasingly common. Online optician services are now commonly used. New services, such as that offering local care workers to those needing care at home, bookable on line, are being developed. Remote access as a means of engaging services will remain important as family members, often located far away from aged parents or relatives, may need to organise home care for that parent, on the phone, and would benefit from the protections of these regulations.. Retaining this protection for distance sales of all healthcare (including social care) and social services is important, both in terms of clarity and simplicity for business (the same rules apply to all), and in ensuring customers are treated fairly and get the information and time they need to make the right decision. We will use the consultation to explore further the costs and benefits of this option.

## **Risks and Assumptions**

34. We have assumed that the costs of extending the withdrawal period from 7 working days to 14 calendar days will not be significant, based on initial business feedback. This will be tested in the consultation.

## **Direct costs and benefits to business calculations (following OIOO methodology)**

35. Where the provisions are mandatory, such as the provisions of the CRD subject to maximum harmonisation, the costs and benefits to business are not to be counted for OIOO purposes. However, where the Government makes use of an **option** which results in an increase or decrease in business burdens compared with the current situation, such costs or benefits should be counted for OIOO purposes.

36. In this case the Government is proposing that the enhanced information requirements and longer cancellation period in the CRD (as compared with existing legislation) will be applied to healthcare and social services sold at a distance. This is going beyond the minimum requirement under the CRD provisions, but for the reasons set out in the costs and benefits section above, is necessary to provide consumers in these areas an adequate level of protection. Once the DSRs are revoked, consumers would otherwise experience a lower level of protection (if not for the proposal to extend to the healthcare and social services sold at a distance).

37.. The Government does not expect the impact of any of these measures to be substantial. It would expect the direct costs and benefits to business, resulting in a small IN. During the Consultation we will seek to evidence to properly assess the size of these costs and benefits and the OIOO implications of these.

## **Summary and preferred option with description of implementation plan.**

38. Distance selling is currently regulated by the Distance Selling Regulations. Provisions in the legislation such as Sales of Goods Act, Consumer Protection from Unfair Trading Regulations, Provision of Services Regulations 2009 and sector specific regulations such as the Gambling Act will also be relevant to such contracts. Distance sales, by their nature, rely on good information to allow consumers to make informed choices where they cannot inspect the goods, or visit the business to ensure it is credible and established. Consumers in distance contracts are wholly reliant on information provided by the seller, and as such information, and the ability to change one's mind is particularly important. Harmonising and simplifying distance selling regulations should be of particular benefit to small businesses, raising the confidence of consumers to shop around, rather than stick with larger, well-known brands

39. Our preferred approach is to implement in line with option 2, the requirements of which broadly replicate existing requirements on distance sellers, although the cancellation period is increased. This option, we believe, will ensure an appropriate level of information and withdrawal rights, whilst maintaining a fair balance of responsibilities between the trader and the consumer. The Consultation responses will help inform us of costs and benefits of extending application beyond the minimum requirement of the Directive, in the way proposed...

40. Implementation is likely to be effected by the copying out of the relevant provisions of the Directive, through section 2(2) of the European Communities Act 1972. Accompanying guidance will help businesses and consumers ensure that they clearly understand any new obligations which may apply. Legislation must be adopted and published by 13 December 2013, and should come into force on 13 June 2014.

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