

Provision of Services Regulations 2009 (“POS Regulations”).

Electronic Commerce (EC Directive) Regulations (2002) (“E-Commerce Regulations”).

1. General

- 1.1 The POS Regulations and E-Commerce Regulations set out certain matters to be provided to customers. This note assumes that all customers are customers acting in the course of a business. Additional requirements apply to consumers who are not buying in the course of a business.
- 1.2 The POS Regulations apply to a “service” which is defined to mean “any self-employed economic activity provided for remuneration”, subject to some specific exemptions. FP does not fall within any of the exemptions. In addition, the BERR states that if a business is not exempt then it is included and goes on to list certain activities which the BERR considers do fall within the Regulations; these include fitting and maintenance of equipment, renting equipment, distributive trades and postal services. So, on balance, we must conclude that the Regulations apply.
- 1.3 Bear in mind that whenever a customer concludes a contract over the internet (eg through your website), you need to make sure that the customer can print off and store all the details of the contract, including the standard terms and conditions that apply.

1.3 The E-Commerce Regulations

The E-Commerce Regulations apply to any “service normally provided for remuneration, at a distance, by means of electronic equipment for the processing and storage of data, and at the individual request of a recipient of a service.” So, sales over the internet we are covered by the E-Commerce Regulations.

2. POS Regulations

2.1 Information to be provided.

The POS Regulations require that you provide the following information:-

- **Contact Details.** You must make your contact details available for complaints and information requests. These must include in particular:-
 - (a) postal address, fax number or email address;
 - (b) a telephone number; and
 - (c) registered office address.
- **Name.**
- **Legal Status and “form”.** Is a limited liability company registered in England and Wales, giving the registered number.
- **Geographic address** at which established.
- **Contact details** for rapid and direct communication, including where you can be contacted by electronic means, the relevant email addresses.

- If you are **registered in a trade or other similar public register**, the name of the register, your registration number or equivalent means of identification in that register.
- Details of any **authorisation scheme**. This is something that requires you (as provider of the service) to be authorised by or notify a competent authority in order to provide the service.
- Details of your **vat number**.
- Details of **regulated profession**. This is not relevant to you.
- The general **terms and conditions** used.
- The existence of contractual terms relating to the **law and courts** that govern the contract.
- The existence of any **after sales guarantee** not imposed by law. For example, in the standard terms of sale.
- The **price**.
- The **main features** of the service, if not already apparent from the context.
- **Compulsory professional liability insurance** if any is required.
- **If the price is not pre-determined**, then details of the price must be given or if an exact price cannot be given, then the means to calculate it must be given or a sufficiently detailed estimate.
- One of the regulations requires information to be given about **other activities undertaken which are directly linked to the service in question** and on the measures taken to avoid conflicts of interest.
- Information about any **codes of conduct** to which you are subject, the electronic address at which they are available as well as the language in which they are available.
- If you are subject to a **code of conduct, or a member of a trade association or professional body, which provides recourse to a non-judicial dispute resolution procedure**, then you must:-
 - inform the customer of that fact;
 - mention it in any information document which gives a detailed description of the service.
 - tell the customer how to obtain detailed information about that procedure.

2.2 When must the information be provided?

The information has to be provided:

- In a clear and unambiguous manner.
- In good time before the conclusion of the contract, or where there is no written contract, before the service is provided. Though the recipients of the service can also ask for the information after the service has been provided.

The Regulations provide that you will have complied with your obligations to provide the information if it is provided in any one of the following ways:-

- The information is easily accessible electronically by means of an address provided by you. So, you could notify customers that all this information is on your website. You could, for example, amend relevant documents, eg order form, quotes, product brochures and the terms and conditions to state that the information is available on your website, giving the website address. This is perhaps the easiest way to comply. You would then need to amend the website to include the information; and it would be best if all the information appeared in one place.
- You supply it on your own initiative. So, you could for example, amend the order form, quotes, brochures and the terms and conditions to incorporate the relevant information.
- The information is easily accessible at the place where the service is provided or where the contract concluded.
- The information appears in any document which describes the services. So, for example in product brochures or on the website.

2.3 Complaints

You must respond to complaints as quickly as possible and make your best efforts to find a satisfactory solution to complaints (the latter does not apply to complaints that are vexatious).

3. The E-Commerce Regulations

3.1 What information must be made available?

Many of the matters required to be made available by the E Commerce Regulations are the same as the POS Regulations; however, I list them all below for the sake of completeness:-

- **Name.**
- **Geographical address** at which established; eg registered office.
- **Details including e-mail address**, which make it possible for you to be contacted by rapid direct communication.
- **Trade or similar register.** If registered in a trade or similar register available to the public, details of the register and registration number or other means of identification in that register.
- **Authorisation scheme.** If the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority.
- **Regulated Profession.** This is not relevant here.
- **Vat number.**
- **Prices.** If prices are referred to any details given must be clear and unambiguous; in particular must state whether inclusive or exclusive of delivery and vat.
- **Commercial Communications.** This means any communication in any form designed to promote goods, services or image; there are some exceptions, but we probably need to take the view that this provision generally applies. The requirements are:-
 - That the communication needs to be clearly identifiable as such;
 - That it makes clear on whose behalf it is made.
 - Clearly identifies as such any promotional offer (including any discount premium or gift) and ensures that any conditions which must be met to qualify for it are easily accessible, clearly presented and unambiguous.
 - Clearly identifies as such any promotional competition or game and ensures that any conditions for participation are easily accessible, clearly presented and unambiguous.
 - Any unsolicited commercial communication sent by email is clearly and unambiguously identifiable as such as soon as it is received.

- **Contracts concluded by electronic means.** Unless you have agreed otherwise with the relevant customer, if a contract is concluded by electronic means, you must before the order is placed by the customer, provide to the customer in a clear, comprehensible and unambiguous manner the information set out in (a) to (d) below:-
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the contract will be filed by the service provider (i.e. you) and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract.

The above does not apply if the contract is concluded exclusively by email.

- Unless you have agreed otherwise with the customer you must also indicate any relevant **code of conduct** you subscribe to and give information as to how those codes can be consulted electronically. This does not apply if the contract is concluded exclusively by email.
- You must provide your **terms and conditions** in a manner that allows the customer to store and reproduce them.
- **Placing the Order** In relation to placing orders you must (unless agreed otherwise with the customer and unless the contract is concluded exclusively by email):-
 - (a) acknowledge receipt of the order without undue delay and by electronic means; and
 - (b) make available to the customer appropriate, effective and accessible technical means to allow the customer to correct input errors prior to placing the order.

Please note that if (b) above applies and you do not comply with (b) above (i.e. allowing the customer to correct input errors) then the customer can rescind the contract (unless you get a court order that the customer cannot do so).