

Motor retailer's guide to the consumer contracts regulations



Written by Peter Stonely,
Stonely Training & Consultancy Ltd
for Auto Trader

Disclaimer:

This guide was written by Peter Stonely, Stonely Training & Consultancy Ltd for Auto Trader. It is our interpretation of the law as it stood on 5th November 2020, ultimately only a court can decide how the law should be interpreted. If you have any doubt seek legal advice.

This Guide is prepared for retailers selling cars, motorcycles, caravans and motorhomes to consumers. For ease, we will refer to all of these as 'vehicles' throughout the Guide. We have focussed solely upon the requirements for the retail sale of vehicles to consumers, this Guide should not be used if you are selling other goods and/or services. The Regulations will not apply if your customers are businesses and not consumers.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 are not easy to understand and our intention is to give you a simple and practical explanation of what you need to know. For more information you may need to consult the actual [Regulations](#) or the detailed guidance on the [Business Companion](#) website.

If you are planning to sell the vehicle with a finance agreement, you must check with your finance provider whether there are any procedures or documentation that they require you to use.

Types of contract

The table, overleaf, gives a practical explanation of the three different types of contract covered by the Regulations. There are information requirements for each type of contract, which we will look at next. In addition, you must give consumers, who enter into an off-premises or a distance contract with you, time in which they can change their mind and cancel their contract without having to give you any reason for doing so.

It is vital that you are very honest with yourself about exactly when, where and how you have entered into a contract with a consumer. This table can then be used when you know at what stage you have agreed a contract to sell the vehicle to the consumer, where that agreement came into place and what had happened before that. As an example, have you taken a fee just to hold the vehicle off sale for the consumer to look at (and then decide whether to buy or not) or have you taken the money as part payment for the vehicle, which would imply that your contract is now in place.

Type of contract	When it would apply	When it would not apply
Off-premises	Contract signed on consumer's drive, in their home or somewhere away from your business premises*	<p>When they have already agreed the contract by some other means and you are simply delivering the vehicle</p> <p>Some paperwork might need to be signed on delivery but not the contract to purchase the vehicle, which has already been agreed</p>
Distance	A contract agreed exclusively by means of organised distance communication – online, email, phone, video conference etc...	<p>Where the consumer has met with your representative and/or test driven the vehicle beforehand – the contract has not been concluded exclusively by means of distance communications</p> <p>If you do not offer distance selling as a service but you have offered, as a genuine one off situation, to deliver a vehicle out for a customer who cannot get to your premises (perhaps they are needing to shield themselves during the lockdown) . Please note, if you use this falsely there is a real element of risk to your business, so this really must be a genuine one-off. DO NOT SEE THIS AS A WAY OF AVOIDING THE LAW</p>
On premises	When you agree a contract on your premises, or when neither of the other two definitions apply	When it is an off-premises or distance contract

* Exhibitions are normally seen as business premises

Common sales scenarios

Here are a few examples of how sales might take place in your dealership, along with the type of contract you would need to use in each case.

Holding deposit	Walk-in
<p>You take a refundable holding deposit, or reservation fee, to take a vehicle off the market for a prospective buyer.</p> <p>No paperwork is agreed up front. Before agreeing to the sale, you'd like to inspect their part-exchange and they'd like to view the vehicle.</p> <p>The buyer visits your dealership, inspects the vehicle and agrees to buy it. You draw up a contract and handle payment. The buyer drives the vehicle away.</p>	<p>A buyer walks onto your forecourt, sees a vehicle they like. They ask to inspect the vehicle and, after showing them around, they make you an offer.</p> <p>You accept the offer. You draw up a contract and handle payment. The buyer drives the vehicle away.</p>
Contract type: On-premises	Contract type: On-premises

Click and collect	Home delivery
<p>A buyer contacts you by email, over the phone or online. They are interested in one of your vehicles.</p> <p>You take a payment, either partial or full, for the vehicle in question. You send them a copy of the contract to sign, which they complete and return.</p> <p>The buyer arrives a couple of days later at your dealership to collect the vehicle. The buyer drives the vehicle away.</p>	<p>A buyer contacts you by email, over the phone or online. They are interested in one of your vehicles.</p> <p>You take a payment, either partial or full, for the vehicle in question. You send them a copy of the contract to sign, which they complete and return.</p> <p>Note, if you sign paperwork with the buyer at their delivery address, this would be an off-premises contract.</p> <p>You then arrange for the vehicle to be delivered to the buyer's address. The vehicle is delivered, and buyer keeps it.</p>
Contract type: Distance	Contract type: Distance / Off-premises

Information Requirements

Information before the contract is made

According to the type of contract that you have entered into, you must give consumers certain information. How you give this will depend upon the type of contract that you have entered into and the type of medium used. In the case of distance and off-premises contracts, it is likely that the information will form part of what you already provide consumers and, in the case of cancellation rights, is likely to form part of your terms and conditions.

