

STATES OF JERSEY

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DRAFT DISTANCE SELLING (JERSEY) LAW 200-

Lodged au Greffe on 16th May 2007
by the Minister for Economic Development

STATES GREFFE



Jersey

DRAFT DISTANCE SELLING (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Distance Selling (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

1. Introduction

The Minister for Economic Development is progressing the consumer protection strategy, based on the recommendations contained in the former Industries Committee's 2001 "Review of Consumer Protection in Jersey". The introduction of the Distance Selling (Jersey) Law will create a minimum level of protection for consumers who purchase goods and some services using a means of distance communication such as the Internet or mail order. Perhaps more importantly, it will help protect the international reputation of Jersey as a place with a well-regulated fulfilment industry from which consumers can be confident they will be treated fairly.

The need for distance selling legislation has been driven by the popularity of the Internet and the explosive growth of online retailing. Distance sellers in the European Union must comply with Directive 97/7/EC which protects consumers entering into distance contracts. The Draft Distance Selling (Jersey) Law 200- reflects the aims of this Directive and it removes the risk of the Island acquiring a reputation for disregarding accepted levels of protection for consumers.

2. Consultation

In June 2003 a consultation was carried out into the proposed legislation which was particularly targeted at the fulfilment industry. The vast majority of responses were in favour of legislation and some of the more established businesses indicated that they had to be compliant in order to compete with U.K.-based Internet traders. It was also pointed out that it would create a level playing field if all Jersey Internet traders were obliged to comply with the Distance Selling (Jersey) Law.

3. Distance contracts

The example of a means of distance communication that most readily springs to mind is the Internet. Other examples include telephone sales, mail order from catalogues, newspapers and magazines and recently, offering goods via television shopping channels. The common aspect to all of these transactions is that there is no simultaneous physical presence of the parties involved. This type of buying allows consumers to view goods at their leisure, at a time of their choosing and in the comfort of their own homes. The Law recognises that shopping at a distance has obvious disadvantages. For example, what happens if the goods do not turn up, do not fit or there is a change of mind once the consumer has had an opportunity to examine the goods? To overcome these disadvantages, allowance is made for a short cancellation period for most goods and services. The Law also ensures that buyers are given clear information about the identity of the seller, details of the order as well as protection against credit card fraud and demands for payment for unsolicited goods.

4. Distance contracts exempt and partially exempt from the Law

The Law will apply to contracts concluded for the sale of most types of goods and services, except the following –

- The sale of any interest in land.
- Financial services.
- Goods bought at auctions.
- Goods bought from a vending machine.
- Goods bought using a public payphone.

Also, the Law only applies when dealing with a trader who is organised to conclude contracts without face-to-face contact with consumers. For example, a consumer seeing goods displayed in a shop window who later orders them from the shop by telephone will not be covered as this will not be considered to be buying at a distance for the purposes of the Law.

The Law applies only in part to the following –

- Timeshare agreements.
- Contracts for the supply of food or drink for everyday consumption.
- Contracts for accommodation, transport, catering or leisure facilities for a specific time or date.
- Package deals sold or offered for sale in EU member states.

5. The right to clear information

Traders will be required to ensure that certain relevant information is provided to potential customers to enable them to make an informed choice about whether to purchase the goods or services on offer. The following is the minimum information prescribed –

- The name of the trader along with the postal address if payment is required in advance.
- An accurate description of the goods or services.
- The price, along with any taxes and delivery charges, if any, and how long the price or offer remains valid if limited.
- Delivery arrangements.
- Payment arrangements.
- The existence of a right to cancel the order, if applicable.
- Information about who is responsible for the cost of returning goods if the right to cancel is exercised.
- For services provided over a period of time, for example a mobile phone contract, information about the minimum duration of that contract must be given.
- If a trader contacts a consumer by telephone, his/her identity and the commercial purpose of the call should be given at the beginning of the conversation.

6. Information required after the conclusion of the contract

Once a consumer has made a decision to purchase and advanced through the ordering process, the trader must provide the following information after the conclusion of the contract –

- Written confirmation of the order (letter, fax or e-mail).
- Written information on how to cancel, a contact postal address and details of any guarantees, warranties or after-sales services, if applicable.
- Details of how and when to end a contract if there is no specified finish date, or if the contract lasts for longer than a year (e.g. Internet service providers).
- Information on how the right to cancel a contract for the provision of a service can be affected if it is agreed to commence the service before the end of the 7 working day cancellation period.

This information should be sent to the consumer by the time the goods are delivered, or, in the case of a service, before or soon after the time a service starts.

7. The consumer's right to cancel, or the 'cooling-off' period

The Distance Selling Law gives a consumer the right to change his or her mind for any reason and cancel an order within 7 working days (conditions apply to some goods, for example CDs or DVDs– see paragraph 10 below) This is a major statutory provision which does not exist in contracts concluded by face to face dealings with traders. If a consumer does decide to cancel, this must be put in writing, either by letter, fax or e-mail. A telephone call is not an acceptable means of communicating cancellation, unless this was previously agreed between trader and consumer. The time limits are as follows –

Goods: 7 working days after the day on which the goods are received.

Services: 7 working days after the day on which the consumer agreed to go ahead with the contract.

If the trader has not provided the required information about the right to cancel and return the goods, but does so within 3 months, the coolingoff period may be extended for 7 working days after the information is received. If the trader has not provided the required information about the right to cancel a service, but does so within 3 months, the coolingoff period may also be extended for 7 working days after the information is received. If the consumer agrees with the trader that the service contract can start before the expiry of 7 working days, the trader must give the required information before the service is performed.

