

# E-COMMERCE

## Law guides - E-commerce

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with **William J. Brennan & Co. Solicitors**

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## Running a website

### Overview

The act of creating and publishing a website can involve a host of technical issues. Once these have been overcome, the legal requirements affecting the running of a commercial website are no less complex.

There are many different Irish and EU laws covering website design, domain name choice, website content, sales from websites, and many other aspects of e-commerce and online activity.

### Terms and conditions

The terms and conditions upon which a website offers goods or services for sale need to be compliant with consumer protection laws. These cover more than just terms of sale but also affect, for example, how the goods or service are marketed or advertised, the means of access of consumers to the offers made and the rights of consumers before and after a sale is concluded.

### Privacy

Another important issue is how a website collates, stores and processes personal information about its customers, or its users. Operators of commercial websites need to understand and be able to apply the principles of data protection law.

### Domain names

Those launching a commercial website will need to choose a domain name carefully. In particular, they should ensure that the chosen domain name is available, does not infringe another person's or entity's trade mark rights and is not confusing or obviously associated with someone else's business.

## Site terms and conditions

To ensure that the customer is legally bound by a website's terms and conditions of sale, they must be incorporated into a contract. To do this, they must be brought to the customer's attention, and the customer must have an opportunity to read and accept them. This can be done by either:

- Providing a clearly sign-posted link on your website to the terms and conditions of sale during the sales process and requiring the customer to tick a check box to confirm that they are accepting the terms and conditions, ensuring that they will otherwise be unable to proceed with the purchase. Underneath the check box you should then have buttons for the customer to select in order to either proceed with the sale (for example 'Pay Now'), or withdraw from the sale (for example 'Cancel'). However, there are risks associated with using this method, such as the hyperlink failing or the link taking the customer to the wrong web page. In these circumstances it is almost certain that you will not be able to rely on the terms and conditions should a dispute arise.
- Ensuring that the terms and conditions of sale appear in full on a web page during the sales process and requiring the customer to acknowledge their acceptance by, for example, ticking a check box with buttons underneath for the customer to select in order to either accept or reject the terms and conditions before being allowed to proceed. This method requires the customer to scroll down through the terms and conditions and is a more recommended way of ensuring that these terms and conditions apply to a contract.

Whichever method you choose to incorporate the terms and conditions, you should ideally always place a notice above the check box warning users that it is important to read and understand the terms before placing their order, and then use words such as 'I accept the terms and conditions' beside the check box.

The Consumer Rights Directive 2014 states that you must provide a button which the consumer must click on to acknowledge that they are incurring an obligation to pay. The Regulations suggest that the button should be labelled 'Order with obligation to pay' or similar wording. 'Pay now' should suffice. The consumer should not be able to proceed with the order without clicking on this button. If you do not comply with this regulation, the consumer is not bound to pay you.

### **Selling to customers abroad**

You can choose to provide the goods to consumers outside the Republic of Ireland, in which case clauses will be inserted giving you a discretion over whether to accept the order, and

advising that the consumer will be responsible to pay any additional costs, such as postage, taxes or import duties.

Note if your business provides services to consumers that under the EU Services Directive you cannot discriminate against customers in the European Economic Area ('EEA') based on their place of residence unless you have an objective reason to justify doing this. This means, for example, that you cannot refuse to provide your services, offer different terms and conditions, or provide different standards of service on the sole basis of an individual's place of residence. In order to justify your reason for discriminating against an individual because of their place of residence, you will have to show that it will put an excessive strain on your business.

Also note that consumers within the EEA, and possibly in other countries, will be entitled to rely on their own local consumer laws for protection if a dispute arises and you may want to consider the applicable law in each country and provide compliant terms and conditions.

You should also consider the security issues involved with allowing overseas orders for goods. For example, if you accept credit/debit cards issued on foreign banks from overseas customers and the credit/debit cards prove to be stolen, your business may be subject to a charge-back of the transaction long after the goods have been shipped.

### **Governing law and consumer contracts**

There are EU regulations regarding which country's laws will apply to a contract and in particular, contracts made online with consumers.

Although the parties to a consumer contract can still choose which country's laws apply to it, a consumer can rely on the consumer laws of their home country if you either:

1. pursue your commercial or professional activities in that country, or
2. direct your commercial or professional activities, in any way, to that country. This could include providing a choice of languages on your website, giving delivery costs to other countries within the EEA etc..

If you intend to make your goods or services available to consumers living in other EEA states, you are likely to be bound by the country's local consumer laws (some of which may be more onerous than the Republic of Ireland's current consumer protection laws), leaving you with the following choices:

1. you can decide to accept the risk of having to comply with laws in an EEA country about which you are unaware
2. seek legal advice in each country in which you direct your activities
3. cease trading with consumers in EEA countries

### **Legislation that applies to all contracts with consumers made online**

We have listed below the information that must be provided to a consumer under various regulations. It is not appropriate to incorporate all of the required information into this document and, in some instances, it is better to make the information available on your website and/or in an email sent to the customer prior to the delivery of goods or provision of services.

We have identified the information which has not been included in the document by inserting 'not included' next to each item. We have also suggested how the information should be provided.

### **Consumer Rights Directive 2014**

The Consumer Rights Directive 2014 (CRD) states that certain information must be given to consumers before they are bound by a contract, and provide for 'cooling off' cancellation periods. The regulations deal with contracts for:

- goods, which include digital content supplied on a tangible medium such as a CD, DVD or USB stick;
- services; and
- digital content supplied by streaming, downloading or means other than on a tangible medium.

Digital content means data produced and supplied in digital form such as computer programs, applications, games, music, videos or texts. The information to be provided differs according to the type of contract.

A website's terms and conditions must be suitable for a distance contract. This is a contract under which a consumer buys goods or services from retailers or service providers under an organised scheme without any face-to-face contact. This includes sales made via websites. This guide focusses solely on the information required for distance contracts.

The CRD states that certain information must be supplied on a durable medium. This means a medium that allows information to be addressed personally to the consumer and allows

the consumer to store and access it for future reference in an unchanged form. Examples of a durable medium are paper, email, text message and a personal account such as online accounts used by utility companies for billing.

## **Exemptions from the Directive**

### *Contracts totally exempt*

Some types of contracts are completely exempt from the CRD. In these cases there is no requirement to supply pre-contract information and neither does the consumer have a right to cancel.