The information that you give must be clear, comprehensible and easy for the consumer to find and understand.

In the case of distance contracts, this information must be provided to the consumer in a way that is appropriate to the means of distance communication.

For off-premises contracts, consumers must be provided with this information in writing or, if they agree, some other durable medium, such as an email.

Appendix 1 gives the information required for on-premises contracts – typically the contracts that you enter into on your premises. Whilst Appendix 2 gives you the information required for off-premises and distance contracts, Appendix 3 provides an example of how you might provide the cancellation information.

Information confirming the contract

In the case of both off-premises and distance contracts, the consumer must receive confirmation of the contract or a copy of the signed contract. This must be in writing, for an off-premises contract although the consumer can agree to receive it in a durable medium, such as an email. This can be provided in writing or other durable medium, in the case of a distance contract.

This information must be supplied no later than when the vehicle is delivered to the consumer, although it is best practice to send it beforehand. The required information does not have to be repeated if it has already been supplied to the consumer in writing or other durable medium before the contract was agreed.

What if I fail to provide all of this information?

Any failure to provide this information, or to provide incorrect information, is treated as a breach of contract, which would allow the consumer to claim an appropriate remedy dependent on the information that has been missed out. There may also be other implications for omitting this information, such as an extended cancellation period, which we will explain below.

Cancellation period

A consumer has a right to change their mind, and cancel their contract with you, from when the contract is agreed with you until 14 days after the day that the vehicle is delivered to them, or the person that they asked you to deliver the goods to. The consumer does not have to give you any reason for their change of mind.

If you fail to give any of items (l), (m) or (n) in Appendix 2, and you have entered into an off-premises contract you commit a criminal offence which can be investigated by Trading Standards. In addition failing to give the required information regarding the cancellation period (item (l) in Appendix 2) for either type of contract leads to the consumer's right to cancel being extended until 14 days after you do give the information or, if you don't give it all the period is extended to one year and 14 days.

There are exceptions to the right to cancel, the only one relevant to the sale of vehicles is for the supply of bespoke goods which are either personalised or made to the consumers specification. This should be interpreted very restrictively and relates to vehicles which are turned into unique 'one-offs' by what has been done to them. This will not apply when fixed manufacturer options have been added. If you think you are selling a vehicle which falls within the exception seek legal advice.

The right for a consumer to change their mind when agreeing to buy vehicles off-premises or at a distance is an essential consumer right. This right cannot be removed by any side agreement with your consumer.

DO NOT ATTEMPT TO AVOID GIVING CONSUMERS THE RIGHT TO CANCEL AN OFF-PREMISES OR DISTANCE CONTRACT WHEN THEY SHOULD HAVE THE RIGHT TO DO SO. TO DO SO COULD

HAVE AN IMPACT ON YOUR BOTTOM LINE, BRAND REPUTATION AND COULD CONSTITUTE A CRIMINAL OFFENCE.

These periods do not apply if a consumer is complaining that their vehicle is not of satisfactory quality or does not meet other rights under the Consumer Rights Act 2015.

Cancellation process

How can a consumer cancel?

The Regulations offer some general guidance on this but the consumer's options are wide:

- They can use the model cancellation form (see Appendix 2) but they don't have to
- They can use any clear statement to inform you – so your staff must be trained to understand what a consumer's rights are and when they are exercising those rights. They must also understand and identify when a call relates to a potential breach of their Consumer Rights Act rights, rather than the Regulations
- You can offer an online cancellation option, but consumers do not have to use it
- If you do use an online cancellation option, you must be able to acknowledge their cancellation using a durable medium (letter or email)
- Consumers have until the end of their cancellation period (see above) in which they can change their mind – the test is whether they have sent it within that period, not when you have received it

The effect of cancellation

Basically the consumer is put back to the position that they were in before they met you – they get their money back and you have the vehicle back. We will now look at what this means in practical terms and what you may be able to deduct from any refund.

