



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

TRANSPOSITION OF CONSUMER RIGHTS DIRECTIVE

REGULATORY IMPACT ANALYSIS

JUNE 2014

CONTENTS

	PAGE
I INTRODUCTION	3
II MAIN PROVISIONS OF THE REGULATIONS	4
III REGULATORY OPTIONS IN THE TRANSPOSITION OF THE DIRECTIVE	12
IV ENFORCEMENT OF THE REGULATIONS	21
V EXTENSION OF DIRECTIVE'S PROVISIONS TO CONTRACTS OUTSIDE ITS SCOPE	24
ANNEX BENEFITS, COSTS AND IMPACTS OF EUROPEAN UNION (CONSUMER INFORMATION, CANCELLATION AND OTHER RIGHTS) REGULATIONS 2013	27

I INTRODUCTION

1. Directive 2011/83/EU on Consumer Rights was published in the Official Journal of the European Union on 22 November 2011.¹ Article 28 (Transposition) of the Directive requires Member States to adopt and publish by 13 December 2013 the laws or regulations necessary to comply with its provisions. Member States are required to apply these laws or regulations from 13 June 2014. The purpose of this interval between adoption and application is to give businesses time to make any necessary adjustments to their contract terms or commercial practices and to enable consumer enforcement authorities to put in place the procedures and resources required to enforce the national laws giving effect to the Directive.

2. The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No 484 of 2013) which transpose the Directive were signed by the Minister for Jobs, Enterprise and Innovation on 11 December 2013 and came into operation on 14 June 2014. Though this Regulatory Impact Analysis notes the main changes introduced by the Regulations and outlines in its Annex the expected costs and benefits for consumers and traders, its main focus is on the options available to Ireland and other Member States in the transposition of the Directive.² Most of the Directive's provisions are fully harmonised - that is, mandatory provisions which can neither be added to, nor subtracted from, in national legislation. As a consequence, Member States had very limited discretion in transposing the Directive. The two public consultations on the implementation of the Directive, the responses to which are noted where relevant in this impact analysis, focused likewise on the available transposition options and on matters to do with the scope and enforcement of the implementing Regulations.³ The responses to the public consultations are available on the Department's website in tandem with this impact analysis.

¹ O.J. L 304, 22.11.2011, p.64.

² The Guidelines governing Regulatory Impact Analyses (RIAs) distinguish between RIAs to be undertaken on the publication of proposals for EU legislation and those to be undertaken after the adoption of EU legislation. The focus of the latter impact analyses should be on the available transposition options and, in particular, should distinguish between those elements of the available options which are prescriptive and those which are optional or have been added as a result of specific national concerns. Department of the Taoiseach. 2009. *Revised RIA Guidelines: How to Conduct a Regulatory Impact Analysis*, paragraph 2.11.

³ Department of Jobs, Enterprise and Innovation. September 2012. *Consultation on Article 19 (Fees for the Use of Means of Payment) and Article 22 (Additional Payments) of Directive 2011/83/EU on Consumer Rights*.

II MAIN PROVISIONS OF THE REGULATIONS

3. The Regulations are divided into eight Parts as follows:

1. Preliminary Matters (Citation and Commencement, Interpretation and Application)
2. Consumer Information for On-Premises Contracts
3. Consumer Information for Off-Premises Contracts and Distance Contracts
4. Right to Cancel Distance Contracts and Off-Premises Contracts
5. Payment Fees, Additional Payments and Charges for Communication by Telephone
6. Passing of Risk and Delivery in Sales Contracts
7. Unsolicited Goods and Services
8. Enforcement and Penalties.

The Regulations revoke the European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 and the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001. The Directives which these Regulations implement – Directive 85/577/EEC on Contracts Negotiated Away from Business Premises and Directive 97/7/EC on Distance Contracts – have also been repealed.

SCOPE OF THE REGULATIONS

4. The impact of regulatory provisions is a function of their nature and scope. The greatest aggregate impact will result from measures that impose substantial new obligations across a wide range of sectors. While the Consumer Rights Directive is a measure of general and not sectoral application, it exempts the sectors and activities outlined at Box 1 from its scope. None of the provisions of the Regulations apply to the contracts listed in Box 1, and there will be no impact accordingly on businesses in the sectors and activities concerned.⁴

Department of Jobs, Enterprise and Innovation. May 2013. *Consultation on the Implementation of Directive 2011/83/EU on Consumer Rights*.

⁴ Notwithstanding the general non-application of the Regulations to contracts for financial services, such contracts may be ancillary contracts for the purposes of the provisions of Regulation 23 on the effects of the cancellation of distance or off-premises on ancillary contracts. Though payments services form part of the definition of “financial service” in the Regulations, payments by consumers for the use of such services in other consumer contracts are within the scope of the provisions of Regulation 25 on fees for the use of means of payment and Regulation 26 on additional payments.

BOX 1

EXEMPTIONS FROM SCOPE OF REGULATIONS

Contracts -

- a) for social services;
- b) for healthcare;
- c) for gambling;
- d) for financial services;
- e) for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- f) for the construction of new buildings or the substantial conversion of existing buildings;
- g) for rental of accommodation for residential purposes;
- h) within the scope of Council Directive 90/314/EEC on package travel, package holidays and package tours;⁵
- i) within the scope of Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts;⁶
- j) established, in accordance with the laws of Member States, by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- k) for the supply of foodstuffs, beverages or other goods intended for current consumption in the household which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- l) for passenger transport services, with the exception of Regulations 11, 25 and 26;⁷
- m) concluded by means of automatic vending machines or automated commercial premises;
- n) concluded with a telecommunications operator through a public pay telephone for the use of the telephone;
- o) concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

⁵ Given effect in Ireland by the Package Holidays and Travel Trade Act 1995 (No. 17 of 1995).

⁶ Given effect in Ireland by the European Union (Protection of Consumers in respect of Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations 2011 (S.I. No. 73 of 2011).

⁷ Recital 8 of the Directive states that, in relation to transport of goods and car rental which are services, consumers should benefit from the protection afforded by the Directive with the exception of the right of withdrawal. Regulation 11 deals with information and related obligations on the trader where "a distance contract to be concluded by electronic means places the consumer under an obligation to pay"; Regulation 25 deals with fees for the use of means of payment; and Regulation 26 deals with additional payments.

5. The exemptions under the new Regulations and Directive are somewhat broader than those under the existing Directives on Contracts Negotiated Away from Business Premises and Distance Selling. The first of these Directives expressly excludes only contracts for the construction, sale or rental of immovable property or for other rights relating to such property; contracts for the supply of foodstuffs and other items intended for current consumption in the household that are supplied on regular rounds; and insurance and securities' contracts. Some of the contracts excluded from the scope of the new Directive, such as those for the use of a public payphone or for a single telephone, Internet or fax connection, however, would not constitute off-premises contracts. Though the existing Distance Selling Directive excludes many of the contracts that are also outside the scope of the new Directive, its provisions apply to contracts for social services, healthcare and, with the exception of the right of cancellation, gambling.

6. As recital 13 of the Directive makes clear, EU Member States are free, in accordance with Union law, to apply the provisions of the Directive to areas not falling within its scope. Member States may accordingly maintain or introduce national legislation corresponding to some or all of the provisions of the Directive in respect of contracts outside its scope. For reasons outlined in Part V of this analysis, this was not an option in the case of the present Regulations, but will be considered in the context of future primary legislation on consumer contract rights.

CONSUMER INFORMATION FOR ON-PREMISES CONTRACTS

7. On-premises contracts are those concluded on a face-to-face basis on a trader's premises. Regulation 5 of the Regulations sets out the information that traders must provide before a consumer is bound by an on-premises contract. The information to be provided relates, among other things, to the main characteristics of the goods, services or digital content; the identity, address and contact details of the trader; the price of the goods, services or digital content; the arrangements for payment, delivery and complaint handling; the existence and conditions of after-sales service and commercial guarantees; and the duration of the contract and the conditions for its termination. In the case of digital content, the trader must, where applicable, provide information on the functionality (including applicable technical protection measures) of the content, and on any relevant inter-operability of the

digital content with hardware or software of which the trader is, or can reasonably expected to be, aware. Provided the information is provided in a clear and comprehensible manner, there are no additional requirements regarding the manner in which, or the medium through which, it is to be provided.

8. Article 5(3) of the Directive gives Member States the option not to apply the information requirements to on-premises contracts “which involve day-to-day transactions and which are performed immediately at the time of their conclusion”. The Regulations have availed of this option for reasons set out in Part III.

CONSUMER INFORMATION FOR DISTANCE AND OFF-PREMISES CONTRACTS

9. The Regulations maintain the approach of existing legislation by giving more extensive protections to consumers who conclude distance and off-premises contracts. The main forms of distance contract are those concluded online, over the telephone or by post. The main forms of off-premises contract are those concluded in the consumer’s home or place of work. Part 3 of the Regulations sets out the mandatory information obligations on traders who engage in distance or off-premises transactions with consumers. Such traders must provide all of the information mandatory in on-premises transactions outlined in paragraph 7, above along with a sizeable number of additional items of information. The manner in which the information is to be provided and confirmed is also regulated to a greater extent than for on-premises contracts. The pre-contractual information to be provided by the trader also forms part of the contract between the consumer and the trader

10. The Directive provides for a number of discretionary options for Member States in regard to the implementation of the information requirements for distance and off-premises contracts. First, Member States may decide not to apply the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed €50. Secondly, Member States, may apply a somewhat lighter set of pre-contractual information requirements to certain off-premises contracts for repairs and maintenance up to a value of €200. Thirdly, Member States may maintain or introduce in their national law language requirements regarding the contractual information to be provided in distance and off-premises transactions. Fourthly, Member States may provide in their national law that, in the case of contracts to be concluded by telephone, the trader must confirm an offer

made to the consumer and that the latter is bound only after he has signed the offer or has sent his written consent. Member States may further provide that the trader's confirmation of such an offer must be made on a durable medium. These regulatory options, and the decisions taken on them, are discussed in Part III of this impact analysis.