Exempt contracts include contracts:

- for gambling - including betting, gaming and participating in a lottery;
- for the supply of financial services;
- for the sale or transfer of land;
- for rental of residential accommodation;
- for the construction or conversion of buildings;
- for the supply of food, beverages or other goods intended for everyday consumption supplied to the consumer's residence or workplace by regular roundsmen (e.g. a milkman, but not a supermarket);
- for package holidays and timeshares.

### **Contracts exempt from cancellation rights**

There is a further list of contracts that must comply with the pre-contract information requirements but for which the consumer does not have cancellation rights.

They include distance contracts:

- for goods made to the consumer's specifications or personalised;
- for goods likely to deteriorate quickly;
- for alcoholic drinks for which the price has been agreed but delivery can only take place after 30 days, and where the price fluctuates in the market;
- for urgent repairs or maintenance where the consumer has specifically requested a visit from the trader;
- for newspapers or magazines except for subscriptions;
- concluded at a public auction which consumers can attend in person (but not online auctions like eBay);

- for accommodation, transport of goods, vehicle rentals, catering or leisure services, where the contract has a specific date or period of performance.

### **Loss of cancellation rights**

There are some circumstances where consumers who would otherwise have cancellation rights can lose them. Consumers will lose this right if they:

- unseal goods that were supplied sealed, and are then not suitable for return for health protection or hygiene reasons;
- unseal sealed audio recordings, video recordings or computer software; or
- mix the goods inseparably with other goods.

If the consumer wants you to start supplying services before the end of the cancellation period you must get:

- the consumer's express request to the supply starting during the cancellation period and
- if the contract is for services only, or for goods and services where the main purpose is the supply of services, the consumer's acknowledgement that they will lose the right to cancel once the services have been fully performed.

Once they have given the appropriate request and acknowledgement, they will lose the right to cancel a contract for services once these have been fully performed in the cancellation period.

If, however you do not get this request and acknowledgement, or if you did not provide the confirmation of the contract (see 'Confirmation of distance contracts' below), including a confirmation of this request and acknowledgement, the consumer will not have to pay you for any services supplied during the cancellation period.

### **Requirements to supply pre-contract information**

If you are selling goods and/or services to a consumer via a distance contract, you must give the consumer certain information **before they place the order**. You must provide this information in a clear, prominent manner that is appropriate to contracting via a website. You should also repeat the information in the order confirmation notice. This is usually an email sent to confirm that you are dispatching the goods or will perform the services. The confirmation notice must be in a durable medium, i.e. on paper, by email or in a form that



allows the consumer to store and reproduce it. Note that these terms and conditions are not appropriate for contracts of indeterminate duration or subscription contracts.

The information that must be given to the consumer before they place the order is:

1. A description of the main characteristics of the goods and/or services.
2. The total price, including all taxes, or the manner in which the price is to be calculated if the nature of the goods or services means it cannot be calculated in advance.
3. Delivery and any other costs, where appropriate.
4. The duration of the contract and minimum duration of the customer's obligations under the contract.
5. Whether any delivery restrictions apply and which means of payment are accepted.

In addition, before the consumer is bound by the contract, you must give them the model cancellation form set out in the CRD, a copy of which is found at the bottom of the terms and conditions. You must also give them the following information (points 6-24) in a clear, comprehensible manner that is appropriate to contracting via a website. It is best to provide this information along with the information mentioned above on the website before the customer places the order. However, you could provide it after the order. At the very latest it must be provided in the confirmation notice.

6. Your business name and the geographical address, telephone and fax numbers and e-mail address of your business (included - but we recommend that this is also provided on the website and in the confirmation notice).
7. The name and geographical address of any trader you are acting on behalf of (not included - provide on your website and in the confirmation notice).
8. How long prices quoted remain valid (not included - provide on your website).
9. Arrangements for payment (included but also include on website and in the confirmation notice).
10. Arrangements for the delivery of goods or performance of services, including the timeframe. You must deliver goods within 30 days of the purchase if you do not agree a longer timeframe with the customer. You must state any delivery restrictions clearly (not included - provide on your website and the confirmation notice).
11. The cost to the customer of communicating with you to conclude the contract when it will be more than the basic rate (not included - provide on your website and in the confirmation notice). You are not allowed to charge the consumer premium telephone rates for any helplines you operate in relation to the contract (e.g. for customer queries, cancellations and complaints).
12. If the consumer has a right to cancel, the time limit, conditions and procedures involved in exercising the right to cancel. (Included but you should also consider providing this on your website and a link to that page in the confirmation notice.)

13. If you are providing services and the consumer wants you to start performing the services before the end of the cancellation period, you need to ensure you have a request from them and their acknowledgement that they will lose the right to cancel once you have fully performed the services.
14. Where there is no right to cancel or that right could be lost, a statement to this effect and the circumstances in which the right can be lost. (Included but provide on your website and in the confirmation notice.)
15. That the consumer will have to pay for services received if they ask you to start performing during the cancellation period and then cancel after you have started.
16. Where the goods should be returned. (Not included. The terms say you will provide these details. You should do so on your website and in the confirmation notice.)
17. That the consumer will have to bear the cost of returning the goods, if this is the case (not included - provide on your website and in the confirmation notice).
18. The cost of returning the goods if regular post can't be used (not included - provide on your website and in the confirmation notice).
19. Your complaints handling policy (not included, other than a term that customer should contact you. Include on website and in the confirmation notice).
20. Details of any out-of-court complaints redress. If you are required to do so by legislation or any rules of your trade association, you must tell the consumer the name and website address of the certified ADR body to submit the dispute to. See 'ADR disputes' below. (ADR provisions are included but also provide on your website and in the confirmation notice.)
21. If you are selling goods, a reminder that you have a duty to supply goods conforming to the contract (included, but also provide on your website and in the confirmation notice).
22. Details of any guarantees or after-sales service (not included - provide on your website and in the confirmation notice).
23. Which, if any, codes of conduct apply to you, and where the consumer can get copies (not included - provide on your website and in the confirmation notice).
24. The existence and conditions of any deposits or other financial guarantees to be provided by the consumer (not included - provide on your website and in the confirmation notice).

### **The model cancellation form**

In distance contracts that do not fall within the exceptions in the CRD the consumer will have a right to cancel. Before the contract is made, you must give them the model cancellation form set out in the CRD in a durable medium. It is included within this document. The cancellation form must be legible.

The consumer does not have to use the model cancellation form so long as they clearly state to you that they are cancelling the contract.