8. Buyer's duty to take care of goods

If a consumer decides to exercise the right to return goods purchased, he or she must take care of goods whilst in their possession and reasonable steps must be taken to ensure that the trader receives them back in reasonable time and that they are not damaged in transit. If the goods are not adequately packaged, are incorrectly addressed or do not carry the correct postage, and become damaged as a result, the trader may have a claim against the

consumer. The trader is entitled to stipulate in their terms and conditions that the buyer must pay postage and packing if they exercise their right to cancel. However, in the case of goods which are found to be defective, the consumer does not have to bear the cost of return.

Where a buyer has decided to exercise the right to cancel within the statutory time period, the trader is obliged to refund the price paid within a period of 30 days. Where the trader has arranged a credit or hire purchase agreement, this should be cancelled automatically and any deposits paid must be returned.

9. Performance of the contract

Unless otherwise agreed, the trader should supply goods or perform a service within 30 days from the day after the day a consumer places an order. An exception to this is when goods are out of stock or services are not available. In these circumstances the trader is obliged to inform the consumer as soon as possible and reimburse any payment. However, the trader may, subject to fulfilling the necessary requirements on giving information, supply substitute goods and services provided the consumer is in agreement.

10. Exceptions to the right to cancel

The requirements for a trader to provide pre-contractual information, written and additional information, the right to cancel and the obligation to carry out the contract within 30 days will not apply to the following types of contract –

- Goods made to personal requirements or specifications (e.g. specially made furniture).
- Goods which will deteriorate quickly, such as fresh flowers or fresh food.
- Sealed audio or video recordings, or computer software, which has been opened.
- Betting, gaming or lottery services.
- Purchase of newspapers, periodicals or magazines.
- The supply of goods or services where the price depends on financial market fluctuations out of the control of the trader.

However, if any goods supplied to a consumer turn out to be faulty or defective then the trader will nevertheless be obliged to refund money paid for those faulty goods or, if the consumer agrees, supply replacement goods.

11. Protection for credit card-holders

Many distance contracts are concluded with the use of a credit card. If a consumer's credit card is used fraudulently or dishonestly (without the card-holder's knowledge) for any kind of distance purchase, the payment may be cancelled and the card issuer is liable to provide a refund. In the event of any dispute over authorisation, it is for the card-issuer to prove that any disputed transaction was in fact authorised by the card-holder.

12. Unsolicited goods and services

There are still occasionally instances of unsolicited goods being sent to consumers and subsequent demands for payment made. Unsolicited goods are those which have been sent 'out of the blue' and which have not been ordered. The Distance Selling Law provides that a consumer can treat such goods as an unconditional gift. If a trader demands payment without reasonable cause to believe he is entitled to such payment or threatens legal action then he commits a criminal offence and, on conviction, will be liable to a fine.

13. Enforcement

Apart from the provisions for unsolicited goods, the Distance Selling (Jersey) Law has, for the first time in Jersey consumer protection legislation, introduced an enforcement framework which does not use the criminal courts as the ultimate sanction against non-compliant traders. Instead, it follows a growing trend seen in other jurisdictions to use injunctive action through the civil court process as a last resort. In practice, Trading Standards Officers will work with traders to enable them to achieve compliance, and only when this process has been exhausted will a trader be reported to the Attorney General for possible injunctive action through the Royal Court.

14. Financial/manpower implications

There are no financial or manpower implications for the States arising from the adoption of this Draft Law.

15. European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 4th May 2007 the Minister for Economic Development made the following statement

before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Distance Selling (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law sets out a number of rights and duties in relation to consumer contracts for the supply of goods or services where those contracts are entered by mail, telephone, internet or other means not involving the combined presence of consumer and supplier. The draft Law also deals with the cancellation of those contracts and the supply of substitute goods or services, as well as related credit arrangements.

Article 1 sets out a number of definitions, but it is in *Article 2* that a distance contract is defined as a contract (concluded by mail, telephone, internet or similar means) for the supply of goods or services under an organized scheme between a business and a private consumer.

Key definitions in *Article 1* include those for “consumer”, “supplier”, “means of distance communication” (also covered by the *Schedule*), “period for performance” and “related credit agreement”.

Articles 3 and *4* set out a number of complete or partial exceptions to the application of the draft Law (regarding for example banking contracts, transactions in land, auctions, and contracts made before this draft Law is in force, contracts for the supply of food or drink, timeshare agreements and tourism packages).

Article 5 requires the supplier to give the consumer certain essential information before a distance contract can be concluded, and *Article 6* requires the same and certain additional information to be given in written or other permanent form after the contract has been concluded. *Article 7* however cuts down the application of *Article 6* where a service is performed on only one occasion through, for example, an internet or telephone service, and billed to the consumer directly by the provider of the internet or telephone service.

Article 8 sets out how a consumer may cancel a distance contract and defines the scope of the right to do that. *Articles 9* (for the supply of goods) and *10* (for the supply of services) set out the periods in which cancellation is possible.

Article 11 sets out certain exceptions to the right to cancel – for example, where the goods or services are of such a nature that it would be unreasonable to cancel.

Article 12 prescribes what happens on cancellation to money paid (including where money has been paid by a credit provider) or a security given. A related credit agreement is, in general, automatically cancelled when the distance contract is cancelled: *Article 13*. Under *Article 14* certain consequences flow as far as the principal and interest under the related credit agreement are concerned.

If a consumer cancels a distance contract for the supply of goods, the consumer must restore the goods to the supplier, and take care of them until that has been done: *Article 15*.

Article 16 deals with a special consequence of cancellation: if goods were accepted by the supplier in part-exchange for goods supplied under a distance contract, the consumer is entitled to have the goods back or, alternatively, to receive a sum reflecting their value.

Article 17 deals with time limits for the performance of a distance contract and with what the duties of the supplier are if due performance does not occur. *Article 18* deals with related credit agreements if due performance does not occur, treating non-performance in much the same way as cancellation.