RIGHT TO CANCEL DISTANCE AND OFF-PREMISES CONTRACTS

11. Part 4 of the Regulations provides that, subject to specified conditions, consumers may cancel distance and off-premises contracts within the applicable cancellation period. In exercising this right, the consumer does not have to give any reason for the cancellation and does not incur any costs or liability other than those arising in certain specified circumstances. The right to cancel a distance or off-premises contract does not apply to the contracts outside the scope of the Regulations listed in Box 1 above. In addition, the right does not apply to the contracts listed in Box 2 below, though all of the other provisions of the Regulations apply to these contracts.

12. The right to cancel off-premises and distance contracts is not new and re-enacts the right conferred by the European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 and the European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communications) Regulations 2001. There are significant differences between the right of cancellation under these enactments and that under the new Regulations, notably the increase from 7 to 14 days in the duration of the cancellation period.

FEES FOR THE USE OF MEANS OF PAYMENT, ADDITIONAL PAYMENTS AND CHARGES FOR

COMMUNICATION BY TELEPHONE

13. Regulation 25 gives effect to Article 19 of the Directive and provides that:

A trader shall not charge a consumer, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of that means of payment.

The Regulation applies to all contracts within the scope of the Regulations, including contracts for passenger transport services. It seeks to ensure that payment charges are not used as an additional revenue source by traders but reflect instead the real cost of payment instruments to the trader.

Box 2

EXCEPTIONS TO THE RIGHT TO CANCEL DISTANCE AND OFF-PREMISES CONTRACTS

- a) service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, and with the consumer's acknowledgement that he will lose the right to cancel the contract once the contract has been fully performed by the trader;
- b) contracts for the supply of digital content not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and with the consumer's acknowledgement that he or she thereby loses the right to cancel the contract;
- c) contracts for the supply of goods or services whose price is dependent on fluctuations in the financial market that may occur during the cancellation period and that cannot be controlled by the trader;
- d) contracts for the supply of non-prefabricated goods made on the basis of an individual choice of, or decision by, the consumer;
- e) contracts for the supply of goods that are clearly personalised;
- f) contracts for the supply of goods that are liable to deteriorate or expire rapidly;
- g) contracts for the supply of sealed goods that are not suitable for return for health protection or hygiene reasons and that were unsealed after delivery;
- h) contracts for the supply of goods that are, according to their nature, inseparably mixed with other items after their delivery;
- i) contracts for the supply of alcoholic beverages where (i) the price of which been agreed upon at the time of the conclusion of the sales contract, (ii) the delivery of the beverages can only take place after 30 days from the conclusion of the sales contract, and (iii) the value of the beverages is dependent on fluctuations in the market which cannot be controlled by the trader;
- j) contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance.
- k) contracts for the supply of sealed audio or sealed video recordings or sealed computer software that were unsealed after delivery;
- l) contracts for the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
- m) contracts concluded at a public auction;
- n) contracts for the provision of accommodation other than for residential purposes, the transport of goods, car rental services, catering or services relating to leisure activities where the contract provides for a specific date or period of performance.

14. Regulation 26 gives effect to Article 22 of the Directive on additional payments and applies to all contracts within the scope of the Regulations, including contracts for passenger transport services. It provides, first, that before a consumer is bound by a contract or an offer, the trader must seek the consumer's express consent to any payment additional to the payment agreed to for the consumer's main obligation under the contract. The Regulation stipulates, secondly, that the consumer's consent cannot be inferred from the use of a default option, such a pre-ticked box, which the consumer is required to reject in order to avoid the additional payment.

15. Regulation 27 gives effect gives effect to Article 21 of the Directive on charges for communication by telephone and applies to on-premises, distance and off-premises contracts within the scope of the Regulations, though not to contracts for passenger transport services. The Regulation provides that, where a trader operates a telephone line for the purpose of permitting consumers to contact the trader about a contract concluded with the trader, calls by the consumer to that line for that purpose must not be charged at more than the basic rate.

PASSING OF RISK AND DELIVERY IN CONSUMER SALES CONTRACTS

Passing of Risk

16. Part 6 of the Regulations implement the provisions of Articles 18 and 20 of the Consumer Rights Directive on delivery and the passing of risk in consumer contracts for the sale of goods, whether on-premises, off-premises or distance contracts. The passing of risk in contracts of sale in Ireland, whether commercial or consumer contracts, is currently regulated by section 20 of the Sale of Goods Act 1893. This provides that, unless otherwise agreed by the parties, the goods remain at the seller's risk until the property in (i.e. the ownership of) the goods is transferred to the buyer. Once that property has been transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Though the passing of the property in the goods will often coincide with their delivery, it may also precede it. If the property in the goods passes prior to delivery and the goods are then lost or damaged while still in the seller's possession or while in transit to the buyer, the loss or damage will fall on the buyer.

17. Regulation 29 amends section of the 1893 Act to provide, first, that, in contracts where the trader dispatches the goods to the consumer, the risk of loss or damage to the goods will pass to the consumer when he, or a third party indicated by him and other than the carrier, has acquired the physical possession of the goods. It amends it, secondly, to provide that, without prejudice to the rights of the consumer against the carrier, the risk will pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and the choice of carrier was not offered by the trader.

Delivery

18. The time of delivery in contracts for the sale of goods is regulated at present in Ireland by section 29(2) of the Sale of Goods Act 1893. This provides that:

Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

19. Regulation 30 of the Regulations amends section 29(2) to provide that, unless the parties have agreed otherwise, the trader must deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract. Where the trader has failed to deliver the goods at the time agreed with the consumer or within the default 30 day time period, the consumer may require the trader to deliver within an additional period of time appropriate to the circumstances. The obligation on the consumer to afford the trader a second opportunity to deliver the goods does not apply, however, where:

- delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract – for example, a wedding dress which must be delivered prior to the wedding, or
- the consumer informs the trader, prior to the conclusion of the contract, that delivery by or on a specified date, is essential.

UNSOLICITED GOODS AND SERVICES

20. Regulation 32 of the Regulations deals with unsolicited goods and services, or inertia selling as it is referred to in the Consumer Rights Directive. It provides, first, that the

consumer shall be exempted from any requirement to provide consideration for unsolicited goods or services supplied by a trader. It provides, secondly, that the absence of a response from the consumer following such an unsolicited supply or provision does not constitute consent to that supply or provision. In the case of an unsolicited supply of goods, thirdly, the consumers may treat the goods as if they were an unconditional gift. These provisions essentially re-enact the provision on inertia selling at Article 9 of the Distance Selling Directive, a re-enactment required by the repeal of that Directive by the Consumer Rights Directive. As the supply of unsolicited goods has been regulated in Ireland since 1980 by section 47 of the Sale of Goods and Supply of Services Act, the Regulations give effect to the Directive's provisions by means of an amendment of that section.

III REGULATORY OPTIONS IN THE TRANSPOSITION OF THE DIRECTIVE

Option 1: Exemption of Off-Premises Contracts Less than €50

21. Article 3(4) of the Directive provides that Member States may decide not to apply the Directive to off-premises contracts for which the payment to be made by the consumer does not exceed €50. It further provides that Member States may define a lower value in their national legislation. Recital 28 of the Directive states that this option has been included “in order to avoid an administrative burden being placed on traders”.

Decision

22. The Department considers that the rationale for the exemption of lower-value off-premises transactions from the application of the Directive is valid and that the threshold for their exemption should be set at the maximum level of €50. Regulation 3(5) of the Regulations provides accordingly that the Regulations do not apply to off-premises contracts for which the payment to be made by the consumer does not exceed €50. Regulation 3(6) provides that, where two or more off-premises with related subjects are concluded at the same time, the total cost of the contracts is to be taken into account in applying the €50 threshold. This provision is based on recital 28 of the Directive and aims to prevent traders from splitting up a contract that should properly constitute a single transaction into a number of separate transactions in order to bring the contract payment below the monetary threshold that would exempt it from the requirements of the Regulations.

23. As stated in the Consultation Paper on the implementation of the Directive, low-value off-premises transactions tend to be informal in nature and do not readily lend themselves to the application of the Directive's provisions on information and cancellation rights.⁸ The traders who engage in such transactions are likely in most cases to be small or micro businesses and, as such, will typically incur higher costs in complying with regulatory requirements.⁹

24. Directive 85/577/EEC on Contracts Negotiated Away From Business Premises, which will be repealed and replaced by the new Directive from 13 June 2014, permits Member States not to apply its provisions to contracts below €60.¹⁰ The Regulations which gave effect to the Directive in Ireland, the European Communities (Cancellation of Contracts Negotiated Away from Business Premises) Regulations 1989 excluded their application to off-premises contracts below £40, equivalent to a little over €50. There is no evidence that the exemption of low-value contracts which has applied since 1989 has given rise to any significant level of consumer detriment. It is relevant to note in this context that the threshold in the new Regulations is similar in nominal terms to that in the 1989 Regulations. In real terms, however, the monetary value of the new threshold is considerably lower than that adopted a quarter of a century ago.