### **Confirmation of distance contracts**

You must give the consumer confirmation of the contract on a durable medium. Unless the pre-contract information above was already supplied to the consumer on a durable medium before the contract was made, it must be included in the confirmation of the contract. You must send this confirmation of the contract to the consumer within a reasonable time after the contract is made, and at the latest at the time of delivery of the goods or before the start of performance of any services.

### **If the pre-contract information is incorrect**

The information which the trader must give the consumer before the consumer is bound by the contract is treated as a term of the contract. This means that if the information is incorrect, the consumer can claim against the trader for any costs incurred by the consumer as a result of the information being incorrect. The consumer can recover up to a maximum of the price paid. The trader cannot change any of that information without the consumer expressly agreeing to this.

### **Cancellation of contracts**

#### **The cancellation period**

Under the CRD, consumers have a right to cancel the contract during the specified cancellation period without giving a reason. If you fail to provide the required pre-contract information about the customer's right to cancel, the cancellation period will be extended.

The normal cancellation period depends on whether you are selling goods, services or goods and services.

#### *Contracts for the sale of goods only*

The cancellation period for contracts under which goods are supplied is the period ending 14 calendar days after the day:

- the consumer (or someone chosen by him other than a carrier) is given physical possession of the goods; or
- the consumer (or someone chosen by him other than a carrier) is given physical possession of the last of the goods, if a series of goods was ordered.

So, for example, if the consumer receives the goods on 1 August, the last day for cancellation is 15 August.

### *Contracts for the supply of services only*

The normal cancellation period for services is the period ending 14 days after the day the contract was made.

### *Contracts for the supply of goods and services*

If the contract is for the supply of goods and services, the cancellation period depends on the main purpose of the contract. If the main purpose of the contract is the sale of the goods, and the service is ancillary, the cancellation period for goods will apply. An example of this is where a washing machine is bought and installed by the seller. However, if the main purpose of the contract is the supply of a service, and the supply of goods is ancillary, the cancellation period for services will apply. An example of this would be a contract for a training course which includes course materials.

### **Extension of time where pre-contract information is not supplied**

Unless your contract falls under one of the exceptions in the CRD, the normal cancellation period is extended if you have not provided consumers with information on the right to cancel before the contract is made (i.e. information on the conditions, time limit and procedures for cancelling). If you provide this pre-contract information on the right to cancel within 12 months of the first day of the normal cancellation period, the cancellation period will end 14 days after the consumer receives this information. The effect of this in a sale of goods contract is that if you provide the information on the right to cancel at the latest by the date you give the goods to the consumer, the normal cancellation period will apply.

If you do not provide this information on the right to cancel at all, the normal cancellation period is extended by 12 months.

### **Exercise of the right to cancel**

The consumer must inform you that they wish to cancel by making a clear statement to you within the cancellation period. Although you must supply them with the model cancellation form before the contract is made, they do not need to use this form and can inform you in some other way.

### **Obligations following cancellation**

### *Your obligation to confirm receipt of model cancellation form*

If a customer submits the model cancellation form you have provided by online submission, you must acknowledge receipt of it without delay using a durable medium. It would be good practice generally to acknowledge receipt of cancellations.

### *Customer's obligation to return the goods*

In a distance contract, the customer has the obligation to return the goods to you after they have cancelled the contract unless you have offered to collect them.

If the consumer has the obligation to return the goods, you should specify the address to which they should return the goods. They must bear the direct cost of returning the goods to you unless:

- you have agreed to pay these costs; or
- you had not provided them with pre-contract information stating that they would have to pay the costs of return.

You cannot require the consumer to pay any costs or charges above the direct cost of returning the goods.

If you have offered to collect the goods, you are not allowed to charge the consumer unless they have agreed to bear this cost.

### *Your obligation to refund money*

When the consumer has cancelled, you must refund everything that the consumer paid for the goods, including any normal postage or delivery charges. However, if the consumer has specifically chosen a more expensive type of delivery than you would normally use, you only need to refund your normal delivery charge.

You must reimburse the consumer without delay. The latest date by which you must reimburse them varies. If the contract is a sales contract (i.e. for the sale of goods only or for the supply of goods and services with the main purpose being the supply of goods), and you have not offered to collect the goods, you must reimburse the consumer within 14 calendar days after the day on which:

- you receive the goods back; or
- if earlier, the day the consumer supplies evidence to you of returning them.

If the contract is a sales contract and you have offered to collect the goods, or if the contract is a services contract (i.e. for the supply of services only, or for the supply of goods and services with the main purpose being the supply of services), you must reimburse within 14 calendar days after the day on which you were informed the consumer was cancelling.

You must reimburse using the same method of payment as the consumer used to pay you, unless you both agree otherwise. You are not allowed to charge any fee for the reimbursement. If the consumer has damaged the goods by handling them beyond what would be reasonable to examine them in a shop, as long as you have provided the consumer with the required pre-contract information on the right to cancel, you are allowed to deduct the loss in value of the goods from the amount reimbursed.

### **Supply during cancellation period**

#### *Supply of services*

You must not start to provide services before the end of the cancellation period unless the consumer has expressly asked you to.

The consumer may cancel while you are supplying the service, but loses the right to cancel once you have finished performing the service as long as:

- the contract is not for the supply of water, gas, electricity or district heating;
- they requested that you start the supply within the cancellation period; and
- they acknowledged that they would lose the right to cancel once the service was fully performed.

If the consumer cancels during the cancellation period after you have started performing the service, they must pay you part of the price proportional to the work done, as long as:

- they requested you to start the supply within the cancellation period; and
- you supplied them with the pre-contract information on the right to cancel and their obligation to pay for services supplied.

### **E-commerce Regulations**

In addition to the CRD, you must also comply with the Electronic Commerce (EC Directive) Regulations 2002 ('ECR'). Some of the information that you must provide overlaps with the requirements of the CRD. We have listed below the additional information required by the ECR and have indicated where it is not included in the terms and conditions. You must supply the following to the customer:

1. Your company registration number (if applicable).
2. Your VAT registration number (if applicable).
3. The name of any publicly accessible trade (or similar) register with which you are registered and your registration number or other means of identification in the register.
4. Details of any supervisory authority if your service is subject to an authorisation scheme (such as a licence, certification or registration).
5. Details of any professional body with which you are registered, any professional titles you hold and the European Union member states in which the titles have been granted, a reference to your professional rules and how they can be accessed.
6. The technical steps that the customer must follow to conclude the contract (not included - provide on your website).
7. A description of the technical means for customers to identify and correct input errors prior to placing an order (not included - provide on your website).
8. Whether or not a copy of the contract will be kept by you and if so, if it can be accessed by the customer (not included - provide on your website).
9. The languages offered for the conclusion of the contract.

