

Legal Briefing

The Consumer Rights Act 2015

June 2015

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Consumer law in the UK has been significantly reformed, culminating in the Consumer Rights Act 2015 passed just before Parliament closed in March. This Act represents the biggest change in UK consumer law in decades. It will come into force on 1 October 2015, giving businesses only a few months to change terms and procedures to comply. This note highlights key points for you to think about to help you get up to speed with the new law.

The Act is designed to consolidate existing consumer legislation to make it easier for businesses to comply with the law, and to give consumers more clarity on their rights. Significantly, it also extends the scope of existing laws to the purchase of digital content. It will stand alongside the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection (Amendment) Regulations 2014, which came into force last year, with all three pieces of legislation now comprising the body of UK consumer law.

Enforcement changes

Trading Standards and the Competition and Markets Authority will continue to regulate consumer law, following the closure of the Office of Fair Trading in 2014. However, the Act introduces a number of reforms to the way consumer law can be enforced against businesses, including the extension of enforcement rights to certain private bodies. For now, the only private body with such powers is

Which? but it is thought this may also be extended to Citizens Advice Bureau.

Aside from the new remedies granted to consumers, enforcers of consumer legislation have flexibility to take action against any wrongdoing. This includes the power to carry out dawn raids, investigate business practices, agree undertakings with enhanced consumer measures, seek civil action including enhanced enforcement orders, and to seek criminal penalties in some more extreme cases. Any criminal proceedings could be brought on summary complaint in the Sheriff Court or on indictment in either the Sheriff or High Court. The potential penalty on summary complaint is currently up to £10,000 for each offence. For breaches of a more serious nature, repeated breaches or breaches with a deliberate or financial motive prosecuted on indictment, the potential penalty is an unlimited fine and/or, in the most extreme cases, up to two years' imprisonment. Directors can also face disqualification.

The 2015 Act also includes new measures allowing consumers to bring collective actions against businesses for anti-competitive behaviour.

Contract changes

The following key headline changes have been made in relation to contracts for the provision of goods, services and digital content to consumers:

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Businesses will be responsible for damage caused to a consumer's device by their content, where they have not used reasonable care and skill to prevent damage. Damaged devices will have to be repaired or the consumer compensated to cover the costs of replacing the device.

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Goods	Services	Digital Content
Implied Terms		
<p>Quality: implied terms regarding quality or standard of goods remain.</p> <p>Delivery and risk: unless agreed otherwise, goods must be delivered within 30 days. Goods will remain at the risk of the business until delivered.</p>	<p>Quality: implied terms regarding quality or standard of services remain</p> <p>Timeframe and price: services must be completed within a reasonable time and for a reasonable price.</p>	<p>Standards: digital content must be of satisfactory quality, fit for purpose and comply with its description.</p> <p>Updates: updates can only be performed without express consent from the consumer if previously agreed. Updates must be of satisfactory standard and must be available to consumers for a reasonable period of time.</p>
Pre-contractual Information		
<p>Information given to consumers before purchase (including adverts and labelling) will form part of the contract.</p> <p>Where goods are sold based on a model seen by the consumer, the goods must either correspond with the model or difference must be brought to the consumer's attention.</p>	<p>Information given to consumers before purchase which may influence their decision to purchase will form part of the contract.</p>	<p>Functionality, compatibility and any other material technical information must be provided in advance and will form part of the contract.</p>
Remedies		
<p>Short term right to reject: consumers will have a new fixed time period of 30 days to reject goods and obtain a full refund if they do not meet certain standards specified in the Act (for example satisfactory quality, fitness for purpose, and conformance with samples).</p>	<p>Repeat performance: consumers will have a right to demand repeat performance of services not performed with reasonable skill or care.</p> <p>Price reduction: if repeat performance is not available or unsuccessful, consumers will have a right to a price reduction.</p>	<p>Repair or replacement: faulty digital content must, if possible, be replaced.</p> <p>Businesses will be responsible for damage caused to a consumer's device by their content, where they have not used reasonable care and skill to prevent damage. Damaged devices will have to be repaired or the consumer compensated to cover the costs of replacing the device.</p>

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If, after one attempt to repair or replace the goods, a consumer is still not satisfied, then they can (i) keep the goods and request a price reduction, or (ii) have a final right to reject the goods and request a full refund.

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Goods	Services	Digital Content
Remedies (continued)		
<p>Repair or replacement: For up to 6 months following delivery, consumers can request a repair or replacement of faulty goods. Repairs or replacements must be provided in a reasonable time and without significant inconvenience to the consumer. Goods can only be repaired or replaced once before consumers can reject and seek a refund or price reduction.</p> <p>Price reduction or final right to reject: if, after one attempt to repair or replace the goods, a consumer is still not satisfied, then they can (i) keep the goods and request a price reduction, or (ii) have a final right to reject the goods and request a full refund.</p>		<p>Price reduction: if faulty digital content cannot be replaced, the consumer is entitled to a price reduction up to the full price paid.</p> <p>Refund: full price reductions are available for faulty content. Refunds are also available where content is supplied illegally (i.e. when the business has no rights to supply the content).</p>
Limitation of Liability		
<p>Liability for failing to meet the following standards cannot be excluded or limited:</p> <ul style="list-style-type: none"> - satisfactory quality - fit for purpose - matching a sample - matching a model seen or examined - correct installation (if applicable). 	<p>Liability for failure to perform a service with</p> <ul style="list-style-type: none"> - reasonable skill and care - in line with information provided <p>cannot be excluded or limited.</p> <p>However, liability for performing services within a reasonable time and for a reasonable price may be limited.</p>	<p>Liability for failings to meet the following standards cannot be excluded or limited:</p> <ul style="list-style-type: none"> - satisfactory quality - fit for purpose - as described - rights to supply.

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Practical Tips

The 2015 Act will have a direct impact on consumer-facing businesses of all sizes and presents a tremendous opportunity to step back and reflect on current business practices and procedures. There is no doubt that some of the changes made by the Act are helpful to businesses as they give clarity and structure to the procedures that should be followed, in particular for returning, refunding, repairing and replacing goods and services.

Some simple practical steps which we would recommend all affected businesses consider in advance of the 2015 Act coming into force in the autumn are:

- review any pre-contractual information provided to consumers (including adverts and labelling), especially for online sales, to ensure that it is compliant;
 - spring clean your contracts - review existing terms and conditions so that they are transparent, unambiguous, and don't contain onerous or potentially unfair terms;
 - ensure that consumers are clearly informed at the point of entering into any payment obligations - attention should be drawn to key terms at this stage;
 - assess your current contract confirmation processes, as well as your cancellation, returns and refund policies;
 - ensure that your terms are consistent with the new timeframes in the Act including the new 30 day short term right to reject goods and the 6 month right to repair or replacement;
- educate your staff - and if necessary revise contact scripts - so that the new rules are properly understood and implemented by those dealing with customers every day; and
 - ensure you have a dawn raid procedure in place and educate your staff on how to manage a dawn raid.

Contact Us

This briefing note is intended as general guidance on current issues in the law. It is not a substitute for advice. Our specialist consumer contract law team are available to discuss the specific impact the 2015 Act may have to your business.

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