25. Of the ten respondents to the Department's Consultation Paper who expressed a view on this issue, eight supported the exclusion of off-premises contracts with a value of less than €50 from the scope of the implementing legislation. The Commission for Communications Regulation (ComReg) expressed concern that the exclusion might deny the Directive's protections to consumers engaging in certain off-premises contracts, particularly as technological advances now make it possible for consumers to pay for certain goods and services, such as road tolls and vending machines, by charging the cost to their telephone account. The ComReg submission acknowledged, however, that it was unlikely that the

⁸ Department of Jobs, Enterprise and Innovation. May 2013. *Consultation on the Implementation of Directive 2011/83/EU on Consumer Rights*, paragraph 15.

⁹ It is estimated that, on average, businesses with fewer than 10 employees face a regulatory burden per employee that is roughly twice as great as the burden on businesses with 10-20 employees and about three times as high as that on businesses with 20-50 employees. For bigger companies, the regulatory burden per employee is estimated to be one-fifth or less that of small businesses. European Commission. 2007. *Models to Reduce the Disproportionate Regulatory Burden on SMES: Report of the Expert Group*, pp. 16-17.

¹⁰ The option at Article 3(1) of Directive 85/577/EEC applies to contracts not exceeding 60 ECU, this being the European Community's unit of account at the time. The ECU was replaced at parity by the euro in 1999.

providers of premium rate services would engage in off-premises contracts within the meaning of the Directive. In the Department's view, transactions involving premium rate telecommunications services will always, or almost always, be distance contracts and, as such, will be unaffected by the exemption for low-value off-premises contracts. The European Consumer Centre Ireland (ECC) considered that, while there was a case for the exemption of low-value off-premises contracts given their informal nature, this should not apply to certain basic information vital to consumer protection. Traders should be required at a minimum to provide details of their legal identity and geographical address as this information would be required if the consumer wished to take a small claims or other action. The Department agrees with the ECC that certain basic information should be available to the consumer even in relatively low-value transactions. Section 46(3) of the Consumer Protection Act 2007, however, effectively requires traders to provide such information, including details of the trader's geographical address and identity, where a commercial practice is or includes an "invitation to purchase".¹¹ As it is difficult to envisage an off-premises contract being concluded without a prior invitation to purchase from the trader, the requirements identified by the ECC are provided for in existing legislation. The Department will keep this question under review and, if the absence from the Regulations of certain minimum information obligations on off-premises traders proves to be a cause of detriment to consumers, will act to address it.

Option 2 Exemption of Contracts Involving Day-to-Day Transactions from Information Requirements Applicable to On-Premises Contracts

26. Article 5 of the Directive sets out a range of information that traders must provide before a consumer is bound by an on-premises contract - that is, a contract concluded on the trader's premises in the presence of the trader and the consumer. While European Union legislation regulating consumer contracts has previously laid down mandatory information requirements for certain types of transaction such as distance contracts or for transactions in certain sectors such as financial services and timeshare, Article 5 is the first

¹¹ Defined in section 2(1) of the Act as a representation by the trader in a consumer transaction that –

- a) indicates characteristics of the product and includes its price, and
- b) enables the consumer to purchase the product.

contract law measure to impose information obligations of a horizontal nature on face-to-face transactions involving a broad range of goods and services.¹²

27. The rationale for mandatory information requirements is less clear-cut in the case of on-premises transactions than in distance transactions where the consumer is unable to engage in person with the trader or to inspect goods before their purchase, or in off-premises transactions where the consumer may be caught off-guard. For this reason, Article 5 provides that the information requirements do not apply if the information in question is “already apparent from the context”. Where consumers buy goods in a shop, for example, which they intend to take away with them, there is clearly no need for information to be provided on delivery arrangements or charges.

28. Article 5 further provides that Member States shall not be required to apply the information obligations for on-premises contracts to “day-to-day transactions ... which are performed immediately at the time of their conclusion.” Day-to-day transactions are to be understood as transactions of a routine or regular nature rather than those necessarily undertaken on a daily basis – for example, the purchase of common foodstuffs or other household staples. The rationale for this regulatory option is that, in the case of goods or services of a kind purchased regularly by consumers, mandatory information requirements would be burdensome on traders without being of material benefit to consumers.

Decision

29. The Department sees merit in the rationale for the exemption of day-to-day on-premises transactions from the Directive’s information requirements. As the goods and services covered by the exemption are familiar to consumers and do not involve high-value items, a requirement to provide the full list of information specified in the Directive would be disproportionate. Regulation 5(2) of the Regulations gives effect accordingly to this exemption. All of the respondents to the Department’s consultation who expressed a view on this regulatory option favoured the implementation of this option.

¹² The information obligations on traders under Directive 98/6/EC on Price Indications or the provisions on invitations to purchase at Article 7(4) of Directive 2005/29/EC on Unfair Commercial Practices are marketing law obligations rather than obligations under consumer contract law.

Option 3 Language Requirements for Off-Premises and Distance Contracts

30. Article 6(7) of the Directive provides that Member States may maintain or introduce in their national law language requirements regarding the contractual information to be provided in distance and off-premises transactions.

Decision

31. The Regulations do not include a language requirement. While there is a clear rationale for mandatory language requirements in the case of information intended to protect health and safety, the argument is less compelling when it comes to general consumer information. Traders who wish to sell into a particular national market have a clear incentive to provide information in the language or languages used in this market. Similar language options in Directive 97/7/EC on Distance Contracts and Directive 1999/44/EC on Consumer Sales and Guarantees were not implemented in Ireland.

Option 4 Lighter Information Requirements for Off-Premises Contracts for Repairs or Maintenance

32. Article 7(4) of the Directive gives Member States the option to apply a somewhat lighter set of pre-contractual information requirements to off-premises contracts where –

- a) the consumer has explicitly requested the services of the trader for the purpose of carrying out repairs or maintenance,
- b) the trader and the consumer immediately perform their contractual obligations, and
- c) the payment to be made by the consumer does not exceed €200.

In such cases, Member States may provide that the trader is required, first, to provide information about his identity, address and the price of the repairs in writing or, with the customer's agreement, on another durable medium. The trader will also be required in such cases to provide information on the main characteristics of the service and on the rights and restrictions relating to the consumer's right to cancel from the contract, but may opt not to provide it on paper or another durable medium if the consumer expressly agrees.

The trader's obligation to provide confirmation of the contract remains, however, and must include all of the information required by Article 6(1) of the Directive.

Decision

33. Regulation 8 of the Regulations incorporates the lighter information regime for off-premises contracts for repairs or maintenance not exceeding €200 provided for in Article 7(4) of the Directive. Implementation of this regulatory option is justified in the Department's view for several reasons. First, as the consumer must expressly request the services of the trader for purposes of repair or maintenance, the exemption from the full set of information requirements will not apply in situations where the consumer is caught off-guard or put under pressure by the trader. Secondly, the restriction of the provision to contracts not exceeding €200 which involve immediate performance by both parties further limits any scope for substantial detriment to consumers. Thirdly, the consumer must receive all of the information required by the Directive in the confirmation of the contract that the trader is required to provide. Fourthly, the traders who engage in the contracts covered by this option are likely in most cases to be small or micro businesses which, as noted above, typically incur higher costs in complying with regulatory requirements.

34. Four of the five respondents to the Department's consultation who expressed a view on the issue supported the inclusion of a lighter information regime for off-premises repair and maintenance contracts below €200. The European Consumer Centre thought, that while there was a case for the limiting the information requirements applicable to these contracts, this exemption should not apply to certain basic information vital to consumer protection, in particular details relating to the trader's legal identity and geographical address. Under the lighter information regime provided for in Article 7(4) of the Directive and Regulation 8 of the Regulations, however, traders are required to provide information about their identity, address and contact details.

Option 5 Additional Confirmation Requirements to be Concluded by Telephone

35. Article 8(6) of the Directive provides that, where a distance contract is to be concluded by telephone, Member States may provide that the trader has to confirm the offer to the

consumer who is bound only after he has signed the offer or has sent his written consent. Member States may further provide that the trader's confirmation of such an offer must be made on a durable medium.

Decision

36. After careful consideration, it was decided not to implement this option in the Regulations that give effect to the Directive. The aim of the provision is essentially to protect consumers from contracts entered into in haste and/or under pressure over the telephone.¹³ In deciding whether or not to implement the option, the key consideration was whether or not this protection was necessary, proportionate and workable. It was concluded, first, that there was a possible case for the inclusion of a provision along these lines only where the trader initiated the telephone contact that resulted in the conclusion of a contract with the consumer. Where a consumer telephoned a trader to make a booking or inquiry, a requirement for confirmation on a durable medium by both parties could frustrate consumers who had initiated a transaction and wished to complete it speedily, while also imposing a significant administrative burden on traders.

37. Where traders telephone consumers with a view to getting the consumer to conclude a contract, there is clearly a stronger argument for giving consumers the additional protection afforded by Article 8(6) of the Directive. This argument loses much of its force, however, where consumers have other forms of protection from contracts entered into in haste or under pressure. In the Department's view, the right to confirmation and cancellation of a distance contract concluded over the telephone granted by the Directive gives adequate protection in this regard. Where these rights apply, there is no obvious need to duplicate the protections which they afford by a provision requiring the trader to confirm his offer and the consumer to give his or her consent to the offer in writing or on another durable medium. Such a requirement could cause practical difficulties for both parties where a consumer who wished to conclude a contract omitted to return the written consent to the trader. The interpretation and enforcement of a provision restricted to contracts where the initial telephone contact was made by the trader could, in addition, give rise to practical

¹³ As the provision was not in the Directive as originally published, its rationale was not set out in the recitals or its impact examined in the impact assessment.

difficulties where, for example, a number of telephone calls were made by each party before the contract was concluded.