Article 19 is a free-standing provision entitling a person to cancel a payment on his or her credit card, debit card or store card if the payment was fraudulently made by another person in connection with a distance contract.

Another free-standing provision, *Article 20* sets out basic rights in the case of attempted inertia selling (where a person sends unsolicited goods to a consumer), and bans a business from invoking enforcement procedures if a consumer does not pay for unsolicited goods or services.

Article 21 makes void certain attempts at excluding the operation of the Law.

Article 22 applies the draft Law to a contract even if, despite a close link with Jersey or a Member State of the European Union, the contract purports to apply the law of a country that is not a Member State of the European Union.

Article 23 enables the Attorney General to apply for injunctions or other orders for the enforcement of the Law.

Article 24 enables the Chief Trading Standards Officer to publish certain information about the terms and operation of the draft Law and to publicize the draft Law in a more general sense.

The States may make Regulations in aid of the draft Law: *Article 25*.

Article 26 sets out when the draft Law is to commence and what it is to be called.



Jersey

DRAFT DISTANCE SELLING (JERSEY) LAW 200-

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Distance contract</u>
<u>3</u>	<u>Contracts to which this Law does not apply</u>
<u>4</u>	<u>Contracts to which only part of this Law applies</u>
<u>5</u>	<u>Information before conclusion of contract</u>
<u>6</u>	<u>Written and additional information</u>
<u>7</u>	<u>Services performed through means of distance communication</u>
<u>8</u>	<u>Right to cancel</u>
<u>9</u>	<u>Cancellation period: goods</u>
<u>10</u>	<u>Cancellation period: services</u>
<u>11</u>	<u>Exceptions to right to cancel</u>
<u>12</u>	<u>Repayment on cancellation, and return of security</u>
<u>13</u>	<u>Automatic cancellation of related credit agreement</u>
<u>14</u>	<u>Repayment on cancellation of related credit agreement</u>
<u>15</u>	<u>Return of goods after cancellation</u>
<u>16</u>	<u>Return of goods given in part-exchange</u>
<u>17</u>	<u>Performance</u>
<u>18</u>	<u>Effect of non-performance on related credit agreement</u>
<u>19</u>	<u>Fraudulent use of card for distance contract</u>
<u>20</u>	<u>Inertia selling</u>
<u>21</u>	<u>Terms in Law are paramount</u>
<u>22</u>	<u>Choice of law</u>
<u>23</u>	<u>Orders to enforce Law</u>
<u>24</u>	<u>Publicity</u>
<u>25</u>	<u>Regulations</u>
<u>26</u>	<u>Citation and commencement</u>

SCHEDULE

INDICATIVE LIST OF MEANS OF DISTANCE COMMUNICATION



Jersey

DRAFT DISTANCE SELLING (JERSEY) LAW 200-

A LAW concerning the sale of goods and services by mail, internet and other means of communication over distance.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law, unless the context otherwise requires –

“Article 6(4) information” means, in the context of a provision that refers to a distance contract, the information that according to Article 6(4) is the information to be provided in respect of the contract;

“business” includes a trade or profession;

“consumer” means, in relation to a distance contract, the person who, as a party to the contract, is to be supplied with goods or services under the contract;

“credit” includes a cash loan and any other form of financial accommodation, and for this purpose cash includes money in any form;

“credit provider” is a person who grants credit under a personal credit agreement or related credit agreement;

“distance contract” has the meaning set out in Article 2;

“fixed-sum credit” means credit that is not running-account credit, (running-account credit being credit that, under the terms of the agreement under which it is provided, is available from time to time in the form of cash, goods or services, or a combination of any of those things);

“means of distance communication” means any means of communication that is effective without the simultaneous physical presence of the parties to the communication, and includes the means specified in the Schedule;

“Member State” means a Member State of the European Union;

“Minister” means the Minister for Economic Development;

“period for performance” means the period that applies under Article 17(1);

“personal credit agreement” means an agreement between a person who is a consumer under a distance contract and any other person, being an agreement under which the latter provides the consumer with credit of any amount;

“Regulation” means Regulation made under this Law;

“related credit agreement” means an agreement under which fixed-sum credit that fully or partly covers the price under a distance contract is granted by the supplier under the contract (or by another person, under an arrangement between that person and the supplier);

“supplier” means, in relation to a distance contract, the person who, as a party to the contract, is to supply goods or services under the contract;

“working day” means a day other than Christmas Day or Good Friday, and other than a Saturday, Sunday or bank holiday.

2 Distance contract

- (1) For the purposes of this Law, a distance contract is a contract –
 - (a) for the supply of goods or services –
 - (i) by a person acting in his or her commercial or professional capacity in relation to that supply, and
 - (ii) to a natural person acting in relation to that supply for purposes that are not those of a business of the person; and
 - (b) concluded under an organized distance-sales scheme.
- (2) For the purposes of paragraph (1), an organized distance sales scheme is a scheme –
 - (a) run by a person who, in relation to the scheme, is acting in his or her commercial or professional capacity; and
 - (b) that, for the purposes of communication in order to conclude any contract for supply under the scheme to a natural person acting in relation to that supply for purposes that are not those of a business of the person, uses exclusively one or more means of distance communication up to and including the moment at which the contract is concluded.

3 Contracts to which this Law does not apply

- (1) This Law does not apply to or in respect of a contract –
 - (a) for the sale, lease or other disposition of an interest in land;
 - (b) for the construction of a building where the contract also provides for a sale, lease, or other disposition, of an interest in the land on which the building is constructed;
 - (c) relating only to a financial service;
 - (d) concluded by means of an automated vending machine or automated commercial premises;
 - (e) concluded with a telecommunications operator through the use of a public pay-phone;
 - (f) concluded at an auction;
 - (g) concluded before this Law comes into force;
 - (h) that the States may prescribe by Regulations.
- (2) Nothing in paragraph (1) affects the application of another provision of this Law to a personal credit agreement, a related credit agreement, or any other agreement for a financial service, if that provision expressly refers to such an agreement or service.
- (3) In this Article –

“financial service” means a service in the nature of banking, a service concerning credit, insurance, personal pensions, investment or payment, or a service concerning dealings in futures or options;

“land” means any corporeal hereditament, including a building, and land covered with water, and also includes any interest in land or water and servitudes or rights in, on or over land or water.

