



States of Jersey



A Guide for
Businesses on
The Distance Selling (Jersey) Law 2007

Contents

1	Introduction	1
2	What is the Distance Selling (Jersey) Law 2007?	3
3	How do I comply with the Law?	10
4	Other consumer protection legislation	30
5	Who enforces the Law?	31
6	Where to go for more information	32
7	Quick reference to subject headings	33

1. Introduction

- 1.1 Many people buy goods and services over the internet, by phone or by mail order. These are all examples of distance selling. An increasing range of goods and services are available to consumers¹ shopping in these ways². Businesses that normally sell by distance means and have systems in place for trading in this way (for example by having standard letters or emails that they send to consumers they deal with at a distance) need to comply with the Distance Selling (Jersey) Law 2007 that came into force in March 2008. An indicative list of selling methods to which the Law may apply is at paragraph 2.7
- 1.2 This guidance explains the Law and provides information on how you can comply.
- 1.3 Please note that this is only a general guide and you should not regard it as a statement of how the law applies in every situation. If you are unsure about how the Law applies to the circumstances of your particular business then you should consult the Law, a legal advisor or Trading Standards.

- 1 In this guide by consumers we mean anyone who buys goods and services using one of the methods to which the Law apply. This excludes anyone buying in the normal course of their business. An explanation of some of the other terms used in the Law and in this guide is at paragraph 1.4.
- 2 Please also see paragraph 2.10 for information on contracts to which the Law does not apply and paragraph 2.19 for information on contracts to which only part of the Law applies.

Explanation of some of the terms used in the Law and in this guidance

- 1.4 Below are explanations of some of the main terms in this guidance.

Business includes a trade or a profession.

Consumer means any person who, in buying something to which the Law applies, is acting for purposes that are outside their business.

Distance contracts means any contract concerning goods or services between a supplier and a consumer under a distance sales or

service provision scheme that makes exclusive use of distance communication up to and including the moment at which the contract is made.

Durable medium is not defined in the Law. Our view is that it means a form in which information can be retained and reproduced but cannot be edited, such as an email that can be printed or a letter, fax or brochure that can be kept for future reference. We do not consider that information on a website is durable as it can be changed at any time after the consumer has accessed it. Technological advances may change what we regard as durable in the future.

Financial service means any banking, credit, insurance, personal pension, investment or payment service.

Organised distance sales or service provision scheme is not defined in the Law. Each case must be considered on its merits. We take the view that where, for example, standard letters, emails or faxes are sent to potential customers who then order by returning them by post, email or fax then it is likely that such an arrangement falls within the definition.

Supplier means any person who is acting in a commercial or professional capacity.

Working days means all days other than Saturdays, Sundays and public holidays.

2. What is the Distance Selling (Jersey) Law 2007?

2.1 The Law follows the essential consumer protection standards within European Council Directive (97/7/EC)³ and for most goods and services provide additional rights to consumers buying at a distance to encourage confidence in this method of buying. The protection the Law offers is important because consumers cannot inspect goods or services before they buy when they shop at a distance. The Law came into force on 1st March 2008.

2.2 The purpose of the legislation is to:

- give consumers confidence to buy goods and services where there is no face to face contact with the seller, and in doing so helps safeguard the reputation of Jersey “as a place to do business”.
- ensure that all traders selling at a distance in the normal course of their business meet certain basic requirements.

2.3 The Law says that you must provide consumers with clear information so that they can make an informed choice about whether or not they wish to buy from you. In most cases you must also give consumers the right to a cancellation period.

3 The intention behind the Directive was the minimum harmonisation of the laws, regulations and administrative provisions of member states in respect of distance contracts. The Directive allows member states to introduce more stringent provisions into their domestic legislation in order to provide a higher level of consumer protection than that referred to in the Directive.

2.4 The information you give must include details about:

- your business
- the goods or services you are selling
- your payment arrangements
- your delivery arrangements, and
- consumers’ right to cancel their orders where appropriate. See paragraphs 3.22 to 3.36 under ‘Cancellation rights’.

This pre-contractual information and some additional information, outlined at paragraphs 3.1 and 3.10 must be confirmed in writing or another durable medium.

2.5 The text of the Law can be downloaded from www.jerseylaw.je

Where does the Law apply? (Jurisdiction)

2.6 One aim of the Directive is to ensure that consumers enjoy the same minimum level of protection no matter where a supplier is based in the EU. In recognition that this requirement did not extend to Jersey, the States of Jersey approved the Distance Selling (Jersey) Law 2007,

to give consumers this vital protection when “doing business with Jersey”.

When does the Law apply?

2.7 The Law applies to your business if you sell goods or services without face-to-face contact with your consumer using an organised distance sale or service provision scheme for instance via:

- the internet
- text messaging
- phone calls
- faxing
- interactive TV, or
- mail order – via catalogues, mail order advertising in newspapers or magazines.

For a fuller explanation of what we mean by organised distance sale or service provision scheme please see paragraph 1.4.

Why must I comply with the Law?

- 2.8 Compliance is a legal requirement. The consequences of not complying are outlined in Chapter 5 of this guide.
- 2.9 Businesses using standard terms in contracts with consumers must also have regard to the Supply of Goods and Services (Jersey) Law 2009 and any Regulations made under this law. A traders guide to this law is available to download at www.tradingstandards.gov.je and selecting *Business Advice*.

Contracts to which the Law does not apply (Article 3)

- 2.10 The Law does **not** apply to the following contracts.
- Contracts for the sale of land, that is the sale of freehold or leasehold interests. The Law does, however, apply to short term tenancy or leasehold agreements (rental agreements) provided the contract is between a business and a consumer and has been concluded by distance means.
 - Contracts for the construction of a building where the contract also

provides for a sale or other transfer of an interest in the land on which the building is constructed. However, the Law does apply where a consumer already has rights over the land and subsequently enters into a distance contract with a builder to construct a building on the land.

