

Which?

Trusted Traders

Know the rules

**New consumer law
that affects your
business**

Consumer Rights Act 2015



This Act come into force on **01 October 2015**

The law directly affects you if you provide goods and services to consumers after this date.



As a Which? Trusted trader it is necessary you understand the rights of consumers. If you do not, your customers may take civil court action against you in the event of an unresolved dispute and you may be in breach of our Code of Conduct.

We're here to help you make sense of the new law

In a nutshell

- A 30 day short term right to reject on faulty goods
- A right to a repeat performance or price reduction where services have not been carried out with reasonable care and skill
- New rights when purchasing digital content
- Consumer contract terms to be fair, clear and understandable

What old laws have been changed?

In updating consumer law in the UK, the following old legislation has been replaced;

- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- Unfair terms in Consumer Contracts regulations 1999

Sale of goods: what are the consumer's rights?

There are core rights that traders will already be familiar with and the new law has incorporated these in similar terms.

Goods must be;

- of satisfactory quality
- fit for their everyday purpose as well as any particular purpose you agreed with your customer they would be suitable for.
- as described
- must match the description or sample
- must be installed correctly

With the above in mind it's useful to remember that to be of satisfactory quality the goods must meet the standard a reasonable person would regard as satisfactory, taking into account any description, the price (if relevant) and all other relevant circumstances.

The quality of goods includes their state and condition, so fitness for all the purposes for which the goods in question are commonly supplied, their appearance, finish and freedom from minor defects.

The remedies when things go wrong

■ A 30 day short term right to reject on faulty goods and the right to a full refund within 14 days of it being agreed by the trader. This does not apply if the goods are installed incorrectly where a right to repair or replacement or price reduction is applicable.

■ If the consumer is out of that time limit or chooses not to exercise that

right then they are entitled to claim for a repair or replacement.

■ If repair or replacement is not available then a final right to reject will apply.

■ Further compensation can be claimed for example if goods have caused damage to property or persons.

■ Where defects are discovered within six months, the Consumer Rights Act says that the defect will be taken to have been present at the time of delivery (unless the trader proves otherwise). After six months the consumer has to prove the issue and may need to provide some evidence (expert opinion etc.).

This reverse burden of proof does not apply when the consumer uses the 30 day short term right to reject option.

With the above short term right to reject, if the consumer accepts a repair within that period then the 30 day period is suspended until the goods



have been repaired or replaced. If the repair or replacement does not conform, the period continues to the original 30 days or 7 days after the waiting period, whichever is the later.

The short term right to reject is only one option within that first 30 days as they can also opt for a repair or replacement and that would be a more sensible solution if for example a double glazed window has a manufacturing fault etc.

Outside of the 30 days then repair or replacement will be the norm but if that is not available from the trader then the final right to reject will apply. The consumer does not have to give the trader multiple attempts at repair, and only has to give one go after which if still no resolution then they are entitled to a replacement or a price reduction. The price reduction could be as much as the whole value of the goods but the trader can take into account any use had from the goods if they were supplied over 6mths ago (less than 6mths if it's a car).

Selling a service: what are the consumer's rights?

Under the new law there are minimum standards that apply to such contracts so;

- Services must be carried out with reasonable care and skill.
- Information said or written to the consumer will be binding where the consumer relies on it.
- If no price was agreed beforehand, only a reasonable price can be charged.

■ Services must be carried out within a reasonable time if no time was agreed beforehand.

The remedies when things go wrong

- Consumers now have a statutory right to a 'repeat performance' so, if you have not provided the service with reasonable care and skill the consumer can ask you to put it right. If that is impossible or can't be done within a reasonable time then they have the right to a price reduction.
- The same applies if you gave the consumer the wrong information to start with and they relied on it as this would not be reasonable care and skill.
- If you are asked to put the service right you must do so at your own expense, within a reasonable time and without significant inconvenience to the consumer. You can do it more than once but then it may be seen as a significant inconvenience and the consumer does not have to accept repeated attempts.
- When negotiating a price reduction, it could amount to the full price but it will normally be the difference between the value of the service the consumer paid for and the value of the service provided so takes account of any benefit the consumer has derived from the service. Negotiate.

Selling goods and services together: what are the consumer's rights?

For traders who sell goods and services together otherwise known as a 'mixed contract' the general rule is that all the relevant parts

of the Consumer Rights Act apply. For example, the goods element of the contract attracts the rights and remedies given for goods, and the services elements attract the rights and remedies for services.

The supply of digital content

Digital content can include:

- items in computer games
- films
- E books
- computer software
- mobile phone apps
- system software for operating goods, for example, domestic appliances, toys, alarms and even cars!

The rules concerning digital content are much the same as the rules for goods so they must be of;

- satisfactory quality
- fit for a particular purpose
- as described

The remedies when things go wrong

- Repair
- Replacement
- Price reduction (which would depend on the circumstances but could be up to a full refund).

Note: For the vast majority of retail transactions on the high street, the digital content that is supplied with the goods can be physically handled, for example, the washing machine, the car, music CD's etc.

The goods and digital content are mixed together as a 'mixed contract'. If the digital content does not meet

the quality requirements above then the remedies the consumer have are those that apply to goods.

If digital content causes damage to other devices or other digital content then consumers are entitled to a repair or compensation.

Consumer contracts and unfair terms

The Consumer Rights Act provides a test of fairness for consumer contracts and traders should review any terms and conditions used when interacting with customers.

The law says that a term is unfair if 'contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer'.

This means that terms and conditions must not be heavily weighted in favour of the business and must consider an overall evaluation of the different interests involved, 'good faith' has a broad application and terms needs to be fair and open and well communicated.

Terms must be transparent and we expect our traders to make important terms prominent. There is a 'blacklist' of terms that are always unfair and a 'grey list' of terms that are potentially unfair.

The 'blacklist' of terms are those which are automatically objectionable and

include excluding liability for death or injury, terms that insist the consumer bears the burden of proof regarding compliance by a distance supplier and contract terms seeking to exclude or restrict statutory rights.

The 'grey list', is a non-exhaustive and illustrative list of terms that may be unfair. It is a 'grey' list because it does not blacklist terms however, a suspicion of unfairness arises if a term has the object or effect of weighting terms unfairly against the consumer and includes;

- Tying consumers into a contract unfairly
- Denying consumers full redress when things go wrong
- Allowing the trader to not perform their obligations
- Making consumers lose prepayments unfairly
- Allowing the trader to vary the terms afterwards

- Allowing the trader to vary the price after it has been agreed
- Unfair financial penalties

The remedies for when traders use unfair terms

- Consumers can challenge their use in a civil court and if found to be unfair the trader would not be allowed to rely on the term.
- Enforcers can obtain orders to stop traders using them

Traders should remember that terms should be regularly reviewed and the general rule is not to make your customers sign up to anything you would not sign up to yourself as a consumer. An unfair term will not protect you from civil action by a consumer.

For more business guidance on the Consumer Rights Act 2015 visit:
www.businesscompanion.info

This leaflet is for guidance purposes only and you should seek independent legal advice for a full interpretation of the law.



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