

E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directives

Akhileshwar Pathak

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INDIAN INSTITUTE OF MANAGEMENT
AHMEDABAD-380 015
INDIA

E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directives

Akhileshwar Pathak

Professor

Indian Institute of Management Ahmedabad

e-mail: akhil@iimahd.ernet.in

E-retailing has exponentially grown in the past decade. Alongside, consumer grievances have also started surfacing. The Consumer Protection Bill, 2015 addresses this by giving the right to the consumer to cancel a consumer contract within 30 days. This is called 'cooling-off'. The provision applies to a sale contract as well as a contract of service. The provision, in its current form, is skeletal, only declaring the right. The right needs to be detailed for it to be functional and effective. The European countries have had laws for more than a decade on 'cooling-off', putting into force the European Union directives on consumer rights. Exploring the European Union directives, the paper explores the basis and principles for 'cooling-off' and develops a draft chapter on 'Distance Contract' for inclusion in the bill. The directives also require the seller to give certain kinds of information and take the responsibility for the safe delivery of the goods to the consumer. The draft chapter develops provisions on these additional themes.

The draft chapter 'Distance Contracts' is in Annexure to the paper.

The internet and mobile telephony is rapidly changing the business practices of retailing goods and services and the experiences of the consumers. The introduction of electronic medium in retailing has been represented by terms like online sales, e-commerce, e-sales and e-retail. E-retailing in India, with a modest start just a decade back, is an industry valued at 17 billion dollar.¹ The sales of e-retailers grew from \$0.7 billion in 2012 to \$7 billion in 2015 and expected to cross \$12 billion in 2016, adding nearly 30 million new customers.² From a humble start with selling books, e-retailing now covers a wide array of goods and services. The goods include electronic gadgets, consumer durables, clothing, furniture and fashion and accessories.³ The range of services being sold include banking, insurance, mobile telephony, transportation and entertainment. The electronic medium has also brought in a new kind of a product, digital content in an intangible form. This includes e-book, music, video and software.

There is a diversity of business practices in e-retailing. The company running the website could be the seller. A company could also run a website only as a platform for the buyer and seller to transact. 'Cash on Delivery' is an innovation of the Indian e-retailers.⁴ While there are three 'billion dollar e-commerce companies' dominating the market⁵, most manufacturing companies and service providers are also reaching the consumers directly through their e-stores. And all this seems only to be the beginning. E-retailing is expected to have an exponential growth and expand to an industry size of 100 billion dollars in the next five years.⁶ It's reach is not confined to the metro cities. Most of the online transactions already arise from tier 2 and tier 3

¹ Indian eCommerce industry set to cross \$100-billion mark in value over the next 5 years: ASSOCHAM- PwC study. Accessed on Sep 28, 2015 through <http://www.dqindia.com/indian-e-commerce-industry-set-to-cross-100-billion-mark-in-value-over-the-next-5-years-assochem-pwc-study/>

² Bisen, Ankur. India's e-tailers need to learn retail in detail to make dollar dreams real. Accessed on Oct 1, 2015 through <http://www.firstpost.com/business/indias-e-tailers-need-to-learn-retail-in-detail-to-make-dollar-dreams-real-2451406.html>

³ Shrivastava, Manu and Ramalingegowda, Chaitanya. Major Milestones in the Indian e-commerce ecosystem that have led to multi-billion dollar investments. Accessed on Sep 28, 2015 through <http://yourstory.com/2014/08/indian-e-commerce-ecosystem/>

⁴ For a survey of e-retailing practices see, Mathen, Nidhi, and Abhishek. Online Promotions: Exploring the Emerging Opportunity in Indian Market, IIM Ahmedabad, Working Paper Series W.P. No. 2014-01-09, January 2014.

⁵ Ghosh, Indrashi. Which are the next big players in India's e-commerce industry. Accessed on Sep 28, 2015 through <http://yourstory.com/2015/02/next-big-players-india-ecommerce/>

⁶ Indian eCommerce industry set to cross \$100-billion mark in value over the next 5 years: ASSOCHAM- PwC study. Accessed on Sep 28, 2015 through <http://www.dqindia.com/indian-e-commerce-industry-set-to-cross-100-billion-mark-in-value-over-the-next-5-years-assochem-pwc-study/>

towns. With mobile phone emerging as a means for making online transactions, the consumer base will expand in tier 4 towns and rural areas.⁷

E-retailing and consumers

E-retailing has obvious advantages for the consumer which is propelling this exponential growth. However, it also has intrinsic disadvantages for the consumer in that the consumer only deals with a computer or a mobile phone screen. In buying goods or services from a retail store, the consumer will visit a store and get information on the product and its performance. The customer will see, touch and feel the product. He will take a demonstration of the product. Only when satisfied, he will decide to buy the product. The shop will test the product before the customer and pack it for him. And then, the customer will pay for it with one hand, so to say, and take the goods with the other. Despite all the attention, things can still go wrong for the consumer. The chances of this happening multiply many times over in e-retailing.

In e-retailing, the consumer is only interacting with a computer or a mobile phone screen. There are a range of prevalent e-retailing malpractices. One, the e-retailer is fictitious and appropriates the money of the customer. Two, the e-retailer misrepresents the goods and services and indulges in half-truths to allure the buyer to do a transaction. The customer has no means of exploring the representations further. Three, the contracted goods do not get delivered or the consumer receives old goods, fake goods or inferior quality goods. The buyer can reach no one other than an e-mail address or a customer care number, with no help in sight. Even when the buyer has received goods which are otherwise fine, the seller is less than willing to help the buyer with a post-purchase defect in the goods. In this rapidly developing e-retailing experience, a buyer of smartphones is delivered a bar of soap and a brick.⁸ Another buyer of iPhones is delivered wooden sticks.⁹ These are shocking and startling stories which get media attention. Beneath, the consumer grievances multiply and simmer. These manifest on the webpage of the e-retailer and other social media sites.¹⁰ It is alleged that the e-retailers only put up the goods reviews and feedback from the customers on their websites, discarding the unfavourable ones.¹¹ The consumer grievances with the smaller e-retailers may be worse and

⁷ Digital India initiative to boost e-commerce across country: AMI. Accessed on Sep 28, 2015 through <http://www.firstpost.com/business/digital-india-initiative-to-boost-e-commerce-across-country-ami-2444220.html>

⁸ Bose, Adrija. The big Snapdeal screw up: Man orders smartphone, gets bar of soap instead. Accessed on Sep 28, 2015 through <http://www.firstpost.com/living/the-big-snapdeal-screw-up-man-orders-smartphone-gets-bar-of-soap-instead-1779633.html>

⁹ Sharma, Ravi. Man orders iPhones, Snapdeal delivers pieces of wood. Accessed on Sep 28, 2015 through <http://timesofindia.indiatimes.com/tech/tech-news/Man-orders-iPhones-Snapdeal-delivers-pieces-of-wood/articleshow/45492851.cms>

¹⁰ Snapdeal: What are some bad experiences people have had with Indian e-commerce sites? Accessed on Sep 28, 2015 through <https://www.quora.com/Snapdeal/>

¹¹ Ibid.

numerous. Thus, alongside the growth of e-retailing, malpractices and consumer grievances are also rapidly accumulating.