- Contracts relating to financial services to consumers.
- Conditional sales⁴ and contracts for hire purchase⁵. However contracts for hire services, for example the hire of electrical items or clothing, are covered by the Law.
- Products bought from vending machines (for example bars of chocolate or cans of drink) or automated commercial premises such as pictures taken by automated photo booths.
- Contracts concluded with a telecommunications operator in respect of a telephone call from a public pay phone.
- Products and services you sell to other businesses (these are business-to-business contracts).
- Auction sales, including online and interactive TV auctions. However,

some activities described as auctions may not necessarily result in sales at auction, so will not fall within this exemption. This will depend on exactly when and how the sale occurs. For further information see paragraph 2.15.

Does the Law apply to public bodies selling products and services by distance means?

2.11 If the public body is acting in a commercial or professional capacity and not exercising a statutory function, it is likely to be considered to be acting as a supplier for the purpose of the Law.

4 A conditional sale is where a consumer becomes bound to purchase the goods from the outset, but they do not own the goods until they have fulfilled all the conditions of the contract (usually paid all the instalments).

5 Hire Purchase is hiring of goods with an option for consumers to purchase at the end if they want to.

Would the Law apply where a consumer has examined goods in my shop and then orders the same goods from me via distance means?

2.12 This depends on the circumstances, but we consider the Law would not normally apply where a consumer examines goods at your premises and later orders those goods by distance means, even if the goods are slightly different, for example, ordered in a different colour from those actually examined.

If I generally do not sell by distance means does the Law apply to orders I sometimes get by email, phone or fax?

2.13 If you normally do business with consumers face-to-face, the Law is unlikely to apply to an occasional order that you take in these ways. However, if the contract is concluded by distance means under an 'organised distance sales or service provision scheme' (see paragraph 1.4 for what we consider this term means) then the Law is likely to apply. Such schemes are not defined in the Law and the facts in each case need to be considered but the Law may apply if you use standard

procedures for processing orders including standard correspondence sent out to customers which they then return.

Does the Law apply to the sale of gift vouchers?

2.14 Yes. In our view, the **provision** of gift vouchers is a contract for the supply of a service. The provision of vouchers that are in the form of electronic money (such as a card with a magnetic strip that may be accepted as a form of payment) may be considered the provision of a 'financial service' so in this format would not be caught.

Auctions and the Law

What is an auction?

2.15 Whether something is an auction depends on how the selling process occurs and whether the contract is concluded at an auction. An auction has no statutory definition but is generally held to be a manner of selling property by bids, usually to the highest bidder, by public

competition, and has a number of characteristics, including:

- a unique item or collection of items for sale
- each bid being an offer to buy
- the auction ending in a pre-arranged manner, such as on the fall of a hammer or the expiry of a deadline, after which bids are no longer accepted, and
- the winning bidder being bound by contract to pay for the items.

2.16 How a contract is concluded determines whether the method of sale is an auction and so falls outside the Law. Fixed price sales, including 'buy it now' type transactions on internet auction sites, **are** covered by the Law because such sales are not concluded by auction.

2.17 Sales by private individuals not acting for business purposes **are not** covered by the Law.

How does the Law apply to auction sites on the internet?

2.18 This depends on specific circumstances, for example:

- the contractual relationship between the website provider and the seller
- whether the seller is acting as a supplier within the meaning of the Law
- whether the seller is operating under an organised distance sales or service provision scheme, and
- whether the buyer is a consumer within the meaning of the Law.

Contracts to which only parts of the Law apply (Article 4)

2.19 The requirements to provide pre-contractual information, written and additional information, the right to cancel and the obligation on the supplier to carry out the contract within a maximum of 30 days do not apply to the following types of contract.

- Contracts for the supply of food, drinks or other goods for everyday consumption delivered to the consumer's home or workplace by

regular roundsmen, for example milkmen. In our view this exemption does **not** apply to home deliveries by supermarkets or other home delivery grocery businesses. However, in relation to the right to cancel, such businesses can often rely on some of the exceptions listed under paragraph 3.38.

- Contracts to provide accommodation, transport, catering or leisure services (for example hotel accommodation; plane, train, or concert tickets; car hire;⁶ or sporting events) where you agree to provide the service on a specific date or within a specific period. However, long-term residential hotel accommodation agreed under a distance contract may be considered to be rented accommodation and therefore subject to the Law.

6 The European Court of Justice has decided that car hire contracts constitute 'contracts for the provision of transport services' within the meaning of the Directive and the implementing Regulations (EasyCar v UK OJ 2005 C115/4, EU: Case C – 336/03 ECJ) and are therefore maybe partially exempted from the Law.

2.20 Specific requirements concerning the carrying out of the contract do not apply to:

- timeshare agreements, and
- tourism package (as defined in Article 4(4)).

When is a contract concluded?

2.21 A contract is concluded when the consumer becomes bound to buy something and the business becomes bound to supply it. The conclusion of a contract is determined by the facts in each case. It is in your interest to make clear to your consumers exactly when a binding agreement will be reached. For example, you need to explain if the contract becomes binding when the customer places the order or only when you confirm that you have accepted their offer to buy.

This is an example of a recommended term in a contract that deals with the conclusion of a contract, which may assist you.

Recommended Terms

Making a contract with us.

When you place an order with us, you are making an offer to buy goods. We will send you an e-mail to confirm that we have received your order.

Once we have checked the price and availability of the goods, we will e-mail you again to confirm that we accept your order, and that a contract has been made between us. We will not take payment from you until we have accepted your order.

In the unlikely event that the goods are no longer available, or that we have made a pricing mistake, we will advise you of this. You will not receive an e-mail confirming acceptance of your order, and there will be no contract between us.

Comments on these recommended terms.

