

The Consumer Rights Act 2015: an overview

By Noel Dilworth

1. The Consumer Rights Act 2015 is a landmark in the field of consumer law. In anticipation of the coming into force on 1 October 2015 of many of the provisions within the Consumer Rights Act 2015, Henderson Chambers will be publishing a series of alerters highlighting different aspects of the new statutory regime, particularly insofar as it governs the content of consumer contractual relationships and how products should be offered to consumers.
2. Whilst the majority of the Act seeks to consolidate existing legislation, there are a number of innovations, which will change the dynamics of the relationship between industry and consumers. First, the array of remedies available to disgruntled consumers has been extended. Second, the Act widens the scope of liability for newly implied terms. The overhaul of the area of consumer rights relating to goods with digital content (found in Chapter 3 of Part 1 of the Act) will form the subject of [Lucy McCormick's](#) alerter. The changes to the principles applied to unfair terms (found in Part 2) will be addressed in [George Mallet's](#) alerter. [Rachel Tandy](#) will consider the extent to which the new provisions will apply alongside the various industry-specific regulations which are imposed on businesses, mainly by the Financial Conduct Authority (FCA). In general, if stricter duties or requirements are already in place, these will take precedence over applicable provisions outlined in the Act (s.53).

Scope of application

3. The Consumer Rights Act applies to contracts and notices between a “trader” and a “consumer.” However, the definition of “consumer” has been widened by section 2. Insofar as the new definition of “consumer” includes individuals “acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession”, it may encompass individuals who enter into contracts for a mixture of business and personal reasons.
4. A “trader” is defined as “a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.” This definition includes government departments and public sector authorities.
5. Territorially, the Act extends to England, Wales, Scotland and Northern Ireland. However, some parts of the Act include separate rules for Scotland: for example, it makes reference to the Scots law remedy of “specific implement”, which is used to compel performance.
6. Certain parts of the Act do not apply to financial services firms as they implement parts of the EU's Consumer Rights Directive which do not apply to these firms. The Act does not make it clear which terms do not apply to financial services firms; however, certain provisions relating to the contractual status of information and the delivery and risk in goods which originated in the EU Directive do not apply to financial services firms.

Changes to remedies

7. The remedies set out in ss.19-24 (which include a new short term right to reject), apply in addition to common law remedies. Consumers now have statutory remedies of

“repeat performance” and price reduction if a service does not conform to the contract. The remedy available depends on the type of breach involved.

8. Where the breach relates to satisfactory quality, fitness for purpose, goods to be as described, goods to match sample or model and digital content supplied with goods to conform to contract, the following remedies are available:
 - a. Short term right to reject (ss20, 22).
 - b. Right to repair or replacement (s.23).
 - c. Right to price reduction or final right to reject (ss20, 24).

9. Where the breach relates to conformity with pre-contractual information required to be given under Consumer Contract Regulations which are included as terms of the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid or the value of other consideration given for the goods (s19(5)).

10. Where the breach relates to the right to have goods installed correctly, the consumer has the right to repair or replacement (s.23) and the right to price reduction or final right to reject (ss.20 and 24).

11. Where the breach relates to delivery, the consumer has a right to reject where too few are delivered (otherwise to pay at the contract rate) and right to reject either the surplus or all the goods if too many are delivered (otherwise to pay at the contract rate) (s.25), the right to not to accept instalment deliveries unless agreed (s.26(1)). If the trader makes defective deliveries in respect of one or more instalments, the consumer may be (but is not necessarily) entitled (a) to exercise the short-term right to reject in respect of the whole contract (ss.20 and 23), or (b) to reject the goods in an instalment. Where in a sales contract there is a breach of the delivery obligations, the consumer may, under s.28, exercise a right to treat the contract as at an end and receive a refund where the trader refuses to deliver the goods, delivery does not take place at the agreed time or the consumer told the trader before the contract was made

that delivery as agreed or within the statutory period was essential. In the event that any of the above do not apply, the consumer may require delivery within a specified, appropriate period and if delivery does not take place, may then treat the contract as at an end and receive a refund. Where the consumer does not treat the contract as at an end, the consumer may still cancel the order, reject the goods and receive a refund.