38. The information available to the Department suggests that contracts are concluded by telephone in two sectors in particular: first, utilities such as electricity, gas and telecommunications and, secondly, the hotel and hospitality sector. In the case of utilities, these contracts may result from telephone calls initiated by the trader with a view to getting existing customers to move to a different package or bundle or to getting the customers of other providers to switch provider, or from calls initiated by consumers who want services for the first time or who want to switch from their existing providers. These contracts are subject to the full protections of the Regulations that implement the Directive, in particular the requirement on the trader to provide confirmation of concluded contracts and the right of the consumer to cancel the contract within a period of 14 days from its conclusion. In the case of the hotel and hospitality sector, telephone calls that lead to bookings are generally initiated by the consumer as hotels and other providers do not typically engage in the kind of large-scale cold-calling undertaken by some utilities providers. While traders in the sector are subject to the requirement to provide confirmation of concluded contracts, the right to cancel the contract does not apply to contracts for non-residential accommodation and contracts for catering and leisure services where the contract provides for a specific date or period of performance. As the telephone contact that lead to the conclusion of a contract for hotel accommodation or other hospitality services is typically initiated by the consumer, however, the case for the additional protections afforded by Article 8(7) of the Directive is not compelling given the inconvenience the provision could cause consumers in some cases and the additional administrative burden it would place on traders.

39. Of the eleven respondents to the Department's consultation who expressed a definite view on this option, six favoured its complete non-implementation, three supported its application to contracts where the telephone contact was initiated by the trader, and two thought that it should apply to all contracts concluded by telephone. The majority of utilities providers (Airtricity, Bord Gais Energy, Electric Ireland, and Telefonica) were opposed to implementation of this option, though UPC did not oppose its application to contracts where the telephone contact was initiated by the trader. The Department of Transport, Tourism and Sport considered that implementation of the provision could create difficulties

for both smaller tourism and hospitality enterprises and for domestic and overseas consumers who wished to make bookings close to the time of travel.

40. A number of respondents opposed to the inclusion of the provision took the view that consumers were adequately protected by the requirement on the trader to provide confirmation of the contract and by the consumer's right to cancel the contract. Some consumers preferred or needed to have contracts explained and completed by telephone and a requirement for the written consent of the consumer to the trader's offer would not be to the advantage of this category of consumer. It was further contended that a requirement for confirmation on a durable medium of both the trader's offer and of the consumer's written or signed consent would create practical difficulties for both parties. A consumer who wanted immediate reconnection of electricity or gas, for example, would not welcome any delay resulting from the double confirmation requirement. If the consumer did not have access to e-mail, there could be a delay of several days where the confirmation of the trader's offer and the consumer's consent had both to be sent by post. According to one respondent, their experience with customers who request direct debit payment forms and then fail to return them suggested that large number of consumers would, for one reason or another, fail to forward written confirmation of their consent to the trader's offer. The resultant delay and uncertainty would increase operating costs for the utilities provider and create practical problems for consumers.

41. Three respondents (the Law Society, the European Consumer Centre and UPC) were supportive in principle of applying the provision to contracts concluded by telephone where the initial contact had been initiated by the trader. The Law Society advised, however, that the Department should give careful consideration to the views of relevant businesses as to the practicality of such a measure. The ECC thought that the provision would prove of benefit to consumers whose contracts were not covered by the right of cancellation. As noted above, however, the transactions where the telephone contact is most commonly initiated by the trader would appear to be covered by the right of cancellation. The ECC also noted the potential difficulty in identifying which party had initiated the telephone contact and suggested that guidance would need to be provided on the point.

42. Of the two respondents who favoured the application of the provision to all contracts concluded by telephone, ComReg suggested that, if adopted, the Regulations should make it clear that the consumer's written or signed consent could be given by e-mail or SMS. As clarified in the Department's guidance on the Regulations, both e-mail and text messages are a "durable medium" for the purpose of the Regulations.¹⁴ The Irish Association of Funeral Directors thought that a requirement for the consumer's written consent to the trader's offer was prudent, though the Association's own code of practice prohibited members from initiating telephone calls to prospective customers.

IV ENFORCEMENT OF THE REGULATIONS

43. Article 23 of the Directive requires Member States to ensure that adequate and effective means exist to ensure compliance with its provisions. Article 24 states that Member States shall lay down rules on penalties applicable to infringements of national provisions adopted to give effect to the Directive and that the penalties provided for must be effective, proportionate and dissuasive.

44. The National Consumer Agency (NCA), or the Competition and Consumer Protection Commission as it is due to become in the near future, will have overall responsibility for enforcing the provisions of the Regulations. The Commission for Communications Regulation (ComReg) will have an enforcement function, concurrent with that of the Agency, in respect of electronic communications networks and services and premium rate services.

45. The enforcement regime under the Regulations is based on that in Part V of the Consumer Protection Act 2007. It aims to give the NCA and ComReg a flexible set of enforcement tools with which to respond to contraventions of the Regulations having regard to the nature and seriousness of the contravention and the consumer detriment associated with it. The alignment of the enforcement provisions of the Regulations with those in the 2007 Act will also help to ensure that, as far as possible, there is consistency of approach in the enforcement of statutory consumer protection provisions.

¹⁴ Department of Jobs, Enterprise and Innovation. June 2012. *The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013: Guidance Note*, paragraph 35.

46. The main civil enforcement options under the Regulations are the prohibition order and the undertaking, while the principal criminal law enforcement options consist of criminal proceedings, compliance notices and fixed payment notices. Traders who are the subject of enforcement action under these provisions will also be included in the Consumer Protection List which lists persons against whom enforcement action is taken by the Agency under the various enactments for which it has responsibility. This list is published twice-yearly by the Agency.

47. The Regulations make provision as follows for consumers to take private actions to recover:

- payments made to traders in respect of goods returned following the cancellation by the consumer of a distance or off-premises contract;
- fees paid by the consumer for the use of means of payment that are in excess of the cost borne for the trader for the use of such means;
- charges to the consumers for calls to customer helplines charged above the basic rate for telephone calls; and
- payments additional to that for the main obligation under the contract for which the consumer's express consent has not been obtained or has been obtained by means of default options such as pre-ticked boxes.

Provision is made also in the Regulations for a trader to take action to recover goods not returned by a consumer who has exercised the right to cancel a distance or off-premises contract.

48. The questions on enforcement in the Department's consultation paper on the implementation of the Directive attracted fewer responses than those on other issues. Respondents to the main consultation were generally supportive of the proposal to make provision for both criminal and civil enforcement by the NCA and ComReg. Trader respondents (Airtricity, Electric Ireland and the Irish Association of Funeral Directors) stated that enforcement bodies should seek to promote voluntary compliance in the first instance. Some respondents to the separate consultation on Article 19 (fees for the use of means of payment) and Article 22 (additional payments) of the Directive (Eircom, Three.ie and ComReg) were in favour of both criminal and civil enforcement, but others expressed

reservations. UPC thought that criminal enforcement would be 'excessive', while Aer Lingus considered civil enforcement to be the more appropriate course. Sky Ireland suggested that a cautious approach should be taken to the issue of criminal enforcement as it might prove difficult to prove an offence relating to Articles 19 and 22 to the requisite standard in criminal proceedings.

49. The Consultation Paper also asked if enforcement bodies should be empowered to apply for a court order in the District Court as well as in the Circuit or High Court. All of the respondents to the main consultation who expressed a view on the issue were in favour in principle of the introduction of such an option on the ground that it would assist enforcers to obtain court orders more quickly and cost-effectively. The Law Society stated, however, that, while an individual breach of the Regulations would of itself be appropriate for determination by the District Court, that determination could have significant implications for other consumers and businesses. It considered accordingly that, in making a decision as to what court jurisdiction to invoke, enforcement agencies should be required to take into account the potential significance of the court decision for affected businesses and the general public. Two respondents to the separate consultation on Articles 19 and 22 of the Directive were opposed to giving enforcement bodies power to apply for court orders in the District Court. ALTO (Alternative Operators in the Communications Market) stated that prohibition orders should arise only from courts of competent jurisdiction. As the District Court is a court of summary jurisdiction, it does not have full, or even partial, equitable jurisdiction. In ALTO's view, the minimum jurisdiction applicable should be the Circuit Court, though its preference would be for applications for court orders to be made to the High Court. Three.ie thought that, in view of the potentially serious implications for businesses, court orders relating to breaches of Articles 19 and 22 of the Directive should be issued by the Circuit Court at a minimum.

50. The Regulations, like the Consumer Protection Act 2007, provide that applications for court orders shall be made to the Circuit Court or High Court. There is merit in the Department's view in permitting appropriate applications to be made to the District Court, particularly in view of the increase to €15,000 of the monetary jurisdiction of that court

provided for in Part 3 of the Courts and Civil Law (Miscellaneous Provisions) Act 2013.¹⁵ This issue is better dealt with, however, in the context of the civil enforcement provisions for all of the main pieces of consumer protection legislation. The consolidated Consumer Contracts Rights Bill, work on which has commenced, will permit the matter to be considered in this broader context. The points made by the Law Society and other respondents will be taken into account in the course of this consideration.

51. On the question of private enforcement, four respondents to the main consultation (ComReg, ECC, Electric Ireland and the Law Society) supported giving consumers an express right of action to recover payments made or retained in breach of the Regulations. Four respondents to the separate consultation on Articles 19 and 22 took a similar view. UPC thought that consumers should be required to raise a complaint initially with the NCA in order to prevent spurious and unfounded claims being heard by the courts, while ALTO reserved its position pending the provision of further information.

V EXTENSION OF DIRECTIVE'S PROVISIONS TO CONTRACTS OUTSIDE ITS SCOPE

52. As noted earlier, the Consumer Rights Directive sets out a range of contracts that are excluded from its scope, including contracts for social services, healthcare, financial services, gambling, immovable property and residential accommodation. These exclusions were agreed in some cases because the contracts in question are already regulated under other European Union consumer protection legislation, and in others because it was considered that the nature of the transactions made them more suited to regulation at national level.