4 Contracts to which only part of this Law applies

- (1) Articles 5 to 18 shall not apply to a contract that is a timeshare agreement.
- (2) Articles 5 to 17(1) shall not apply to –
 - (a) a contract for the supply of food or beverages; or
 - (b) a contract for the provision of accommodation, transport, catering or leisure services, being a contract under which the supplier undertakes to provide these services on a specific date or within a specific period.
- (3) Articles 17(2) – (7) and 18 shall not apply to or in respect of a contract for a tourism package that is sold or offered for sale in Jersey or in a Member State.
- (4) In this Article –

“timeshare agreement” means an agreement under which a person as a member of a pool of users is entitled to the use of living accommodation located in Jersey or elsewhere, being use –

 - (a) at least partly for the purposes of leisure;
 - (b) for a specified or ascertainable fraction of each year; and
 - (c) during a period of not less than 3 years;

“tourism package” means the planned combination of at least 2 of the following components when sold or offered for sale at a global or inclusive price and when the components so combined span in their execution a period of more than 24 hours or include overnight accommodation–

 - (a) transport;
 - (b) accommodation;
 - (c) one or more other tourist services not ancillary to transport or accommodation but, alone or together, accounting for a significant proportion of the value of the combination.
- (5) For the purposes of the definition of a tourism package in paragraph (4), a combination of components is no less a tourism package –
 - (a) because a separate account is created for any of the components; or
 - (b) because the combination is arranged partly or wholly in accordance with the consumer’s peculiar instructions as to one or more of the components.

5 Information before conclusion of contract

- (1) Subject to paragraph (5), in good time before the conclusion of a distance contract with a consumer for the supply of goods or services the supplier shall provide to the consumer the following information –
 - (a) the identity of the supplier;
 - (b) the address of the supplier, if the contract requires payment in advance;
 - (c) the main characteristics of the goods or services;
 - (d) the price of the goods or services including all taxes;
 - (e) the delivery costs, if there are any;
 - (f) the arrangements for payment;
 - (g) the arrangements for delivery or performance;
 - (h) if the consumer has a right to cancel the contract under Article 8, notice that the consumer has such a right;
 - (i) if the contract is for a supply to be made indefinitely or recurrently, the minimum duration of the contract;

- (j) the cost to the consumer of using the means of distance communication, whether in respect of the contract or in the negotiations for the contract, if this cost is calculated otherwise than at the basic rate (being the rate for normal communications over the same distance and at the same time and date and using the same provider of communications, the same method, and analogous terminals);
 - (k) the period for which the offer, or the price, in respect of the contract remains valid;
 - (l) any other information that the States may prescribe by Regulations.
- (2) If a supplier proposes that, in the event that goods or services to be supplied under a distance contract were unavailable, the supplier would supply substitute goods or services of equivalent quality and price, the supplier shall, in good time before the conclusion of the contract, inform the consumer –
 - (a) of that conditional proposal; and
 - (b) that, in the case of the supply of substitute goods, the cost of returning the substitute goods to the supplier if the consumer cancelled the distance contract would be met by the supplier.
 - (3) The supplier shall provide the information required by paragraph (1), (2), (4) or (5) in a clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who do not have full capacity to enter contracts.
 - (4) Subject to paragraph (5), the supplier shall make clear his or her commercial purpose when providing the information required by paragraph (1).
 - (5) If the means of distance communication used in communications in respect of the contract, or in the negotiations for the contract, is the telephone, the supplier shall make clear his or her identity, and his or her commercial purpose, at the beginning of those communications with the consumer.

6 Written and additional information

- (1) The supplier in relation to a distance contract shall, before the conclusion of the contract, provide to the consumer in writing, or in another durable medium accessible to the consumer, information in respect of the contract, being the information referred to in paragraph (4).
- (2) The supplier shall do so in a document that is separate from the contract itself.
- (3) Despite paragraph (1), the supplier may, except in the case of the information referred to in paragraph (4)(i)(vi), satisfy the requirements of paragraph (1) by providing the information referred to in paragraph (4) at, or in good time after, the conclusion of the contract, and in any event–
 - (a) during the performance of the contract, in the case of a contract for the supply of services; or
 - (b) at or before the time of delivery of the goods, in the case of a contract for the supply of goods where the delivery is not to a party other than the consumer.
- (4) The information is the following –
 - (a) the identity of the supplier;
 - (b) the address of the supplier, if the contract requires payment in advance;
 - (c) the main characteristics of the goods or services;
 - (d) the price of the goods or services including all taxes;
 - (e) the delivery costs, if there are any;
 - (f) the arrangements for payment;
 - (g) the arrangements for delivery or performance;
 - (h) if the contract is for a supply to be made indefinitely or recurrently, the minimum duration of the contract;
 - (i) if the consumer has a right to cancel the contract under Article 8, information about the conditions under which and the procedures by which the right to cancel in accordance with

Article 8 is to be exercised, including –

- (i) notice that the consumer has a right to cancel the contract under Article 8,
- (ii) the address for giving the notice of cancellation,
- (iii) the name of the person (if any) nominated by the supplier as a person to whom the consumer may give the notice of cancellation,
- (iv) if the contract requires (or the supplier intends that, when concluded, the contract will require) that on cancellation the consumer would return any goods supplied to the supplier, notification of that requirement,
- (v) information as to whether, on cancellation, it is the consumer or the supplier who would be responsible under this Law for the cost of returning any goods to the supplier or of the supplier's recovering any goods,
- (vi) in the case of a contract for the supply of services, information as to how the right to cancel may be affected by the consumer's agreeing to the start of the performance of the services before the end of the cancellation period specified in Article 10;
- (j) the geographical address (if different from the address referred to in sub-paragraph (b)) of the place of business of the supplier, being the address to which the consumer may address any complaints;
- (k) details of any after-sales services and any guarantees;
- (l) if the contract is of an unspecified duration or of a duration exceeding one year, the conditions for exercising a contractual right (if any) to terminate the contract;
- (m) any other information that the States may prescribe by Regulations.

