



Consultation Document

Implementing the Consumer Rights Directive

Response from:

British Vehicle Rental and Leasing Association

River Lodge

Badminton Court

Amersham

BUCKS HP7 0DD

Tel: +44 1494 434747

Fax: +44 1494 434499

E-mail: info@bvrla.co.uk

Web: www.bvrla.co.uk



Response to Department for Business Innovation and Skills

Executive Summary

We welcome the opportunity to comment on the Department for Business Innovation and Skills consultation on implementing the Consumer Rights Directive and thank the department for meeting with us to discuss our concerns and observations.

We believe the introduction of the directive across Europe should provide the opportunity of delivering the twin objectives of simplicity for business and creating an environment in which consumers will be afforded the confidence to purchase goods and services in any Member State.

The BVRLA has worked for a number of years with policymakers in Europe on the final content of the Consumer Rights Directive. This has specifically been with regards to offering a right of withdrawal to consumers who rent motor vehicles. The BVRLA was able to secure a specific exemption for vehicle rental vehicles following its discussions in which we were able to demonstrate that the costs associated with offering the consumer a right of withdrawal would outweigh any benefits for the consumer who is already afforded flexible cancellation policies from vehicle rental companies.

We would wish to ensure a minor amendment is made by the department with regards to the exemption for vehicle rental and would welcome the department's clarification that this is possible. Article 16 (L) of the directive stipulates that:

“the provision of accommodation ***other than for residential purpose***, transport of ***goods***, car rental services, catering or ***services related to leisure activities if the contract provides*** for a specific date or period of performance;

For the sake of clarity we would suggest that the word ‘car’ is replaced with ‘vehicle’. This will help ensure that regardless of whether a consumer is renting a car, van or minibus the exemption should be to all classes of motor vehicles. We expand on this clarification request in more detail below and explain why the legal protection needs to apply to all motor vehicles rented.

We note details of the exemption for financial services from the directive and fully agree with the comments that the financial sector is already obligated in ensuring a high level of consumer protection, which includes a 14 day cooling off period as prescribed for under the Financial Services (Distance Marketing) Regulations 2004 (“Distance Marketing Regulations”).

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The definition of “financial service” under the Distance Marketing Regulations is described as being any service of a banking, credit, insurance, personal pension, investment or payment nature.

It would be helpful to clarify that our members provide financial products to consumer, such as a consumer-hire agreement often referred to as ‘personal contract hire’ or ‘personal leasing’ agreement. Under this type of personal leasing arrangement, the consumer is not able to obtain legal title or ownership of the new motor vehicle. Under a lease agreement, the consumer is entering into a financial payment arrangement to be able to use the vehicle from the owner of the motor vehicle. A personal hire agreement for a motor car is typically for 3 to 4 years in duration. The consumer is liable for payments for the full term of the agreement with the vehicle owner taking a credit and financial risk. The company leasing the vehicle to a consumer would also be required to ensure they have a consumer credit licence as the OFT requires such financial activity to be governed by a fit and proper legal entity.

We wish to clarify that a leasing company would ensure the consumer is given a 14 day cooling off period, in accordance with the Distance Marketing Regulations, for all agreements concluded at a distance. This would mean that the consumer leasing a car would be given a minimum of 14 days to cancel the agreement from the date it was signed. We feel that the department could help businesses and consumer by providing clarity in any guidance supporting the transposition of the Consumer Rights Directive into UK law. This clarity will help to avoid the perverse situation arising whether consumers felt that they were entitled to a 14 day cooling off period from when the new leased car is delivered to the consumer. To do so would result in the vehicle owner taking back and making a loss of over 25% on the original purchase price as the newly registered vehicle is now in fact a second-hand vehicle.

Specific Comments

Definitions and Interpretation – Section C, paragraphs 4-7

Question 1: Given the copy-out principle [see paragraphs 4-6), are there areas, provisions or issues in the Directive which you believe are, or may be too uncertain or unclear and would benefit from guidance or elaboration on the face of the UK’s implementing regulation?