Refunding the consumer and what you can deduct from this

The starting point is that you must give the consumer a full refund, which includes the initial delivery charges, and you cannot make a charge for cancellation. You must refund without delay and certainly within 14 days of receiving the vehicle back. You must refund using the same payment method as they used to make the original purchase, unless you both come to an alternative agreement for a different method.

If you offer different delivery costs – perhaps a premium next day delivery service as well as your standard delivery times – you only need to refund delivery charges at your basic rate.

You can make a deduction from a refund to reflect unreasonable handling of the vehicle which has diminished its value. The Regulations talk about handling the goods in a way beyond what might be reasonable in a shop. Some online retailers of vehicles will set a maximum mileage figure, to reflect what would be reasonable for a test drive and then charge an excess mileage for exceeding this. You should be able to justify the figures that you use and ensure that these are not being used as a way of deterring a consumer from cancelling their contract. You cannot use this to cover the depreciation of a new vehicle that has now become second-hand – that is the cost of distance and off-premises selling models, which should be balanced against the benefits of operating these sales streams. **You can only make this deduction if you have**

informed the consumer of this as part of the information you are required to provide – see Appendix 2 & 3.

Collection or return of the vehicle following cancellation

Once a consumer has cancelled, there are a number of options for return of the vehicle:

- You can collect it – you can charge the direct costs of doing so. You cannot use this as a barrier to cancellation and must be able to justify whatever charge you make
- You can require the consumer to return the vehicle at their cost, they must do so within 14 days of cancelling and you must specify the address you want the vehicle returning to
- The above two options depend upon you having given the consumer this information as part of the required information (see Appendix 2 & 3). **If you don't provide information regarding collection, you must collect at your cost**
- If you have entered into an off-premises contract and delivered the vehicle at the same time – they saw it at their home, tried it and agreed a sale there and then – you have to collect the vehicle at your cost if they cancel

Cancellation of ancillary contracts

If a consumer has taken out a credit agreement, to finance the purchase of the vehicle through you, or they have purchased an extended warranty from you, those contracts will automatically come to an end too upon cancellation. It is your responsibility to inform those other parties so that they can manage the cancellation of their contract, in line with what the Regulations require.

Other matters

There are a number of matters that apply whether you have entered into an on-premises, off-premises or distance contract.

Use of negative options

You cannot use negative options for additional contracts linked to the purchase of the vehicle – 'tick if you don't want this'. Consumers can only decide to opt in to additional purchases, not be asked to opt out.

Basic rate telephone helpline charges

Consumers who have bought a vehicle from you must be able to contact you, regarding their purchase, at a basic rate call charge. Basic rate numbers are:

- **Geographic numbers:** starting 01 or 02
- **Non-geographic number:** starting 03
- **Freephone numbers:** starting 0800 or 0808
- **Mobile numbers:** starting 07 (except 070 numbers which are not mobile numbers)

Delivery times

Unless you have agreed a specific date, you must deliver the vehicle without undue delay and

certainly no later than 30 days. Once again, this shows the importance of clear information in your contract, particularly when you are at the mercy of your suppliers with regard to delivery dates.

If you do not deliver within the agreed time, the consumer may be able to cancel their contract, if you knew delivery within the agreed time was essential, otherwise they could set you a new time period and cancel if you do not meet that. They may also be able to claim other costs resulting from your failure to deliver on time.

Passing of risk

If you are delivering the vehicle yourself, or you are employing someone to do this for you, the vehicle remains at your risk until it comes into the physical possession of the consumer, or to the person that they have asked you to deliver it to. So if the vehicle is delivered to the wrong address, or damaged in transit, that is your problem to resolve. At the current time, when social distancing is essential, it is important that you have clear processes in place to ensure that you can prove delivery of the vehicle, undamaged, to the right place.

If the consumer is arranging their own collection, risk passes to them when they (or their representative) collects the vehicle from you.

Conclusion

The current COVID-19 crisis presents real challenges for selling vehicles to consumers by conventional means. Distance or off-premises selling offers new options which may enable you to meet consumer's needs. It is vital that you get your contracts right, this may sound complicated but following this Guide a step at a time should enable you to get it right.

