

Importantly, the UK has also implemented all major EU legislation.



Legal Framework and Regulation

Framework

The UK has three separate legal systems: English law, Northern Irish law, and Scottish Law. The former two are based on common law principles, whereas Scottish law has a mixture of both common and civil law elements. Importantly, the UK has also implemented all major EU legislation.

Key Legislation

The corresponding table (*Table B*) contains some key legislation to consider before you begin trading in the UK. Please note that this below is not an exhaustive list, and that professional advice should be sought where applicable.

Table B

Topic Area	Relevant Regulation	Purpose	Effects
1. Privacy and Data Protection	a) Data Protection Act 1998 (passed to implement the European Data Protection Directive 95/46/EC) Privacy and data protection legislation in the United Kingdom is regulated and enforced by the Information Commissioner's Office, which also produces guidance and best practice guidelines for compliance with the legislation.	To protect the rights and privacy of individuals, and to ensure that information is not processed or used by businesses, organisations, or the government without an individual's knowledge and consent wherever possible	All who are responsible for using data have to follow strict rules, called 'data protection principles', which involve putting appropriate security measures in place to protect things like customers' private information, order details, credit card numbers and banking information, both during transmission and in storage. There is stronger legal protection for more sensitive information, such as ethnic background, the information of minors, political opinions, religious beliefs, health, or criminal records. Time frames apply to the retention of data, as do strict provisions as to customer consent.
	b) Privacy and Electronic Communications (EC Directive) Regulations 2003 (passed to implement Directive 2002/58/EC)	Sets out the consent requirements applicable to electronic marketing and the rules with regard to the use of "cookies".	In order for a business to send a consumer direct marketing, the consumer must have specifically granted permission via an 'opt-in' agreement unless there is a previous relationship between the parties. Consumers cannot simply be added to a marketing database and given an 'opt out' option. These regulations also make the transmission of an automated recorded telephone message for direct marketing purposes unlawful without the prior consent of the subscriber. In some circumstances, merchants can capture, exchange, and store aggregated data on customers' use and preferences in respect of the merchant's ecommerce services (i.e. place "Cookies") without the customer's prior permission, but merchants should provide information relating to their use of cookies on their websites.

Topic Area	Relevant Regulation	Purpose	Effects
2. Consumer Protection	a) Unfair Contract Terms Act 1977 (UCTA) and the Unfair Terms in Consumer Contracts Regulations 1999 (the latter of which was passed to implement the EU (then EEC) Unfair Consumer Contract Terms Directive 93/13/EEC)	To regulate the reasonableness of consumer contracts	Prohibits the exclusion of certain statutory warranties in relation to the provision of goods and services to consumers, and restricts the operation and legality of some contract terms (in particular exclusions and limitations of liability).
	c) Consumer Protection (Distance Selling) Regulations 2000 (incorporated European Directive 97/7/EC into UK law) From June 2014 this regulation was repealed and replaced	Protected consumer rights when buying products from a distance, for example, online, by mail order, or over the phone.	A merchant must provide certain key information when selling from a distance. This area was quite complex, so some additional information is given in the table below. From June 2014, this area of the law was simplified by the Consumer Rights Directive (see below)
	d) The Consumer Protection from Unfair Trading Regulations 2008 (passed to implement the EU Unfair Commercial Practices Directive 2005/29/EC)	Introduced new rules about consumer protection and the responsibility of businesses to trade fairly.	There is now a general prohibition against unfair commercial practices and specific prohibitions against misleading and aggressive practices. Additionally, these regulations instated a blacklist of 31 practices that will be deemed unfair in all circumstances.
	e) Sale of Goods Act 1979	To protect consumers in their purchase of goods.	Applies to all businesses that supply goods, including online and distance sellers. The regulations require, amongst other things, that the goods are as described, are fit for purpose, and are of satisfactory quality. The merchant will ensure that a clear, easy to use, and effective procedure is in place to enable a customer to notify the merchant of a fault. The Act also provides for remedies a merchant must provide where these conditions are not met.
	f) The Consumer Rights (Payment Surcharges) Regulations 2012	To increase price transparency and make payment surcharges cost reflective.	Surcharges beyond costs attributable to the use of debit or credit cards are unlawful, as are the use of premium rate hotlines, unless these have specifically been agreed to as a service.
3. Digital Signatures and Authentication	a) The Electronic Communications Act 2000	To confirm the legal status of electronic signatures.	An electronic signature will be considered equivalent to a handwritten signature for evidential purposes and for the purposes of establishing the authenticity of the communication of data
	b) Electronic Signatures Regulations 2002 (implemented European Electronic Signature Directive 1999/93/EC)	As above	To date this law has largely remained without any practical effect.
4. Intellectual Property	a) Copyright, Designs and Patents Act 1988 b) Trade Marks Act 1994 c) The Design Right (Proceedings before Comptroller) Rules 1989 (and Amendment Rules 1992) d) Patents Act 1977 e) The Patents Rules 2007 f) Patents (Fees) Rules 2007	The protection of intellectual property rights, i.e. copyright, trademarks, design rights and patents. There are also more specialised varieties of sui generis exclusive rights	Merchants must respect the intellectual property rights of creators and providers of copyrighted materials, information and other intellectual works. The UK Intellectual Property Office provides guidance in interpreting the law in this complex area.

