

Cars and other vehicles sold by distance means

Consultation response

May 2005

Information on the internet

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CONTENTS

<i>Chapter</i>		<i>Page</i>
1	Introduction	1
2	Summary of responses to consultation questions	3
<i>Annexe</i>		
A	consultation respondents	10

1 INTRODUCTION

- 1.1 This report is a summary of the consultation on the draft guidance, *Cars and other vehicles sold by distance means – Guidance on compliance* (OFT 689con) which was published in February 2004. The final version *Cars and other vehicles sold by distance means – Guidance on compliance* (OFT 689) was published on 31 May 2005. This document can be downloaded from our website at www.offt.gov.uk
- 1.2 The guidance sets out the requirements of the Consumer Protection (Distance Selling) Regulations 2000 (DSRs) in relation to vehicle sales. It explains the responsibilities of suppliers and applies to both goods and services connected with cars which they sell by distance means to consumers. The guidance is also intended to encourage them to review their procedures, brochures, websites and terms and conditions to ensure compliance.
- the OFT received 21 responses to the consultation, mostly from vehicle suppliers or their trade organisations, and from trading standards services. Respondents are listed in Annexe A.
- 1.3 We would like to thank all those who contributed.

The new guidance

- 1.4 The points raised in the consultation responses have been taken into consideration and a number of these suggestions and amendments are reflected in the final version.
- 1.5 Some respondents indicated disagreement with the DSRs themselves. While it is the duty of OFT to enforce the DSRs, we do not have responsibility for the framing of the legislation. This falls to the Department of Trade and Industry (DTI).
- 1.6 A number of respondents took issue with the OFT's interpretation of the legislation. Some felt that the guidance placed more emphasis on consumers' rights than on sellers' rights. The DSRs are a consumer protection measure. The guidance accurately reflects the obligations and rights suppliers have under the DSRs and it does not introduce additional

obligations for suppliers. Ultimately it would be for a court to decide in individual cases.

- 1.7 Some respondents requested a level of detailed advice that is beyond the scope of general guidance.
- 1.8 Several respondents expressed concern that the OFT had issued its consultation on these guidelines and might go on to issue its guidance while the DTI was consulting on amendments to the DSRs. The DTI has now amended the DSRs to make them clearer and more workable for businesses and consumers. Our guidance reflects these changes. The changes to the DSRs concern services and specifically services that begin promptly after a contract is formed and thus have little direct relevance to car sales by distance means.
- 1.9 Publication of revised OFT guidance on the DSRs is planned for early 2006. The existing general guidance on distance selling can be found on the DTI website www.dti.gov.uk.
- 1.10 Also, we have included some information about the requirements of the Electronic Commerce (EC Directive) Regulations 2002, the Sale and Supply of Goods to Consumers Regulations 2002 and the Distance Marketing and Financial Services Regulations 2004 as well as other relevant consumer protection legislation.
- 1.11 We have inserted additional questions and answers in the relevant chapters to amplify how we interpret the DSRs and we have included discussion of additional typical scenarios. We have included a glossary section, a list of details of relevant acronyms and details of relevant websites for reference.
- 1.12 Respondents agreed that the guidance would help dispel some common misunderstandings about the DSRs and that as a result transactions concluded by distance means are more likely to be compliant

2 SUMMARY OF RESPONSES TO CONSULTATION QUESTIONS

- 2.1 The consultation paper asked five general and seven specific questions. Responses are summarised as follows:

General questions

Is the draft guidance sufficiently clear?

- 2.2 Respondents generally considered the guidance sufficiently clear and comprehensive. The question and answer format was considered user-friendly.

Does the draft guidance have any significant omissions?

- 2.3 **A glossary of terms, an explanation of acronyms and links to appropriate websites were requested.** The guidance was amended to include a glossary, acronyms and links to websites that traders will find helpful.
- 2.4 **One respondent who had commented on the consultation for the *IT Consumer Contracts made at a Distance* guidance, considered that the use of examples of terms in that guidance was helpful and suggested that that OFT should follow that format for other guidance.** The IT guidance included examples of how unfair standard terms had been improved as a result of action under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). However that reflects the complexity of the requirements of the UTCCRs. We do not see a need to follow this format for the *Cars* guidance because it relates entirely to the DSRs compliance which is significantly more straightforward.
- 2.5 **Several respondents referred to the consultation undertaken by the DTI proposing changes to the existing DSRs and suggested that any amendments be incorporated into the guidance.** Amendments to the DSRs by the DPEI have been incorporated into the guidance.
- 2.6 **One respondent noted the absence of comment about the status of manufacturers' warranties.** We have remedied that by including a specific Q & A on the subject.