The key messages that you should take from this guidance are:

- If you are not using these sales streams already, you will need to revise your contract documentation
- If you are doing this already, you can check whether what you are using is correct and up to date – as an example, if you are quoting a 7-day cooling-off period you are probably using legislation that was replaced when the Regulations came into effect in June 2014
- Do not attempt to deter consumers from exercising their right to cancel, or ask them to waive their rights – to do so will be pointless, could leave the consumer with a year to change their mind, damage your brand reputation and could constitute a criminal offence
- It is important that your staff are aware of the requirements of the Regulations when selling to consumers and dealing with any request to cancel
- Once you have revised your documentation and procedures, seek legal advice and your local Trading Standards may also be able to help you

The Legal stuff

This Guide was written by Peter Stonely, Stonely Training & Consultancy Ltd for Auto Trader. It is our interpretation of the law as it stood on 13th May 2020, ultimately only a Court can decide how the law should be interpreted. If you have any doubt seek legal advice.

Appendix 1. Information required for an on-premises contract

All the required items are listed below but they may not all be relevant to your business, selling vehicles to consumers. Those less likely to be relevant to your contracts have been shown in *italics* with limited explanation given. If you think they do apply to you, you must also supply this information.

	Information Required	Comments
(a)	Main characteristics of the vehicle	Quite simply, the consumer will see the vehicle. Your paperwork will confirm the detail
(b)	Your identity, such as your trading name, geographical address & phone number	Although only your trading name is required, other legislation (see shaded box below) will require business ownership details to be displayed in certain places
(c)	Total price of the vehicle	This should include VAT and any other compulsory charges
(d)	Delivery charges, if you are going to deliver the vehicle	These could be supplied to the consumer when the contract is being finalised, although you might also want to provide general information about delivery costs or how they will be calculated
(e)	Arrangements for payment or delivery, and the time that you will take to deliver the vehicle, if applicable	This could be supplied to the consumer when the contract is being finalised
(f)	Your complaint handling policy	If you have one. This could be included in your sales documentation
(g)	A reminder that you under a legal duty to supply goods that are in conformity with the contract	For example, "We will supply goods in line with your normal consumer rights, if you have any concerns please contact us immediately."
(h)	Details about any after-sales services or guarantees	Might be part of other documentation/information that you provide/make available to the consumer
(i)	<i>The duration of the contract or how it can be terminated if indeterminate</i>	
(j)	<i>Functionality of digital content</i>	<i>Digital content is a separate product category, so this will not be relevant to your contracts to supply vehicles</i>
(k)	<i>Compatibility of digital content</i>	<i>Digital content is a separate product category, so this will not be relevant to your contracts to supply vehicles</i>

The manner in which you communicate this information is not prescribed, so it will be a combination of what consumers see and any paperwork that you use.

Additional Information Requirements

Business Ownership

Company and business disclosure legislation requires you to display details of ownership (rather than simply your trading name) on your premises and certain business documentation. For more information see company & business names

Information on all business websites

See the shaded box in Appendix 2, regarding information that you must show on your business website irrespective of whether or not you are distance selling

Appendix 2. Information required for off-premises and distance contracts

The information required for both types of contract is, basically, the same and any differences will be pointed out below. We will deal with how this information is to be given in the main notes and explain what must be provided before the contract is entered into and after it has been agreed.

	Information Required	Comments
(a)	Main characteristics of the vehicle	
(b)	Your identity, such as your trading name	Although only your trading name is required, other legislation (see box below) will require business ownership details to be displayed in certain places
(c)	Geographical address & phone number, fax number and email (where you have these)	The test is that the consumer should be able to contact you quickly and efficiently. Online sellers – an email address is needed, an online form is not enough
(d)	If you are acting on behalf of another trader – their identity & geographical address	
(e)	If you have a different address for consumer complaints, this must be given	
(f)	Total price of the vehicle	This should include VAT and any other compulsory charges
(g)	Delivery charges	
(h)	<i>Monthly, or billing period, of open-ended contracts or subscriptions</i>	
(i)	<i>Additional costs of using a specific means of distance communication to make the contract.</i>	<i>eg. A premium rate phone number</i>
(j)	Arrangements for payment and delivery, and the time that you will take to deliver the vehicle	
(k)	Your complaint handling policy	If you have one
(l)	The conditions, time limits and procedure for exercising a right to cancel	The Regulations provide model instructions for cancellation which you can find in Appendix 3, where we have adapted them for vehicle sales