The rapidly expanding field requires regulation for both, protection of the consumer and a healthy and sustained growth of e-retailing itself. Consumer rights and a level and fair playing field for the businesses are the two sides of the same coin. The Central Government is addressing this in the re-enactment of the consumer protection law, the Consumer Protection Bill, 2015. The Consumer Affairs minister, thus, described the problem of the consumers:¹²

First, they are allured by misleading advertisements. Subsequently, when they buy an item online, either they don't get it in time or the product they get is sub-standard. There is no relief after you buy an item.

Law, ideas and strategies: The European Union and the UK

While we are getting ready to regulate e-retailing, the developed economies have had longer experience in regulating e-retailing. In law making, it is common, and efficient, to learn from the experiences in other jurisdictions. The government too is keen to draw from global practices.¹³ The most systematic and organised expression of the law comes from the European Union. The European Union is a common market and mandated to develop common practices among the member states to facilitate and integrate trade and commerce across the Union. This ranges from consumer rights to trade practices. However, what the European Union develops are the directives, which are statement of principles and directions, binding on the member states. The member states have to give effect to the directives as a domestic law. The directives find final shape and use in the form of domestic law. We will take the law in the UK as reference. The current prevailing law in the UK is the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (The Regulation). The UK has the European Communities Act 1972, under which, the government is authorised to make regulations to give effect to the European Union directives. The regulation is an instrument made by the executive. Before exploring the Regulation, let us note some points on the nature of law-society relationship.

Law is associated with many ideas and has several facets. In this study, we use and highlight that law is both, legal ideas and strategies.¹⁴ Law comprises of legal ideas.

¹² Jaitley, Paswan bat for stricter regulation on e-commerce. Accessed on Sep 28, 2015 through <http://timesofindia.indiatimes.com/tech/tech-news/Jaitley-Paswan-bat-for-stricter-regulation-on-e-commerce/articleshow/47477659.cms>

¹³ Consumer Protection Amendment Bill likely in this Parliament session: Ram Vilas Paswan. Accessed on Sep 28, 2015 through <http://www.dnaindia.com/india/report-consumer-protection-amendment-bill-likely-in-this-parliament-session-ram-vilas-paswan-2069207>

¹⁴ Pathak, Akhileshwar (2002), Law, Strategies, Ideologies: Legislating Forests in Colonial India, Oxford University Press, New Delhi.

While the legislators are the authors of the law, they do not invent the legal ideas. Legal ideas arise in practices, in relation to and in opposition of, other ideas in society. In this play of ideas in society, some ideas become dominant. These ideas get picked up by the legislators, and are refined and given as the law. Once enacted, the ideas become the ruling legal idea, backed by the state. Of course, around the idea, now sanctioned as the law, further play of ideas continues.

While law is about legal ideas, for governance, merely stating the legal ideas is not adequate. The other facet of law is functional, instrumental and strategic, calculated to produce certain specific effects. Law has to provide specific and detailed directions to the subjects to be meaningful and effective. The details of the law too come from practices. Following Foucault, we put it that in practices, parties are engaged in strategies and counter-strategies to out flank each other.¹⁵ The play leads to the development and deployment of strategies. Legislators pick up these strategies from practices, refine and adapt it, and give it as the law. Once put in use, the governed come up with strategies to get around these functional imperatives. In response, the state gets back with its counter-strategies to put things in place. The play of strategies and counter-strategies and the development of the law continue. Thus seen, law is a dossier of the strategies fashioned in the field. While the details of the law are to be derived from the legal ideas, at times, the strategies may well stretch the ideas and give rise to new legal ideas. Through these discourses, legal ideas and the functional aspects of law are continually shaped and re-shaped.

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 contains legal ideas and details of deploying them which have developed over a period of 25 years. The legal ideas are generalised concepts. These need to be conceptually appraised and one should be open to receive them. The details are specific to the context. These do not have to be adopted in their entirety. One can pick and adapt to one's context. The basis for the legal principles is that the buyer seller are at a distance and do not get to be in physical proximity to conclude the contract. We will call this distance contract. Compared to a face-to-face transaction, this puts the buyer at a disadvantage. The buyer contracts with limited information, supplied by the seller and does not get to examine the goods before contracting. Law needs to step in to maintain parity with a face-to-face transaction. There cannot be disagreement with this. The legal ideas to maintain parity are the followings. One, require the trader to mandatorily give certain information. Two, make the information a part of the contract. Three, give the freedom to the consumer to cancel the contract within a short window of time. Four, require the seller to make safe delivery of the goods to the buyer. We will appraise the principles and derive the details from them. We will also appraise the provisions on e-retailing in the Consumer Protection Bill, 2015. In the light of the discussion, we will develop draft provisions for introduction in the bill. We first take the right of the consumer to cancel the contract. This is popularly called cooling-off.

Cooling- off: General Principles

¹⁵ Foucault, Michel (1980), *Knowledge/power: Selected Interviews and Other Writings, 1972-1977*, edited by Gordon, Colin, Harvester Press.

The Regulation is governing e-retailer and consumer in the UK but the legal principles and even the details of the law were developed before e-retail was born! The electronic medium only provided a new means of communication between the parties who were at a distance. Mail order was the first form where the buyer and seller were at a distance and made a contract through post. Mail order started as early as 1855 in the United Kingdom.¹⁶ In a mail order, a seller would widely disseminate its product catalogue to the public. A customer could request for a product which would get delivered through the mail. The money could have been paid in advance or paid at the time of the delivery. In the UK, Pryce-Jones set up the first modern mail order in 1861 selling flannel. By the end of 1870s, he had 40,000 customers and the number grew to 100,000 a few years later.¹⁷ A famous retail store in Paris had started selling with a mail-catalogue as early as 1865. Thereafter, this form of distance selling had grown.¹⁸ In the USA, mail order started earlier and flourished. By 1884, the catalogue of Orvis, a prominent company, contained 240 pages with thousands of items.¹⁹ Expansion of post office and the railway network created the context for the mail order business to reach the rural areas. Thereafter, the business continued to grow. By the mid-1970s, the mail order share was 5% of the total retail sales in the UK. Seven out of ten households were exposed to the catalogues of one of the five big mail order companies in any year.²⁰

In the 1980s, in Europe, other means of communications further expanded distance contracts. Print medium came to take different forms including addressed letter, unaddressed letter and newspaper advertisements. Telephone became another means of communication, leading to tele-marketing. Sellers advertised their products on the radio and television, asking the customers to write or call to form a contract. Thus, numerous means of communication came to be deployed for distance contracting. The European Union, as a common market, was mandated to have uniform practices for the benefit of the nation states as well as the consumers. By the late 1980s, the concerns with distance selling had become prominent and the European Union took note of it. By then, the member states had come to notice the problem and put regulations in place. The European Union, looking at the problem and the law being developed by the member states, came up with a draft directive.²¹

¹⁶ Coopy, Richard; O'Connell, Sean; and Porter, Dilwyn, (2005) Mail Order Retailing in Britain: A Business and Social History, Oxford University Press, London: p14.

