

NEW ACT ON CERTAIN CONSUMER CONTRACTS WILL SOON TAKE EFFECT—ARE YOU READY?

10 December 2013, the Danish Parliament passed a series of amendments to the Danish Act on Certain Consumer Contracts based on the fully harmonizing Directive on Consumer Rights (2011/83/EU) which implies a series of changes within consumer law. The amendment will come into force 13 June 2014.

The amendment implies several material changes, including:

- More agreements will be covered by the business operator's duty of disclosure
- Tighter requirements regarding the duty of disclosure when entering into consumer contracts
- Extension of the consumer's right to cancel
- Assessment of term of notice regarding ongoing services
- Relaxation of the rules on the passing of the risk
- Stricter sanctions

The material changes listed above will be explained in more detail in the following.

The new rules apply to agreements made on and after 13 June 2014.

Overall, the new Act on Certain Consumer Contracts contains amendments concerning distance selling and agreements made somewhere other than at the business operator's place of business. The Act implies improvements for the consumers, for instance by providing the possibility of returning used products and the possibility of extending the right to cancel.

More Agreements will be covered by the Business Operator's Duty of Disclosure

Previously, only distance selling and agreements made outside the business operator's place of business involved a duty of disclosure.

The rules about the business operator's duty of disclosure will be extended from applying to certain consumer contracts to now applying to all consumer contracts covered by the Act on Certain Consumer Contracts which means any distance selling where the business operator and the consumer do not meet in person.

Tighter Requirements regarding the Duty of Disclosure when entering into Consumer Contracts

The new Act on Certain Consumer Contracts now requires that information must be provided in Danish when regarding distance selling or agreements made somewhere other than at the business operator's permanent place of business. However, the requirement to provide information in Danish only applies if the product in question has been marketed in Danish. Provided that the consumer has agreed to receive the information in any language other than Danish, the requirement may be departed from.

Further, the requirements regarding the duty of disclosure include the business operator's contact information, description of the procedures for exercising the right to cancel, information about the steps that the consumer must take when returning a product, and any additional information about the total price to the extent that the agreement in question is ongoing with no time limit or a subscription agreement.

Extension of the Consumer's Right to Cancel

The right to cancel within three months, also known as the ultimate right to cancel, will be extended to 12 months. The ultimate right to cancel applies only when the information which the business operator must give to the consumer has not been given in a timely fashion. The consumer's right to cancel remains 14 days from the time at which the information about the right to cancel is received by the consumer. In addition to the extended right to cancel, the right to cancel will also be maintained in situations where the consumer has used the product to a wider extent than what is necessary in order to determine whether or not it is the real product and if it works, i.e. when used. The consumer is, however, liable for any impairment as a result of the product being used. In reality, this means that the business operator must take back used products against compensation from the consumer. The consumer is not, however, required to compensate the business operator in the event that the business operator has neglected to inform the consumer about the right to cancel.

Assessment of Term of Notice

The term of notice in consumer agreements may not exceed one month plus the present month. Agreements with an initial binding period are allowed, however, and in this case, the consumer may terminate the agreement with a month's notice until the end of a month once five months have passed from the time when the agreement was made.

Relaxation of the Rules on the Passing of the Risk

Contrary to previous rules, the consumer now bears the risk of the product's accidental destruction when returning it, whereas before the consumer was only liable in cases of carelessness in connection with returning a product. However, the Danish Sale of Goods Act's rule of presumption still applies which means that the burden of proof showing that the fault was caused by the consumer, and that it did not exist when the product was delivered, remains on the business operator.

Consumers can no longer be viewed as having cancelled a purchase by refusing to receive the package, but must notify the business operator thereof separately.

Stricter Sanctions

Under the previous rules, fines could be issued in the event of more gross violations of the duty of disclosure. As something new, business operators may be fined for first time violations, e.g. if the business operator has neglected to inform the consumer about the right to cancel.

Our View

The amendments which originate in the Directive on Consumer Rights imply a number of changes that will strengthen the legal position of consumers and lead to new challenges for business operators as well as set requirements for the future organization of the sales procedure. It is therefore our recommendation that any business operators that take advantage of distance selling and online business revise their terms of sale and delivery with a view to ensure that they comply with the strengthened requirements of the Act.

Both the deal site provider and the supplier should ensure that it is clear from any given offer with whom the consumer enters into agreement. It is also important that any complaint process refers to the appropriate party from the start.

Consumers should also look into who it is that they enter into agreement with before purchasing goods and services on a deal site in order to avoid disappointment later.

If you have any questions or would like additional information regarding the legal regulation of deal sites or on consumer law issues in general, please contact partner Pernille Nørkær (pno@mwblaw.dk) or junior associate Peter Smed (psm@mwblaw.dk).

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