If you accept orders at the wrong price or for goods which are not available, or that a contract has been formed, you cannot then cancel the order (unless the mistake would have been obvious to the buyer). You would have to supply the goods at the quoted price, or to compensate the buyer for the additional cost of buying equivalent goods elsewhere.

To minimise the risk to you, you can check price and availability before accepting an order. You will need to make it clear to the buyer when a contract is made. If you find a pricing error before the contract is made, you can invite the customer to buy at the correct price, but they do not have to take up your offer. Taking a payment is strong evidence that a contract has been formed, and you are therefore advised not to take payment until you are sure that the goods are available and the price is correct. The exact details of contract formation will vary between retailers and will depend on factors such as the technology available to you, and payment scheme rules.

3. How do I comply with the Law?

There is some information that you must give your consumers before they decide to buy from you (Article 5)

3.1 You must give your consumers certain information before they agree to buy from you. We refer to this as pre-contractual information which includes the following.

- (i) Your identity including sufficient detail for the consumer to be able to identify the business they are dealing with.
- (ii) A description of the main characteristics of the goods or services you are offering.
- (iii) The price of the goods or services you are offering, including all taxes.
- (iv) Details of any delivery costs.
- (v) Details of how payments can be made.
- (vi) If payment is required in advance, you must supply your full geographic address⁷.
- (vii) The arrangements for delivery or performance of the service, for example when consumers can expect delivery of the goods or the service to start. The contract should be performed within 30 days unless the

parties agree to a different period. There is more information on this at paragraph 3.16 under 'Carrying out the contract'.

- (viii) Information about your consumers' right to cancel, where applicable – see paragraphs 3.22 to 3.36 under 'Cancellation rights'.

7 This applies before goods or services are received by the consumer.

- (ix) If consumers have to use a premium-rate phone number, you must specify the cost of the call (including taxes) before any charges are incurred for the phone call. This may be the cost of the call per minute (including an indication of the likely cost of the call, including tax). You should also advise your consumers that the cost of the call may differ from that quoted, depending on their network provider.
- (x) For how long the price or the offer remains valid.
- (xi) The minimum duration of the contract where goods or services are to be provided permanently or recurrently and

(xii) That you will pay the cost of your consumers returning any products that you supply as substitutes because the goods or services originally ordered are not available.

3.2 The pre-contractual information can be given by any method appropriate to the form of distance communication you are using to agree the contract, providing it is clear and comprehensible. For example, this information can:

- be provided on a website if you sell goods or services over the internet.
- appear in a catalogue for goods or services sold by mail order, or
- be given over the phone if you are selling goods or services by phone.

In whichever way you give this information, you must make the purpose of your communication clear. Depending on how you have provided this information to the consumer, you may need to confirm it in writing together with some additional information which must be given in all cases. See paragraph 3.9 for more information.

Are there businesses that do not have to give this 'pre-contractual' information?

3.3 Yes. Please see the list at paragraph 2.19 under 'Contracts to which only part of the Law apply'.

Do I have to give all the pre-contractual information if I cold-call potential consumers over the phone?

3.4 Yes. You must give this information if you operate an organised distance sales or service provision scheme under which your consumer is entering a contract over the phone. If you sell by phone you must also state clearly, at the start of any conversation:

- the identity of your business or the business on whose behalf you are calling, and
- the reason for your call.

Do I have to give the pre-contractual information if I sell via a premium-rate phone service?

3.5 Yes. You should provide consumers with all the information referred to above, plus the cost of using the

phone service (including Tax), before you start charging. You should also advise consumers that the cost of the call may differ from that quoted, depending on their network provider.

What if I supply goods or services on an ongoing basis over a minimum term?

3.6 You must also tell consumers the minimum time that they will be bound to continue to buy from you, for example if you are supplying a mobile phone or satellite TV contract or a book club subscription.

What if I want to supply substitute goods if the ones I agreed to supply are not available?

3.7 You must:

- explain in the pre-contractual information you provide that this could happen, and
- make it clear that you will meet the cost of returning any substitute goods if the consumer does not want them.

This is an example of a recommended term in a contract that deals with the substituted goods, which may assist you.

Recommended Term

If the goods are not available, we may supply you with substitute goods. If you decide not to accept the substitute goods, you will not have to pay to return them to us.

Comments on the Recommended Term

You can supply substitute goods if you run out of the original goods ordered. However, if you intend to do this, you must state that the buyer need not accept them, and that you will then bear the cost of returning them. This term is not required if you do not supply substitute goods.

Written and additional information (Article 6)

3.8 Once consumers decide to buy you must provide them in writing with some of the information at paragraph 3.1 and some additional information (Article 6)

3.9 If you provide pre-contractual information in a form that does not allow it to be stored or reproduced

by the consumer, such as during a phone call or on a website, then you must confirm in writing, or in another durable medium⁸ available and accessible to the consumer, the information given at paragraph 3.1(i) to (viii).

In all cases you **must also give** your consumers the following information in a durable medium:

- when and how to exercise their rights under the Law to cancel including:
 - for goods – whether you require goods to be returned by the consumer and if so who will pay for their return. For more information on this see paragraph 3.55
 - for services – the consequence of agreeing to a service starting before the end of the usual seven working day cancellation period. See paragraph 3.22 under ‘Cancellation rights’
- details of any guarantees or after-sales services
- the geographic address of the business to which the consumer may direct any complaints. There is no definition of ‘geographic address’ in

the Law but our view is that this means a physical location, so a P O Box address is not sufficient, and

8 For examples see the reference to ‘durable medium’ at paragraph 1.4 under ‘Explanation of some of the terms used in the Law and this guide’.

- if a contract lasts more than a year or is open-ended, the contractual conditions for terminating it. This safeguards you as well as the consumer as both parties have the same information.
- 3.10 You do not have to send your consumers this durable information if you have already given it to them, for example in a catalogue or in another durable medium such as in an advertisement.