¹⁷ Coopy, Richard; O'Connell, Sean; and Porter, Dilwyn, (2005): P15.

¹⁸ Commission of the European Communities (1992), Proposal for a Council directive on the protection of Consumers in respect of contracts negotiated at a distance (distance selling). Hereafter referred as 'EU(1992)'.

¹⁹ Cherry, Robin, Catalog: The Illustrated History of Mail Order Shopping Princeton Architectural Press, 2008. Also see, A Brief History of Mail Order Catalogs. Accessed on Sep 28, 2015 through <http://www.imagineinc-usa.com/articles/historyofmailorde.html>.

²⁰ Coopy, Richard; O'Connell, Sean; and Porter, Dilwyn, (2005): p1.

²¹ EU (1992).

The draft recounted the long history of distance contracting through mail order and noted that since the beginning, the companies gave the right to the buyer to cancel the order after receiving the goods. It noted:

Since the famous mail-order catalogue Bon-Marche was first published in 1865, certain traders have allowed the consumer the right to cancel the contract when he receives the goods. ...

The companies engaged in mail order gave the option to their customers as a means to assure them of their products and gain customers. The practice had come to be around since distance selling itself. This was known as 'money back guarantee.' The practice was widespread in mail-order selling, but not always in the other sectors using the new technologies like the television and telephone.²² In the 1980s, the nation states took note of the emergent problem of the consumers in distance contracts.²³ A remedy for the disadvantage of the consumer in distance selling was already there in practices, in the right of the consumer to cancel the contract. Denmark introduced legislation on distance selling in 1987. This included a seven day 'cooling-off' period, within which the buyer could return the goods and get his money back. Luxembourg introduced legislation which gave a 15 day cooling-off period. By the time the European Union came to prepare the draft directives, all the 15 member states had a 'cooling-off' period in distance selling, 7 by law and 9 by voluntary compliance. The idea got readily picked up as a protection for the consumer in distance selling. The principle got included in the final directive, passed by the European Parliament in 1997.²⁴ The UK adopted it in the Consumer Protection (Distance Selling) Regulations 2000 and has continued since in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

The Consumer Protection Bill, 2015 accepts introduction of this right for the consumer. It makes the following an unfair trade practice of the trader:

(H) after selling such goods and rendering of such services, refuses to take back or withdraw the goods or withdraw or discontinue the service and refuses to refund the consideration thereof, if paid, within a period of thirty days after the receipt of goods or availing of services if it is so stipulated and requested by the consumer;

It does, not, however, provide further details. To work out the details, we will derive from the principle and compare, learn, borrow and adapt from the details in the Regulation.

Cooling-off- Sale contract

²² EU (1992).

²³ Barratt, Patricia (1993), The EC distance selling Directive, International Company and Commercial Law Review, 1993, 4(8), 304-307.

²⁴ European Union (1997), Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. Here after EU(1997).

The right of the consumer to cancel a contract has different implications and details for a sale contract and a service contract. The Regulation has introduced a further category of a contract for sale of digital content in an intangible form. It has its own specificity and is treated as a separate category. Thus, we will explore cancelling a contract under the three different heads. We first take a sale contract.

The term used in the Regulation for the right of the consumer is 'cancel the contract'. A popular term for the right, is 'cooling-off'. The European Union documents use it.²⁵ Another popular description is the buyer will return the goods and get his money back. The bill expresses the right in this language. A precise expression for this right, in contract law, is termination for convenience. The term is widely used in the general conditions of contract. The term distinguishes it from a termination for breach where the party in breach will have to pay damages. In a termination for convenience, at the point of termination of the contract, the parties are discharged from further duties and responsibilities and performance of the contract. Neither party is liable for damages to the other. The parties put themselves in a situation they would have been if no contract had been made. To do this, both the parties restore the benefit drawn from the contract to the other. In a sale contract, the buyer would return the goods to the seller and the seller the money. As it is the buyer who wants to cancel the contract, for no fault of the seller, the buyer will bear the cost of returning the goods to the seller. This should be done soon after terminating the contract. Similarly, the seller must refund the money within a reasonable time of the buyer cancelling the contract.

The buyer must return the goods to the seller in as good a condition as he got it. This may or may not be possible for the buyer to do. If the seller does not get the goods in as good a condition he gave to the buyer, the seller can cover the losses. The loss to the seller need not be in any physical damage to the goods. A loss is anything which brings down the value of the goods for the seller. More generally, we can say that any depreciation in the goods or diminution in the value of the goods should be borne by the buyer. Correspondingly, if the seller delays in returning the money, he must pay the interest.

We can now detail out other aspects of the right of the consumer to cancel a sale contract. The object of the right is to maintain parity with a buyer who is buying goods face-to-face. A distance buyer, unlike an ordinary buyer, does not get to see, touch or feel the goods. He does not get to examine the goods. In a distance contract, the consumer can do all these, only when he is delivered the goods. Therefore, the cooling-off period should start only when the consumer is delivered the goods. How long should the cooling-off period be? A contract once made becomes final on the parties. The cooling-off right suspends this finality for the benefit of the consumer. Prescribing a long period is unfair to the trader. On the other hand, the buyer must be given a reasonable time. The time to be given to the customer is not for an extensive run or use of the goods to find defect in them or their suitability. A buyer in a shop does not get to do this. If the goods turn out to be defective, or not suitable for the contracted purpose, there are other remedies for the buyer. The buyer can terminate the contract for the breach of an implied term and

²⁵ See EU (1997).

claim damages.²⁶ The purpose of cooling-off is to give the customer as much opportunity as a buyer in a shop has. The Consumer Protection (Distance Selling) Regulations 2000 gave seven working days to the consumer. The Regulation (of 2013) has changed it to 14 calendar days. The Consumer Protection Bill, 2015 gives 30 days to the consumer to cancel a contract. Perhaps, 15 days may be a reasonable period.

A significant concern of the law, at the level of policy and detail, is that trader will claim that the goods are not in the condition he delivered it to the buyer. The consumer would necessarily unpack the goods. This cannot be taken to be diminution of the goods. He will touch, feel, handle and use the goods. The trader cannot complain about it. However, how much handling of the goods should the customer be allowed? The answer would be only as much a customer would get to handle similar goods in a shop. The consumer should cover losses arising to the trader from excessive handling of the goods. The Regulation defines excessive handling as:

... handling ... beyond what is necessary to establish the nature, characteristics and functioning of the goods if, in particular, it goes beyond the sort of handling that might reasonably be allowed in a shop.

