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# UK Consumer Rights Act 2015

The Consumer Rights Act ("the 2015 Act") received Royal Assent on 26 March 2015 and comes into force 1 October 2015. The 2015 Act aims to reform and consolidate eight pieces of legislation addressing consumer rights in the UK.

This note provides a brief overview on some of the changes that will be introduced in the following key reform areas:

- Sale and Supply of Goods
- Supply of Services
- Digital Content
- Unfair Contract Terms
- Consumer Collective Actions for Anti-Competitive Behaviour

## Sale and Supply of Goods

### Implied terms

Under the 2015 Act, certain terms will be implied into every transaction involving the sale and supply of goods. Traders must have the right to transfer/sell the goods, and the goods themselves must:

- be of satisfactory quality;
- be fit for a particular purpose;
- match the description, sample or model that is seen or examined by the consumer; and
- be installed correctly.

Under the 2015 Act, pre-contract information, such as details on payment, delivery and after-sales service will become implied terms of the contract.

### Remedies for breach

If the goods do not meet these requirements, the consumer has a short-term right to reject the goods within 30 days unless the expected shelf life of the goods is shorter (e.g. perishable goods).

Consumers will have the right to request that faulty or not as described goods are repaired or replaced even after the 30 day right to reject period has expired. Consumers will also have the right to a reduction in the price or the reject the goods after **one** unsuccessful repair or replacement.

### Burden of proof

The burden lies on the consumer to prove that the goods do not conform to the contract if they are exercising their short term right to reject, or if more than six months have passed the consumer must prove that the defect was present at the time of delivery.

However, if the consumer decides to repair, replace, request a price reduction or exercise the final right to reject (where repair or replacement fail, are not available, or were not provided within a reasonable time and without causing significant inconvenience to the consumer), subject to certain exceptions, it is assumed that the fault existed at the time of delivery unless the trader can prove otherwise.

## Supply of Services

### Implied terms

The 2015 Act will imply into every contract for the supply of services the following:

- the service must be performed with reasonable skill and care;
- the price for the service will be reasonable if not agreed; and
- the service will be performed within a reasonable period if not agreed.

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Furthermore, any information said or written to the consumer about the trader or service is an implied term if it influences the consumer to buy the service or make any decision about the service after entering into the contract.

### Remedies for breach

Where a trader has failed to provide a service with reasonable skill and care or it does not conform to pre-contractual statements it has made, the consumer can require the trader to perform the service again to complete it correctly. Consumers may also claim a price reduction up to 100% of the price in certain circumstances, depending on how serious the breach was.

### Digital Content

The 2015 Act introduces for the first time specific rights and remedies for digital content. Previously, existing UK consumer law on goods and services applied to digital products and services; however, the 2015 Act covers contracts in relation to digital content as distinct from other goods and services. Digital content is considered to be data that is produced and supplied in digital form and includes products and services such as music downloads, films, software and computer games.

### Implied terms

The 2015 Act will imply into every transaction that the digital content supplied must be:

- of satisfactory quality;
- fit for a particular purpose; and
- as described.

### Remedies for breach

If the digital content supplied fails to meet the quality standard, the consumer has the right to a repair or replacement unless it is either impossible to do so or disproportionate when compared to another available remedy. A consumer also has the right to obtain a price reduction but only if repair or replacement is not possible, or these remedies have been requested by the consumer but they have not been carried out within a reasonable time and without significant inconvenience to him/her.

The consumer is also entitled to claim compensation in the event that the digital content supplied causes damage to their device or other digital content if the consumer can show that the trader did not exercise reasonable care and skill.

### Unfair Contract Terms

The 2015 Act will cover the use of unfair terms in consumer contracts. Under the 2015 Act:

- price/subject matter contract terms are only exempt if they are transparent and prominent
- all written terms of a consumer contract must be transparent
- three new terms will be added to the “grey list” of terms presumed to be unfair:
  - disproportionately high charges where the consumer decides not to conclude or perform the contract or for services which have not been supplied;
  - terms which allow the trader to determine the characteristics of the subject matter after the contract has been formed; and
  - terms which allow the trader to determine the price after contract has been formed.

The UK’s Competition and Markets Authority (“CMA”) has issued draft guidance on unfair contract terms and this document has been out for consultation until 30 March 2015. The CMA is currently analysing public feedback on this document and therefore the content of its guidance could change before it publishes a finalised version.\*

### Consumer Collective Actions for Anti-Competitive Behaviour

The 2015 Act will also introduce a new “opt-out” collective action in the Competition Appeal Tribunal (CAT) which will make it easier for private parties, SMEs and consumers in particular, to bring damages actions for competition law infringements. Claims will now be able to be brought on behalf of a defined group without having to identify each individual claimant.

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\*More information on the CMA’s consultation on its draft guidance on unfair contract terms can be found here: <https://www.gov.uk/government/consultations/unfair-contract-terms-draft-guidance-on-consumer-protection-law>

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An opt-out collective action would cover all class members except:

- any class member other than those who opt-out by notice; and
- any class member who is not domiciled in the UK at the specified time **who has not opted-in**.

The 2015 Act also introduces a collective settlement procedure to enable businesses to settle cases more easily and a voluntary redress scheme where companies voluntarily agree to pay those harmed by their infringement of UK or EU competition law.

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