### **Provision of Services Regulations**

The EU (Provision of Services) Regulations 2010 apply to most businesses which provide services to both consumers and to other businesses. They are intended to help service providers sell their services more easily across the EEA.

The information that you are required to disclose under these Regulations overlaps with the requirements of the ECR and the CRD. However, the majority of the information must be provided in good time before a contract has been concluded with the customer, so that they are able to make an informed decision when considering whether or not to purchase your services. It must also be provided in a clear and unambiguous manner, so that it can be easily understood.

This means that for online sales, the information should be provided on your website.

In addition to the pre-contract information required by the ECR and CRD mentioned above, these regulations require you to provide:

1. Details of any professional liability insurance or guarantee you may have including the contact details of the insurer or guarantor and the territorial coverage of the insurance or guarantee (not included - provide on your website and in the confirmation notice).
2. The terms of the contract including any terms in relation to the law and jurisdiction of the contract.
3. The main features of the service if these are not apparent from the context (not included - provide on your website and in the confirmation notice).
4. Any dispute resolution procedures provided by the professional regulatory body or under the code of conduct which governs your business (included - also provide on your website and in the confirmation notice).

In addition to the obligation to provide certain information, these regulations require you to:

1. Deal with any complaints as quickly as possible (taking into consideration certain factors such as the nature and complexity of a case) and to make best efforts to find a satisfactory solution.
2. Make your services available to the public at large and not to discriminate on the grounds of an individual's place of residence unless you have an objective reason to justify doing this. This means, for example, that you cannot refuse to provide your services, offer different terms and conditions or provide different standards of service on the sole basis of an individual's place of residence unless you can justify it. In most cases, you will be entitled to make adjustments by, for example, charging higher prices for any additional costs. You will need to be sure that it will put an excessive strain on your business before refusing to provide services to an individual living in the EEA.

## **Alternative Dispute Resolution**

Businesses selling to consumers (except health professionals) must comply with the requirements of the EU (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (The 'ADR Regulations'). Alternative Dispute Resolution ('ADR') is a means of resolving disputes other than by court proceedings. In a mediation, an independent person gives both sides the opportunity to state their position and tries to help them to find a solution. Adjudication or arbitration involves an independent person hearing both sides of the dispute and making a decision to resolve it.

If you are required to use ADR by any legislation which applies to your trade sector or by the rules of your trade association, you must give the consumer certain information before the contract is made. You must tell the consumer the name and website address of the certified ADR body to submit the dispute to. You should provide this information on your website. It will also be included in this document.



In addition, from 15 February 2016, if you are an online trader obliged to use ADR and you make an offer to a customer via email, you must provide a link to the Online Dispute Resolution ('ODR') platform in that email (i.e. <http://ec.europa.eu/consumers/odr/>). The ODR platform is a way of resolving disputes through online communication. In your terms and conditions, you will need to inform the consumer about the existence of the ODR platform and that it is available to resolve disputes between you and the consumer. On your website, you must also state your email address as the first contact for complaints, and provide a link to the ODR platform.

## **Unfair terms**

Consumers have legislative protection from unfair terms in consumer contracts as required by the Unfair Terms in Consumer Contracts Regulations. An unfair term in a standard consumer contract is a term that is significantly weighted against the consumer. In other words, the contract contains a statement that puts the consumer at a disadvantage. A supplier of goods or services can have an advantage over the consumer by including such an unfair term in a contract.

A term will be considered unfair if it is not included in good faith, if it causes a significant imbalance in the rights and obligations of the parties and is detrimental to the consumer. The Regulation contains a list of terms that will always be unfair and of terms that may be unfair depending on the circumstances.

A trader cannot rely on clauses in a contract designed to protect the trader from claims by the consumer where the consumer has suffered loss as a result of the goods not being of satisfactory quality, fit for their purpose, matching their description or matching the sample or model provided by the trader. The trader also cannot protect themselves from a claim if the consumer suffers death or personal injury as a result of the trader's negligence.

Other terms which may be unfair include:

- a term allowing the trader to retain sums paid by the consumer or to charge the consumer a disproportionately high sum where the consumer decides not to go ahead with the contract
- a term which allows the trader to unilaterally and without a valid reason alter the terms of the contract or the characteristics of the goods or services provided, and
- a term allowing the trader to increase the price of the goods or services without giving the consumer the right to cancel the contract.

## **EC (Companies) (Amendment) Regulations 2007**

The European Communities (Companies) (Amendment) Regulations 2007 require the following information to be included on your website if you are operating through a company:

1. the company's registered name and number
2. the part of the Republic of Ireland in which the company is registered
3. the registered address
4. the fact that it is a limited company if it is exempt from using the word 'limited'
5. if it is an investment company, the fact it is such a company (not included)

### **Sole traders, partnerships and limited liability partnerships**

Limited liability partnerships are required to provide their registered name and number and registered address.

A sole trader must provide their name (in addition to any trading name that they may use) and an address where service of any business related documents will be effective.

Partnerships must provide the names of the partners unless there are more than 20, in which case the website must provide the address of the partnership's principal place of business and state that a list of the partners' names can be inspected there. They must also provide an address where service of any business related documents will be effective.

## Consumer rights

Whenever you sell goods or services, there are various consumer laws with which you must comply. These are described below.

The following legislation applies to all contracts with consumers whether or not they are made online:

### **The Sale of Goods and Supply Services Act 1980**

The Sale of Goods and Supply of Services Act 1980 (as amended) requires a supplier of services acting in the course of a business in the Republic of Ireland to provide the service:

- using reasonable care and skill
- within a reasonable time (unless the price is determined by the contract, left to be determined in a manner agreed by the contract or determined by the course of dealing between the parties)
- at a reasonable cost

These terms will be implied in all agreements with consumers but can be excluded subject to compliance with legislation regarding the use of unfair contract terms.

### **The Sale of Goods Act**

The Sale of Goods Act 1893 (as amended) imposes three requirements on traders which cannot be excluded in contracts with consumers:

- You must make sure the supplied goods are as you describe them; for example, a television must be the exact model that you say it is.
- The goods must also be of satisfactory quality. To be of satisfactory quality, goods must normally:
  - do what they are supposed to do
  - be safe
  - comply with any public statements made about the characteristics of goods (especially in advertising or on labelling)
  - be free from defects, including minor ones
  - function properly for a reasonable period of time
  - have a reasonably satisfactory finish and appearance

You should also ensure that the goods are 'fit for their purpose'.