We can now go through further details associated with the exercise of the rights of the consumer. It is for the consumer to communicate the decision to cancel the contract. To make it clear that the consumer has a right to cancel the contract, and to see the trader does not evade it, the Regulation requires the trader to supply a cancellation form to the consumer. This can be send electronically or put on the webpage of the trader. The consumer can apply in this or in any other durable form to clearly bring out that he is cancelling the contract. The consumer has to send the intimation before the 'cooling-off' period gets over. The communication may reach the trader after the cooling-off period.

The trader should return the money without delay. However, the trader can make deduction for diminution in the value of goods. The Regulation has fixed it at 15 days of the trader receiving the goods. The reference point has to be the trader receiving the goods. It is only after receiving the goods he can make out any diminution in the value of the goods. The contract may have provided for the trader to collect the goods from the consumer. The terms would apply. However, if the contract has not provided on it, the consumer would arrange to have the goods send to the trader at his own expense within 14 days of communicating his decision of cancelling the contract.

Cooling-Off: Service Contract

In a service contract, unlike a sale of goods, there is nothing to touch, feel or experience. A service may or may not be of a kind which can be explored or demonstrated. For example, a person can look at a hotel room before booking it, get

²⁶ After a certain period, the buyer will only have the right to gets the goods repaired or replaced and not terminate the contract.

to see a taxi before getting in it or look at a hospital before consulting it. This is not the same as actually getting a demonstration or experience of the service. That would be in experiencing the hospitality of a hotel, getting a taxi ride or getting a procedure done. What a customer experiences are important but nevertheless only surrounding the service not the service itself. Further, other services may not be amenable to this also.

In a face-to-face contract, the consumer gets to explore and gather information about the service. In a distance contract, the consumer may have to contend with limited information provided by the trader. However, this information asymmetry is addressed by the requirement of the trader mandatorily providing certain kinds of information. With this in place, the parity is restored. Why should the right to cancel a service contract be given? Undoubtedly, seeing a hotel room before contracting and booking a hotel room on the internet are not the same thing. Deciding to book a hotel room on the basis of a picture is significantly different from actually seeing a room. Seeing a taxi before getting in cannot be substituted by booking a taxi on the internet. But giving a cooling-off period is not going to bring parity. Nothing short of making a contract face-to-face would. The only way in which parity can be brought about, for example, in the case of hotel, is to put a video giving a complete walk-way to the hotel.

Even further, in an ordinary contract, the customer may have no access to experience things surrounding a contract. For example, a person booking a river cruise could be buying the ticket at the city centre or at a hotel reception. A taxi may have to be booked without seeing the taxi or a driver as in the case of pre-paid taxi at our airports. A cinema ticket is booked at a booking counter, only then the customer gets access to the premises. And the reverse, a person may see a hotel room and book it then and there through a mobile app. A taxi can be examined and prospected for hiring but the booking may still have to be done on the phone or through a mobile app with the centralised office of the service.

The reason for giving the right to consumer to cancel a service contract is actually, 'cooling-off'. While the mail-order was there for more than a century, it was principally for selling of goods. Even when services started becoming prominent in the economy, by its nature, it was not amenable to be sold by mail-order. It could be advertised through mail-order but not readily sold through it. It is the new means of communications, like individual mail communication, fax, phone, television and computers which brought in distance selling of services in the 1980s. The European Union noted this in the 1980s itself:²⁷

New information technology is being increasingly used for communicating information to consumers, for example, videotext links computer databanks via telephone cables to television sets in the home. These are systems which will permit orders to be passed from the consumer's home to the supplier. ... While the importance to the consumer of the freedom to acquire goods ... cannot be over-emphasised, the service sector is also important.

²⁷ Commission of the European Communities, (1986), A New Impetus for Consumer Protection Policy: p13-14.

The communication technologies transformed distance contracting through the 1980s. The draft directive on distance contracting, prepared by the European Union in 1992 noted:²⁸

The major innovation in this market is the widespread use of new technologies both to offer products or services and to obtain the consumer's order. Among the means used to disseminate the offer are the telephone (telephone canvassing), radio, television and home computers. ... There are two basic trends: Distance selling is being used for products or services which were formerly not sold in this way. (foodstuff, services); more and more firms are marketing their products or services directly by these new methods.

The reason for talking of goods and services in the same breath in relation to the right of the consumer to cancel the contracts was a distance contract was 'much more in the nature of an impulsive purchase.' Consisted with this, the draft article, thus, contrasted between goods and services:²⁹

Whereas the consumer is not able to see in concreto the product or ascertain the service provided at the moment when his custom is solicited; where as the consumer should be permitted to cancel the contract after receiving the product or service.

A consumer entering in a service contract was to be given the right to cancel the contract as he could not fully ascertain the contract he was getting into. It was actually cooling-off, giving an opportunity to the consumer to withdraw from a contract made impulsively. The basis was accepted in the 1997 consumer directive of the European Union and since has continued.³⁰

We now turn to working out the details of cancelling a service contract. Services have a wide variety and possibilities. A service yet to be provided is amenable to be cancelled. Simply, the service provider need not provide the service. Unlike a sale contract, nothing is to be returned to the service provider. The service may be of a kind which gets consumed irretrievably, for example, a taxi ride or a haircut. Such contracts cannot be cancelled. Other services get performed over a period of time. Take the case of a telephone subscription. On the cancellation of the contract, the telephone company need not provide the service. However, in this while, the contract has already been part-performed. The consumer must pay for the part of the service that has been consumed under the contract. The value of the service availed can be calculated on the basis of the total value of the contract. A way out of these difficulties is to defer the provision of the service till the cooling-off period. This is what the Regulation does. The Regulation requires the service provider not to provide the service till the cooling-off period is over unless the customer in express terms requests for it. If the contract is fully performed, the consumer cannot cancel the contract. If the contract is only part performed in the 'cooling-off' period, the customer can cancel the contract. However, he will have to pay for the part availed according to the terms of the contract.

²⁸ EU (1992): p10.

²⁹ EU (1992): p74.

³⁰ EU(1997)

Consistent with this, the cooling-off period should start when the contract is made. The cooling-off period ends after 14 days. The service provider must pay the money, after deducting for the services already availed, within 15 days of receiving the intimation of cancellation of the contract.

Cooling-Off: Digital Content

Digital content can be music, book, software and video. If sold on a CD, DVD, pendrive or a similar medium, it is sale of good in a tangible form. This is a contract for sale of goods. Digital content can also be sold through downloads. E-book is a prominent example of it. This may still be a sale of goods and not a contract for service.³¹ However, for several aspects of performance of contract it emerges as a category in itself. Once the content is downloaded, the contract is performed and consumed. The downloaded content is not capable of being returned. Thus, the seller should provide it only after the cooling-off period is over unless the consumer in express terms requests for it. In this case, however, the customer loses the right to cancel the contract.