53. The harmonisation of national laws brought about by the Directive applies only to contracts that come within the Directive's scope. Member States are free accordingly to apply legislative provisions similar to those in the Directive to transactions outside that scope. Recital 13 of the Directive states that:

Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that

¹⁵ At the time of writing, Part 3 of the Act had yet to be commenced.

fall outside the scope of this Directive.

54. Whether or not, or in which cases, the option thus accorded Member States should be exercised was one of the main questions on which views were sought in the two public consultations on the implementation of the Directive. Views were sought in particular, first, on the application of the Directive's provisions on consumer information and cancellation rights to contracts for healthcare and social services; secondly, on the application of the provisions on fees for the use of means of payments and additional payments to all exempted sectors other than financial services; and, thirdly, on the application of the provisions on charges for communication by telephone to all exempted sectors.

55. Only two respondents to the main consultation (the European Consumer Centre and the Law Society) expressed a view on the application of the Directive's provisions to contracts for social services and healthcare. Both were supportive of such an extension. Three respondents (ComReg, Electric Ireland and the Law Society) supported the application of Article 21 of the Directive on charges for calls to customer helplines to all exempted contracts. The Irish Banking Federation stated that customer helpline numbers in the financial services sector in Ireland were charged at or below the basic rate and proposed that, in line with current practice, such helplines should be prohibited from using premium rate numbers. The European Consumer Centre thought that this provision should not be applied to contracts for gambling, financial services, immovable property, construction of new buildings or substantial conversion of existing ones, rental of residential accommodation, and the supply of foodstuffs and household goods by traders on frequent rounds to the consumer's residence.

56. Two respondents to the separate consultation on Article 19 (Fees for the use of means) and Article 22 (Additional payments) of the Directive (Eircom and Visa Europe) supported the application of these provisions to all exempted sectors. The Irish Internet Association was in favour of maintaining the exemptions from these provisions. ALTO reserved its position on the inclusion of contacts in sectors subject to sector-specific regulation pending the provision of more detailed information. Aer Lingus questioned whether Member States were in fact empowered to apply the Directive's provisions to exempted sectors.

57. Legal advice obtained in connection with the possible early implementation of Articles 19 and 22 of the Directive clarified, however, that the constitutional immunity for Regulations made under the European Community Act 1972 applied only to provisions in such Regulations that were necessitated by the obligations of EU membership. As the extension of the Directive's provisions to contracts outside its scope could not be held to be so necessitated, any such extension effected in Regulations made under the 1972 Act would be open to legal challenge. The Regulations provide accordingly for no application of their provisions to any of the contracts exempted from the scope of the Directive. As the legal constraint at issue applies only to legislation made under the 1972 Act, the application of the Directive's provisions to certain contracts outside its scope will be considered in the preparation of the proposed Consumer Contracts Rights Bill which will, among other provisions, incorporate the Regulations that implement the Directive. The views expressed in response to the consultations on the Directive will be taken into account in the consideration of any such extension of the Directive's provisions to exempted sectors.

**ANNEX: BENEFITS, COSTS AND IMPACTS OF EUROPEAN UNION
(CONSUMER INFORMATION, CANCELLATION AND OTHER RIGHTS) REGULATIONS 2013**

GENERAL

The impact of the Regulations is limited obviously to the contracts within the scope of the Regulations. As set out in Part II of the Impact Assessment, contracts in a sizeable number of sectors and activities are excluded from the scope of the Regulations. These exemptions are also somewhat broader than those in the Regulations on Distance Selling and on Contracts Negotiated Away from Business Premises that the new Regulations revoke and replace.

PART 2 CONSUMER INFORMATION FOR ON-PREMISES CONTRACTS

	BENEFITS	COSTS
CONSUMERS	<p>The pre-contractual information provisions will give consumers engaged in on-premises transactions a clearer and fuller idea of the goods, services, digital content, or utility which they are purchasing, thereby facilitating better-informed purchasing decisions and, in turn, reduced levels of consumer detriment. There are important new information requirements in particular on the functionality and inter-operability of digital content.</p> <p>The greater, though not full, harmonisation of pre-contractual information provisions for on-premises transactions effected by the Directive will be of benefit to the considerable number of Irish consumers who purchase goods, services or other products on this basis in other Member States.¹⁶</p>	

¹⁶ A survey undertaken in 2011 found that 46 per cent of Irish respondents had purchased goods in the previous 12 months while on holiday, business or a shopping trip in another EU country, the third highest level in the EU and almost twice the EU average of 25 per cent. European Commission. 2012. *Flash Eurobarometer 332: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p.51.

	BENEFITS	COSTS
TRADERS	<p>A large majority of traders engage in on-premises transactions.¹⁷ It is in the interest of traders to give potential customers all relevant information about the goods and services provided by the trader. Better-informed purchasing decisions by consumers should also lead to fewer post-purchase disputes and to lower dispute-resolution costs for traders.</p> <p>The greater, though not full, harmonisation of pre-contractual information provisions for premises transactions effected by the Directive will be of benefit to traders who provide goods, services or other products to consumers on an on-premises basis in more than one Member State. This benefit will increase in line with the number of Member States in which traders engage in such transactions.¹⁸</p>	<p>The costs to traders of the pre-contractual information provisions of the Regulations for on-premises contracts are not likely to be significant for the following reasons:</p> <ul style="list-style-type: none"> ▪ The majority of the provisions overlap to a considerable degree with information requirements under other consumer protection legislation and, to that extent, will not give rise to additional burdens on traders. ▪ The information does not have to be provided where “it is already apparent from the context”. ▪ Only a minority of the information provisions are of general application to on-premises transactions. The application of the remainder of the provisions depends on the subject-matter and terms and conditions of the contract, and the payment, delivery or other arrangements provided for in the contract. ▪ The Regulations give effect to a discretionary exemption in the Directive for “contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion”. ▪ Other than requiring that the information be provided in a clear and comprehensible manner, the Regulations do not impose any other conditions on the manner in which the information is to be provided.

¹⁷ A survey of Irish retailers with ten or more employees undertaken in 2012 found that 74 per cent engaged in direct retail sales in shops. European Commission. 2013. *Flash Eurobarometer No. 359: Retailers’ Attitudes Towards Cross-Border Trade and Consumer Protection*, p. 11.

¹⁸ 12 per cent of Irish retailers with ten or more employees surveyed in 2010 reported that they had a subsidiary or a retail outlet in at least one other EU country, slightly above the EU average of 10 per cent. European Commission. 2011. *Flash Eurobarometer No. 300: Retailers’ Attitudes Towards Cross-Border Trade and Consumer Protection*, p. 17.

PART 3 CONSUMER INFORMATION FOR OFF-PREMISES CONTRACTS AND DISTANCE CONTRACTS

CONSUMER INFORMATION FOR OFF-PREMISES CONTRACTS

	BENEFITS	COSTS
CONSUMERS	<p>The pre-contractual information provisions for off-premises transactions in the Regulations are more detailed and comprehensive than those in the existing Regulations on contracts negotiated away from business premises. The enhanced information provisions will give consumers engaged in off-premises transactions a clearer and fuller idea of the goods, services, digital content, or utility which they are purchasing, thereby facilitating better-informed purchasing decisions and, in turn, reduced levels of consumer detriment. There are important new information requirements in particular on the functionality and interoperability of digital content.</p> <p>As off-premises transactions mainly involve the simultaneous physical presence of the consumer and the trader in the consumer's home or place of work, consumers do not usually engage in these transactions on a cross-border basis.¹⁹ The full harmonisation across the European Union of the pre-contractual information provisions for off-premises transactions effected by the Directive will be of limited benefit accordingly to consumers.</p>	

¹⁹ The definition of off-premises contracts includes, however, contracts concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer. Such an excursion could be organised by a trader in a different Member State to that of the consumers taking part in the excursion and, as a consequence, be of a cross-border nature.

	BENEFITS	COSTS
TRADERS	<p>The proportion of traders engaging in off-premises transactions is far smaller than the proportion engaging in on-premises or distance transactions.²⁰ The impact of provisions applicable to off-premises transactions is more limited accordingly than that of provisions applying to these other types of transaction. The impact of the information provisions is further reduced by the fact that the Regulations have availed of the discretionary option in the Directive to exempt off-premises contracts for which the payment to be made by the consumer does not exceed €50. In the case of off-premises contracts where the consumer has expressly requested the services of the trader for repairs which are performed immediately and the payment for which does not exceed €200, the Regulations also avail of the discretionary option in the Directive to apply a lighter set of information requirements to these transactions.</p> <p>It is in the interest of traders to give potential customers all relevant information about the goods and services provided by the trader. Better-informed purchasing decisions by consumers should lead to fewer post-purchase disputes and to lower dispute-resolution costs for traders. The comprehensive pre-contractual information to be provided to consumers, including information on</p>	<p>Insofar as the pre-contractual information provisions applicable to off-premises contracts are more comprehensive and detailed than those in the Regulations that they are to replace, there will be transitional costs for traders arising from the requirement to familiarise themselves with the additional information provisions. This information must also be provided on paper or, if the consumer agrees, on another durable medium. In addition, the trader must provide the consumer with a copy of the signed contract, or with confirmation of the contract, on paper or, if the consumer agrees, on another durable medium.</p> <p>As the Regulations provide that the pre-contractual information that must be provided by the trader forms part of the contract between the consumer and the trader, there will be a need for traders to review and, where necessary, to adjust, contract terms.²¹ This need will also apply to the changes to the provisions governing the right to cancel off-premises contracts outlined in Part 5 below.</p> <p>The transitional and other costs to traders arising from the pre-contractual information provisions of the Regulations for off-premises contracts will be lessened by virtue of the following factors:</p> <ul style="list-style-type: none"> ▪ The majority of the information provisions for off-premises contracts in the Regulations overlap to a significant degree with

²⁰ 11 per cent of Irish retailers with ten or more employees surveyed in 2010 reported that they engaged in doorstep sales, slightly above the EU average of 9 per cent. *Flash Eurobarometer No. 300: Retailers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p. 14. There is no information available on the extent to which Irish traders outside retailing engage in doorstep or other off-premises transactions.