7 Services performed through means of distance communication

- (1) Article 6 does not apply to a distance contract for the supply of services that are performed through the use of a means of distance communication, if those services are supplied under the contract on only one occasion and are invoiced to the consumer by the operator of the means of distance communication.
- (2) However, the supplier shall, on demand by the consumer who is a party to a contract referred to in paragraph (1), give the consumer the geographical address of the place of business of the supplier to which the consumer may address any complaints.

8 Right to cancel

- (1) Subject to Article 11, a consumer may give notice of cancellation of a distance contract.
- (2) Except as otherwise provided by this Law, the effect of a consumer's giving notice of cancellation of a distance contract is, if the notice is given in accordance with this Law, that the contract shall be treated as if it had not been made.
- (3) A notice of cancellation is given in accordance with this Law if –
 - (a) it is given within the cancellation period specified, as the case requires, in Article 9 or 10;
 - (b) it is given to the supplier or to a person (if any) nominated by the supplier as a person to whom the consumer may give the notice of cancellation;
 - (c) it is a notice in writing or in another durable medium accessible to the supplier (or to the nominated person);
 - (d) however expressed, it indicates the intention of the consumer to terminate the contract; and
 - (e) it has been left, or sent, as referred to in paragraph (4), (5), (6) or (7).
- (4) If the consumer leaves the notice at the supplier's or nominated person's address last known to the consumer and the notice is addressed to the supplier or nominated person by name, the notice is

taken to have been given on the day on which it was left.

- (5) If the consumer sends the notice by post to the supplier's or nominated person's address last known to the consumer and the notice is addressed to the supplier or nominated person by name, the notice is taken to have been given on the day on which it was posted.
- (6) If the consumer sends the notice by facsimile to the supplier's or nominated person's business facsimile number last known to the consumer, the notice is taken to have been given on the day on which it was sent.
- (7) If the consumer sends the notice by electronic mail to the supplier's or nominated person's business electronic mail address last known to the consumer, the notice is taken to have been given on the day on which it was sent.

9 Cancellation period: goods

- (1) For the purposes of Article 8, the cancellation period in the case of a distance contract for the supply of goods shall begin with the day on which the contract is concluded and shall end as provided in paragraph (2), (3), (4) or (5).
- (2) If the supplier has complied with Article 6 in respect of a distance contract for the supply of goods the cancellation period shall end on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the goods.
- (3) If a supplier has not complied with Article 6 in respect of a distance contract for the supply of goods but provides the Article 6(4) information to the consumer—
 - (a) in writing or in another durable medium accessible to the consumer; and
 - (b) within the period of 3 months beginning with the day after the day on which the consumer receives the goods,the cancellation period shall end on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information.
- (4) In a case to which neither paragraph (2) nor (3) applies, the cancellation period shall end on the expiry of the period of 3 months and 7 working days beginning with the day after the day on which the consumer receives the goods.
- (5) In the case of a distance contract for the supply of goods for delivery to a third party, paragraph (2), (3) or (4) shall apply as if the consumer had received the goods on the day on which they were received by the third party.

10 Cancellation period: services

- (1) For the purposes of Article 8, the cancellation period in the case of a distance contract for the supply of services shall begin with the day on which the contract is concluded and shall end as provided in paragraph (2), (3), (4) or (5).
- (2) If the supplier complies with Article 6 in respect of a distance contract for the supply of services and does so on or before the day on which the contract is concluded, the cancellation period shall end on the expiry of the period of 7 working days beginning with the day after the day on which the contract is concluded.
- (3) Except in the case to which paragraph (4) applies, if a supplier has not complied with Article 6 in respect of a contract for the supply of services on or before the day on which the contract is concluded but provides the Article 6(4) information to the consumer—
 - (a) in writing or in another durable medium accessible to the consumer; and
 - (b) within the period of 3 months beginning with the day after the day on which the contract is concluded,

the cancellation period shall end on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information.

- (4) If the performance of the contract has begun with the consumer's agreement before the expiry of the period of 7 working days beginning with the day after the day on which the contract was concluded and the supplier has not complied with Article 6 in respect of the contract on or before the day or which performance began, but provides the Article 6(4) information to the consumer during the performance of the contract, the cancellation period shall end –
 - (a) except as provided in sub-paragraph (b), on the expiry of the period of 7 working days beginning with the day after the day on which the consumer receives the information; or
 - (b) if the performance of the contract is completed before the expiry of the period referred to in sub-paragraph (a), on the day on which the performance of the contract is completed.
- (5) In a case to which none of paragraphs (2), (3) and (4) applies, the cancellation period shall end on the expiry of the period of 3 months and 7 working days beginning with the day after the day on which the contract is concluded.