It would be unfair to the trader or impractical in relation to certain kinds of goods or services to give the right of 'cooling-off' to the consumer. Ready examples of this are sale of perishable goods and newspapers and news magazine. Some goods or services may have a fluctuating price. Giving the 'cooling-off' period to the customer would be to the detriment of the trader. In transportation, hotel and entertainment, a consumer cancelling last minute, within the cooling-period, will mean the supplier going 'empty seat'.³² This will be a complete loss to the service provider. A law dealing with a specific sector, may have provided a cooling-off period. It may be best for the sector specific law to exclusively provide on it. Thus, where appropriate, contracts should be exempted from the application of the law. For these reasons, the European Union Directive and the Regulation exempt certain contracts. The Regulation do not apply to a contract for supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader. The exemption list also includes: passenger transport services; provision of water, gas and electricity; supply of good's made to the customer's requirement; perishable goods; supply of newspaper, periodical or magazine; supply of accommodation, transport of goods, vehicle rental services, catering or services related to leisure activities. It is not possible for the legislators to detail out the contracts which should be exempted. Further, the practices will change requiring frequent changes in the law. This is best done by the bill setting out the policy, and delegating the power to the Central Government to make rules to provide further details.

³¹ Tata Consultancy Services v. State of Andhra Pradesh, AIR 2005 SC 371.

³² These questions have become a matter of court judgement and contestation by several industries. See Hall, Elizabeth (2007), Cancellation rights in distance-selling contracts for services: exemptions and consumer protection, Journal of Business Law, Sep 2007.

Applying these principles, we have developed, in annexure, a chapter on distance contracts giving the right to the consumer to cancel a distance contract. The bill does not provide for the other protections in the Regulation. The right of cooling-off is the most significant right. There should be no objection to the inclusion of the other rights which give further protection to the consumer.

Mandatory Information

An ordinary consumer visits a specific business premises and interacts with specific persons. He has the freedom to get all the information on the goods and services, prices, payment mechanism and delivery. In the case of a distance contract, the consumer contracts in 'the dark'.³³ He has to contend with the information put up by the trader. The concern of the European Union was that distance contracting should not lead to a reduction in the information to the consumer. The draft article provided:³⁴

Whereas the use of such technologies must not lead to a reduction in the information provided to the consumer; whereas it is therefore necessary to determine the information that is required to be sent to the consumer whatever the means of communication used.

To maintain parity, the trader should be required to furnish information an ordinary customer would seek before getting into a contract. The usual information will be on the trader, goods and services and prices. This is a simple principle and does not require justification. There are two ends to it. Limited information may not serve the consumer. At the other end, there may be an over load of information for the customer to handle and for the trader to comply. This may be counter-productive. Indeed, in implementing the EU directives, there has been much discussion on the aspect of overload of information on the customer and the burden on the trader.³⁵ The balancing of this is best left to the rule making powers of the government which can adapt the law to the changing technology and business practices. A significant requirement of information in the Regulation is for the trader to clearly state that the customer has the right to cancel the contract during the cancellation period and furnish a contract cancellation form in a prescribed proforma.

Further, when a customer leaves a retail store, he knows whether a contract has been formed or not. In the case of a distance contract, the customer may not be sure whether a contract has been made. On paying the money, he may assume that a contract is formed. This may not, however, be the case. For example, according to the terms of several of the e-retailers, a contract is made only when the e-retailer

³³ See J. Dickie, "Consumer Confidence and the EC Directive on Distance Contracts" (1998) 21 J.C.P. 217 at p.219.

³⁴ EU (1992): p73.

³⁵ House of Lords (2009), European Union Committee - Eighteenth Report: EU Consumer Rights Directive: getting it right. Accessed on Sep 28, 2015 through <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldecom/126/12608.htm>

dispatches the goods. While in other cases, a person may have ended up getting in a contract while he understood he was only exploring. The Regulation requires the trader to communicate to the customer that a contract has been formed. The trader is further required to give the information required earlier in a durable form, if he has not already given it in a durable form. There may be contracts which would need to be exempted from the requirement of mandatory information. This is best done by the rule making powers of the government.

Incorporation of terms in a contract

Much communication may go on between the parties before a contract is concluded. However, everything which is exchanged is not a term of the contract. A contract is formed on acceptance of an offer. Only what is offered, which then is accepted, is a term of the contract. The other information is extraneous to it. Most face to face contracts are made orally and work as follows. The consumer and the trader make a series of communications. At the end, the consumer declares settling on a product. Thus, all the communication between the parties gets assimilated and becomes a part of the contract. The same is the case where the parties conclude a contract on the phone. This may take a different form in a service contract. At the end of the exchange, the customer may sign an offer document for the service. The formation of a contract with an e-retailer, however, is different. The e-retailer has written terms to which the customer agrees to for forming the contract. These are the terms of the contract. There are significant chances of the trader making certain representations on its webpage but contracting on different terms. Alternately, the contracting terms may complete disclaim liabilities for any representation made. The Regulation makes the information given by the distance seller to be a part of the contract and bind the parties to it. Let us explore this remedy.

Contract law provides remedy to an innocent party who has been induced to form a contract on the basis of false information. The false information can be a misrepresentation or fraud. The remedy for the consumer is to continue with the contract and insist that the representation be met. The other party will either make it good what he has stated. Failing this, he will have to pay damages for being in breach. The effect of this is to make the representation a part of the contract. The other alternative for the innocent party is to set aside the contract and claim damages for the losses which arise to him. As a landmark case on the theme, *ESSO Petroleum Co. Ltd. v. Mardon*³⁶, brings out, in a business contract, both the alternatives are of value to the innocent party. The measure of damages could be different in the different alternatives. In a distance consumer contract, however, the consumer discovers the misrepresentation only when he receives the goods or services. To set aside the contract, the consumer will have to establish that it was the misrepresentation which caused him to get in the contract. Further, it would be inconvenient for the customer to return the goods and restore the benefits. While he will get damages for the losses suffered, the depreciation in the value of goods or the value of the services availed will have to be worked out. The parties would invariably find themselves in dispute on this. The consumer does not benefit from these uncertainties. He is better off insisting the trader make good what he has represented. Either the trader provides this or pays damages for it. This is what the

³⁶ *ESSO Petroleum Co. Ltd. v. Mardon*, (1976) QB 801.

Regulation does. It makes the representation a part of the contract and takes away the right of the consumer to set aside the contract on the grounds of misrepresentation. As the information is a part of the contract, it is no more 'misrepresentation'.