⁶ A survey of UK businesses undertaken in 2012-2013 found that the average one-off cost of producing new versions of relevant documentation (contracts, invoices, receipts, brochures etc.) when changing or updating pre-drafted standard terms and conditions in consumer contracts was £255 for micro-businesses (1-9 employees); £1,080 for small businesses (10-49 employees); £884 for medium-sized businesses (50-249 employees); and £3,029 for large businesses (250+ employees). IFF Research. 2013. *Consumer Rights and Business Practices*, p. 27.

	BENEFITS	COSTS
	<p>the right to cancel off-premises contracts, and the conditions attaching to that right, may contribute also to a reduction in the number of contracts that are cancelled.</p> <p>The full harmonisation across the European Union of pre-contractual information provisions for off-premises contracts brought about by the Directive will be of benefit to traders who provide goods, services or other products to consumers on an off-premises basis in more than one Member State. There are no data on the number of Irish traders in this category, but it is likely to be small.</p>	<p>requirements under other consumer protection legislation and, to that extent, will not give rise to additional burdens on traders.</p> <ul style="list-style-type: none"> ▪ Only a minority of the information provisions are of general application to on-premises transactions. The application of the remainder of the provisions depends on the subject-matter and terms and conditions of the contract, and the payment, delivery or other arrangements provided for in the contract. ▪ The information and other provisions of the Regulations do not apply to off-premises contracts of up to €50. ▪ A lighter information regime applies to off-premises contracts for repairs and maintenance subject to immediate performance for which the payment does not exceed €200. <p>On the publication of the Directive in 2008, the European Commission estimated that the one-off cost to distance traders of compliance with the Directive's provisions would be approximately €2,150; this estimate relates to all of the provisions of the Directive and not just those on pre-contractual information.²² As the Directive's provisions on off-premises contracts are fully harmonised, this compliance cost would be the same for a trader selling to a number of, or to all 27, Member States, resulting in a major reduction in the cost burden for companies selling goods and services on a cross-border basis in the EU.</p>

²² European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, p. 232.

CONSUMER INFORMATION FOR DISTANCE CONTRACTS

	BENEFITS	COSTS
CONSUMERS	Irish consumers engage in distance transactions, particularly online transactions, in large and growing numbers. ²³ To the extent that the Consumer Rights Directive succeeds in its core aims of enhancing consumer confidence in cross-border distance transactions, ²⁴ and reducing barriers to the willingness of traders to engage in cross-border trade, ²⁵ it can be expected to contribute materially to enhanced consumer choice and welfare. Ireland is the seventh most expensive of the eighteen EU countries in the euro zone. ²⁶ For a range of consumer electronic products, prices in Ireland have been found to be twenty per cent higher than those in the least expensive EU member state. ²⁷	
TRADERS	Surveys have consistently found that differences in consumer protection laws in EU countries are among the factors that deter traders from offering goods and services to consumers in other	To the extent that the pre-contractual information provisions applicable to distance contracts under the Regulations are more comprehensive and detailed than those in the Regulations which they

²³ A survey conducted in 2012 found that two-thirds of consumer respondents from Ireland had purchased goods, services or other products via the Internet in the previous 12 months, the fourth highest level in the EU and above the EU average of 51 per cent. The corresponding figure for Irish consumers in 2006 was just 25 per cent. European Commission. 2013. *Flash Eurobarometer No. 358: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p.12. A separate survey undertaken in 2010 found that 15 per cent of Irish consumers had made a distance purchase by telephone, and 17 per cent a distance purchase via mail order, in the previous twelve months. European Commission. 2011. *Flash Eurobarometer 299: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, pp.17-18.

²⁴ Ireland is one of a small number of EU countries in which consumers are more likely to have purchased goods or services from suppliers in other Member States than from domestic suppliers. In 2012, 52 per cent of Irish consumers with Internet access reported that they had purchased goods or services from a supplier outside Ireland, compared with 44 per cent who had done so from a supplier in Ireland. European Commission. 2013. *Flash Eurobarometer No. 358: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p.20.

²⁵ In line with their purchasing decisions, Irish consumers report the highest level of trust in cross-border sellers of any EU country. 70 per cent of Irish consumers with Internet access surveyed in 2012 expressed confidence in purchases via the Internet from suppliers in another EU country, compared with an EU average of 41 per cent. The same proportion of Irish consumers expressed confidence in Internet purchases from Irish suppliers. European Commission. 2013. *Flash Eurobarometer No. 358: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, pp.27-29.

²⁶ As measured by Eurostat's price level indices. Forfás. 2013. *Ireland's Competitiveness Performance 2013*, p. 8.

²⁷ European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, Annex 2, table 3.

	BENEFITS	COSTS
	<p>Member States. Across the EU as a whole, just 25 per cent of traders sell to consumers in at least one other Member State.²⁸ At 28 per cent, the figure for traders in Ireland is just slightly above the EU average; Irish retailers who sold to consumers in other EU countries were more likely than those in other Member States to sell to consumers in just one other country. Survey findings indicate that the cost of complying with different consumer protection and contract law rules in other Member States is one of the main obstacles to cross-border trade cited by traders. 41 per cent of retailers across the EU surveyed in 2012, and 34 per cent of Irish retailers, cited these costs as an important obstacle to the development of their cross-border sales to other EU Member States.²⁹ Almost a third of retailers surveyed across the EU, and 41 per cent of Irish retailers, considered that their cross-border sales would increase if consumer protection laws were the same in all Member States.³⁰</p> <p>The harmonisation of the rules on consumer information and cancellation rights for distance contracts, and on delivery and the passing of risk in distance contracts of sale effected by the Consumer Rights Directive has the potential to reduce the cost of complying with consumer legislation to traders and to facilitate an increased willingness to engage in cross-border trade. The impact assessment on the Directive prepared by the European Commission estimated that, under the existing rules governing</p>	<p>are to replace, there will, as noted in the discussion of off-premises contracts, be transitional costs for traders arising from the requirement to familiarise themselves with the additional information provisions. Where this information is provided on a durable medium, it must be legible. The trader must also provide the consumer with confirmation of the concluded contract on a durable medium.</p> <p>The Regulations include new provisions which aim to provide greater protections for consumers incurring payment obligations under distance contracts to be concluded by electronic means, principally contracts concluded on traders' websites. In such cases, the trader must first make the consumer aware in a clear and prominent manner, and directly before the consumer places an order, of certain specified items of information. The trader must ensure, secondly, that the consumer, when placing an order, explicitly acknowledges that the order implies an obligation to pay.</p> <p>As the Regulations provide that the pre-contractual information that must be provided by the trader forms part of the contract between the consumer and the trader, there will be, as outlined earlier, a need to review and, where necessary adjust, contract terms.</p> <p>The transitional and other costs to traders arising from the pre-contractual information provisions of the Regulations applicable to distance contracts will be lessened by virtue of the following factors:</p> <ul style="list-style-type: none"> ▪ The majority of the information provisions for distance contracts

²⁸ European Commission. 2013. *Flash Eurobarometer No. 359: Retailers' Attitudes Towards Cross-Border Trade and Consumer Protection*, pp.22-23.

²⁹ *Ibid.*, p.34.

³⁰ European Commission. 2011. *Flash Eurobarometer No. 300: Retailers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p. 30.

	BENEFITS	COSTS
	<p>distance contracts, the average compliance cost for traders selling only in their domestic market was approximately €5,000–€6,000.³¹ This cost increased in line with the number of Member States to which traders sold goods or services and amounted to over €70,000 for traders selling to all of the then 27 Member States. The elimination of the fragmented national rules governing distance transactions would reduce the average compliance burden for traders to around €2,000, a figure that would apply regardless of whether the trader operated only in his or his domestic market or sold to all 27 Member States.</p> <p>It is in the interest of traders to give potential customers all relevant information about the goods and services provided by the trader. Better-informed purchasing decisions by consumers engaged in distance transactions should also lead to fewer post-purchase disputes and to lower dispute-resolution costs for traders. The comprehensive pre-contractual information to be provided to consumers, including information about the right to cancel distance contracts and the conditions attaching to that right, may contribute also to a reduction in the number of contracts that are cancelled.</p>	<p>under the Regulations are similar to those under the existing Distance Selling Regulations and also overlap to a considerable degree with requirements under other consumer protection legislation and, to that extent, will not give rise to additional burdens on traders.</p> <ul style="list-style-type: none"> ▪ Only a minority of the information provisions are of general application to on-distance transactions. The application of the remainder of the provisions depends on the subject-matter and terms and conditions of the contract, and the payment, delivery or other arrangements provided for in the contract. <p>On the publication of the Directive in 2008, the European Commission estimated that the one-off cost to distance traders of compliance with the Directive’s provisions would be approximately €2,150; this estimate relates to all of the provisions of the Directive and not just on pre-contractual information.³² As those provisions are fully harmonised, this cost would be the same for a trader selling to a number of, or to all 27, Member States, resulting in a major reduction in the cost burden for companies selling goods and services on a cross-border basis in the EU.</p>

³¹ European Commission. 2008. Impact Assessment on the Directive on Consumer Contractual Rights, pp. 11-12. European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, pp. 219-233.