If a customer makes it known to you that they intend to use the goods for a particular purpose, it is implied by law that the goods supplied are reasonably fit for that purpose. For example, if you are told by a customer that they wish to use a jacket for hill-walking in rainy weather, the jacket should be waterproof. The first two conditions must normally be met whatever price the goods are sold at.

However, the standard of the remaining conditions depends on factors like the price of the products or whether they are new. For example, if the products are second hand, it may be reasonable for the goods to last only a short time or have some defects, such as signs of wear and tear. If they are brand new, however, this will not be acceptable at all unless the defects have been pointed out to the buyer - who will normally expect a reduction in price to reflect this.

## **Examples**

Here are some examples - but it is important to remember that each case is different:

- A new Range Rover which is drivable but has a variety of minor problems with its engine and bodywork is not of satisfactory quality - especially in view of its luxury price tag.
- A second hand car which has a defective clutch and breaks down shortly afterwards would be of satisfactory quality if the seller had pointed out the defect and the price took account of it.

## **Remedies available to a consumer**

If the consumer goods or services that you sell do not conform to the implied terms contained in the Sale of Goods Act or the Sale of Goods and Supply of Services Act a customer may seek redress by:

### *Rejecting the contract and seeking a refund.*

This must be done within a 'reasonable time'. What constitutes a reasonable time will vary from case to case and, in the case of the sale of goods, will include whether the customer has had a reasonable opportunity to examine them. A customer cannot reject the contract if the goods have been 'accepted', such as if the goods have been held by the customer for over a reasonable period of time.

This does not apply to customers who have been supplied with goods that are faulty or are not as described and they will be entitled to a refund. In such cases a customer does not have to accept a replacement or credit note as an alternative.

### *Seeking damages*

Compensation may be claimed if the implied terms are breached. This could include the cost of obtaining replacement goods or services, damage caused by faulty goods or the cost of repairs. If goods have been accepted then the customer can only claim damages.

#### *Requesting the goods be repaired or replaced*

If a customer elects for the goods to be repaired, they will not lose their right to reject the goods or require a refund if the goods are not repaired to their satisfaction. You must undertake the repair or supply a replacement within a reasonable time. If this cannot be done, or if it is likely to cause the customer too much inconvenience, you must inform the customer and they can choose another remedy.

You have the right to refuse a request to repair if the cost will be disproportionately higher than the cost of replacing the goods (and vice versa).

#### *Requesting a refund*

If the goods do not conform to the terms of the contract, a customer may request a full or partial refund. You are entitled to see evidence of proof of purchase.

Note that a customer's legal rights are the same whether or not they are buying online and if they are buying sale items or items at their full price.

If the goods have any defects or faults (or, in the case of the provision of services, there are any limitations to the service provided) then these should be brought to the customer's attention prior to purchase.

You cannot be held responsible for:

1. fair wear and tear
2. misuse or accidental damage by the consumer
3. where the customer has tried their own repair or had someone else attempt a repair, and this has damaged the goods
4. incorrect public statements about the characteristics of goods (such as in advertising or on labelling) which you were not aware of for good reason or had been corrected in public before the conclusion of the sale or the decision to buy was not influenced by the statement

#### **Time limits for bringing claims**

The time limit to bring a claim to court is six years. The period runs from when the breach of contract occurred, which, in practice, is taken to be the date on which the goods were provided or the services performed. However, this time limit does not mean that goods have to last for this length of time.

### **Obligation to minimise loss**

The customer has a duty under contract law to take reasonable steps to minimise their loss. This means that they should act reasonably when seeking redress and should not add unnecessary costs. Consequently, they should:

Report faults as soon as possible, to make it easier for them to show that the goods were inherently faulty at the point of sale, and to prevent the goods from deteriorating further.  
Service goods as appropriate, follow the user instructions and look after them, so that they do not contribute to any existing or inherent fault.

### **Data Protection**

The General Data Protection Regulation (GDPR) Directive (EU) 2016/680, supplemented by the Data Protection Acts 1988 and 2003, govern the processing of personal information. Most importantly, you should minimise the amount of personal data you request, store and process and only do so when either the website user has consented to that processing or it's necessary for one of several specified reasons. In addition, you should always provide a specific privacy notice - it is not good practice to include your privacy notice within these terms and conditions.

You can find out more on the Data Protection Commission website.

## Domain names

### Overview

A domain name is a registered right which entitles the holder to use a combination of letters and numbers (the domain name) to point to its web server. In other words, when you enter the domain name into a browser, you will be directed to the domain name owner's website or the website of someone who has a licence from the domain name owner. In practice, it can be bought and sold, like a piece of property. Currently in the Republic of Ireland there are no formal requirements for domain name sales or transfers to be evidenced in writing, although the domain name registrar will have their own transfer process which must be followed. Nevertheless, it is sensible to have a written agreement so that appropriate warranties and assurances are given.

The transferor of a domain name will be registered as the owner with the registrar of the top level domain. (IEDR is the registry for internet domain names ending in .ie.) For basic public information on the domain name system, how it works and how to obtain global top level domains (gtld's) such as ".com", ".org" etc. see The Internic website.

### Registration and re-registration

Since domain names are subject to registration, their transfer takes effect by re-registering in the name of the transferee.

### Fees for transfer

Domain name registries require fees to be paid when registrations are transferred.

## Privacy policy

### Introduction

If your business has a website, you will probably use it to collect and store information from people who visit it, either by asking for it directly or by putting a cookie on their web browser.

Under the EU General Data Protection Regulation (GDPR) Directive (EU) 2016/680, and supplemented by the Data Protection Acts 1988 and 2003, you need to tell people about the information you hold, including how you will use it and for what purpose. You also need to tell them about their privacy rights and how the law protects them. You can use a privacy notice to do this (it is sometimes also known as a privacy policy or privacy statement). See LawOnline's 'Privacy and cookie policy for a website' (EC003).

If your website does not have anywhere for users to enter information and does not use cookies then you do not need a privacy notice.

You should also use our 'Terms of use for a website' (EC005), which govern use of your website generally. If you make sales (i.e. take payments) via your website, you may also need our 'Terms and conditions for selling consumer goods or services on a website' (EC004).

### What you need to do

Assess what personal information you request and process: this will enable you to prepare this privacy notice and add it to your website.

However, the purpose of a privacy notice is to bring this information to people's attention in the most accessible format possible. This includes doing so at the appropriate time such as including a link to the notice on every page of your website. It would also be helpful for a link to this notice, with a short explanation, to pop up before any information is provided by users of the website (in the UK, for example, these are referred to as 'just-in-time' notices).