Performance, delivery and passing of goods in sale Contract

This section applies to only sale of goods and not services. At times, a seller in a distance contract collects the money from the buyers and delays delivery to solve his liquidity and cash flow problems. The Regulation attends to it. If a sale contract provides on the time of delivery, the seller is to deliver according to it. If the contract does not provide on the time of delivery, the seller must supply the goods within 30 days.

In a face-to-face contract, the buyer will pay with one hand, so to say, and take the delivery of the goods with another. In a distance contract, a carrier will necessarily be involved in the delivery of the goods from the seller to the buyer. The buyer and seller can settle on different terms on the role and position of the carrier. The buyer can appoint a carrier who can bring the goods for him from the seller. In this case, the carrier is an agent of the buyer. The carrier gets the delivery of the goods for the buyer from the seller. Alternately, the seller can commission a carrier to deliver the goods to the buyer. In this case, the carrier is an agent of the seller. In a variation, the seller can arrange for a carrier but as an agent of the buyer.

If the contract is silent on the modality of delivery, prima facie, the carrier takes delivery for the buyer from the seller. The default option, developed by the law, was in relation to contracts between traders. In a consumer contract, there is an asymmetry. The trader is in the business of selling goods and as a part of the business regularly deals with carriers. A consumer being a disparate buyer of goods, would be hard pressed to organise a carrier. The Regulation, thus, changes the default option. It provides that unless the trader and consumer have agreed otherwise, the trader must deliver the goods to the consumer.

Another important theme, when the parties are at a distance, is the transfer of ownership and passing of risk. Transfer of ownership takes place as the parties provide in the contract. Risk passes with ownership. In business contracts, traders, historically, placed more emphasis on the passing of risk. Contracts provided as to when the risk in the goods would pass from the buyer to the seller. The transfer of risk is tied to delivery terms. This is an important concern in distance contracts. We have noted India consumers being delivered bricks and stones instead of mobile phones. If an e-retailer courier goods and these get stolen or damaged, should the consumer bear the loss and attend to it or the e-retailer. The seller as a business entity is better equipped to deal with carriers, organise insurance and make insurance claim. It is one more business activity for the seller. Further, the seller can always factor this as a cost and pass it on to the consumer. For the consumer, it will be demanding organising insurance, particularly when the goods are in the possession of the seller and originating from him. Thus, it stands to reason that the

seller should bear the risk in goods till these are delivered to the consumer. The European Union directive thus puts it:³⁷

(55) Where the goods are dispatched by the trader to the consumer, disputes may arise, in the event of loss or damage, as to the moment at which the transfer of risk takes place. Therefore this Directive should provide that the consumer be protected against any risk of loss or damage to the goods occurring before he has acquired the physical possession of the goods. The consumer should be protected during a transport arranged or carried out by the trader, even where the consumer has chosen a particular delivery method from a range of options offered by the trader.

The Regulation, thus, provides that the risk will be with the trader till the goods come in the possession of the consumer. The only exception the Regulation makes is, when the consumer, on his own initiative, contracts to take delivery himself or employ a carrier to take delivery. We have developed draft provisions on these themes and included in the chapter on distance contract. (See Annexure)

In the course of exploring the different heads, we recognised that some contracts will need to be exempted from the application of the provisions. In fact, there may be several kinds of contracts which should be exempted from all the provisions on distance contracting. The reason for this can be difficulty or impracticality of applying it. The Central Government, by its rule making powers, can detail it out.

Cooling-off for all consumer contracts

The bill gives the right of cooling-off to all consumer contracts. We will explore the basis for extending this beyond distance contracts. The general principle of contracts is once a contract is made, it is final and binding on the parties. To this rule, exemption has been made in distance consumer contracts as the consumer does not get to see the goods or ascertain the services. Extending the right to all contracts is to the disadvantage of the trader. It takes away the finality of every contract for the duration of the cooling-off period. In the cases where the consumer exercises the right to cancel the contract, the goods would have to be received, stored and assessed for diminution in value. Even if there is no diminution in the value of the goods, it may not be possible for the retailer to restore the packing of the goods to sell it to another customer. The retailer may have to sell at a discount or return to the manufacturer to re-pack it. In the case of services, it may be complex and contentious to work out the value of the services utilised. The trader will have the additional work of refunding the money. Thus, while the right is valuable to the customer, there is a cost to the trader.

In specific forms of consumer contracts, however, cooling-off period has been provided. In India, a cooling-off period is provided for insurance contracts. The presumed reason for this is the insurance agent may have prevailed on the customer. In the UK, the Consumer Credit Act, 1974 allows a 14 days cooling-off period in consumer credit,³⁸ and the Timeshare Act 1992 allows a 14 day cooling-off

³⁷ Directive 2011/83/EU of the European Parliament and the Council of 25 October 2011 on consumer rights.

³⁸ See the Consumer Credit Act, 1974.

period in a contract of timeshare. A timeshare contract is where a person buys the right to use a property, typically holiday homes, for a limited period of time each year. The Timeshare Act, 1992 gives the right to the buyer as sales representatives aggressively market the product.³⁹ There are separate directives of the European Union on the services of banking, credit, insurance, personal pension and investment. These also provide a cooling-off period.⁴⁰ In Canada, the law on cooling-off varies from state to state. In the states, the cooling-off includes for service contracts including credit, health clubs, condominiums, natural gas, electricity and door-to-door sales.⁴¹ In the USA, the Federal Trade Commission provides a three day cooling-off period for door-to-door sales.⁴² This applies to the whole of the USA. Each of the states further provides cooling-off in different contracts. For example, in Illinois, a three day cooling-off period is given for a contract for repairing a house or remodeling a house.⁴³

Thus, the general principle is that a contract once made is final and its sanctity should be maintained. However, the governments have been making exceptions wherever the consumer is at a disadvantage due to the specific nature of the contract. In some kinds of contract, there can be excessive persuasion of the sales persons. In others, the consumer is more likely to make an impulsive purchase. In yet others, the needs of the consumer may be overwhelming and the liability a long term one.

The retailers in the developed world have been voluntarily giving the option to their customers to return the goods and get a refund in a few days of the purchase. This ranges from clothing to consumer durables and electronic items. The retailers have come to do this to encourage the consumer to buy than defer the decision. This helps increase the sales. The practice is widespread and has become common.

How does a consumer in India fare in relation to contracts of sale and service? The same companies, who have a refund policy in their home country, do not offer it in India. The following is a common experience of a consumer, shopping in the best of the stores in the metros. The consumer buys an expensive mobile phone, of a reputed brand, and takes it home. The same day, he notices problem(s) with the phone, say, the battery drains out or the sound from the speaker is not loud enough.