³²European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, p. 232. The Commission estimated that the cost per distance seller of the existing fragmented consumer regulatory regime was approximately €5,500, while that per off-premises seller was approximately €6,600. These estimates include, however, the compliance cost of legislative provisions that do not form part of the Directive as enacted in 2011.

PART 4 RIGHT TO CANCEL DISTANCE CONTRACTS AND OFF-PREMISES CONTRACTS

In addition to the contracts that are entirely outside of the Regulations, a range of other specified distance and off-premises contracts are excluded from the right to cancel the contract. Most of these exceptions are similar to those under the existing Distance Selling Directive, though a small number are new. Unlike under the existing Regulations on Distance Selling and Contracts Negotiated Away from Business Premises, however, consumers will now be able to cancel contracts for the supply of services or utilities during the cancellation period before the service has been fully performed or the utility fully supplied. In this event, the consumer must pay the trader an amount proportionate to the service or utility provided up to the time the trader was informed of the exercise of the right to cancel. The right to cancel will not apply, however, to contracts where the consumer specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance.

Consumers engaging in distance and off-premises contracts to which the right to cancel applies have the right to cancel such contracts within a specified cooling-off period under existing Regulations. The main changes introduced by the new Regulations are as follows:

- The period during which the consumer may cancel the contract is increased from 7 to 14 days.³³
- Where the trader has not informed the consumer of his or her right to cancel, the maximum cancellation period is twelve months compared with a potentially indefinite period under the existing Regulations on Contracts Negotiated Away from Business Premises and three months under the existing Directive on Distance Selling.
- The trader must reimburse payments received from a consumer within fourteen days of receiving notice of cancellation from the consumer compared with 30 days under the existing Distance Selling Regulations but, unlike under the latter Regulations, the trader may wait until the goods have been returned or the consumer has supplied evidence of having returned them, before making the reimbursement.³⁴

³³ The cancellation period in the new Regulations is fourteen calendar days compared with seven calendar days in the existing Regulations on Contracts Negotiated Away from Business Premises and seven working days in the existing Regulations on Distance Selling.

³⁴ The Regulations which give effect to the Directive on Contracts Negotiated Away from Business Premises do not specify the period within which reimbursement must be made by the trader, but give the consumer a lien over any goods held under a lawfully cancelled contract until all monies owed by the trader are repaid in full. If the trader has not repaid the monies owed to the consumer in full three months after the date on which the consumer has delivered the cancellation notice to the trader, the title in the goods passes to the consumer.

- In the event of the cancellation of a contract for the sale of goods, the consumer must return the goods and bear the costs of their return unless -
 - a) otherwise agreed between the parties;
 - b) the trader has failed to inform the consumer that he or she is liable for these costs; or
 - c) in the case of off-premises contracts, the goods were delivered to the consumer's home at the time of the conclusion of the contract and the nature of the goods is such that they cannot normally be returned by post.

Under the existing Regulations on Contracts Negotiated Away from Business Premises, the consumer is required to make the goods available for collection but not to return them. Under the existing Regulations on Distance Contracts, the obligation to return the goods and the cost of doing so rests with the consumer unless otherwise agreed between the parties.

- Under the new Regulations, the consumer is liable, unless the trader has failed to provide him or her with the required information on the right to cancel, for any diminished value of the goods resulting from the handling of the goods beyond that necessary to establish their nature, characteristics and functioning. There is no such liability on the consumer under the existing Regulations on either Contracts Negotiated Away from Business Premises or Distance Selling.

	BENEFITS	COSTS
CONSUMERS	<p>Though exercised only by a small minority of consumers who engage in distance or off-premises transactions, the right to cancel is an important safeguard for consumers unable to inspect goods before their purchase or caught off-guard when approached by traders at home or in a place other than a business premises.³⁵ The doubling of the duration of the cancellation period is a significant extension of the right, though, for reasons outlined across, the additional benefit it confers is likely to prove less significant in practice.</p> <p>In the case of off-premises contracts in particular, the new Regulations contain a more comprehensive and detailed set of rules on the exercise of the right to cancel. This will give consumers a</p>	<p>Other than in specified circumstances, consumers who cancel an off-premises contract will now be liable to return the goods and to bear the cost of their return.</p> <p>As the trader is not obliged to reimburse a consumer who has cancelled a distance or off-premises contract for the sale of goods until the trader has received the goods back or the consumer has supplied evidence of having sent them back, consumers may face a longer wait for reimbursement in some cases as well as possible disputes about whether goods were sent back.</p> <p>Consumers will be liable for any diminished value of goods returned</p>

³⁵ The European Commission have estimated the rate of cancellation of distance contracts at 2-5 per cent of these contracts. European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, p.90.

	BENEFITS	COSTS
	clearer view of the benefits and, in some cases, costs of the exercise of the right and, as a result, should contribute to lower levels of detriment and dispute. As outlined across, however, certain new aspects of the provisions may give rise to disputes.	to the trader following the exercise of the right to cancel caused by excessive handling during the cancellation period. This will lead in some cases to the reimbursement paid to the consumer being less than the price paid for the goods, and may prove to be a cause of dispute.
TRADERS	<p>Though often viewed as being of advantage only to consumers, the right to cancel distance and off-premises contracts can contribute materially to the willingness of consumers to engage in these types of transaction.</p> <p>The more comprehensive and detailed rules on the right to cancel in the new Regulations will reduce existing areas of uncertainty around the exercise of the right and should contribute to a reduction in the number of disputes arising from its exercise. As outlined across, however, certain new aspects of the provisions may give rise to disputes.</p> <p>The full harmonisation across the European Union of the provisions governing the right to cancel distance and off-premises contracts will be of substantial benefit to traders who provide goods, services or other products on a distance or off-premises basis to consumers in more than one Member State. This benefit will increase in line with the number of Member States to which traders supply goods, services or other products.</p>	<p>The increase from 7 to 14 days in the cancellation period is likely to result in a rise in the number of cancellations. The impact of the longer cancellation period will be offset, however, by the fact that most large distance sellers in particular already offer a cancellation period in excess of 14 days. There is also some evidence to suggest that the rate of cancellation is not strongly correlated with the length of the cancellation period.³⁶</p> <p>The longer cancellation period may result in an increase in the number of goods that are damaged or lose part of their value. Losses attributable to this cause will be offset, however, by the consumer's liability for any diminished value of goods resulting from excessive handling during the cancellation period.</p> <p>Traders providing services or supplying utilities may see an increase in cancellations as consumers will now be permitted to cancel distance or off-premises contracts for services or utilities during the cancellation period. Losses attributable to this cause will be offset, however, by the consumer's liability for the costs of the service provided or the utility supplied up to the time of withdrawal.</p>

³⁶ European Commission. 2008. *Accompanying Document to the Proposal for a Directive on Consumer Rights*, pp. 90-91.

PART 5 PAYMENT FEES, ADDITIONAL PAYMENTS AND CHARGES FOR COMMUNICATION BY TELEPHONE

FEES FOR THE USE OF MEANS OF PAYMENT

The Regulations provide that traders must not charge consumers in respect of the use of a given means of payment fees that exceed the cost borne by the trader for the use of that means of payment.

	BENEFITS	COSTS
CONSUMERS	<p>Though payment surcharging is not a widespread practice across consumer markets in Ireland, some traders in the passenger travel, package travel, utilities and other sectors apply such charges, mainly to payments made by credit card. In cases where these fees are applied, the prohibition of above-cost surcharges is not expected to result in a reduction in the overall price of goods or services. The evidence suggests that excessive payment charges are applied separately to the price of the goods or service by traders in order to entice consumers with a lower initial price. Consumers attracted by this price are likely to remain committed to the transaction in many cases even if the final price is significantly higher following the addition of payment or other charges, particularly where such charges are imposed at a late stage of the purchasing process.</p> <p>The main benefit to consumers from the prohibition on above-cost payment fees will be an improvement in the price transparency of goods or services to which such fees are applied. This will make it easier for consumers to compare prices and to shop around for better value. In the airline sector, where payment and payment-related surcharges have been common, there have been changes in the way in which prices are advertised and presented, presumably in anticipation of the introduction of the provision on payment fees.</p>	
TRADERS	Traders whose competitors apply payment fees but who do not	The impact of the provision on payment fees will be limited, first, by

	BENEFITS	COSTS
	<p>apply such fees themselves will benefit from improved price transparency. Greater price comparability will facilitate fairer competition.</p>	<p>virtue of the fact that these fees are not applied to the great majority of consumer transactions. Where fees are applied, there will be no ongoing addition to business costs. Businesses which have to lower their payment fees will be free to increase their prices to make up for any shortfall in revenue.</p> <p>The transitional costs resulting from the introduction of the provision should also be relatively limited. In the passenger transport and utilities sectors, the traders who apply such charges are mainly large enterprises who adjust prices and charges relatively frequently. A one-off change in one element of the price of goods or services should not entail significant costs in such cases, nor should consequential changes to web pages.</p> <p>Traders who apply fees for the use of means of payment will need to identify the costs associated with these means of payment in order to ensure that the fees charged do not contravene the prohibition on above-cost charges. While these costs could be estimated on a per transaction basis, it will be permissible and, almost certainly more practicable, for traders to estimate the average cost of a particular means of payment, such as payment by credit card, on an aggregate basis over a period of time.</p>

ADDITIONAL PAYMENTS

The provision on additional payment states, first, that before a consumer is bound by a contract or an offer, the trader must seek the consumer's express consent to any payment additional to the payment agreed to for the consumer's main obligation under the contract. It provides, secondly, that the consumer's consent cannot be inferred from the use of a default option, such a pre-ticked box, which the consumer is required to reject in order to avoid the additional payment.