11 Exceptions to right to cancel

Unless the parties to a distance contract have agreed otherwise, the consumer shall not have the right to cancel the contract under this Law –

- (a) if the contract is for the supply of services and the performance of the contract has begun, with the consumer's agreement, before the end of the cancellation period specified in Article 10 and after the supplier has provided the Article 6(4) information;
- (b) if the contract is for the supply of goods, or services, the price of which is affected by financial market fluctuations that cannot be controlled by the supplier;
- (c) if the contract is for the supply of goods in a case where –
 - (i) the goods are made to the consumer's specifications (or otherwise personalized),
 - (ii) the supplier could not, for other reasons to do with the nature of the goods, reasonably be expected to accept their return, or
 - (iii) the goods are liable to deteriorate or expire rapidly;
- (d) if the contract is for the supply of an audio or video recording or computer software and the recording or software has been unsealed by the consumer;
- (e) if the contract is for the supply of a newspaper, magazine or other periodical;
- (f) if the contract is for a gaming, betting or lottery service; or
- (g) in a case that the States prescribe by Regulations.

12 Repayment on cancellation, and return of security

- (1) On the cancellation of a distance contract in accordance with this Law, the supplier shall reimburse (to the person by whom it was paid) any sum paid to the supplier by or on behalf of the consumer under or in relation to the contract, less any charge made in accordance with paragraph (5), but otherwise free of any charge.
- (2) The reference to any sum paid on behalf of the consumer includes any sum paid by a credit provider under a personal credit agreement with the consumer, being a credit provider who is not the same person as the supplier.
- (3) The supplier shall make the reimbursement as soon as possible and in any case within the period of 30 days beginning with the day on which notice of cancellation was given.
- (4) If any security has been provided in relation to the distance contract, the security interest thereby

created shall, on cancellation of the contract in accordance with this Law, be treated as never having had effect and the secured party shall forthwith return any collateral that has been lodged with the secured party solely for the purposes of the security.

- (5) Subject to paragraphs (6) and (7), the supplier may make a charge, not exceeding the direct costs of recovering any goods supplied under the contract, if –
 - (a) a term of the contract provides that the consumer shall, if the consumer cancels the contract in accordance with this Law, return any goods supplied; and
 - (b) the consumer does not comply with the term or causes the goods to be returned at the expense of the supplier.
- (6) Paragraph (5) shall not apply if –
 - (a) the term is an unfair term; or
 - (b) the consumer cancels the contract in circumstances where he or she has the right to reject the goods under a term of the contract, including a term implied by virtue of any enactment or any other law.
- (7) Paragraph (5) shall not apply to the cost of recovering any goods that were supplied as substitutes for the goods ordered by the consumer.
- (8) For the purposes of paragraph (6)(a), a term of a contract shall be taken to be unfair if–
 - (a) the consumer has had no effective say in the drafting of the term or any redrafting of the term;
 - (b) the term causes, contrary to the principles of good faith in commercial transactions, a significant imbalance in the rights and obligations of the parties to the contract and arising under the contract; and
 - (c) the imbalance is to the detriment of the consumer.

13 Automatic cancellation of related credit agreement

- (1) On the cancellation of a distance contract in accordance with this Law, the notice of cancellation shall also have the effect of terminating any related credit agreement from the time when the notice is given.
- (2) On the cancellation of a distance contract in accordance with this Law, the supplier shall, if he or she is not the same person as the credit provider under any related credit agreement, forthwith on receipt of the notice of cancellation inform the credit provider that the notice has been given.
- (3) If a related credit agreement is terminated by virtue of paragraph (1)–
 - (a) the credit provider shall reimburse (to the person by whom it was paid) any sum paid by or on behalf of the consumer under, or in relation to, the related credit agreement (not being a sum that the supplier is obliged to reimburse under Article 12(1) nor any sum that, if it has not already been paid, would have to be paid because of sub-paragraph (b));
 - (b) the related credit agreement shall, subject to Article 14, continue in force so far as it relates to repayment of the credit and payment of interest; and
 - (c) in other respects, the related credit agreement shall be taken to be at an end.
- (4) If security has been provided under a related credit agreement, the security interest thereby created shall, on cancellation of the relevant distance contract in accordance with this Law, be treated as never having had effect and the secured party shall return any collateral lodged with the secured party solely for the purposes of the security.

14 Repayment on cancellation of related credit agreement

- (1) This Article applies following the termination of a related credit agreement by virtue of Article 13(1).
- (2) If the consumer repays the whole or a portion of the credit –

- (a) in the case of credit repayable in one sum, before the expiry of one month following the termination of the related credit agreement; or
- (b) in the case of credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

- (3) In the case of credit repayable by instalments, if the consumer does not pay the whole of the credit before the date on which the first instalment is due, the consumer shall not be liable to repay any of the unrepaid credit unless the credit provider gives the consumer notice in writing stating the amounts of the remaining instalments (recalculated by the credit provider as nearly as may be in accordance with the agreement and without extending the repayment period).
- (4) The amounts referred to in paragraph (3) shall not include any sum other than the principal and, in a case where interest is payable, the interest.
- (5) If security has been provided under a related credit agreement, the duty imposed on the consumer to repay credit shall not be enforceable before the credit provider has discharged any duty imposed on him or her by Article 13(4) to return any collateral lodged with him or her as security.