When must I supply the durable information?

3.11 Before the conclusion of the contract or in 'good time'. Information is said to be received in good time if consumers have sufficient time to act on it when they receive it, for example to enable them to exercise their right to cancel. The applicable cancellation periods will depend on when this information is provided. Please see paragraphs 3.22 and 3.23 for more information.

Do all businesses have to give the pre-contractual and the written additional information?

3.12 No, there are exceptions. Please see paragraph 2.19.

Can I provide this information by email?

3.13 Yes. This information must be in a 'durable medium', which includes email, post or fax. Please see paragraph 1.4 on what is meant by 'durable medium'.

Do I need to provide written and additional information for any free after-sales service and guarantees I provide with the goods?

3.14 Yes. If you offer free after-sales service and product guarantees that do not constitute service contracts in their own right, you have to provide details of these services or guarantees as part of the written or durable information. This information should include:

- the cost of using any premium rate phone lines to obtain the after-sales service advice, and
- whether repairs will be carried out on site or, if not, who will be responsible for the cost of transporting goods for repair.

Carrying out the contract (Article 17)

How long do I have to carry out the contract?

3.15 A contract must be carried out within the time limits agreed with the consumer as stated in your terms and conditions. If no period has been agreed, the statutory time limit is 30 days from the day after the day the consumer sends the order to you.

What if I am unable to deliver the goods or start a service in the time agreed or within the 30 days statutory limit?

3.16 If you cannot meet the 30 day deadline to deliver the goods or perform the service, you must inform the consumer before the expiry of the deadline. You and the consumer may agree a revised date for delivery of the goods or performance of the service. But the consumer does not have to agree to a revised date. If they do not agree to a revised date, the contract must be treated as if it had not been made, apart from any rights that the consumer has under it as the result of the non-performance.

3.17 If you are unable to meet the deadline and have not agreed an alternative delivery date with the consumer, you must refund all money paid in relation to the contract including the postage and packaging. Please see paragraph 3.49 for information on additional services that may have been provided under a different contract. The refund should be made as quickly as possible and within a maximum of 30 days.

3.18 Any credit agreement associated with the purchase is also automatically cancelled. For more information about refunds see paragraphs 3.46 to 3.54.

Can I charge the consumer the cost of insuring items that I send out?

3.19 No. These items belong to you until they have been accepted by your consumer. So you cannot charge your consumers for carrying risks that you should bear. See paragraph 3.36 for more information.

When providing services, when does a service begin?

3.20 This depends on the circumstances. Generally a service is said to have started once you start supplying the service you have promised. Many services require administrative or other preparatory work (such as setting up an account) before a supplier is able to provide the service promised. Often this work is underway when a contract is being agreed. In our view such work before the service starts does not mean that the service has begun.

Cancellation rights (Article 8)

What cancellation rights do consumers have?

- 3.21 The stage at which you provide your consumers with the required written information (see paragraph 3.9) will affect when the cancellation period ends.
- 3.22 Where the Law gives consumers the right to cancel an order, this right is unconditional and begins from the moment the contract is concluded. Unlike when buying from a shop, the first time that a consumer will typically have an opportunity to examine goods purchased by distance means is when they receive them. The Law gives consumers who buy by distance means more rights than consumers who shop in person. When a distance consumer cancels a contract to which the cancellation provisions apply they are entitled to a refund of any money they have paid in relation to the contract even if the goods are not defective in any way. Please also see paragraph 3.46 for further information.

The time limits for cancellation are as follows.

For goods:

- provided you give your consumer the required written information no later than the time the goods are delivered, their cancellation rights end seven working days after the day on which they received the goods
- if you do not give your consumer the required written information by the time the goods are delivered, but do so within three months from the day after the day the consumer receives the goods, the cancellation rights will end after seven working days from the day after the day on which the consumer received the required written information, or
- if you do not give the required written information at all (or give it after the three month period mentioned above), the consumer's cancellation rights will end after three months and seven working days from the day after the day the consumer received the goods.

For services:

- if you give your consumer the required written information **on or before the day the contract is concluded**, their cancellation rights will last for seven working days, counting from the day after the contract was concluded, or
- If the required written information is provided **after the contract is concluded but within three months** (beginning the day after the contract was concluded), cancellation rights will last for seven working days after the information is received.

Different rules apply to services where the consumer agrees that the service starts before the usual cancellation period expires. These rules are as follows.

- Where you have supplied the required durable information before **the service starts** and the consumer agrees **to the service starting before the end of the usual cancellation period**, their cancellation rights will end when performance of the service starts.
- if the **consumer agrees** that the service can start before the usual cancellation period ends, but you do not provide **the required written information until after the service has started** but provide it **in time** for it still to be useful, cancellation rights will last for seven working days after the day the consumer receives the information. But if you finish providing the service **within seven working days after the day the consumer receives the required durable information**, cancellation rights will end on the day of completion, or
- if you do not provide the required durable information at all, your consumer's right to cancel ends after three months and seven working days counting from the day after the day on which the contract was concluded. This applies whether or not the consumer agrees that you can start the service before the cancellation period ends.

Can I offer a longer cancellation period under my own contract terms?

3.23 Yes. If you do, you need only inform consumers about the longer period you are offering.

How do I make sure consumers do not cancel a service contract after I have started work?

3.24 Once you have started work or begun to provide a service the consumer is contractually bound to honour his part of the contract so long as you:

- had their agreement to start the service
- provided them with the required written information in advance of your starting, and
- told them that their cancellation rights will end as soon as you do start carrying out the contract.

This is an example of a recommended term in a contract that deals with cancellation and returns, which may assist you.