	BENEFITS	COSTS
CONSUMERS	<p>Like payment surcharges, additional payments imposed by traders result in the final price of goods or services exceeding the advertised price, often by a significant margin. By making prices more opaque to consumers, such payments militate against price comparability and competition. In addition to enhancing price transparency, the requirement to obtain the consumer's express consent to additional payment will help ensure that consumers do not make purchasing decisions, and in some cases costly purchasing decisions, on the basis of incomplete and potentially misleading information about the final price of goods or services.</p> <p>There are no data on the extent to which traders apply either additional payments within the scope of the provision, or use default options such as pre-ticked boxes. The latter have been common in the airline sector in the past, but appear to be somewhat less so now.</p>	
TRADERS	<p>The requirement on traders to seek the consumer's consent to additional payments should help to reduce disputes about the imposition of such payments and their effect on the final price of goods or services.</p>	<p>There is no reason for the provision on additional payments to lead to any direct loss of revenue for traders. The provision does not preclude such payments but requires rather that traders obtain the express consent of the consumer to them. Traders also have the</p>

	BENEFITS	COSTS
	Traders whose competitors apply additional payments or use default options such as pre-ticket boxes, but who do not apply such payments or use such options themselves, will benefit from increased price transparency. Greater price comparability will facilitate fairer competition.	<p>option of incorporating such payments in the headline price of the goods or services.</p> <p>The administrative costs entailed by the provision should also be modest. Where traders use pre-ticked boxes on websites, the adjustments required to such boxes should be straightforward.</p>

CHARGES FOR COMMUNICATION BY TELEPHONE

This provision of the Regulations states that, where a trader operates a telephone line for the purpose of permitting consumers to contact the trader about a contract concluded with the trader, calls by the consumer to that line for that purpose must not be charged at more than the basic rate. Its purpose is to ensure that traders do not use customer helplines for post-contractual queries or complaints as a source of revenue or as a way of discouraging consumers from making such queries or complaints.

	BENEFITS	COSTS
CONSUMERS	There are no reliable data on the number of companies that operate customer helplines, calls to which are charged above the basic rate, though it is not believed to be large. The provision will ensure that consumers who call a trader about purchased goods or services on a telephone line operated for that purpose will not pay more than the normal price charged for an equivalent call by their telephone service provider.	
TRADERS		There will be no cost from this provision to the great majority of

	BENEFITS	COSTS
		traders who are not believed to use premium rate or other revenue generating services for calls to customer helplines. Businesses that use such services will sustain a loss in revenue from telephone calls as well as the administrative costs incurred in switching to a price-neutral helpline.

PART 6 PASSING OF RISK AND DELIVERY IN SALES CONTRACTS

Part 6 of the Regulations gives effect to Article 18 of the Consumer Rights Directive on delivery and Article 20 on the passing of risk. The new provisions state, first, that, in contracts where the trader dispatches the goods to the consumer, the risk of loss or damage to the goods will pass to the consumer when he, or a third party indicated by him and other than the carrier, has acquired the physical possession of the goods. They provide, secondly, that, without prejudice to the rights of the consumer against the carrier, the risk will pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and the choice of carrier was not offered by the trader.

Under the existing rules in section 20 of the Sale of Goods Act, the goods remain at the seller's risk until the property in (i.e. the ownership of) the goods is transferred to the buyer. Once that property has been transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Though the passing of the property in the goods will often coincide with their delivery, it may also precede it. If the property in the goods passes prior to delivery and the goods are then lost or damaged while still in the seller's possession or while in transit to the buyer, the loss or damage will fall on the buyer.

The provisions on delivery in Part 6 of the Regulations provide that, unless the parties have agreed otherwise, the seller must deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract. Where the seller has failed to deliver the goods at the time agreed with the consumer buyer or within the default

30 day time limit, the buyer may require the seller to make the delivery within an additional period of time appropriate to the circumstances. The obligation on the buyer to afford the seller a second opportunity to deliver the goods does not apply, however, where:

- delivery within the agreed delivery period is essential taking into account all the circumstances attending the conclusion of the contract – for example, a wedding dress which must be delivered prior to the wedding, or
- the buyer informs the seller, prior to the conclusion of the contract, that delivery by or on a specified date, is essential.

If the seller fails to deliver the goods with the time agreed with, or specified by, the buyer as essential, the latter may terminate the contract.

For consumer contracts of sale, these provisions will replace the following provision at section 29(2) of the Sale of Goods Act 1893.

Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

The current Distance Selling Regulations, which are to be revoked by the new Regulations, require suppliers, unless the consumer has agreed otherwise, to execute orders within a maximum of 30 days from the day following that on which the consumer forwarded the order. Unlike the provision that is to replace it, this provision applied to both goods and services.

	BENEFITS	COSTS
CONSUMERS	For consumers, issues to do with delivery – non-delivery, late delivery, loss or damage of goods during delivery – are the principal source of detriment and dispute arising from distance contracts. ³⁷ Concerns about delivery accordingly are one of the main factors that	

³⁷ 30 per cent of EU consumers, and 20 per cent of Irish consumers, who had made online purchases from a seller in their own country claimed in 2012 to have experienced delays in delivery, while 8 per cent of EU consumers and 7 per cent of Irish consumers had experienced non-delivery of goods. 19 per cent of the EU consumers reported delays in the delivery of online purchases from sellers in another EU country and 7 per cent reported non-delivery in such cases. European Commission. 2013. *Flash Eurobarometer No. 358: Consumers’ Attitudes Towards Cross-Border Trade and Consumer Protection*, p.79. The greater incidence of late and non-delivery in purchases from domestic sellers must be seen in the context of higher transaction levels with such sellers in most EU countries.

	BENEFITS	COSTS
	<p>deter consumers from purchasing goods from sellers in other EU member states.³⁸</p> <p>The provisions on the passing of risk in the Regulations are clearer and more in accordance with consumer expectations than the existing rules. They will ensure that the risk of loss or damage to goods prior to, and during, delivery will, unless the carrier was chosen by the consumer, rest with the trader. Though the new provisions represent a significant change in the law governing consumer sales contracts, they probably reflect existing practice to a considerable extent.</p> <p>The provisions on delivery represent a less marked change on the existing law. Like the corresponding provisions in the Sale of Goods Act, the provisions in the Regulations are default rules. Though more precise than the reasonable time stipulation in the Sale of Goods Act, the thirty day default period for delivery in the new Regulations is similar to that in the existing Distance Selling Regulations. Unlike the Distance Selling Regulations, however, the new provisions will give traders a second chance to deliver in many cases and set no default time limit for the performance of service contracts. In the case of on-premises and off-premises contracts, the 30 day default time limit may prove somewhat firmer than the 'reasonable time' default delivery rule that currently applies to these contracts.</p>	

³⁸ 57 per cent of EU consumers surveyed in 2010 claimed that they were not interested in making cross-border distance purchases because of worries over delivery; at 42 per cent, the figure for Irish consumers, though lower, was still substantial. European Commission. 2011. *Flash Eurobarometer No. 299: Consumers' Attitudes Towards Cross-Border Trade and Consumer Protection*, p. 38.

	BENEFITS	COSTS
	<p>The new provisions also clarify that, where the trader fails to deliver within the time agreed by the parties, or specified by the consumer, to be essential, the consumer may terminate the contract. While existing sale of goods law regards time as of the essence in commercial contracts and failure to deliver on time as grounds for termination of the contract, this presumption does not necessarily apply to consumer contracts of sale.³⁹</p>	
TRADERS	<p>The new rules on delivery are clearer and more explicit on the circumstances in which traders are to be given a second chance on delivery and, as such, more favourable to traders than the existing rules.</p> <p>The full harmonisation of rules on delivery and the passing of risk in sales contracts brought about by the Directive will be of benefit to traders who sell to consumers in other EU Member States. That benefit will increase in line with the number of Member States to which the trader sells.</p>	<p>Though there are no estimates available, the cost to traders of the new rules on the passing of risk may be relatively modest. The likelihood is that many traders already assume the loss of risk or damage prior to the consumer's taking possession of goods. It is easier also for a trader who is dispatching goods on a regular basis to insure, where required, against this risk than it is for consumers. Insofar as the new rules clarify the passing of risk in a manner in accordance with consumer expectations, they can be expected to help reduce the number of disputes over loss or damage to goods in transit.</p> <p>The delivery provisions arguably take reasonable account of trader interests and constraints. In most cases, traders will be given a further chance to deliver if delivery is not made within the agreed time or the 30 day period, an option that may help to reduce the number of cancelled sales. While a default 30 day time limit will now apply to on-premises and off-premises sales, the Regulations give traders the option to agree a later delivery period with the consumer if they consider the 30 day period to be insufficient.</p>

³⁹ Sales Law Review Group. 2011. *Final Report on the Law Governing the Sale of Goods and Supply of Services*, paragraphs 8.5 to 8.9.

PART 7 UNSOLICITED GOODS AND SERVICES

The provisions of Part 7 of the Regulations, like Article 27 of the Consumer Rights Directive to which they give effect, re-enact the provisions of Article 9 of the Distance Selling Directive on inertia selling.⁴⁰ As such, the provisions confer no new benefits on consumers, or impose no

⁴⁰ As substituted by Article 15 of Directive 2005/29/EC. Though part of the Distance Selling Service, the provisions on Article 9 on inertia selling or unsolicited goods and services were of general application and were not restricted to unsolicited goods or services supplied by distance means.