This document will create up to four of these just-in-time notices for different situations, depending on your circumstances. Their contents will change depending on your answers, but you may need to tailor them further to the specific situation.



As we explain below, to process someone's data you need one of several legal justifications. That they have consented is one such justification. If that is your justification, you will also need to provide a mechanism for website users to consent to your processing of their data in the manner intended.

## **The data protection principles**

Irrespective of your privacy notices, when you hold or are considering asking for personal data, you must follow the data protection principles outlined below.

All employees should be notified of these data protection principles because they will be processing data on behalf of the business.

The GDPR outlines six data protection principles that are central to data protection law. You will have to comply with these principles at all times in your personal data-handling practices. In brief:

1. Personal data must be processed lawfully, fairly and transparently. That means you must provide certain information to the person whose data you want to capture. The purpose of this privacy notice is to provide this information. It also means you may only process the information if you have a 'lawful basis' (i.e. a legal justification) for doing so. These justifications are:

*The person consented to the specific processing (you should only use this justification if you can't rely on any of the others).*

*The processing is necessary to carry out a contract with the person.*

*The processing is necessary to comply with a legal obligation.*

*The processing is necessary in order to protect the person's 'vital interests', or those of another person. 'Vital interests' generally means life or death situations, e.g. a person's medical history is disclosed to a hospital's A&E department after a serious accident. You should only consider this justification after considering the others.*

*The processing is necessary for a task carried out in the public interest or in certain official capacities.*

*The processing is necessary for a legitimate interest pursued by you or by a third party, except where the processing would have a disproportionate adverse effect on the person's rights and legitimate interests. If you rely on a legitimate interest you should also conduct a legitimate interest assessment. That means that you've shown that the processing is necessary for the legitimate interest and balanced it against the individual's interests, rights and freedoms.*

2. Personal data must be obtained only for one or more specified and lawful purposes and not processed in a manner incompatible with those purposes.
3. Personal data collected shall be adequate, relevant and not excessive in relation to the purposes for which it is processed.
4. Personal data shall be accurate and kept up-to-date.
5. Personal data shall not be kept for longer than is necessary.
6. The data controller is responsible for, and must be able to demonstrate compliance with, the other data protection principles.

## Sensitive information

The GDPR also outlines eight special categories of data relating to a person's:

- political opinions
- racial or ethnic origin
- religious or philosophical beliefs
- trade union membership
- biometric data
- genetic data
- health
- sex life or sexual orientation

In order to process these categories of data - along with data relating to criminal convictions, offences and related security matters - you have to meet at least one of the following extra conditions:

- The processing is with the person's **explicit** consent.
- The processing is in connection with employment, for the purposes of performing any legal right or obligation that you have.
- The processing is necessary in order to protect the person's interests of those of another person, where you can't get consent or you are not reasonably expected to get it. Another option would be where the person has unreasonably withheld their consent but the processing is necessary to protect the interests of another person.
- The processing is:
  - carried out for legitimate interests of a non-profit organisation, that exists for political, philosophical, religious or trade union purposes;*
  - carried out with appropriate safeguards for the person's rights and freedoms;*
  - relates only to individuals who either are members of the non-profit organisation or have regular contact with it; and*
  - does not involve disclosure of the personal data to a third party without the person's consent.*

- The person has already deliberately taken steps to make the personal data public.
- The processing is necessary for the purpose of or in connection with legal proceedings, getting legal advice etc.
- The processing is necessary for reasons of substantial public interest, but with many other restrictions.
- The processing is necessary for medical purposes.
- The processing is necessary for the protection of public health.
- The processing is necessary for archiving purposes in the public interest.

In addition, some of these justifications involve further safeguards. For example, information about employment, health and social care, public health or archiving, search and statistics requires that you have an appropriate policy in place. Health and social care or public health information must be undertaken under the responsibility of someone under an obligation of professional secrecy.

If the data relates to criminal convictions, offences or related security matters, you must not process the information except under the control of official authority or when authorised by law and under appropriate safeguards. In the context of a website, it will only be authorised by law if it relates to health or social care or public health, and the above conditions also apply.

### **Anonymise v pseudonymise**

What if you remove the parts of the data from your website that make it possible to identify individuals? The GDPR uses two terms for this: 'anonymise' and 'pseudonymise'.

**Anonymisation** means that the parts of the information that identify individuals have been **irretrievably** removed. That means the information does not identify individuals therefore it would not be covered by the GDPR. This also applies to information from cookies. Note, however:

- The EU's data protection advisors body has stressed that the standard for anonymising is high, so you will need specialist advice to ensure that the removal qualifies as anonymisation under the GDPR;
- The act of anonymising itself is a type of processing, therefore unless the information is anonymised **before** you receive it, you will be processing personal data and it'll fall under the GDPR.

**Pseudonymisation** means to remove the parts of the information that make it possible to identify someone, but in such a way that either you or someone else could re-identify the data with reasonable effort. This data remains covered by the GDPR.

Given that you still have to list this data in a privacy notice, you may be wondering whether there is any gain in removing identifying data this way. However, it is advantageous as it makes the data more secure - if someone gets access to your data, if it is pseudonymised it will be more difficult for them to abuse. Individuals concerned are likely to look highly upon that.

## **Rights of those using your website**

### **Subject access requests**

Users of your website have a right to ask whether you, or someone on your behalf, are processing any personal data about them and, if so, to be given:

- A description of the personal data
- Information regarding the purposes for which the personal data is being processed
- The disclosees, or potential disclosees, of the personal data
- A copy of information in an intelligible form containing such personal data and any information that you have access to, identifying the source of that personal data
- Where you or someone on your behalf has processed such personal data by automatic means for the purpose of evaluating matters relating to such user e.g. credit worthiness, and such processing is likely to form the sole basis for any decision significantly affecting the user, you must inform such user of the logic involved in that decision making.

### **Other rights**

Those users whose information you hold also have the following rights:

- To ensure that you correct or complete information relating to them if appropriate, or to complain to the Data Protection Commissioner if you do not;
- To request that their personal information that you hold is deleted if you relied on their consent in holding that information, or if it is no longer necessary;
- To restrict or object to the processing of their information in certain circumstances;
- The right to portability - in brief, to request a copy of the data or request that the data is sent to another controller;
- To be told of a likely breach of their data protection rights.