As mentioned above we believe that for clarity Article 16 (L) of the Consumer Rights Directive should, when being transposed into UK law, to be amended so that “car rental” is changed to “vehicle rental”. There is a risk that without this amendment vehicle rental



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companies would be subject to the very concerns the European Parliament had intended to address. The BVRLA and its European Trade Association, Leaseurope, have proven that this exemption will help to ensure that an estimated €249 million p.a. compliance and administrative burden will not be imposed upon the industry. The industry provides over 44 million rental transactions across all EU member states each year. And contrary to the media hype, there is little or no evidence of consumer harm arising by the provision of this exemption and therefore no justifiable requirement for regulatory intervention.

Furthermore, this exemption also fully supports the UK Government's own amendments to the UK distance selling regulation, which were made back in 2005 to rectify the gold plating which had taken place with the transposition of the original directive.

The department recognised through our lobbying that requiring businesses to courier or post the prior information requirements to a consumer when a service was to commence within seven days was unworkable and amended the regulation to allow these requirements to be covered at the rental desk.

Our own calculations have shown that without this amendment UK vehicle rental firm's operating and regulatory costs would rise by £5.8 million each year if they had to offer the cooling off rights to customers renting vans or minibuses. We have included a detailed breakdown on how this cost has been calculated at Annex A.

It would also be helpful to add that we received clarification from the European Commission that their intention was to include vehicle rental in the directive. It was not possible to get the amendment made in Europe as the European Council wanted to deviate as little as possible from the original proposed text of the Directive. It was their considered view was that the change was not needed as vans and minibuses are all classes of a motor car and that each Member State would interpret this as such.

Unlike the European Commission, we feel that leaving the wording to read 'car rental' creates legal uncertainty, and that it would be prudent in order to remove any ambiguities from arising for the Department to ensure all classes of motor vehicles that are rented are clearly excluded within the terms of UK law.

Question 6 (paragraphs 8-9 and 23) It is our view that areas such as financial services and gambling are better covered through existing, sector specific legislation and that we should not pursue the option of extending the CRD information and cancellation rights to these sectors. Do you have any comments on this or others areas, including any not addressed in the proposals?

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We support the department's views that financial services is better covered through existing, sector specific legislation. However, we are of the view that guidance is required to help confirm which products are financial products, especially concerning personal contract hire products as we have explained above.

Private Rights of Redress – Section C, paragraphs 73-82

Question 24: With regard to private redress, do you consider the consequences provided for in the Directive for breaches of certain provisions to be clear and appropriate? Please explain your answer.

We do not believe it would be appropriate for the legislation to be prescriptive on this point as we believe to do so would stifle the opportunity for businesses to go beyond the law and offer consumers enhanced rights and protection as a market differentiator.

Question 25: In your view, should the consumer have a private right of recovery, and if so, what form should that right take where a trader fails to comply with the obligation to reimburse payments following cancellation by the consumer?

We do not believe it would be appropriate for the legislation to be prescriptive on this point as we believe to do so would stifle the opportunity for businesses to go beyond the law and offer consumers enhanced rights and protection as a market differentiator.

Question 26: With regard to private rights of the trader, should a failure by a consumer to return items, in breach of CRD obligations, be actionable as a breach of statutory duty or expressed in another way? What are your views regarding the imposition of penalties for such breaches? Please give your reasons.

The trader always has the courts as a solution if a problem arises.

Question 27: Are there any other issues or areas on which you would like to comment? If so, we would welcome your views.

We would welcome clarity with regards to how payments will be defined under the requirement for "*all traders within the scope of the CRD must seek the express consent of the consumer for any payments which are additional to the main price for the goods or services provided under the contract*".

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Will payments, for example, include payments which are taken after a contract has been concluded which relate to either contractual waivers or indeed compensation payment arising directly from the customer breaching the contract? For example, our members are often notified of parking charges after a rental has been concluded. Such matters relate to a breach of contract with the rental company either paying the fine or charging administration fees for dealing with the notice. The agreement would make it clear to the customer that by entering into the agreement they are responsible for such charges.