Recommended Terms

Cancellation and returns

This policy does not apply to the following goods, which are exempt from the right to cancel:

[List exempt items, if any]

You can cancel your contract at any time up to 7 working days after the day of delivery. To do this, Please e-mail us or write to us at...

You do not have to give any reason for cancellation. However, a brief explanation will help us to improve the service we offer to customers in the future.

If you can cancel, you must return the goods to us at your own expense. You must ensure that the goods are packaged adequately to protect against damage.

If you fail to return the goods, we will collect them, and we will charge you the direct cost of collection. If you fail to take reasonable care of the goods before they are returned to us, and this results in damage or deterioration, we will charge you for the reduction in value.

This cancellation policy does not affect your legal rights – for example, if goods are faulty or misdescribed.

Comments on the recommended terms

You must include information about the existence of the right to cancel, and how to exercise that right (unless the goods are exempt – see below). If you require the customer to return goods at their own expense, you must state this as a contract term. You must state that a returns policy or warranty does not affect the consumer’s legal rights.

Consumers are generally entitled to cancel contracts for goods bought over the internet, without giving any reason. To cancel, they simply have to notify you in writing. They must do this within 7 working days, commencing the day after they receive the goods. Saturdays, Sundays and public holidays are not ‘working’ days. You can specify a longer returns period if you prefer.

If the compulsory information is not provided before the contract is made,

or if it is not also provided in a durable form before or at the time of delivery, then the consumer may have an extended cooling-off period of up to 3 months and 7 working days.

On cancellation, you are required to refund all moneys paid, including outward postage charges, within 30 days.

Some types of goods are exempt from the right to cancel, as are items which are genuinely sold by auction. If you sell any exempt items, you could list these in your terms and conditions. You may also wish to highlight the exemption in the description of the goods, so that the customer does not mistakenly assume that they can cancel. Alternatively, you may choose to accept cancellation for all items, even if they are exempt. For more information about exemptions, contact Trading Standards.

What must my consumers do if they want to cancel?

3.25 They must tell you in writing, or in another durable medium, if they want to cancel. This includes letter, fax or email. A phone call is not enough unless you say in your terms and conditions that you will accept cancellations by phone.

From what date would the notice of cancellation become effective?

3.26 The effective date for cancellations under the Law is the date on which the consumer gives notice of cancellation to you. This ensures that the consumer can take advantage of the full cancellation period provided for in the Law.

What does 'give notice of cancellation' mean?

3.27 The Law says that a notice of cancellation will be properly given if the consumer gives notice in one of the following ways:

- by leaving a notice addressed to you at your last address known to the consumer, in which case notice is said to have been given on the day on which it was left at your address

- by posting the notice to you at the address last known to the consumer, in which case notice is said to have been given on the day it was posted, or
- by faxing or emailing the notice to you on the last fax number or email address known to the consumer, in which case notice is said to have been given on the day it was sent.

3.28 You may ask your consumers to keep some evidence of having given you the cancellation notice, such as a certificate of posting or confirmation of fax transmission, but you cannot insist on this.

How do the cancellation provisions apply to linked contracts for goods and services, for example a mobile phone and an associated airtime contract, or a modem and broadband service?

3.29 There are normally two contracts in such situations – one for goods (the mobile phone or modem, for example) and the other for a service (such as the airtime or internet connection).

3.30 In both cases the cancellation period starts when the contract is made. The time limits for cancellation of the goods and service contracts are explained at paragraph 3.22. With these types of contract it is possible to have cancellation periods running at different times and for the service contract to remain cancellable after the goods have been provided.

3.31 With service contracts, if you fail to give consumers the required written information before you start the service, or fail to obtain their consent to starting the service early, they will have a right to cancel their contract even though they may have started using the service.

3.32 Where a service contract is cancelled the Law requires you to refund all the money paid in relation to the contract. So if a consumer cancels an airtime or internet contract before the cancellation period has expired, you must refund all charges (including, for example, call charges) incurred under the contract.

How do the cancellation provisions apply where a consumer agrees to spend a minimum sum over a defined period to purchase a set number of goods offered at a discount?

3.33 It depends on the required written information you provide and the terms and conditions of the contract with the consumer. Consumers must be given cancellation rights when they agree to their initial commitment to buy goods from you. Thereafter, if the terms say that a new contract is entered into each time the consumer orders goods, then each of those contracts is cancellable. However, the consumer's right to cancel may apply only to that particular purchase rather than to the entire commitment to purchase in future.

Can a consumer cancel an order before they receive the goods or where goods are lost in transit?

3.34 Yes. Where the Law gives consumers rights to cancel, this right is unconditional. If consumers cancel before they have received the goods you must refund the total price of the goods, including any delivery charges. Consumers who have

cancelled under the Law may refuse to accept delivery of the goods. Refusal in such a situation cannot be treated as a breach of contract.

3.35 Where goods are lost in transit from you to the consumer you will need to either send new goods or offer the consumer a full refund, including delivery charges. See paragraph 3.20 for more information.

Instances where cancellation rights do not apply (Article 11)

Can consumers cancel an order in any circumstances?

3.36 No. The cancellation provisions do not apply to contracts referred to at paragraph 2.19. There are also statutory time limits for consumers to exercise their rights to cancel, as explained at paragraph 3.22.

3.37 Unless you have agreed that they can, your consumers cannot cancel if the order is for:

- services where you have had the consumer's agreement to start the service before the end of the usual cancellation period and you have provided the consumer with the

required written information before you start the service, including information that the cancellation rights will end as soon as you start the service

- goods or services where the price depends on fluctuations in the financial markets which cannot be controlled by the supplier
- the supply of goods made to the consumer's own specification such as custom-made blinds or curtains. But this exception does **not** apply to upgrade options such as choosing alloy wheels when buying a car; or opting for add-on memory or choosing a combination of standard-off-the-shelf components when ordering a PC, for example
- goods that by reason of their nature cannot be returned
- perishable goods like fresh foods or fresh cut flowers
- audio or video recordings or computer software that the customer has unsealed
- newspapers, periodicals or magazines, and
- gaming, betting and lottery services.

