

General Background

The UK Government's Consumer Rights Act (it received Royal Assent on 27 March 2015) is part of the Government's reform agenda to update UK consumer law. It brings consumer law into the 21st century by extending rights into digital content for the first time, and making it easier for people to understand their rights and challenge bad practice. Though the Act was expected to also implement the EU Consumer Rights Directive, as this was on an earlier timescale, this was implemented into UK law on 13 June 2014 by the Consumer Contract Regulations 2014. The consumer law review also updated the law on misleading and aggressive practices following a Law Commission report. This came into force on 1 October 2014 via the Consumer Protection (amendment) Regulations 2014.

All three strands provide a firm foundation for empowering consumers and will benefit businesses that treat their customers fairly. It has been welcomed by consumer groups.

The Consumer Rights Act will (mostly) enter into force from October 2015.

Overview of the key provisions of the Consumer Rights Act

- Remedies for faulty goods
- Remedies for substandard services
- Digital Content
- Unfair Terms
- Enforcement Powers
- Collective Redress for breaches of competition law

New rights for digital content

This is the first time such rights have been enshrined in UK law. The aim of the legislation is to give consumers similar legal rights (since the 1970s) for tangible goods i.e. clear legal standards that must be met by the digital content provided and statutory consumer remedies when it does not. Digital content is defined as 'data which are produced and supplied in digital form'. It must be of satisfactory quality, fit for a specified purpose and as described) and where it falls short, consumers are entitled to a repair, replacement or a refund.

However, free content is excluded - only digital content for which a consumer 'pays a price' is covered, but power to extend regime in future 'if appropriate'.

New general rights in goods & services

The key new rules that have been agreed are:

- There will be a fixed 30 days to return faulty goods for a full refund;
- There will be no deduction for use of a product that is faulty after 30 days and before 6 months, other than for cars;
- There is a new statutory remedy available when services are not provided with reasonable care and skill: a consumer will be entitled to re-performance or, if this does not or cannot resolve the issue, to a price reduction.

Unfair Contract Terms

Existing rules have been clarified following the 2010 Supreme Court judgement on bank charges. In short, the Act will limit the range of price terms immune from a fairness assessment - only those that are transparent and prominent will be exempt. The Act also extends the provisions on unfair terms so it covers both non-negotiated and individually negotiated terms and gives the Government the power to vary the list of 'grey terms' that are always presumed to be unfair.

Private Actions in Competition Law

An opt-out process for collective proceedings for competition law infringements has finally been agreed. This was one of the most controversial issues between business and consumer groups. It marks a small but significant step forward for UK collective redress rules and helps to address some of the concerns Which? has identified with the old regime following its replica football shirts case.

New enforcement powers

The Act introduces enhanced consumer law enforcement powers to support those implemented under the Injunctions Directive. Public enforcement bodies (e.g. the Competition & Markets Authority, and local Trading Standards) will now have the power to seek consumer remedies, including an obligation to pay redress, implement specific compliance obligations or measures to facilitate consumer choice, at the same time as bringing infringements to an end. Such powers may be extended to private enforcement bodies such as Which? in due course.

Implementing the EU Consumer Rights Directive

As noted above, the Consumer Rights Directive (CRD) was implemented via the Consumer Contracts Regulations 2014. The implementation of the CRD has delivered positive changes for British consumers. For instance, telephone calls to 'post-contract customer helplines' (e.g. customer service or complaints lines) must only be charged at a basic cost rate and the new rules also extend to both passenger transport and financial services sectors. Which? has been monitoring compliance and holding companies to account if they do not implement it.

The CRD also introduced a ban on excessive card payment surcharges. Following Which? campaigning, this was implemented early in the UK in April 2013. Which? is monitoring compliance, and investigating if charges, in particular for online purchases, are appearing in other ways, such as administration fees and fees to print tickets. These additional fees are particularly prevalent in the travel and entertainment sectors. Finally, the CRD bans pre-ticked boxes for additional purchases such as travel insurance when buying a flight and updates EU-wide consumer rights on distance and off premises contracts, for example by giving consumers across the EU 14 days to return unwanted goods; previously in the UK it was 7 days.

You can read the full text of the new legislation at:

http://www.legislation.gov.uk/ukpga/2015/15/pdfs/ukpga_20150015_en.pdf

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