³⁹ House of Lords (2007), European Union - Third Report, Chapter 6: The right of withdrawal and the cooling-off period. Accessed on Oct 1, 2015 through <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/18/1809.htm>

⁴⁰ For example, on credit, see Directives 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

⁴¹ Industry Canada, Office of Consumer Affairs. Accessed on Oct 1, 2015 through <http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02654.html>

⁴² FTC Approves Changes to Cooling-Off Rule. Accessed on Oct 1, 2015 through <https://www.ftc.gov/news-events/press-releases/2015/01/ftc-approves-changes-cooling-rule>

⁴³ Illinois Attorney General, Three Day Right to Cancel Home Repair. Accessed on Oct 1, 2015 through <http://www.illinoisattorneygeneral.gov/consumers/threedaycancel.html>

The consumer is upset with the purchase and approaches the store the same day, to return the phone. The phone is not of merchantable quality and the buyer has a right to return the phone. The contract is orally made and not subject to any terms. Thus, the manufacturer's warranty that the consumer can only get it repaired and not terminate the contract does not apply. Invariably, the manufacturer will have posted an employee in the shop to promote the brand. The retailer has traction with the manufacturer for the manufacturer to concede the defect and take it back. And yet, the retailer, in concert with the manufacturer, will refuse to take back the goods and insist that the consumer take it to the service centre of the manufacturer. This is a common experience in the cities, in big stores, in relation to reputed stores and manufacturers who spend large amounts on advertising their products. One can imagine the plight of the consumer in smaller towns.

An ordinary consumer is expected to have the benefit of examining the goods before buying. A big retail store would have the products on display and a sales man will give demonstration of the product to a prospective customer. However, the practice may be confined to the big retailers in the big cities. Most retailers have limited stock. The retailer would open up the box only after the customer purchases the goods. Till then, the retailer will only highlight the features of the product. Other times, the retailer will contract with the customer first and then procure it for him. Thus, like a distance contract, the consumer may not have the benefit of seeing and examining the goods. He may just have to go with the advertisements put up by the manufacturers and the representations made by the retailer.

Unfair and false advertising abound in India. As our laws have evolved, there is no regulation on false and unfair advertising.⁴⁴ The competing companies rival to outdo each other in false advertising. A consumer decides to buy a product on the basis of the advertisements. Having made a purchase, the consumer realises the misrepresentation. The consumer should be able to set aside the contract but the retailer will refuse to entertain any complaint. The retailer will disclaim any responsibility by stating that the advertisements are issued by the manufacturer. On the whole, in the context of India, there is a case for giving a cooling-off period in every consumer sale contract.

The experience of a consumer of a service contract, ranging from professional education to financial services, is no different. In the absence of regulation, false and unfair advertising are common. The trader or the agent is not interested in giving a complete or true picture, and indulges in half-truths. The consumer is not encouraged to read the terms. Even if the consumer reads the terms, as a lay person, he will not be able to make sense of it. Once the consumer has given his money, the only remedy for him is to approach a consumer forum to contest and establish that the contract was caused by misrepresentation. This is an unnecessary hardship for the consumer. It is easy to give the benefit of cooling-off to the consumer in a service contract without any cost to the trader. The trader is not to provide the service till the cooling-off period is over. The customer can choose to get the service earlier by forgoing his right to cancel the contract. This only shifts for the trader the conclusion of the contract by the cooling-off period. Thus, the only cost on

⁴⁴ Pathak, Akhileshwar, (2015) Consumer Rights in the New Economy: Amending the Consumer Protection Act, 1986', IIMA, Working Paper Series, No. WP2015-08-04.

the trader is the additional paper work of cancelling the contract and refunding the money.

The bill provides a cooling-off period of 30 days. As commented earlier, there has to be a balance between the rights of the consumer and inconvenience to the trader. In most jurisdictions, cooling-off period ranges from three days to fourteen days. In a sale contract, fourteen days is adequate for a consumer to get a feel of the product. If a longer period is given, the consumer might excessively handle the product or make use of it, leading to a claim of diminution by the trader. In a service contract, a consumer is doubtful about the decision for some days. The period of doubt and uncertainty does not last for 30 days. A shorter period will create an impetus for the consumer to apply and decide than defer. Thus, fifteen days may be an appropriate cooling-off period. The right of cooling-off can be given to the consumer in all contracts by making the following provision in the bill: 'The provision on cancelling of a contract in the part on distance contract is tended to all contracts made a consumer.'

Annexure: Draft Provisions on Distance Contracts

Part: Distance Contract

Section 1 Distance Contract: This Part applies to distance contracts between a trader and a consumer. The terms occurring in this part have the following meaning:

A “distance contract” means a contract without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.

‘Cancel a contract’ means a termination of contract for convenience, by the consumer at will, without explaining or giving any reason or justification. As the termination is not for breach, neither party will pay damages to the other. The benefits drawn from the contract will be restored to put the parties in a position as if the contract was not made.

‘express consent’ is to be obtained by drawing specific attention to the information. There is no express consent if consent is inferred from the consumer not changing a default option (such as a pre-ticked box on a website).

Durable medium means paper, email, sms, electronic medium or any other medium and should meet both the following two requirements. One, allows information to be addressed personally to the recipient. Two, enable storage and retrieval of the information unaltered long enough for the purposes of the information, and

Section 2 Exceptions: (1) The part does not apply to the following contracts:

(a) A contract concluded by means of automatic vending machines, automated commercial premises or automated teller machines.

(b)

(c)

(2) The Central Government, by rules, may exempt contracts from the application of the entire Part or any of the Sections below in this Part.

Section 3 Provision of Information: (1) Before the consumer is bound by a distance contract, the trader must give or make available to the consumer the following information in a durable form, in clear and comprehensible manner, and in a way appropriate to the means of distance communication used:

1. The identity and addresses of the trader including telephone number, e-mail address to enable the consumer to contact the trader quickly and communicate efficiently. If a trader is acting on behalf of another trader, identity and addresses of the both the traders are to be provided.

2. The main characteristics of the goods or services, to the extent appropriate to the medium of communication and to the goods or services.

3. The total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated.
4. Delivery charges or any other cost, if these cannot be reasonable calculated in advance and included in the total price.
5. The arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods or to perform the services.
6. Unless the contract is exempted from the right of the consumer to cancel the contract, the contract cancellation form in the prescribed form for the customer to intimate the trader is decision of cancelling the contract.
7. The Central Government may by rules specify the details and require further information to address the information asymmetry in a distance contract.

Section 4 Confirmation of distance contracts (1) In the case of a distance contract the trader must give the consumer confirmation of the contract on a durable medium.

(2) The confirmation must be provided within a reasonable time after the conclusion of the contract, but in any event—

- (a) not later than the time of delivery of any goods supplied under the contract, and
- (b) before performance begins of any service supplied under the contract.

(3) Any information provided by the trader, required to be provided under this part, on the quality, features or characteristics of the goods would be taken as an express term on the quality of goods.

(4) Any information provided by the trader, required to be provided under this part, other than on the quality, features or characteristics of the goods is to be treated as included as a term of the contract. A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.