Do downloads of electronic books or music from a website, or the purchase of ring tones and screen savers for mobile phones fall within the cancellation exceptions referred to above?

3.38 We consider that these examples are likely to constitute services, rather than goods as the consumer does not receive physical goods. The right to cancel are therefore those that apply to services.

Do the exceptions at paragraph 3.38 referring to, for example, computer software apply generally to products that may be the subject of copyright, for example books or sheet music?

3.39 No. There is no general exception for copyright products and in our view the exception would not extend to other products that may lend themselves to being copied such as books or sheet music. But this does not stop you from specifying in your terms and conditions what you consider to be reasonable care in examining such goods. However, if the consumer has done no more than examine the goods as they would have in a shop and if that

requires opening the packaging and trying out the goods then they would not have breached their duty to take reasonable care of the goods. In a shop, books and sheet music are usually displayed unsealed and therefore opening such seals does not invalidate the right to cancel.

I sell items that may raise health and safety concerns if returned unsealed. How are such products treated under the Law?

3.40 The first question to consider is whether such items fall under the exceptions listed at paragraph 3.38, for example goods that by reason of their nature cannot be returned. The Law does not define this category any further but we consider this exception to apply only where returning the goods is a physical impossibility or where they cannot be restored in the same physical state as they were supplied. This exception may apply, for example, to items such as latex or nylon clothing which could become distorted once worn.

3.41 We are conscious of concerns about reselling items which may raise concerns about hygiene. However,

the Law does not link cancellation rights with a supplier's ability to resell items as new.

- 3.42 With items that fall outside the exceptions, cancellation rights will apply, but the consumer has a duty under the Law to take reasonable care of the goods throughout the cancellation period.
- 3.43 What constitutes reasonable care depends on a number of things. It may be reasonable for the supplier to stipulate what they consider to be reasonable care, such as not removing hygiene seals on garments or only trying out shoes indoors. But these stipulations cannot restrict a consumer's reasonable opportunity to inspect and assess the product. Consumers have the right to cancel even if they fail to take reasonable care of the goods; however the Law does give suppliers a right of action against consumers for breach of the statutory duty to take reasonable care.

What is a breach of statutory duty?

- 3.44 Under the Article 15(2) of Law, consumers are under a statutory duty throughout the period of cancellation to retain possession of the goods and take reasonable care of them.

Refunds (Article 12)

When do I have to refund a consumer's money if they cancel an order?

- 3.45 As soon as possible after the consumer cancels, and in any case within 30 days at the latest. You must refund the consumer's money even if you have not yet collected the goods or had them returned to you by the consumer. You cannot insist on the goods being received by you before you make a refund. See also paragraph 3.64.

Can I withhold a refund if a consumer fails to take reasonable care of the goods?

- 3.46 No. Other than for the exceptions at paragraph 3.38 the Law gives consumers an unconditional right to cancel a contract and legally oblige you to refund all sums due in relation

to the contract as soon as possible after the consumer cancels, and within a maximum of 30 days. The Law does, however, give suppliers a right of action against consumers for breach of the statutory duty to take reasonable care.

What specifically do I have to refund to the consumer if they cancel?

3.47 The Law requires you to refund any money paid by or on behalf of the consumer in relation to the contract to the person who made the payment. This means the full price of the goods, or deposit or prepayment made, **including the cost of delivery**. The essence of distance selling is that consumers buy from home and receive goods at home. In these circumstances, almost every case of home shopping will involve delivery of the goods ordered and so delivery forms an essential part of the contract.

3.48 If you provided additional services such as gift wrapping or express delivery that a consumer specifically requested, then you may withhold the additional charges incurred by the consumer for these services only if:

- the additional services were provided under a separate contract
- you had the consumer's agreement to start the additional services before the end of the cancellation period, and
- you provided the consumer with the required written information before you started the additional services, including information that the cancellation rights would end as soon as you started to carry out the additional services.

I sometimes provide gifts with the goods or services I sell. If a consumer cancels the contract where I have provided such gifts, am I entitled to recover them?

3.49 This depends on the terms of the contract. For example, where a gift was supplied with goods the consumer purchased then, so long as they expected to receive the gift when they placed an order, they may be under a contractual duty to return that gift on cancellation.

3.50 But you must make sure consumers have agreed to receive the gift by placing an order. Otherwise the

consumers can treat the gift as unsolicited and can keep it as though it were an unconditional gift.

I sell goods by accepting goods from the consumer in part exchange. In the event of a cancellation what happens to the part exchanged goods I have accepted as part of the contract?

3.51 You must return the part exchanged goods within **ten days** of the consumer cancelling. The part exchanged goods must be returned in as good a condition as when you received them. If you cannot do this, you must pay to the consumer a sum equal to the value you allowed for the goods.

What happens on cancellation to related credit agreements that a consumer has used to finance a purchase?

3.52 If a consumer has entered into a related credit agreement specifically to finance the purchase of the goods or services and if the loan is from you or from a lender with whom you have arrangements, then that loan agreement is automatically cancelled

when the consumer cancels the order. Any money paid to you by the consumer or by the lender on the consumer's behalf in relation to the agreement with you will need to be refunded to the person who made the payment.

3.53 Where a consumer uses a credit, debit or store card to buy the goods or service, the consumer's agreement with the card issuer is not cancelled. All that happens is that the money should be credited back to the consumer's account.

Return of goods following cancellation (Article 15)

Who pays for returning the goods if the consumer cancels an order?

3.54 If you want the consumer to return the goods and to pay for that return, you must make it clear in the contract and as part of the required written information – see paragraph 3.9. If the consumer then fails to return the goods, or sends them at your expense, you can charge them the **direct cost** to you of the return, even if you have already refunded the consumer's money. You are not

allowed to make any further charges, such as a restocking charge or an administration charge.

