

# **CONSUMER RIGHTS ACT 2015**

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## **EXPLANATORY NOTES**

### **SUMMARY AND BACKGROUND**

3. The Consumer Rights Act 2015 sets out a framework that consolidates in one place key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts. In addition, the Act introduces easier routes for consumers and small and medium sized enterprises (“SMEs”) to challenge anti-competitive behaviour through the Competition Appeal Tribunal (“CAT”). The Act clarifies the maximum penalties that the regulator of premium rate services can impose on non-compliant and rogue operators. It also consolidates enforcers’ powers as listed in Schedule 5 to investigate potential breaches of consumer law and clarifies that certain enforcers (Trading Standards) can operate across local authority boundaries. It will also give the civil courts and public enforcers greater flexibility to take the most appropriate action for consumers when dealing with breaches or potential breaches of consumer law. Additionally, it changes the way in which judges are able to sit as chairs in the CAT; and imposes a duty on letting agents to publish their fees and other information. Further, the Act expands the list of higher education providers which are required to join the higher education complaints handling scheme, and includes certain requirements relating to resale of tickets for recreational, sporting and cultural events.
4. The Act is in three Parts:
  - Consumer contracts for goods, digital content and services;
  - Unfair terms; and
  - Miscellaneous and general, including investigatory powers; amendment of the Weights and Measures (Packaged Goods) Regulations 2006; enhanced consumer measures and other enforcement under the Enterprise Act 2002; clarification of the maximum penalties that the regulator of premium rate services can impose on non-compliant and rogue operators; private actions in competition law; a change in the way in which judges are able to sit as chairs in the CAT; a duty on letting agents to publicise fees and other information; expansion of the list of higher education providers which are required to join the higher education complaints handling scheme; and certain requirements relating to resale of tickets for recreational, sporting and cultural events.

### ***Background***

5. There is general agreement across business and consumer groups that the existing UK consumer law is unnecessarily complex. It is fragmented and, in places, unclear, for example where the law has not kept up with technological change or lacks precision or where it is couched in legalistic language. There are also overlaps and inconsistencies between changes made by virtue of implementing European Union (“EU”) legislation alongside unamended pre-existing UK legislation.
6. The law that protects consumers when they enter into contracts has developed piecemeal over time. Initially it was the courts that recognised that a person buying

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goods has certain clear and justified, but sometimes unspoken, expectations. The courts developed a body of case law which gave buyers rights when these expectations were not met. This case law was then made into legislation that protected buyers when buying goods, originally in the Sale of Goods Act 1893, updated by the Sale of Goods Act 1979 (“SGA”). These rights were then extended by the introduction of the Supply of Goods and Services Act 1982 (“SGSA”) to cover the situations when goods were provided other than by sale (for example when someone hires goods). The SGSA also covers (in relation to England, Wales and Northern Ireland) certain protections for the recipients of services supplied by traders. Legislation setting out rules on unfairness in contract terms was established domestically in the Unfair Contract Terms Act 1977 (“UCTA”). These pieces of legislation currently cover more than just consumer contracts but certain of their provisions offer extra protection to consumers (as opposed to other types of buyers).

7. The EU has also legislated to protect consumers and so the UK legislation has been amended to incorporate this European legislation; sometimes this has been implemented in domestic law without resolving inconsistencies or overlaps.
8. The relevant domestic law is currently mainly contained in the following legislation:
  - Supply of Goods (Implied Terms) Act 1973
  - Sale of Goods Act 1979
  - Supply of Goods and Services Act 1982
  - Sale and Supply of Goods Act 1994
  - Sale and Supply of Goods to Consumers Regulations 2002
  - Unfair Contract Terms Act 1977
  - Unfair Terms in Consumer Contracts Regulations 1999
  - Unfair Terms in Consumer Contracts (Amendment) Regulations 2001
  - Competition Act 1998
  - Enterprise Act 2002
9. The European Directives implemented in the Act are:
  - Directive [99/44/EC](#) of the European Parliament and of the Council on certain aspects of the sale of consumer goods and associated guarantees;
  - Directive [93/13/EEC](#) of the Council on unfair terms in consumer contracts;
  - Some provisions of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights. See sections 11, 12, 36, 37 and 50 in relation to the enforcement of information requirements and also see paragraph 11 below. See also section 28 in relation to default rules for the delivery of goods, and section 29 regarding the passing of risk in goods.
10. In addition, the Act implements some provisions (in respect of enforcement) of:
  - Regulation [\(EC\) No. 2006/2004](#) of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws;
  - Regulation [\(EC\) No. 765/2008](#) of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products;

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- Directive [2001/95/EC](#) of the European Parliament and of the Council on general product safety; and
- Directive [98/27/EC](#) of the European Parliament and of the Council on injunctions for the protection of consumers' interests.