15 Return of goods after cancellation

- (1) This Article applies where a distance contract for the supply of goods is cancelled in accordance with this Law after the consumer has acquired possession of any goods under the contract, not being goods referred to in Article 11(b) to (e) or (g).
- (2) The consumer shall be taken to have been under a duty throughout the period before the cancellation to retain possession of the goods and to take reasonable care of them.
- (3) On cancellation, the consumer shall be under a duty to restore the goods to the supplier in accordance with this Article, and until that restoration to retain possession of the goods and to take reasonable care of them.
- (4) For the purposes of discharging the duty to restore the goods, the consumer shall not be under any duty to deliver the goods except at his or her own premises and in pursuance of a request in writing, or in another durable medium accessible to the consumer, from the supplier and made to the consumer either before, or at the time when, the goods are collected from those premises.
- (5) If the consumer –
 - (a) delivers the goods (whether at his or her own premises or elsewhere) to the supplier or any person nominated by the supplier as a person to whom notice of cancellation of the distance contract could have been given; or
 - (b) sends the goods at his or her own expense to the supplier or that nominated person,the consumer shall be discharged from any further duty to restore the goods to the supplier or to retain possession of the goods.
- (6) If the consumer delivers the goods in accordance with paragraph (5)(a), his or her duty to take reasonable care of the goods shall cease on that delivery.
- (7) If the consumer sends the goods in accordance with paragraph (5)(b), he or she shall be under a duty in the sending to take reasonable measures to ensure that they are received by the person referred to in that sub-paragraph and do not suffer damage or deterioration in transit, but his or her duty to take reasonable care of the goods shall cease when he or she sends them.
- (8) If, at any time during the period of 21 days beginning with the day when notice of cancellation was given, the consumer receives a request in accordance with paragraph (4), and unreasonably fails to comply with it, his or her duty to retain possession and take reasonable care of the goods shall continue until he or she delivers or sends the goods as referred to in paragraph (5).
- (9) If within that period he or she does not receive such a request, his or her duty to take reasonable care

of the goods shall cease at the end of that period.

- (10) However, paragraphs (8) and (9) shall apply as if for the expression “period of 21 days” in paragraph (8) there were substituted the expression “period of 6 months” if –
 - (a) a term of the contract provides that if the consumer cancels the contract, he or she must return the goods to the supplier; and
 - (b) the consumer is not otherwise entitled to reject the goods under the terms of the contract or by virtue of any law.
- (11) If security has been provided in relation to the cancelled distance contract, the duty to restore goods imposed on the consumer by this Article shall not be enforceable until the supplier has discharged any duty imposed on the supplier by Article 12(4) to return on cancellation any collateral lodged with him or her as security.
- (12) A breach of a duty imposed by this Article on a consumer shall be actionable as a breach of statutory duty.

16 Return of goods given in part-exchange

- (1) This Article applies on the cancellation of a distance contract in accordance with this Law if the supplier had agreed (in respect of the contract) to take goods in part-exchange (the “part-exchange goods”) and those goods have been delivered to the supplier.
- (2) Unless, before the end of the period of 10 days beginning with the date of cancellation, the part exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the supplier, the consumer shall be entitled to recover from the supplier a sum equal to the part-exchange allowance.
- (3) In this Article the “part-exchange allowance” means the sum agreed as such in the cancelled distance contract or, if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.
- (4) If the consumer recovers from the supplier a sum equal to the part-exchange allowance, the title of the consumer to the part-exchange goods shall vest in the supplier (if it has not already done so) on recovery of that sum.

17 Performance

- (1) The supplier in relation to a distance contract shall perform the contract within the 30 days beginning with the day after the day when the consumer sent the relevant order to the supplier, or if those parties have agreed on another period, that other period instead.
- (2) Subject to paragraph (7), if, because goods or services that were ordered are not available, the supplier is unable to perform the relevant contract within the contract’s period for performance, the supplier shall –
 - (a) inform the consumer of that inability; and
 - (b) reimburse (to the person by whom it was paid) any sum paid to the supplier by or on behalf of the consumer under or in relation to the contract.
- (3) The reference in paragraph (2)(b) to a sum includes any sum paid by a credit provider who is not the same person as the supplier, being a sum paid under a personal credit agreement with the consumer.
- (4) The supplier shall make the reimbursement as soon as possible and in any case within the period of 30 days beginning with the day after the day on which the period for performance expired.
- (5) A distance contract not performed within the period for performance shall be treated as if it had not been made, except that the contract shall be treated as being in force to the extent necessary for the enforcement of any rights of, or remedies available to, the consumer as a result of the non-performance.

- (6) If security has been provided in relation to a distance contract, the security interest thereby created shall, if the supplier is unable to perform the contract within the period for performance, be treated as never having had effect and the secured party shall return any collateral lodged with the secured party solely for the purposes of the security.
- (7) Despite paragraph (2), in the circumstance that under a distance contract the supplier is unable to supply, within the period for performance, the goods or services ordered by the consumer, the supplier may perform the contract by making a supply of substitute goods or services (respectively) of equivalent quality and price if –
 - (a) the contract provided for the latter supply in that circumstance;
 - (b) that supply is within the period for performance; and
 - (c) before the conclusion of the contract the supplier had, in relation to the contract, given the consumer the information required by Article 5(2) in the manner required by Article 5(3).

18 Effect of non-performance on related credit agreement

If a supplier is unable to perform a distance contract within the period for performance –

- (a) Articles 13 and 14 shall apply to any related credit agreement as if the consumer had given a valid notice of cancellation in accordance with this Law on the expiry of the period for performance; and
- (b) the reference in Article 13(3)(a) to Article 12(1) shall be read, for the purposes of this Article, as reference to Article 17(2).

19 Fraudulent use of card for distance contract

- (1) A person who holds a payment card for purposes that are not those of a business of the person shall be entitled to cancel a payment made on the card, being a payment that was made –
 - (a) by fraudulent use of the card;
 - (b) in connection with a distance contract; and
 - (c) by another person not acting, and not to be treated as acting, as the holder's agent and not having, and not to be treated as having, the authority of the holder.
- (2) The holder of the card shall be entitled to be recredited, or to have all sums returned by the card issuer, in relation to a payment referred to in paragraph (1).
- (3) In any proceedings, if the holder of a payment card alleges that any use made of the card in connection with a distance contract by another person was not authorized by the holder and the card issuer disputes this allegation it is for the card issuer to prove that the use was in fact so authorized.
- (4) This Article applies only to and in respect of the use of a payment card that occurs on or after the date on which this Article comes into force.
- (5) In this Article –

“card issuer” in relation to a payment card means the owner of the card;

“payment card” includes a store card that can be used for payment, a credit card, a charge card and a debit card.