3.55 If you did not include these details in the required written information then you cannot charge anything. See paragraph 3.9. You can never require consumers to pay the cost of returning **substitute** goods – see paragraph 3.1 for more information.

3.56 If the goods are faulty or do not comply with the contract, you will have to pay for their return whatever the circumstances.

Can I insist that consumers who cancel an order within the cancellation period return the goods as new or in their original packaging?

3.57 No. Consumers are under a duty to take reasonable care of the goods while in their possession as discussed in paragraph 3.44. The Law allows consumers to examine goods they have ordered as they would in a shop. If that requires opening the packaging and trying the goods then they have not breached their duty to take reasonable care of the goods. In these circumstances you cannot insist that consumers return

the goods as new or in their original packaging. You may ask consumers to return goods **with** the original packaging, but you cannot insist on this. In the case of goods such as earrings that have hygiene seals, you may require consumers to exercise reasonable care by not removing the seals when examining them.

How can I resell the goods as new if they have been opened and tested by the customer?

3.58 The Law does not provide any general exception to the right to cancel on this point. Unless one of the specific exceptions referred to above at paragraph 3.39 applies, consumers can exercise their right to cancel a contract and return the goods to you. The Law does not link cancellation rights with a supplier's ability to resell items as new.

Whose responsibility is it to look after the goods if an order is cancelled?

3.59 Consumers have a statutory duty to take reasonable care of the goods while in their possession. Where a consumer cancels an order under the

Law they have a duty to return the goods to you or make them available for collection. The Law does not require the consumer to return the goods but if the contract says the consumer must return them and they do not, you can charge them for the direct cost of recovery.

How do I ensure that the consumer must return the goods to me following the cancellation of an order?

- 3.60 By saying in your terms and conditions that consumers must return the goods to you if they cancel a contract under the Law. If you do not say this in the contract and you want to collect the goods from the consumer, you should make this request in writing or in another durable medium available and accessible to the consumer.
- 3.61 When a consumer returns the goods to you in accordance with the contract, the consumer must take reasonable care to ensure that you receive the goods and that the goods are not damaged in transit. If the consumer does not exercise reasonable care and the goods are damaged, you may have a claim

against them for breach of this statutory duty.

What if a consumer fails to return the goods to me despite this being required by the contract?

- 3.62 Then you may have a claim against the consumer for breach of their statutory duty.

Can I include a term in the contract that states that the consumer must return goods within a certain number of days in order to obtain a refund?

- 3.63 No. Under the Law such terms have no legal effect. The Law contains provisions aimed at ensuring that businesses do not use contractual terms that deny consumers their rights under the Law or impose obligations on consumers that are inconsistent with them. For example, a term making cancellation conditional on the return of goods would be inconsistent with consumers' rights to receive a refund – see paragraph 3.46. However, you may request that goods are returned within a certain period or as soon as practicable as long as it does not link the receipt of the goods to the giving of a refund.

I sell self-assembly products. Can I say that if a consumer cancels the contract for the provision of such goods then they should be returned unassembled?

- 3.64 No. If disassembly is not possible, because for example, doing so will damage the item, then it can be returned or collected as it is. Consumers are under a duty to take reasonable care of the goods while in their possession. If you consider that by assembling the product the consumer has not taken reasonable care of it, then you may have a claim against the consumer for breach of their statutory duty.
- 3.65 You may also advise consumers what you consider to be reasonable care, but you need to be careful that any restrictions you place on consumers are not so stringent that they are prevented from properly examining the goods. See paragraph 3.44.

After the deadline for cancellation has passed, a consumer claims that goods are faulty or services do not conform to the contract. Do I have to refund the consumer's money?

- 3.66 In general the Law does not affect the consumer's rights under other

legislation, for example under the Supply of Goods and Services (Jersey) Law 2009. If the goods or services do not conform to the contract and consumers exercise their rights to reject them, you will have to refund their money.

- 3.67 If goods develop a fault within the first six months of being sold, the law presumes that the fault was there when you sold the goods – unless you can show otherwise. You should not charge return costs for goods that have been rejected because they are faulty.
- 3.68 If you offer a replacement for faulty goods that have been returned by the consumer, the cancellation rights under the Law will run for seven working days from the day after the day the consumer receives the replacement goods, provided you have previously complied with the information giving provisions in the Law – see paragraph 3.9 for more information'.

4. Other consumer protection legislation

Protection for consumers paying by payment card (Article 19)

Protection from payment card fraud

- 3.69 The Law says that if fraudulent use is made of a consumer's payment card when buying goods or services the consumer is entitled to cancel the payment and be reimbursed by the card issuer.
- 3.70 The Law extends this protection in relation to distance contracts so that card issuers cannot charge the consumer for the first £50 of loss arising from fraudulent use of the card.

Inertia selling (Article 20)

- 3.71 Unsolicited goods may be treated as a gift and consumers have a right to retain or dispose of them as they see fit.

I want to send out some goods as a marketing exercise, is that allowed?

- 3.72 Yes, provided you do not ask for payment. Asking for payment for any unsolicited goods or services is a offence under the Law.

What do I do if things go wrong?

- 4.1 It is important to know what rights consumers have and try to deal with complaints as quickly and as helpfully as possible. As well as reading this guidance, you will also need to know about other legislation such as:

- **Supply of Goods and Services (Jersey) Law 2009**

This requires that traders must sell goods as they are described and that the goods are of satisfactory quality. It also sets out remedies available to consumers if the goods do not meet these requirements.

This requires a supplier of a service acting in the course of a business to carry out that service with reasonable care and skill and, unless agreed otherwise, within a reasonable time and for a reasonable charge.