***Wider reforms to the consumer legislation framework***

11. In addition to the Act, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 implement Directive 2011/83/EU of the European Parliament and of the Council on consumer rights (commonly known as the Consumer Rights Directive (“CRD”)) in regulations made under the European Communities Act 1972. These regulations came into force on 13 June 2014. However, a small number of the CRD’s provisions are implemented in the Act, as indicated above. The CRD:
  - for all contracts where a trader supplies goods, services or digital content to a consumer, requires that a trader must provide certain information (for example on the main characteristics of the goods, services and digital content) before the consumer is bound by the contract;
  - specifies the consumer’s cancellation rights (during so-called “cooling off periods”) for goods, services and digital content contracts concluded at a distance or off premises; and
  - introduces various measures aimed at protecting consumers from hidden charges once they have entered into a contract.
12. A consultation by the Department for Business Innovation and Skills (“BIS”) in August 2012 sought views on implementing the CRD in particular highlighting those areas where the UK had some flexibility in the way it might be applied<sup>1</sup>. A Government response was published in August 2013. Part of the CRD was implemented early as the Consumer Rights (Payment Surcharges) Regulations 2012, and the remainder was implemented with effect from 13 June 2014 as the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
13. In developing proposals for the Consumer Rights Act 2015, the Government has taken into account the definitions and measures contained within the CRD and, as far as appropriate, has made the Act consistent with the CRD, with the intention of achieving overall a simple, coherent framework of consumer legislation.
14. The Government has also implemented the majority of the recommendations made by the Law Commission and Scottish Law Commission (“the Law Commissions”) following their findings that the law surrounding consumer rights to redress following misleading or aggressive practices by traders is fragmented, complex and unclear<sup>2</sup>. The Consumer Protection (Amendment) Regulations 2014<sup>3</sup> amend the Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”) and, as such, this reform did not need to be introduced within the Consumer Rights Act 2015. The new rights came into force on 1 October 2014 and give consumers the right to unwind a contract or payment, or receive a discount on the price paid, if they are subjected to misleading or aggressive practices. The Government published its response to its consultation on the draft regulations on 2 April 2014<sup>4</sup>.

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<sup>1</sup> A consultation on implementing the Consumer Rights Directive, BIS, August 2012

<sup>2</sup> The Law Commission No.332/The Scottish Law Commission No.226, March 2012

<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2014/870/contents/made>

<sup>4</sup> <https://www.gov.uk/government/consultations/protecting-consumers-from-misleading-and-aggressive-selling>

### **Advice and consultations**

15. The University of East Anglia concluded in 2008 that the UK consumer protection regime had two key weaknesses – uneven enforcement and excessively complex law<sup>5</sup>. A call for evidence in the Consumer Law Review in 2008 revealed strong support across the board for consolidating consumer legislation, making it clearer and more accessible<sup>6</sup>. Respondents highlighted a number of benefits that a rewrite would bring – removing discrepancies and inconsistencies, greater use of plain English, greater awareness of rights, remedies and obligations, greater flexibility, future proofing and aiding business growth.
16. A number of consultations and academic research papers over several years have examined proposals that form part of this Act. A single Government response to BIS consultations between March and November 2012 and a report by the Law Commissions of March 2013 (detailed below) was published alongside a draft Bill with accompanying explanatory notes. The draft Bill was scrutinised by the House of Commons Business Innovation and Skills Committee. The Committee published a report in December 2013<sup>7</sup>.