(m)	If you are requiring the consumer to return the vehicle after cancellation at their cost, you must tell them this and what this might be	See Appendix 3
(n)	<i>Information about asking for a service contract to start during the cancellation period</i>	<i>Unlikely to be applicable to vehicle sales contracts, unless extras/modifications are to be carried out before delivery to the consumer</i>
(o)	<i>You must inform consumer when there are no cancellation rights or where a consumer might lose their right to cancel</i>	<i>It will very rare that this will be relevant to your contracts – see “Cancellation Periods”</i>
(p)	A reminder that you under a legal duty to supply goods that are in conformity with the contract	For example, “We will supply goods in line with your normal consumer rights, if you have any concerns please contact us immediately.”
(q)	Details about any after-sales services or guarantees	Might be in other documentation/information that you provide/make available to the consumer
(r)	If you are a member of a code of conduct, how a consumer can obtain a copy of the code	For example, by including a weblink to the Code sponsor’s website
(s)	<i>The duration of the contract or how it can be terminated if indeterminate</i>	
(t)	<i>Minimum contract duration</i>	
(u)	Any requirement for a deposit or financial guarantee	Include any applicable conditions
(v)	<i>Functionality of digital content</i>	<i>Digital content is a separate product category, so this will not be relevant to your contracts to supply vehicles</i>
(w)	<i>Compatibility of digital content</i>	<i>Digital content is a separate product category, so this will not be relevant to your contracts to supply vehicles</i>
(x)	Details of any ADR scheme that you belong to	E.g. Motor Ombudsman or National Conciliation Service Online sellers must also provide a link to the European Online Dispute Resolution Platform whilst the UK remains a member of the EU
(y)	Model cancellation form	Example, in the prescribed format, below

Model Cancellation Form

To: [Add your full contact details here]

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods:

Ordered on [*/received on [*

Name of consumer(s)

Address of consumer (s)

Signature of consumer(s)

Date

[*] Delete as appropriate

Additional Information Requirements

Business Ownership

Company and business disclosure legislation requires you to display details of ownership (rather than simply your trading name) on your premises and certain business documentation. For more information see company & business names

Information on all business website

Irrespective of whether or not you sell through your website, all websites must comply with the Electronic Commerce (EC Directive) Regulations 2002, and provide the following information:

- Ownership of the business
- Geographic address
- Contact details, including email address
- Details of any code of practice that you subscribe to
- VAT registration number
- Prices of what you are selling should be clearly and unambiguously displayed

Distance contracts, which are concluded by an electronic means must ensure that items a, f, g, h, s & t are clearly and prominently brought to the consumer's attention before they place their order. In addition, if a button is used for the consumer to place their order, this must be labelled as 'buy now', 'pay now' or other words with a similar effect.

In the case of distance contracts, this information must be provided to the consumer in a way that is clear, comprehensible and appropriate to the means of distance communication. For off-premises contracts, consumers must be provided with this information in writing or, if they agree, some other durable medium, such as an email.

Appendix 3 – Model wording

Schedule 3, of the Regulations, provides model wording to enable you to communicate the required information to consumers regarding the cancellation process and their rights after cancellation. These words do not have to be followed, but it is essential that you provide the same information.

The example, below, is based upon the general wording in Schedule 3. Footnotes have been added to indicate areas where you may wish to add more specific statements to reflect your business needs, these should be read in conjunction with the main Guide notes.

Right to cancel

- a) You have a right to cancel this contract within 14 days without giving any reason
- b) The cancellation period will expire after 14 days from the day on which you acquire, or the person that you have asked to send the goods to acquires, physical possession of the goods
- c) You will have no right to cancel items that we have personalised for you or which have been made to your specification
- d) To exercise the right to cancel you must inform us (see our contact details) of your decision to cancel this contract by a clear statement (e.g. a letter sent by post, fax or email). You may use the model cancellation form [[link to model cancellation form](#)], but it is not obligatory
- e) To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired

Effects of cancellation

- a) If you cancel this contract, we will reimburse to you all payments received from you, including the costs of delivery (except for the supplementary costs arising if you chose a type of delivery other than the least expensive type of standard delivery offered by us)
- b) We may make a deduction from the reimbursement for loss in value of any goods supplied, if the loss is the result of unnecessary handling by you*
- c) We will make the reimbursement without undue delay, and not later than 14 days after the day you provide evidence that you have returned the goods, or (if earlier) 14 days after the day you provide evidence that you have returned the goods
- d) We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement

Returning the goods

- a) You shall send back the goods or hand them over to us without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired
- b) You will have to bear the cost of returning the goods**
- c) You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods*

* You may wish to add a statement regarding the maximum miles that you consider to represent a test drive and the costs that you will deduct from a refund to reflect excessive use within the cancellation period. See 'Refunding the consumer and what you can deduct from this' in the main Guide.

** You may wish to add more detail regarding the return of the vehicle, and any costs associated with this.



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