

E-Commerce Regulations

Part 2 of 2

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In the previous edition of the Technology Column, we considered the implications of the Electronic Commerce (EC Directive) Regulations 2002 (the “E-Commerce Regulations”) in the context of the liability of internet service providers, particularly in the context of 3rd party material posted on their website.

Staying on the theme of the E-commerce Regulations, this month’s Technology Column takes a refresher look at some of the provisions of these regulations with regard to information requirements and contracting requirements.

E-Commerce Regulations 2002

Most businesses operating online are likely to fall within the scope of the regulations (although the regulations do expressly exclude their applicability to certain activities or issues, including: taxation; data protection; cartel laws; as well as certain betting, gaming and lottery activities).

The regulations are squarely aimed at service providers “established” in the UK, with the regulations defining how the term “established” is construed. The result of this, is that they prevent entities which would normally fall within the scope of the regulations, avoiding the application of them by locating their servers in the USA for example. Thus there are anti-avoidance provisions within the regulations themselves.

Although we considered the regulations mainly from the perspective of ISPs and hosters of third party materials in the previous Technology Column, the regulations also have the role of aiming to promote transparency and boosting confidence in e-commerce activities to both businesses and consumers, whilst also actively encouraging trade across the European Economic Area.

This month’s Technology Column therefore considers some of the transparency requirements promoted by the regulations, and consequently, our focus will mainly be on Regulations 6 – 11, which will be briefly considered below, by way of a quick checklist of some of the minimum requirements.

Regulation 6: General Information to be provided by a Person Providing an Information Society Service

This Regulation requires the following information to be provided in an “easily, directly and permanently accessible” manner:

- Name of the service provider;
- Geographic address at which the service provider is established;
- Details of the service provider (including its email address) to allow quick communication with the service provider;

- Trade register details and the service provider's registration number in respect of such publicly accessible register;
- Details of any relevant supervisory authority;
- Details relating to the regulated profession that the service provider belongs to; and
- VAT number.

The Regulation also states that pricing details must be expressed in a clear and unambiguous manner, and must state whether they are inclusive of tax and delivery costs.

Regulation 7: Commercial Communications

This Regulation deals with mandatory requirements with regard to "commercial communications" (which is a defined term under the Regulations, and in essence deals with promotional communications).

The Regulations state that any such communications must:

- Be clearly identified as commercial communications;
- Identify the person on whose behalf the commercial communication is made;
- Provide details of any promotional offer/game/competition, together with any conditions in respect of the promotion, in a clear, easily accessible and unambiguous manner.

Regulation 8: Unsolicited Commercial Communications

This Regulation is aimed at SPAM emails, and the Regulation states that any unsolicited commercial communication must be identified as this, as soon as it is received by the recipient.

Regulation 9: Information to be provided where Contracts are Concluded by Electronic Means

In terms of contracts which are to be concluded online (other than simply by an exchange of emails), the following are mandatory requirements in such business to consumer contracts (whilst in business to business contracts, the parties are able to agree different provisions), in terms of information which must be clearly presented prior to an order being placed by a customer:

- The different technical steps to conclude the contract;
- Whether or not the contract will be filed by the service provider and whether it will be accessible by the customer;
- The technical means for identifying and correcting input errors prior to the placing of the order (the term "order" in this context is defined by Regulation 12 as meaning a "contractual offer");
- The languages offered for the conclusion of the contract.

In addition, in the context of Regulation 9, the following additional requirements are also imposed:

- In business to consumer contracts: the service provider must provide details of relevant codes that it subscribes to, and how they may be accessed electronically;
- The service provider must allow the customer to be able to store and reproduce the terms and conditions applicable to the contract – usually this can be done simply through an option to print the terms and conditions or alternatively to save a copy electronically.

Regulation 11: Placing of the Order

Regulation 11 deals with orders placed through "technological" means (other than simply by an exchange of emails) by a recipient of the

service. The following are mandatory requirements in such business to consumer contracts (whilst in business to business contracts, the parties are able to agree different provisions), in that the service provider must:

- Acknowledge receipt of the order to the customer quickly and by electronic means – although Regulation 11 states that the acknowledgement can take the form of the provision of the service which has been paid for, where that service constitutes an “information society service” under the Regulations (in essence such a service being one which is provided to process or store data);
- Provide technical means for identifying and correcting input errors prior to the placing of the order (the term “order” in this context is also defined by Regulation 12 as meaning a “contractual offer”) – Regulation 15 states that if this requirement is not fulfilled, then a customer shall be entitled to rescind the contract.

Final Thoughts

The E-Commerce Regulations have been with us for some years now, and can sometimes appear a little daunting to the uninitiated, but hopefully the above will serve as a quick refresher/checklist of some of the minimum requirements which can be put in place with regard to both existing websites, as well as new online ventures. Not only does compliance align a business with the regulatory framework, but at the end of the day, it will most likely have the effect of ensuring that the right image is portrayed to prospective customers, through the transparency which the regulations seek to achieve.

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