Online and Distance Selling For Businesses

As noted above, following the Consumer Protection (Distance Selling) Regulations 2000 and associated legislation were vital steps when it came to distance trading. As of June 2014, these regulations were repealed and replaced by the Consumer Rights Directive (see below). The table immediately below sets out the myriad rules that a distance trader had to comply with both before and after an order was placed and the additional rules that had to be followed if a trader planned to sell online or overseas. Most of these rules still apply under the current, simplified legislation. Deviations are highlighted in the 'Consumer Rights Directive' section below.

Before Order Placement	After Order Placement	Online Selling (Additional)	Overseas Selling (Additional)
Sufficient, proscribed detail for the consumer to be able to identify the business they are dealing with (i.e. business name, address, and contact details)	Information in writing after an order is placed but before delivery. The merchant should acknowledge an order immediately via an automated process wherever possible, and will supply the customer with all order details.	Information on which languages are available to your customers, and the implications of this regarding queries, complaints, etc.	A VAT charge to customers in the EU if applicable.
A fair/adequate description of goods/services	Order cancellation and returns as dictated by law. A trader must provide detail relating to process, time frames, the 'cooling off' period, and costs, including who takes payment responsibility for returning goods.	Information on the steps involved for the customer when they place an order	If your customer is outside the EU, you must fill out a customs declaration when you ship the goods.
Price of goods/services, including all taxes/delivery costs	An address for complaints (and a merchant must not make any charge for complaint handling)	A quick acknowledgment of the receipt of an online order	You must also keep 'proof of export' if you sell to customers outside the EU, which compasses a variety of information concerning the transaction
Information relating to contract lengths, accessibility, filing and termination	Details of any after-sales services or guarantees offered	A means of allowing customers to correct errors in their orders	
Consumer payment methods	Information relating to contract lengths and termination	A means for the customer to access/store/produce a copy of your terms and conditions	
Delivery costs, arrangements, and time frames	All order information (including delivery/shipping) to be retained by the merchant for a period of not less than one year from the transaction date, and supplied to the customer on request during that period.	Your email address	
Information relating to a customer's right to cancel	Each order to be allocated a unique identification number or code to enable tracking.	If your business is registered for VAT, your VAT number.	

Please note that the above is **not** an exhaustive list.

The merchant should also disclose and make easily available before, during and after the transaction its terms and conditions for electronic transactions.

Even with the high level of consumer protection on the statute books in the UK, additional discretionary service localisation measures should be embraced. Thus, aspiring e-merchants should strive to provide UK consumers with the level of protection they have become accustomed to, even if this means the implementation of a measure that does not directly fall within the law's remit.

The Consumer Rights Directive

The Consumer Rights Directive (CRD), which implemented EU Directive 2011/83/EU, simplified the law relating to consumer protection in certain key areas, and aimed to bolster the safeguards previously in place. This Directive repealed and replaced two previous Directives, including Directive 97/7/EC (described above), which governed consumer protection in online and distance selling. The CRD also covers door-to-door and off-premises sales. The aim is to standardise consumer rights across all 27 Member States.

The CRD came into force on the 13th June 2014, and the UK applied the national law, the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations, implementing the Directive from that date. This new law has had a big impact on UK retailers and it's important to take note of the considerable changes that have taken place as a merchant may have to redraft contracts, retrain staff and rewrite terms and conditions. A few important changes are highlighted below:

- **Extension of the 'cooling-off' period:** The 'cooling-off' period, or, the window during which consumers are able to cancel a contract and receive a full refund has changed from a minimum of 7 working days after receipt of items to 14 calendar days. Consumers are able to return goods in this period for any reason. The failure of a business to inform a consumer of their right to withdraw from the contract can now end in this cooling-off period extending to 12 months from the end of the initial 14 day period.
- **Model withdrawal forms:** Businesses also need to provide consumers with and make available on their website a model withdrawal form to aid consumers in cancelling contracts.
- **Service cancellation:** In contrast to previous legislation, under the CRD a consumer's right to cancel services can no longer be entirely excluded. However, a business can charge a proportionate sum for services used up to cancellation.
- **Changes to order confirmation buttons:** Buttons which, when clicked, will give rise to a contract or a payment obligation on the part of the consumer must be clearly and unambiguously labelled as doing so – a button simply reading 'confirm' or 'place order' is not enough. The regulation suggests that the button should now read 'order with obligation to pay', or something equally unequivocal.
- **Box ticking:** Having pre-ticked boxes for optional additional services/payments as part of the sales process is no longer lawful under the CRD – consumers will now actively have to tick the box themselves.
- **Rules relating to refunds:** Under the CRD, merchants now have to issue refunds within 14 days of receiving the returned goods. With the exception of special delivery methods, this includes the cost of delivery. Importantly, a merchant's withholding a refund is permissible until the merchant has received the goods back from the consumer, or otherwise been provided with proof that the goods have been dispatched. A business may also not need to provide a full refund if the goods in question have been unnecessarily handled/used whilst in the possession of the consumer.

Digital content, which is distinct from goods and services, with the CRD has its own specific rules regarding cancellations, as well as new rules governing the availability of pre-contractual information to consumers.