5. Who enforces the Law?

- **The Consumer Safety (Jersey) Law 2006**

Among other things this covers product safety.

- 4.2 You can get information about these and other laws from the addresses listed under 'Where to go for more information'.

- 5.1 Trading Standards are responsible for the operation of this Law. In the event of non-compliance a report would be submitted to the Attorney General who may then apply for a Royal Court injunction (including an interim injunction), or other order, against any person who appears to the Attorney General to be responsible for a breach of this Law (Article 23).

Where to go for more information

Background information, legislation and advice

A copy of the law can be viewed at www.jerseylaw.je

You can also contact Trading Standards for advice on 448160.

Trading Standards

9-13 Central Market
St. Helier
JE2 4WL

e-mail: tradingstandards@gov.je

www.tradingstandards.gov.je

Quick reference to subject headings

Chapter	Page		
1 Introduction	1	What is an auction?	6
Explanation of some of the terms used in the Law and in this guidance	1	How does the Law apply to auction sites on the internet?	7
		Contracts to which only part of the Law applies (Article 4)	7
		When is a contract concluded?	8
2 What is the Law?	3		
Where does the Law apply? (Jurisdiction)	3		
When does the Law apply?	4		
Why must I comply with the Law?	4		
Contracts to which the Law does not apply (Article 3)	4		
Does the Law apply to public bodies selling products and services by distance means?	5		
Would the Law apply where a consumer has examined goods in my shop and then orders the same goods from me via distance means?	6		
If I generally do not sell by distance means does the Law apply to orders I sometimes get by email, phone or fax?	6		
Does the Law apply to the sale of gift vouchers?	6		
Auctions and the Law	6		
		3 How do I comply with the Law?	10
		There is some information that you must give your consumers before they decide to buy from you (Article 5)	10
		Are there businesses that do not have to give this 'pre-contractual' information?	11
		Do I have to give all the pre-contractual information if I cold-call potential consumers over the phone?	11
		Do I have to give the pre-contractual information if I sell via a premium-rate phone service?	11
		What if I supply goods or services on an ongoing basis over a minimum term?	12

What if I want to supply substitute goods if the ones I agreed to supply are not available?	12	Cancellation rights (Article 8)	16
Written and additional information (Article 6)	12	What cancellation rights do consumers have?	16
When must I supply the durable information?	14	Can I offer a longer cancellation period under my own contract terms?	18
Do all businesses have to give the pre-contractual and the written additional information?	14	How do I make sure consumers do not cancel a service contract after I have started work?	18
Can I provide this information by email?	14	What must my consumers do if they want to cancel?	20
Do I need to provide written and additional information for any free after-sales service and guarantees I provide with the goods?	14	From what date would the notice of cancellation become effective?	20
Carrying out the contract (Article 7)	14	What does 'give notice of cancellation' mean?	20
How long do I have to carry out the contract?	14	How do the cancellation provisions apply to linked contracts for goods and services, for example a mobile phone and an associated airtime contract, or a modem and broadband service?	20
What if I am unable to deliver the goods or start a service in the time agreed or within the 30 days statutory limit?	15	How do the cancellation provisions apply where a consumer agrees to spend a minimum sum over a defined period to purchase a set number of goods offered at a discount?	21
Can I charge the consumer the cost of insuring items that I send out?	15	Can a consumer cancel an order before they receive the goods or where goods are lost in transit?	21
When providing services, when does a service begin?	15		

Instances where cancellation rights do not apply (Article 11)	22	I sometimes provide gifts with the goods or services I sell. If a consumer cancels the contract where I have provided such gifts, am I entitled to recover them?	25
Can consumers cancel an order in any circumstances?	22	I sell goods by accepting goods from the consumer in part exchange. In the event of a cancellation what happens to the part exchanged goods I have accepted as part of the contract?	26
Do downloads of electronic books or music from a website, or the purchase of ring tones and screen savers for mobile phones fall within the cancellation exceptions referred to above?	23	What happens on cancellation to related credit agreements that a consumer has used to finance a purchase?	26
Do the exceptions at paragraph 3.38 referring to, for example, computer software apply generally to products that may be the subject of copyright, for example books or sheet music?	23	Return of goods following cancellation (Article 15)	26
I sell items that may raise health and safety concerns if returned unsealed. How are such products treated under the Law?	23	Who pays for returning the goods if the consumer cancels an order?	26
What is a breach of statutory duty?	24	Can I insist that consumers who cancel an order within the cancellation period return the goods as new or in their original packaging?	27
Refunds (Article 12)	24	How can I resell the goods as new if they have been opened and tested by the customer?	27
When do I have to refund a consumer's money if they cancel an order?	24	Whose responsibility is it to look after the goods if an order is cancelled?	27
Can I withhold a refund if a consumer fails to take reasonable care of the goods?	24		
What specifically do I have to refund to the consumer if they cancel?	25		

How do I ensure that the consumer must return the goods to me following the cancellation of an order? 28

What if a consumer fails to return the goods to me despite this being required by the contract? 28

Can I include a term in the contract that states that the consumer must return goods within a certain number of days in order to obtain a refund? 28

I sell self-assembly products. Can I say that if a consumer cancels the contract for the provision of such goods then they should be returned unassembled? 29

After the deadline for cancellation has passed, a consumer claims that goods are faulty or services do not conform to the contract. Do I have to refund the consumer's money? 29

Protection for consumers paying by payment card (Article 19) 30

Protection from payment card fraud 30

Inertia selling 30

I want to send out some goods as a marketing exercise, is that allowed? 30

4 Other consumer protection legislation

What do I do if things go wrong? 30

5 Who enforces the Law? 31



Trading Standards Service
9-13 Central Market
St. Helier
Jersey
JE2 4WL

T. +44(0)1534 448160
F. +44(0)1534 448175
www.tradingstandards.gov.je