12. The Act's remedies can be relied sequentially in so far as they are available for a breach, but the short-term right to reject is limited to 30 days from delivery/installation and not the contract (subject to exceptions and unless extended by trader) (s.22). That right would be relied upon prior to exercise of the right, under section 23, to repair or replacement at the trader's expense, which, in turn, would be exercised before the right to an appropriate price reduction or the final right to reject arises (at the consumers election) (s.24).

13. Consumers also have a right to reject entitles consumers to reject the goods wholly or (in certain cases under s.21) partially to treat the contract as at an end (repudiate it); and receive a refund. On rejection of the goods, the trader must provide a refund (in the case of hire-purchase the amount paid to date) using the same payment method as the consumer used (subject to agreement) without undue delay and in any event within 14 days of agreeing a refund is due. Where the final right to reject is exercised after six months from supply of the goods, the trader may make a deduction from the refund to allow for the consumer's use of the goods, up to the full contract price. The trader is also responsible for the costs of returning the goods (other than any costs incurred by the consumer in returning to the place where the goods were originally transferred). Under section 21, a consumer may elect to keep part of the goods and reject part only, unless the goods "form a commercial unit" – this is where division of the goods would "materially impair the value of the goods or the character of the unit", or where a thing (which cannot be substituted by an equivalent amount of the thing i.e. not money) transferred by the consumer under the contract cannot be returned or cannot be appropriately divided.

Implied terms

14. Contracts to supply goods will have the following implied terms (liability under which cannot be excluded or limited – s.31). The terms are largely familiar, although a new implied term as to compliance with model seen or examined is contained in section 14:

- a. Satisfactory quality (s.9).
- b. Fitness for purpose (s.10).
- c. Goods to be as described (s.11).
- d. Goods to match sample or model (s.13)
- e. Goods to match model (s.14).
- f. Digital content supplied with goods to conform to contract (s.16).
- g. Conformity with pre-contractual information required to be given under Consumer Contract Regulations which are included as terms of the contract (s.12).
- h. Right to have goods installed correctly (s.15).
- i. Implied terms relating to the right of the trader to supply goods, that goods are free of charges and encumbrances and the right to quiet possession (s.17).
- j. In the case of sales contracts, unless otherwise agreed, the right to have the trader deliver the goods and then without undue delay or within 30 days of the contract being made (again unless otherwise agreed) (s.28).
- k. In the case of sales contracts an implied term as to passing of risk (risk passes to consumer when goods come into physical possession of the consumer or designated person and passes on transfer to carrier where carrier is designated by consumer) (s.29).

15. Chapter 4 of Part 1 applies to contracts to supply a service. This will include delivery and installation. Every contract to supply a service includes specified implied terms, liability for breach of which cannot be excluded or limited if to do so would prevent the consumer recovering the price paid or other consideration (other restrictions are subject to unfair contract term rules in Part 2)(s.57). The

implied terms include a term that the trader must perform the service with reasonable care and skill (s.49.); and conformity with information provided pre-contract (i) relating to performance of the services and (ii) other information about the trader or service (including, but not limited to) any information the trader is required to provide under the Consumer Contracts Regulations) (s.50).

16. Thus, spoken or written voluntary statements, made by the trader, about the trader or the trader's service can now be deemed to be binding contractual terms. This can be the case where the statement is taken into account by the consumer when:
 - a. deciding to enter into the contract;
 - b. making any decision about the service after entering into the contract.

17. Previously, if a consumer was presented with misleading information, this information would not be deemed part of the contract. This meant that the only remedy available to the consumer would be to raise an action of misrepresentation. As any misleading statements made by the trader can now become contractual terms, a consumer will now be entitled to raise a breach of contract claim. This is significant because claims for breach of contract are generally easier to prove, and because damages will be awarded based on what the consumer's position would have been had the contract been performed.

18. Further, where the contract makes no specific provision, there is an implied term that the consumer is to pay a reasonable price for services (s.51); and that the services are to be performed within a reasonable time (s.52). Again remedies are linked to the rights. There is a right to require repeat performance (ss.54 and 55); and a right to price reduction (refund up to the contract price) where the right to repeat performance is not available, is impossible or where the consumer has required repeat performance but the trader is in breach of the requirement to complete it within a reasonable time and without significant inconvenience to the

consumer (ss.54 and 56). Where there is non-conformity with the information provided pre-contract not relating to performance of the services (including any information the trader is required to provide under the Consumer Contracts Regulations) (s.50) or where no time for performance is specified (s.52), the consumer has a right to a price reduction.

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