## Cookies

### What is a cookie?

Cookies are text files containing small amounts of information which are downloaded to a user's device when they visit a website. Cookies are then sent back to the originating website on each subsequent visit, or to another website that recognises that cookie. Cookies are useful because they allow a website to recognise a user's device.

Cookies do lots of different jobs, like letting users navigate between pages efficiently, remembering their preferences, and generally improving the user experience. They can also help to ensure that adverts users see online are more relevant to them and their interests. You can find more information about cookies at <http://www.allaboutcookies.org> and <http://www.youronlinechoices.eu>.

The General Data Protection Regulations (GDPR) specifically addresses cookies in this way:

*Natural persons may be associated with online identifiers [...] such as internet protocol addresses, cookie identifiers or other identifiers [...]. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.*

Some cookies will escape that broad definition, however most will be covered by it.

However, there is another, older European directive that is more specific to cookies - the ePrivacy Directive. This is currently being updated, but the updated version is not yet finalised. Therefore, in relation to cookies, you must abide by some parts of the GDPR and some parts of the ePrivacy Directive.

In brief:

- In accordance with the GDPR, if the cookie can be used to identify or build a profile of someone, data protection law applies. For brevity, we'll refer to that as an identifying cookie.
- For identifying cookies, you must give a privacy notice.
- However, the older directive says whether consent is necessary. In brief, it is necessary unless the cookie is essential for a service requested from you by the website user. For example, if you sell on your website you probably provide shopping baskets, for which cookies might be necessary - without the cookies, the basket would not remember what goods the user wishes to buy. On the other hand,

if the cookie is used to tailor the products offered to the customer's past preferences, that isn't essential and so consent would be required.

- If consent is required, the GDPR governs the requirements of the consent.

The law applies also to similar technologies for storing or retrieving information such as local shared objects (often referred to as 'flash cookies'), web beacons or web bugs (including transparent or clear gifs).

For this reason, this privacy notice explains what identifying cookies are used, and provides you with a just-in-time notice to be presented to the website user before any cookies are set on the user's browser.

## **Types of cookies**

### *First-party v third-party cookies*

Whether a cookie is 'first' or 'third' party refers to the domain placing the cookie. First-party cookies are those set by a website that is being visited by the user at the time - the website displayed in the URL window. Third-party cookies are cookies that are set by a domain other than that of the website being visited by the user. If a user visits a website and another entity sets a cookie through that website, this would be a third-party cookie.

### *Session v persistent cookies*

Persistent cookies remain on a user's device for the period of time specified in the cookie. They are activated each time the user visits the website that created that particular cookie.

Session cookies allow website operators to link the actions of a user during a browser session. A browser session starts when a user opens the browser window and finishes when they close the browser window. Session cookies are created temporarily. Once you close the browser, all session cookies are deleted.

## **Categories of cookies**

The International Chamber of Commerce (ICC) defines four categories of cookies:

### *Category 1: strictly necessary cookies*

These cookies are essential in order to enable users to move around the website and use its features, such as accessing secure areas of the website. Without these cookies services users have asked for, like shopping baskets or e-billing, cannot be provided.

User consent is not required for the delivery of those cookies that are strictly necessary to provide services requested by the user. However, it is important to give users the opportunity to understand these cookies and the reasons for their use.

Generally these cookies will be first-party session cookies. It is possible for third-party or persistent cookies to be essential, but it will be rare.

Not all first-party session cookies, however, will fall into the 'strictly necessary' category and the use of the cookie must be related to a service provided that has been explicitly requested by the user.

Strictly necessary cookies will generally be used to store a unique identifier to manage and identify the user as unique to other users currently viewing the website, in order to provide a consistent and accurate service to the user.

Examples include:

- remembering previous actions (e.g. entered text) when navigating back to a page in the same session
- managing and passing security tokens to different services within a website to identify the visitor's status (e.g. logged in or not)
- to maintain tokens for the implementation of secure areas of the website
- to route customers to specific versions/applications of a service, such as might be used during a technical migration

These cookies will not be used:

- to gather information that could be used for marketing to the user; or
- to remember customer preferences or user ID's outside a single session (unless the user has requested this function).

### *Category 2: performance cookies*

These cookies collect information about how visitors use a website, for instance which pages visitors go to most often, and if they get error messages from web pages they are only

used to improve how a website works. These cookies might be anonymised, in which case the GDPR will not apply. However, it is more likely that the anonymisation will not be thorough enough so you should assume that the GDPR does apply.

Web analytics that use cookies to gather data to enhance the performance of a website fall into this category. For example, they may be used for testing designs and ensuring a consistent look and feel is maintained for the user. They may also be used to track the effectiveness of 'pay-per-click' and affiliate advertising, but where the same cookies are used for re-targeting they must be included in 'Category 4: targeting cookies or advertising cookies' as well. An affiliate is a website operator who can send traffic to a website using links from another website. The affiliate is paid an agreed commission from the referral.

This category does not include cookies used for behavioural/targeted advertising networks.

These cookies can be first or third party, session or persistent cookies. To fall within this category their usage should be limited to performance and website improvement.

Examples include:

- Web analytics: where the data collected is limited to the website operator's use only, for managing the performance and design of the site. These cookies can be third-party cookies but the information must be for the exclusive use of the publisher of the website visited.
- Ad response rates: where the data is used exclusively for calculating response rates (click-through rates) to improve the effectiveness of advertising purchased on a site external to the destination website. If the same cookie is used to re-target adverts on a third-party site this would fall outside the performance category (see: Category 4: targeting cookies or advertising cookies).
- Affiliate tracking: where the cookie is used to let affiliates know that a visitor to a site visited a partner site some time later and if that visit resulted in the use or purchase of a product or service, including details of the product and service purchased. Affiliate tracking cookies allow the affiliate to improve the effectiveness of their site. If the same cookie is used to re-target adverts this would fall outside the performance category.
- Error management: measuring errors presented on a website, typically this will be to support service improvement or complaint management and will generally be closely linked with web analytics.
- Testing designs: testing variations of design, typically using A/B or multivariate testing, to ensure a consistent look and feel is maintained for the user of the site in the current and subsequent sessions.

*Category 3: functionality cookies*



These cookies allow the website to remember choices users make (such as their user name, language or the region they are in) and provide enhanced, more personal features. For instance, a website may be able to provide local weather reports or traffic news by storing in a cookie the region in which the user is currently located.

These cookies can also be used to remember changes users have made to text size, fonts and other parts of web pages that they can customise. They may also be used to provide services users have asked for such as watching a video or commenting on a blog.

