UK Consumer Rights Act 2015: Seven key changes

Law à la Mode

20 OCT 2015
By: Matthew Duncombe

The last 12 months have seen significant change to the consumer law landscape in the UK, culminating most recently with the Consumer Rights Act 2015 (which came into force in October 2015).

Changes in consumer law commenced last year with the implementation of the Consumer Rights Directive into English law by the Consumer Contracts Regulations 2013. The 2013 Regs brought into law further rules relating to distance and online selling, including:

- extending the "cooling-off period" for consumers to change their mind from 7 to 14 days
- cutting the period for refunding customers from 30 to 14 days
- making it a requirement that "pay" buttons on traders’ websites must clearly signpost the customer’s obligation to pay rather than simply ‘order’
- a prohibition on pre-ticked boxes on traders’ websites meaning further up-sells must be actively agreed to
- a maximum 30-day window for the delivery of goods and services, unless the customer agrees otherwise and
- a ban on premium rate helplines: all must charge the basic rate
While the reforms implemented by the 2013 Regs have helped harmonize online selling rules across the EU (all EU countries should now have implemented the underlying EU directive), the UK Government has also been keen to update and simplify general UK consumer rules. The Consumer Rights Act, which received royal assent on 26 March 2015, consolidates and reforms the myriad of UK legislation, which provides protections and rights for the consumer, into a single act and also brings into effect certain online rules from the 2013 Regs into all consumer contracts. For example, any changes made before a consumer enters into a contract are not effective unless agreed to, and delivery is 30 days unless otherwise agreed.

This article highlights the key changes implanted by the Consumer Rights Act.

**Pre-contract information**

**Change**: pre-contract information required under Consumer Contracts Regulations will form part of the implied terms.

When the Act comes into force, it will be an implied term of the contract that the pre-contract information currently required under the Consumer Contracts Regulations will be provided to the consumer.

Sellers should therefore be aware that a failure to provide this information - which is currently listed in the Schedules to the Consumer Contracts Regulations and includes things such as the identity of the trader, total price of the goods, delivery charges and the trader’s complaint handling policy – will leave them open to having to refund the customer. Sellers should review their terms and conditions accordingly.

**Prominent and transparent key terms**

**Change**: terms governing price and subject matter must be “prominent” and “transparent”.

Under existing law, the following two categories of core terms are not subject to the fairness test:

1. the adequacy of price against the goods or services
2. the main subject matter of the contract

"Digital content will be introduced as a new distinct category of product alongside goods and services that must meet a minimum standard”

This position will remain the same under the new regime but with the added caveat that those terms must be transparent (i.e. use plain and intelligible language) and prominent (i.e. brought to the consumer’s attention in such a way that the average consumer would be aware of the terms). Failure to adhere to this requirement will leave such provisions open to the fairness test. Businesses should review terms and conditions as well as customer facing websites, apps and notices to ensure that at the point of sale these terms are clearly brought to a consumer’s attention.

**Quality standards applying to goods**

**Change**: the standards around quality currently implied as standard terms by existing legislation will be replicated under the Act and extended to cover any goods purchased based on a model of the final product.

The requirements that goods must be of satisfactory quality, fit for purpose and meet the expectations of the consumer, currently implied into all trader-to-consumer contracts by the Sale of Goods Act 1979, will be replicated in the Act.

These remain statutory rights that cannot be excluded.

This standard currently expressly applies to all goods that are bought on the basis of a description or a sample. However, a further category of goods – those purchased following the viewing or examination of a model of the final product – will be added to this list under the Act. Vendors should therefore be aware that any sales of goods based on prototypes or models must meet this standard or the consumer will be entitled to a refund.

**Unfair contract terms**
Change: streamlining of the existing law and addition of new categories of terms that are likely to be considered unfair to a so-called gray list.

At present, the law on unfair contract terms is enshrined in the Unfair Contract Terms Act and the Unfair Terms in Consumer Contract Regulations. The Act will consolidate what is deemed "unfair" in consumer contracts.

The "fairness test" remains at the center of the law. Essentially, a term that causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer, will be excluded from the contract and will not be binding on the consumer. But see comments above on the requirement for certain terms to be "prominent" and "transparent".