Section 5 Right to cancel- (1) The consumer may cancel a distance contract at any time during the cancellation period without giving any reason or justification.

(2) The right to cancel a distance contract is in addition to the other rights for termination of contract for breach of a term, and not in substitution of it.

(3) The cancellation period is of 14 days and for the different kinds of distance contracts start as follows:

(a) In a contract for sale of goods, the day the customer; or any person, other than a carrier, authorised by him, gets the physical possession of the goods.

(b) In a contract for sale of goods consisting of multiple goods, where the goods are delivered on different days, the day the customer; or any person, other than a carrier, authorised by him, gets the physical possession of the last of the goods.

(c) In a service contract, the day the customer enters in the contract.

(d) In a contract for the supply of digital content not on a tangible medium, the day the customer enters in the contract.

(4) Paragraph (1) above does not affect the right of the consumer to withdraw an offer made by the consumer to enter into a distance contract, at any time before the contract is entered into, without giving any reason and without incurring any liability.

Section 6 Form for Cancellation: The Central Government will prescribe a Cancellation Form for the consumer to apply to the trader for cancelling the contract. The trader will provide the information before the customer enters in a contract of the right of the customer to cancel the contract and furnish the cancellation form for the customer to apply in.

If the trader does not provide the consumer with the information on the right to cancel the contract or the cancellation form, the cancellation period will get extended from 14 days to one year.

Section 7 Communication of Cancellation: (1) To cancel a contract, the consumer must inform the trader of the decision to cancel the contract. To inform the trader, the consumer can use the form provided by the trader or make a clear statement communicating the decision to terminate the contract.

(2) The trader must communicate to the consumer an acknowledgement of receipt of the cancellation on a durable medium within 14 days of the receipt of the communication of cancellation.

(3) The parties can make communication on cancellation in a durable form, including electronic form and webpage.

(4) The consumer is to be treated as having cancelled the contract in the cancellation period if the communication is sent before the end of the cancellation period.

(5) In case of dispute, it is for the consumer to show that the contract was cancelled in the cancellation period.

Section 8 General effect of cancellation (1): The cancellation ends the obligations of the parties to perform the contract.

(2) As a general principle, the parties are to restore the goods, payment and benefit drawn for the contract to each other.

Section 9 Cancellation of a sale contract: (1) On receiving the communication of cancellation from the consumer, the trader will collect the goods from the customer if the contract so provides.

(2) If it is not the trader's responsibility under paragraph (1) to collect the goods, the consumer must send them back to the trader or a person authorised by the trader to receive them.

(3) The customer will send the goods to the address specified by the trader for sending the goods back. If no address is specified for that purpose, the goods would be sent to any address specified by the trader for the consumer to contact the trader.

(4) The customer must send off the goods within 14 days of sending his communication terminating the contract.

(5) The consumer will bear the cost of returning the goods unless the trader has agreed to bear the costs.

(6) The trader must reimburse all payments, other than the followings, received from the consumer, within 14 days of receiving the goods from the customer.

(a) Payment for delivering the goods to the customer; and

(b) reduction in the value of goods as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods. Handling is beyond necessary if it goes beyond the sort of handling that might reasonably be allowed in a shop.

Section 10 Cancellation of a service contract (1) The trader must not begin the supply of a service before the end of the cancellation period unless the consumer has made an express request.

(2) If the trader has supplied the service within the cancellation period, without the express request of the customer, the customer can cancel the contract during the cancellation period. If the customer cancels the contract, the trader must reimburse all payments, received from the customer, within 14 days of receiving the information of cancellation of the contract from the customer.

(3) If the trader has supplied the service within the cancellation period, with the express request of the customer, the customer loses the right to cancel the contract if the service has been fully performed.

(4) If the trader has supplied the service within the cancellation period, with the express request of the customer, the customer can cancel the contract within the cancellation period if the service has yet not been fully performed. If the customer cancels the contract, the trader must reimburse all payments, other than the value of the service provided, within 14 days of receiving the intimation from the customer of the cancellation of the contract.

The value of the service provided is to be calculated as a proportion to what was to be supplied and the total price agreed in the contract. If the total price is excessive, the value of the supplied service will be calculated with reference to comparing prices for equivalent services supplied by other traders.

Section 11 Cancellation of a contract for digital content not on a tangible medium (1) The trader must not supply of digital content not on a tangible medium before the end of the cancellation period unless the consumer has made an express request.

(2) If the trader has supplied digital content not on a tangible medium, within the cancellation period, without the express request of the customer, the customer can cancel the contract

during the cancellation period. If the customer cancels the contract, the trader must reimburse all payments, received from the customer, within 14 days of receiving the information of cancellation of the contract from the customer.

(3) If the trader has supplied the digital content not on a tangible medium, within the cancellation period, with the express request of the customer, the customer loses the right to cancel the contract.

(4) If the trader has not supplied the digital content not on a tangible medium, the customer can cancel the contract within the cancellation period. If the customer cancels the contract, the trader must reimburse all payments, received from the customer, within 14 days of receiving the information of cancellation of the contract from the customer.

Section 12 Ancillary contract (1) An “ancillary contract”, is a contract which gets formed as a result of, or arising from, the distance contract (the “main contract”). It can be another contract between the customer and the trader or the customer and a third party on the basis of an arrangement between the trader and the third party.

(2) If a consumer withdraws an offer to enter into a distance contract, or cancels the main contract, the ancillary contract automatic gets cancelled.

(3) The parties, following the cancellation of the ancillary contract, will restore the goods, payment and benefit drawn for the ancillary contract to each other. This will be done following the provisions for the restoration of benefits for the main contract provided in this part.

Section 13 Delivery and Risk (1) In a distance contract for sale of goods, unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer.

(2) Unless there is an agreed time or period, the contract is to be treated as including a term that the trader must deliver the goods not more than 30 days after the day on which the contract is entered into.

(3) If the trader fails to deliver the goods in time, according to the terms of the contract or 30 days period, as the case may be, the customer may treat the contract as at an end. The trader must without undue delay reimburse all payments made under the contract. This remedy is in addition to other remedies in the Act or other laws.

Section 14 Passing of risk: (1) A sale contract is to be treated as including the following provisions as terms.

(2) The goods remain at the trader’s risk until they come into the physical possession of—

- (a) the consumer, or
- (b) a person identified by the consumer to take possession of the goods.

(3) Paragraph (2) does not apply if the goods are delivered to a carrier who—

- (a) is commissioned by the consumer to deliver the goods, and
- (b) is not a carrier the trader named as an option for the consumer.

In this case, the goods are at the consumer's risk on and after delivery to the carrier. This does not affect any liability of the carrier to the consumer in respect of the goods.

Section 15 A term to contrary void: A contract term excluding or limiting the rights of the consumer provided in this chapter is void.