

The Consumer Rights Act 2015

An overview

The Consumer Rights Act 2015 (the Act) comes into force on 1 October 2015. It aims to consolidate and reform a large part of consumer law in the UK.

Overall, the Act represents a substantial increase in the rights of consumers. We recommend that businesses (if they have not done so already) take time to review their standard terms of business along with any documentation used for transactions with consumers to make sure they comply with the new requirements brought in by the Act.

The Act applies to contracts and notices between a 'trader' and a 'consumer'.

A 'consumer' is defined as *"an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession"*. This definition of consumer is wider than existing definitions found in UK and EU law as it includes individuals who enter into contracts for a mixture of business and personal reasons.

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.

"This is the biggest shake up of consumer law for a generation, bringing legislation in line with the fact many people now buy online."

Business Secretary, Vince Cable.

It was widely felt that consumer law in the UK was in need of reform in order to regulate and consolidate the supply of services to consumers, create a regime for digital content (as intangible digital property, i.e. a downloads, were not considered a good), provide better protection to consumers when buying goods and address unfair terms in consumer contracts.

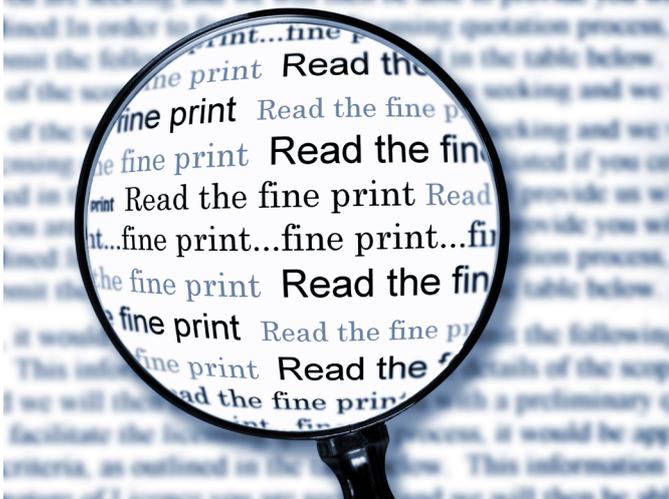


The Act is split in to three parts:

Part 1: Consumer contracts for goods, digital content and services

This part contains the rights and remedies for the supply of goods, services and digital content and provides statutory minimum rights in such contracts. These are largely drawn from the Supply of Good and Services Act 1982 and the Sale of Goods Act 1979 but it introduces additional aspects, some of which are listed below:

- Defines digital content and creates a third category of regulated contract which provides new rights for consumers to get a repair or a replacement of faulty digital content such as online film, games, music downloads and e-books.
- Introduces statutory remedies of 'repeat performance' and 'price reduction' if a service does not conform to the contract.
- Establishes a 30-day time period to return faulty goods and get a full refund and entitling consumers to some money back after one failed repair of faulty goods (or one faulty replacement) even if more than 30 days have passed.
- 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 so a consumer can claim breach of contract instead of argue misrepresentation.



Part 2: Unfair contract terms

This part covers the scrutiny of unfair terms in consumer contracts and is a combination of the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contract Regulations 1999. The areas of reforms include:

- All business to consumer contracts regardless of whether those contracts were negotiated individually with the consumer are covered by the Act.
- Consumer notices (broadly defined as a notice that relates to rights or obligations between the trader and the consumer or restricts the trader's liability) are subject to the fairness test.
- A court is now under an obligation to consider contractual terms for fairness, even if neither party to the proceedings raises fairness as an issue
- Requirement for terms to be made *"transparent and prominent"* with consumers and not hidden away in the small print
- Three new additions to the 'grey list' (an indicative but non-exhaustive list of terms in consumer contracts which may be regarded as being unfair)

Part 3: Miscellaneous and general provisions

This part contains miscellaneous and general provisions and is fairly broad in its scope. A summary of the reforms it introduces in each area are listed below:

Introduction of Enhanced Consumer Measures (ECMs) designed to give enforcers greater flexibility in ensuring that consumers receive the best outcome. Extension of the range of remedies and measures that public and private enforcers can impose on businesses breaching consumer laws i.e. the enforcement of civil remedies such as redress or injunctive relief as well as criminal prosecutions including fines and imprisonment.

- Ability for consumers to bring collective class actions against a business in response to its anti-competitive behaviour through the Competition Appeal Tribunal (CAT).
- Regulation of the resale of tickets for events taking place in the UK.
- Enforces a duty on letting agents to publicise their fees.

We will address the reforms introduced by Part 1 and Part 2 of the Act in more detail over the next few days. These reforms will have the largest impact on day to day transactions between both consumers and traders.

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