

THE CANCELLATION OF CONTRACTS MADE IN A CONSUMER'S HOME OR PLACE OF WORK ETC. REGULATIONS 2008

Existing Legislation

How many times have you been plagued by telephone selling?

Or how many times have you thought about using telephone selling to boost your sales?

Be aware of the Distance Selling Regulations (or to give them their full title, the Consumer Protection (Distance Selling) Regulations 2000). The 2000 Regulations give consumers a cooling off period within which to cancel contracts with suppliers of goods and services which were made otherwise than in a face to face meeting between the supplier and the consumer (e.g. over the telephone or online.)

New Legislation

The Government have introduced new legislation which will come into force on 1 October 2008 which will, basically speaking, extend the right to a cooling off period for the cancellation of a consumer contract to circumstances where the contract was made in or pursuant to a meeting between the supplier and the consumer which took place in the consumer's home or place of work or the home of another individual (e.g. doorstep selling.)

The new regulations are called the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulation 2008. They will apply to most contracts made in the circumstances set out above, however, there are a limited number of contracts which will be excluded from the ambit of the Regulations.

In circumstances where the Regulations apply, the suppliers must give written notice to the consumer of their right to cancel the contract within the cooling off period. the cooling-off period is a minimum of 7 calendar days starting with the day on which the consumer receives the notice of their right to cancel. If the contract between the supplier and the consumer is in writing then the notice must be set out in the contract and must provide particular information required by the Regulations. The consumer must also be provided with a detachable document which they may (but do not have to use) to cancel the contract within the cooling-off period. This document must be set out in the form prescribed by the Regulations.

What will happen if the Contract is cancelled within the cooling-off period?

If the contract is cancelled by the consumer within the cooling-off period then the supplier can only recover payment for any services supplied prior to the cancellation if the consumer gave their consent in writing to the supplier commencing work before the expiry of the cooling-off period and the contract is a “specified contract” under the Regulations. In cases where the consumer’s written consent is not obtained, the supplier will not be able to recover any costs incurred during the cooling-off period from the consumer.

If the contract relates to the supply of goods then the consumer will be under an obligation to take reasonable care of the goods but not to return them to the supplier.

Can a supplier afford to ignore the Regulations?

This rather depends on whether the supplier is willing to be fined up to £5,000.00 and to be unable to enforce the contract against the consumer. These are the potential sanctions if the supplier fails to provide a written “Notice of the Right to Cancel” or to provide the information required by the Regulations.

Conclusion

If you are a supplier who requires advice on the effect of the Regulations or wishes to have your contract terms reviewed and amended to include the provisions necessary to comply with the new requirements then please contact Darren Edwards on 01903 706971 or by email on de@bennett-griffin.co.uk

Alternatively, if you are a consumer who has been effected by a supplier’s failure to comply with the Regulations then please contact Charlotte Hammond on 01903 706914 or by email on ceh@bennett-griffin.co.uk