As with previous legislation, the Act provides a blacklist of terms that will always be considered unfair as well as a gray list of terms likely to be considered unfair. The blacklist remains largely the same (e.g. restriction of liability for death or PI resulting from negligence). The Act does add the following three terms to the gray list that may be considered unfair:

- disproportionately high prices where the consumer decides not to conclude or perform the contract (e.g. disproportionate cancelation charges)
- terms which allow the trader to determine characteristics of the goods after the consumer has entered into the contract and
- terms which allow the trader to determine the price of the goods after the consumer has entered into the contract

Traders should review their standard terms and conditions ahead of the Act coming into force for any terms that may fall under one of these new categories.

Consumer notices

Change: non-contractual notices will be subject to the fairness test. Those deemed "unfair" will be unenforceable.

The Act governs notices that do not form part of a contract but limit a trader's liability to the consumer in some way. Currently, consumers have very limited scope to claim a non-contractual notice is unfair.

However, the Act subjects "consumer notices" to the fairness test set out above. Breaching this will render the notice unenforceable.

Traders should review their product range and customer facing literature for any notices or statements – safety warnings for example – that serve to alert the consumer to a particular point. If deemed "unfair" the notice will be unenforceable.

Remedies available to the consumer

Changes: consumers will have a right to reject, within 30 days, goods that do not meet the statutory standard. A new "tiered" remedy system gives the consumer a further, final right to reject.

1. Refund within first 30 days: consumers have the right to reject any item that does not conform to the contract within the first 30 days of receiving it (shorter for perishable goods) and receive a full refund.
2. Repair or replacement within first 30 days: should the consumer choose instead to have the goods repaired or replaced, the time limit for the right to a refund is 'paused' until the goods are returned the consumer. If, upon return, the item still does not conform to the contract, then the consumer's right to reject is extended by a minimum of seven days.
3. Repair or replacement after first 30 days: if a fault is discovered after the 30-day rejection window, the consumer has the right to a repair or a replacement. The trader has one opportunity to provide the consumer with a product that conforms to the contract.
4. Refund or price reduction following first repair or replacement: if repair or replacement is impossible, the attempt at repair fails or the replacement is also defective, the consumer has a final right to reject, or a right to a reduction in price.

Consumers' rights have been enhanced in this regard as the Act gives consumers a clear window for a refund in...
contrast to the existing "reasonable" timeframe. This is in addition to the recent changes brought in by the 2013 Regs: a 14-day period for consumers to change their minds and the reduction from 30 to 14 days for the period in time in which traders must be provide a refund.

Given the substantive change in this area, traders should review their refund and repair policies to ensure that they remain fully complaint.

**Digital content**

*Change: digital content must meet quality standards equivalent to those currently required for goods and services.*

Digital content will be introduced as a new distinct category of product alongside goods and services that must meet a minimum standard. Currently the protections are much greater for products where the digital content is sold on a tangible good (a DVD, for example) than those where it is intangible (such as an MP3 download) so the reforms aim to address this inconsistency.

The product itself could be anything within the broad spectrum of digital content – defined as "data which are produced and supplied in digital form" – including eBooks, MP3s and in-app purchases from "freemium" computer games – that is, essentially anything with a digital element.

Upon purchasing digital content, it will be implied in the contract that the product will be of satisfactory quality, fit for purpose and compliant with any description. These implied terms will apply whether or not the consumer paid money for the digital content or the digital content came free with other goods for which the customer had paid. If the digital content fails to meet the implied terms, the consumer is entitled to a repair, a replacement or (in limited circumstances) a price reduction of up to 100%. There is no direct right to a refund unless the digital content is in a physical item, for example a DVD, in which case the usual remedies for goods (see above) apply.

Sellers should review their product ranges for any goods with a digital content element. If these are sold and the digital content does not conform to the contract (i.e. by meeting the quality standards), the goods themselves will be deemed to not conform to the contract and the consumer will be entitled to remedies, as set out above.

Back to Law à la Mode Issue 17

**AUTHORS**

Matthew Duncombe  
Partner  
Leeds | T: +44 (0)20 7349 0296 [UK Switchboard]  
matt.duncombe@dlapiper.com