2.7 **Several respondents suggested that reference should be made to the European Court Judgement relating to car hire (C-336/03 easy car (UK) Ltd & OFT).** The guidance is primarily intended for car sales and as such car hire is beyond its remit.

Is the guidance in need of amplification/clarification and, if so, in what respect?

2.8 Amplification or clarification was requested, in respect of the following:

- **the enforcement powers and the serious consequences of not complying with the DSRs.** Paragraph 2.7 'Enforcement' has been expanded to underline that if traders do not comply with the DSRs, they risk being taken to court.
- **the 'definition of a distance sale'.** This is largely covered by Section 3.2 of the guidance. However, we have included further information on the point that for the DSRs to apply, 'no face to face' contact between the supplier and the consumer can take place during the contract forming process.
- **one respondent felt that the guidance does not make sufficiently clear the extent to which the DSRs apply to ancillary negotiations.** This issue relates to cars sold on consumer credit and has been overtaken by the introduction of the Financial Services (Distance Marketing) Regulations 2004 (FSDMRs). Pre-contractual information relating to regulated consumer credit agreements now fall within the FSDMRs rather than the DSRs.
- **the exemption for goods where the price is dependent on 'fluctuations in the financial market'.** An additional Q & A has been inserted into the section on cancellation rights to explain how the DSRs apply to cars supplied from overseas where the sterling price depends on exchange rate variations.
- **the application of the DSRs to advertising referred to in paragraph 3.3 of the draft guidance in case it implied that all advertising or all sales by advertising were caught by the DSRs.** Paragraph 3.3 is intended to

show that in each of the methods of sale described, the DSRs will apply if you conclude contracts for the sale of cars to consumers without face to face contact. In addition a Q & A now clarifies that the DSRs do not apply to advertising in isolation, although traders will need to comply with regulations on misleading advertising.

- **potential Trade Descriptions Act and Consumer Protection Act offences and where guidance to these can be found.** An additional Q & A ('What advertising requirements are there on businesses') has been included to show that all advertisements must comply with the provisions contained within advertising codes governing broadcast and non-broadcast media.
- **the DSR Regulation 7 prior information requirements for prices to include all taxes - the circumstances under which import duty must be included in the price** A new Q & A has been included in the guidance which sets out clearly what the 'price of the vehicle including all taxes' means and the implication for traders when importing cars from the EC.
- **the point at which a contract is concluded for the seven day cancellation period to apply, especially for sales concluded over the telephone.** 'Cancellation Rights' Paragraph 3.7 has been expanded to provide greater clarity and reminds traders of the Regulation 8 written information requirement. Additional information is also given under paragraph 3.8 to explain the extended cancellation period of three months and seven working days if the Regulation 8 information is not provided by traders. Another Q & A on the conclusion of a distance contract for sales concluded over the telephone has been added. This clarifies the specific information to be provided over the telephone and what information must be given to consumers about their right to cancel.
- **the requirement for consumers to take 'reasonable care' of the vehicle when exercising their right to cancel, especially when the vehicle has been test driven.** Additional information was added to the Q & As, on the issue of reasonable care and whether suppliers could suggest an acceptable mileage limit. While any excess mileage travel will not

nullify a consumer's statutory right to cancel, the supplier could take a dispute about reasonable care to court.

- **any requirement in terms and conditions that a consumer should return the vehicle when they cancel.** Additional wording to 3.12 now states that a term may require the consumers to return the vehicle to the supplier. However, the supplier cannot make cancellation conditional on the consumer's compliance with such a term.
- **part exchange allowances - Regulation 18(3) specifies that if there is no amount agreed in the cancelled contract for these then the amount to be repaid shall be such sum as would have been 'reasonable'.** In most contracts the part exchange sum to be repaid will be determined on an individual basis according to the terms of the contract. However, additional information has now been incorporated into the guidance to clarify that where no part exchange sum was agreed in the contract the amount to be repaid must be a reasonable sum.
- **the paragraph entitled 'Performance' about delivery dates (Regulation 19).** This paragraph has been simplified in line with the respondent's suggestion, to aid clarity.

Are there any parts of the guidance that are not needed?

- 2.9 **Respondents considered that all parts of the guidance are useful. Although one respondent stated that the guidance may be too restrictive and stifle the market.** The guidance is an interpretation of existing DSRs and does not introduce additional obligations for suppliers.

Are there any points in the guidance with which you disagree and, if so, in what respect?