We believe the clarity or indeed examples on what the department considered to be “payments which are additional to the main price” actually mean in practice as this is an area that could easily be misunderstood, for the reasons we outline above.

Closing Comments

You will see that our members have very particular interests with the implementation of the Consumer Rights Directive.

We welcome the opportunity to continue our constructive dialogue and do hope our Association will be able to continue to add value to the shaping and development of initiatives aimed at improving consumer protection across Europe.

Leasing Members

In general, vehicle leasing is an arrangement where the user simply hires the use of the vehicle and assumes operational responsibility for a predetermined period and mileage at fixed monthly rental from the owner (the leasing company). Legal ownership is, in the majority of cases, retained by the leasing company.

Short Term Rental Members

Rental Members offer hourly, daily, weekly and monthly rental of vehicles to corporate customers and consumers. As explained above, rental members are the owners of the vehicle.



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Annex A

Current Assessment of Rental Members' Fleets Vans and Minibuses

Size of van and minibus fleet – 83,228

Average number of consumer van and minibus rental transactions per year – 1.1million

49% of consumer rental transactions are paid in advance and 51% are simply reserved and paid for upon arrival at the rental desk.

The rental industry handles around 195,000 rental cancellations each year from consumer wishing to rent a van or minibus.

Approximately 50% of these are cancelled by the consumer contacting the rental company either by phone or email within seven days of the rental start date.

50% are no shows – this is where the consumer does not notify that they are not picking up the rental vehicle and do not show up on the date and time pre-agreed by both the consumer and the rental company.

Reservations are made as follows:

Reservation method	Percentage	Reservation confirmation
Telephone	32%	Half of BVRLA members provide a confirmation for telephone reservations
Internet	55%	All internet reservations receive a confirmation email
Walk Up	13%	N/A

74% of reservations are made less than 14 days prior to the rental commencing and 26% are booked more than 14 days prior to the rental commencing.

Reservation confirmations costs by email with an internet reservation are minimal but the costs rise where the reservation is made by telephone and increase further if a reservation confirmation has to be posted.

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Based on the number of households who have access to the internet¹ it can be anticipated that 27% of telephone reservations would need a reservation confirmation posted this would cost the rental industry £920,000 per year.

Other reservation costs are as follows:

Reservation method	Confirmation Cost	Industry cost per year
Telephone	£0.75	£260,000 per annum
Internet	£0.50	£1.3 million per annum

Costs of cancellations and no shows

A cancellation will on average cost our members £5 in time and administration and a no show costs £50 as the vehicle is unlikely to be rented out again due to there being no notice that the vehicle is now available. The total industry costs for cancellations are £558,007 and no shows cost the industry £4.2million.

Benefit of the removal of the car rental exemption from the Consumer Rights Directive

Every rental reservation would need a reservation confirmation and consumers would not be able to cancel after the fourteen day cooling off period. Increased costs would include:

Total reservation confirmation costs: £2.48million per annum

It can be anticipated that no shows will reduce if reservation confirmations are introduced this could reduce costs for the industry by 20% approximately £840,000.

Members increased costs increase by £5.8 million per annum if the exemption does not cover vans and minibuses.

¹ National Statistics Online state that 73% of UK households have access to the internet



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If it is of assistance to the department, then we would be only too happy to demonstrate the lack of consumer harm in accessing our products and services by a distant means. In fact, we believe the flexibility, choice and competitive nature of the vehicle rental market are all delivered through natural market behaviour, and we would go as far as stating that consumers are normally afforded far greater protection than they would enjoy if the van and minibus rental was in scope. Other than additional regulatory costs being passed to the consumer, the primary objective of ensuring consumers are confident to acquire our services at a distance will not be achieved.



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Response from: British Vehicle Rental and Leasing Association
Address: River Lodge
Badminton Court
AMERSHAM
Bucks HP7 0DD

Contact: Mr Jay Parmar, legal and policy director

Phone: +44 1494 545706

Fax: +44 1494 434499

Email: jay@bvrla.co.uk

Bona-fides **BVRLA, the industry and its members**

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.5 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.
www.bvrla.co.uk