20 Inertia selling

- (1) Paragraphs (2) and (3) apply if –
 - (a) unsolicited goods are sent to a person (“the recipient”) with a view to his or her acquiring them;
 - (b) the recipient has no reasonable cause to believe that they were sent with a view to their being acquired for the purposes of a business; and

- (c) the recipient has neither agreed to acquire nor agreed to return them.
- (2) The recipient may, as between the recipient and the sender of the goods, use, deal with or dispose of the goods as if they were an unconditional gift to the recipient.
- (3) The rights of the sender of the goods to the goods shall be extinguished.
- (4) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business makes a demand for payment, or asserts a present or prospective right to payment, for what the person knows are –
 - (a) unsolicited goods sent to another person for purposes that are not those of a business of the latter person; or
 - (b) unsolicited services supplied to another person for purposes that are not those of a business of the latter person,
 shall be guilty of an offence and liable to a penalty of level 4 on the standard scale.
- (5) A person who, not having reasonable cause to believe there is a right to payment, in the course of any business and with a view to obtaining payment for what the person knows are unsolicited goods sent or unsolicited services supplied as referred to in paragraph (4)–
 - (a) threatens to bring any legal proceedings;
 - (b) places or causes to be placed the name of any person on a list of defaulters or debtors or threatens to do so; or
 - (c) invokes or causes to be invoked any collection procedure or threatens to do so,
 shall be guilty of an offence and liable to a fine.
- (6) This Article applies only to and in respect of goods sent or services supplied on or after the date on which this Article comes into force.
- (7) In this Article –
 - “acquire” includes hire;
 - “send” includes deliver;
 - “sender”, in relation to any goods, includes –
 - (a) any person on whose behalf or with whose consent the goods are sent;
 - (b) any other person claiming through or under that person; and
 - (c) any person who delivers the goods;
 - “unsolicited” means, in relation to goods sent or services supplied to any person, sent or supplied without any prior request made by or on behalf of the person.

21 Terms in Law are paramount

- (1) A term in a distance contract is void to the extent that it is inconsistent with a provision of this Law or of the Regulations.
- (2) However nothing in this Article renders void –
 - (a) a term that this Law or the Regulations expressly permit or require to be included in a distance contract; or
 - (b) a term that a distance contract is taken to contain by virtue of this Law or the Regulations.
- (3) For the purposes of this Article, in the case of a provision of this Law or of the Regulations that specifies a duty or liability of a consumer in certain circumstances, a term in a distance contract is inconsistent with that provision if the term would, but for this Article, have the effect of imposing on the consumer in those circumstances –
 - (a) an additional duty or liability;

- (b) an additional element in the duty or liability;
 - (c) a more onerous substitute duty or liability; or
 - (d) something that the States prescribe for the purposes of this paragraph by Regulations.
- (4) The States may by Regulations prescribe terms (not inconsistent with this Law) that a distance contract is required to contain, or that a distance contract is taken to contain.
 - (5) If a distance contract does not set out a term that the States by Regulations require the distance contract to contain, the distance contract shall be taken to contain the term.
 - (6) In a distance contract, a term that requires the consumer to return any goods supplied to the consumer under the contract if he or she cancels it under Article 8 shall, in the event of cancellation by the consumer under Article 8, have effect only for the purposes of Articles 12(5) and 15(10).
 - (7) A term referred to in paragraph (6) shall not be taken, only because of the operation of paragraph (3), to be inconsistent with the provisions of this Law or of the Regulations.

22 Choice of law

- (1) If a distance contract has a close connection with the territory of Jersey, this Law shall apply in respect of the contract notwithstanding any term in the contract that applies or purports to apply the law of a country, or territory, that is neither a Member State nor Jersey.
- (2) If a distance contract has a close connection with the territory of a Member State, this Law shall apply in respect of the contract notwithstanding any term in the contract that applies or purports to apply the law of a country, or territory, that is neither a Member State nor Jersey.

23 Orders to enforce Law

- (1) The Attorney General may apply for an injunction (including an interim injunction), or other order, against any person who appears to the Attorney General to be responsible for a breach of this Law.
- (2) The Royal Court, on an application under this Article, may grant an injunction, or other order, on such terms as it thinks fit to secure compliance with this Law.

24 Publicity

- (1) The Chief Trading Standards Officer may arrange for the publication, in such form and manner as he or she considers appropriate, of details of –
 - (a) an undertaking given to the Chief Trading Standards Officer by or on behalf of any person as to compliance with this Law;
 - (b) an application made by the Attorney General for an injunction, or other order, for the purposes of enforcing this Law; and
 - (c) an undertaking given to, or injunction or other order made by, the Royal Court in proceedings on such an application.
- (2) The Chief Trading Standards Officer may arrange for the dissemination, in such form and manner as he or she thinks fit, of information and advice concerning the operation of this Law.

25 Regulations

- (1) The States may by Regulations make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that the States may prescribe by Regulations.
- (2) The States may by Regulations amend the Schedule.

- (3) Regulations may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

26 Citation and commencement

- (1) This Law may be cited as the Distance Selling (Jersey) Law 200-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different provisions of this Law and for different purposes.

SCHEDULE

(Article 1)

INDICATIVE LIST OF MEANS OF DISTANCE COMMUNICATION

1. Unaddressed printed matter.
2. Addressed printed matter.
3. Letter.
4. Press advertising with order form.
5. Catalogue.
6. Telephone with human intervention.
7. Telephone without human intervention (e.g. automatic calling machine, audiotext).
8. Radio.
9. Videophone (telephone with screen).
10. Videotext (microcomputer and television screen) with keyboard or touch screen.
11. Electronic mail.
12. Facsimile machine.
13. Television.