- The main areas where there was disagreement with our interpretation of the DSRs were:
- **On the issue of HP and credit sales where it was argued that the application of the DSRs to these sales is an untested area of law.** The consultation document was written prior to the FSDMRs coming into

force. A Q & A has now been inserted to clarify that vehicles subject to HP and conditional sale agreements, fall within the definition of financial services for the purposes of the DSRs and are therefore excepted. They are subject to the parallel information giving and cancellation regime contained in the FSDMRs.

- **OFT's interpretation of the law relating to the cancellation of personalised vehicles and car number plate registration. Issue was taken with the OFT regarding vehicle registration and whether a registered vehicle can be sold as new.** The OFT's view is consistent with that taken by the DTI and the DVLA. The use of personalised number plates does not indicate that the vehicle has been personalised since the law relating to the registration of cars provides that the registration number is registered to the car and not the consumer's identity.
- **With the consumers' rights to return a vehicle and incur no charge except for damage to the vehicle by not taking 'reasonable care'.** The DSRs provide a cooling off period during which the consumer has an unconditional right to cancel. Paragraphs 3.7 and 3.8 have been amended to clarify the time period involved for cancellation. When a consumer cancels an order, the effect is to treat the order as if it had never been made. A Q & A has been inserted which explains that a trader can put a term in his contract requiring consumers to return the car at their own expense, but the supplier must not make the right to cancel conditional upon the return of the car.

Specific questions on the guidance (Part II):

Chapter 3 of the guidance is intended to give readers a brief introduction to the DSRs, without having to refer to the full text of the legislation. Do you think it meets this aim?

- 2.10 It was generally felt that the organisation of Chapters 3 and 4 are clear and provide a good overview to the DSRs. One respondent thought it should be clearly stated that business purchases are excluded from the DSRs. The guidance was amended to include this suggestion and now states that the DSRs do not apply to business to business contracts.

The guidance deals separately with suppliers who sell directly to consumers and with sourcing and agency services. Is the organisation/structure of Chapters 3 and 4 of the guidance clear and comprehensive?

- 2.11 Respondents were very positive about the coverage given to the issues of sourcing cars from abroad. It was felt there is enough detail on agency services.
- 2.12 The overall structure was considered logical, although one respondent said that it would be helpful if the sections were clearer and indexed. The guidance was formatted to help make the individual sections and corresponding Q & A's clearer. An index has been included.

Is the question and answer format useful? How could this be changed to be more accessible?

- 2.13 The question and answer format was thought to be useful. It was felt that it helps break up a lengthy document. Several respondents felt that more cross referencing would be helpful. One said that the question and answers are useful but section summaries would also help businesses check their compliance. Additional cross references were included to improve the clarity of the guidance.

Are there any other questions that should be included?

- 2.14 One respondent suggested clarifying what happens when an agent sources from abroad on behalf of a consumer and the supplier doesn't comply with the DSRs. An additional Q & A has been inserted within the section on sourcing arrangements to specifically address this question.

Does the guidance cover all the business models you are aware of?

- 2.15 The guidance was welcomed as a comprehensive and useful guide to the DSRs and consultees felt that it covered most business models.

Is there enough on agency services?

- 2.16 **Respondents were satisfied that there is sufficient on agency services, but felt that this was a difficult area to explain and requested more cross referencing.** Reference to sourcing arrangements under the DSRs in paragraph 2.4 is now cross referenced to chapter 4 which deals extensively with agency and sourcing arrangements.

Are there any further comments you wish to make?

- 2.17 **One respondent suggested that it may be useful to have a couple of decision trees showing the consumer's rights to cancel and implications for the agent.** However, we doubted that the trees could cover all scenarios and that their inclusion could provide an ambiguous blueprint for suppliers – who might see them as a substitute for a detailed reading of the guidance.
- 2.18 **The guidance was welcomed as a source for clarifying past confusion over the DSRs. Although one respondent thought that consumers could dip into the questions and answers and take an answer out of context. It was thought that more cross referencing would help.** Additional cross referencing has been included.

A CONSULTATION RESPONDENTS

BMW Dealer Council

Bristol Trading Standards Department

British Car Auctions Ltd

British Vehicle Rental and Leasing Association

Department of Trade and Industry

Finance and Leasing Association

Hertfordshire Trading Standards Department

International Car Distribution Programme

Local Authority Coordinators of Regulatory Services (LACORS)

Newspaper Society

North Yorkshire Trading Standards Department

Retail Motor Industry Federation

South East Trading Standards Authorities (SETSA)

The Advertising Association

The Society of Motor Manufacturers and Traders

The Trader Media Group (Autotrader)

Trading Standards Institute

Trading Standards Northern Ireland