Where these cookies are also used for behavioural/targeted advertising networks they must be included in 'Category 4: targeting cookies or advertising cookies' as well as this category.

These cookies can be first-party, third-party, session or persistent cookies. These cookies will typically be the result of a user action, but might also be implemented in the delivery of a service not explicitly requested but offered to the user. They can also be used to prevent the user being offered a service again that had previously been offered to that user and rejected.

Examples include:

- Remembering settings a user has applied to a website such as layout, font size, preferences, colours etc.
- Remembering a choice such as not to be asked again to fill in a questionnaire
- Detecting if a service has already been offered, such as offering a tutorial on future visits to the website
- Providing information to allow an optional service to function such as offering a live chat session
- Fulfilling a request by the user such as submitting a comment

#### *Category 4: targeting cookies or advertising cookies*

These cookies are used to deliver adverts more relevant to users and their interests. They are also used to limit the number of times users see an advertisement as well as help measure the effectiveness of the advertising campaign. They are usually placed by advertising networks with the website operator's permission. They remember that a user has visited a website and this information is shared with other organisations such as advertisers. Quite often targeting or advertising cookies will be linked to site functionality provided by the other organisation.

There are practical hurdles when it comes to providing privacy notices and obtaining consent for third-party cookies. The most important thing is that adequate notice is given and consent obtained. In practice, operators of consumer-facing websites may be best positioned to obtain consent. Where third-party cookies are set through a website, both the third party and the website operator will have a responsibility for ensuring users are clearly informed about cookies and for obtaining consent.

These cookies will always be persistent but time-limited cookies. These cookies contain a unique key that is able to distinguish individual users' browsing habits or store a code that can be translated into a set of browsing habits or preferences using information stored elsewhere.

Examples include:

- Cookies placed by advertising networks to collect browsing habits in order to target relevant adverts to the user. The site the user is visiting need not actually be serving adverts, but often this will also be the case.
- Cookies placed by advertising networks in conjunction with a service implemented by the website to increase functionality, such as commenting on a blog, adding a site to the user's social network, providing maps or counters of visitors to a site.

#### *Cookies that fit into multiple categories*

It is up to website operators to appropriately place cookies in the correct category based on what function those cookies have and their use. However, there may be cookies that fit into all/several of the categories in the guide as a result. For instance where a cookie can be used to change website functionality, and is also used for delivering online behavioural advertising, the cookie must be placed into both category 3 and category 4 and consent must be sought in relation to both categories/uses.

#### **Giving information and getting consent**

The ICC has published guidance on the different approaches that might be taken on these issues depending upon the types of cookies used. This guidance (which can be found at [https://www.cookie law.org/media/1096/icc\\_uk\\_cookiesguide\\_revnov.pdf](https://www.cookie law.org/media/1096/icc_uk_cookiesguide_revnov.pdf) - link opens a PDF) should be referred to for more detailed information.

Methods of getting consent may include:

- accepting website terms and conditions;

- settings-led consent: getting consent as users select website settings;
- feature-led consent: getting consent as users register for or 'switch on' website features;
- function-led consent: getting consent as a result of users initiating or activating website functions; or
- notice and choice mechanisms, such as sensitively deployed pop ups or header bars.

There is much disagreement, and possibly confusion, within the industry and among commentators about what is valid consent for obtaining cookies.

The safest way of correctly getting consent for cookies is by explaining your use of them and giving a specific option on your website. For example, before setting any cookies, your website could display a notice listing the cookies it uses, explaining what they are for, and asking the user which cookies are accepted. This privacy notice includes a table listing your cookies in that way, so that users can make a specific and informed decision about which cookies to accept.

In the past website operators generally provided a brief notice saying they use cookies and that continuing to use the website indicates acceptance of cookies. This relies on the idea that, if they did not want to accept all cookies, users could change their browser's settings - for example to not accept any cookies or to not accept third-party cookies.

It is debatable whether that ever really sufficed even under the previous law. For the GDPR, the problems include:

- many users do not use their browser settings in a proactive manner, making it potentially difficult to argue that continuing to use the website without changing browser settings equals valid consent;
- consent should be specific to the specific processing - changing browser settings will change your acceptance of *all* cookies of that type; but you might want your favourite cycling shop to know which cycling jerseys you regularly consider buying, but there may be other advertisers who you do not want to know anything at all about you.

It is not entirely clear if current browsers offer adequate consent options but consenting via browser settings could suffice. In the absence of a clear position on this matter we have given the option, in this policy, of using browser settings this way. That is because even previously it may not have been lawful but such a practice developed. We are not sure how practice will evolve under the GDPR. However, we would suggest you choose the first option.

## Data protection officer

Under the GDPR, you must appoint a Data Protection Officer (DPO) if:

1. your core activities require large scale, regular and systematic monitoring of individuals (for example, online behaviour tracking); or
2. your core activities consist of large scale processing of special categories of data or data relating to criminal convictions and offences.

Currently it is unclear what **large scale** means because it is not defined by the GDPR. However, the following should be considered:

- the number of individuals concerned;
- the volume of data or range of items being processed;
- the duration or permanence of processing activity;
- the geographical extent of processing activity.

In many cases, it is unlikely that small organisations will be processing on a large scale. The European Commission gives guidance and some examples in question 3 of [http://ec.europa.eu/information\\_society/newsroom/image/document/2016-51/wp243\\_annex\\_en\\_40856.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-51/wp243_annex_en_40856.pdf) (PDF).

You can appoint a DPO if you wish, even if you are not required to. If you decide to voluntarily appoint a DPO you should be aware that they will have the same responsibilities as if the appointment had been compulsory.

A DPO can play a key role in your organisation's data protection governance structure. Their responsibilities are:

- to inform and advise you and your employees about your obligations to comply with the GDPR and other data protection laws;
- to monitor compliance with the GDPR and other data protection laws, and with your data protection policies, including managing internal data protection activities; raising awareness of data protection issues, training staff and conducting internal audits;
- to advise on, and to monitor, data protection impact assessments;
- to cooperate with the supervisory authority; and
- to be the first point of contact for supervisory authorities and for individuals whose data is processed (employees, customers etc.).

Regardless of whether the GDPR obliges you to appoint a DPO, you must ensure that your organisation has sufficient staff and resources to discharge your obligations under the GDPR.

If you decide that you do not need to appoint a DPO, either voluntarily or because you do not meet the above criteria, it is a good idea to record this decision to help demonstrate compliance with the accountability principle. It is also a good idea, even if you do not appoint a DPO, to consider appointing someone as the primary point of contact for data protection issues.