### **Part 1**

17. The Davidson report in 2006, which examined the transposition of European Directives into domestic law, concluded that UK law on the sale of goods was unnecessarily complex<sup>8</sup>. The Law Commissions consulted on potential changes to the law on remedies for faulty goods and made recommendations in 2009<sup>9</sup>. Professors G. Howells and C. Twigg-Flesner examined the law on goods and services in 2010 and made recommendations to BIS on how the law could be clarified and simplified<sup>10</sup>. Also in 2010, Professor Bradgate reported to BIS on the uncertainty in current law around consumer rights to quality for digital content products<sup>11</sup>. Following these various reports, BIS consulted from July to October 2012 on proposals to clarify consumer rights in goods, services and digital content<sup>12</sup>.

### **Part 2**

18. Legislation on unfair contract terms is contained in the UCTA, which currently applies to contracts between businesses and between consumers but contains some particular rules about business to consumer contracts. It makes some terms in contracts automatically non-binding and subjects others to a test of reasonableness. The Unfair Terms in Consumer Contract Regulations 1999 (“UTCCRs”) enable consumers to challenge most non-negotiated terms of a contract on the grounds that they are unfair. There are certain terms that cannot be assessed for fairness: terms that relate to the definition of the main subject matter of the contract and those that relate to the adequacy of the price or remuneration as against the goods or services supplied in exchange. These are known as “exempt terms”. In August 2002 the Law Commissions issued a consultation proposing a unified law on unfair contracts terms and, in February 2005, they issued a report setting out detailed recommendations, which was published alongside a draft Bill<sup>13</sup>. These recommendations were not taken forward at the time. However, in May 2012 the Parliamentary Under-Secretary of State for Employment Relations, Consumer and Postal Affairs, Norman Lamb MP, asked the Law Commissions to look again at unifying a regime on unfair terms in

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<sup>5</sup> Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries, a study for BERR by UEA, 2008

<sup>6</sup> Consumer Law Review: Summary of Responses, BIS, 2009

<sup>7</sup> Draft Consumer Rights Bill; sixth report of session 2013-2014

<sup>8</sup> Davidson Report, HM Treasury, 2006

<sup>9</sup> The Law Commission No.317/The Scottish Law Commission No.216, 2009

<sup>10</sup> Consolidation and simplification of UK consumer law, BIS, 2010

<sup>11</sup> Consumer rights in digital products, BIS, 2010

<sup>12</sup> Enhancing consumer confidence by clarifying consumer law, BIS, 2012

<sup>13</sup> The Law Commission No.292/The Scottish Law Commission No.199, 2005

consumer contracts, focusing on the exempt terms. From July to October 2012 the Law Commissions sought views on a discussion paper on revised proposals for the exempt terms and made recommendations to BIS in March 2013<sup>14</sup> concerning terms in consumer contracts.

### Part 3

19. There are a number of pieces of legislation that set out rights and duties on traders. To ensure effective enforcement of these rights and duties, enforcers such as local weights and measures authorities (known as “Trading Standards”) and other regulators (such as the Competition and Markets Authority (“CMA”)) have powers to investigate compliance. These investigatory powers are usually set out in the individual pieces of legislation creating the rights or duties and whilst largely similar, have some differences between them. In March 2012, BIS published a consultation on consolidating and modernising enforcement officers’ investigatory powers into a generic set. It also consulted on removing the barriers to trading standards operating efficiently<sup>15</sup>. Additionally, views were also sought on reducing burdens on business by introducing certain safeguards on the use of these powers, such as requiring officers to give reasonable notice of routine visits, unless there are good reasons for them to be unannounced.
20. In November 2012, BIS published a consultation paper on extending the range of remedies available to courts when public enforcers apply to them for enforcement orders under Part 8 of the Enterprise Act 2002 (“EA”)<sup>16</sup>.
21. Research by the OFT showed that businesses view the present approach to private actions by consumers and businesses as one of the least effective aspects of the UK competition regime. BIS consulted on measures to make it easier and simpler for businesses and consumers to challenge anti-competitive behaviour in April 2012 and Government published its response in January 2013<sup>17</sup>.

### *Structure of the Act*

22. The Act consists of three parts and ten Schedules. The general arrangement of the Act is as follows:

<i>Part</i>	<i>Summary</i>
Part 1	<ul style="list-style-type: none"> <li>• Sets out the standards that goods must meet.</li> <li>• Consolidates and aligns the currently inconsistent remedies available to consumers for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase.</li> <li>• Sets a time period of 30 days in which consumers can reject substandard goods and be entitled to a full refund.</li> <li>• Limits the number of repairs or replacements of substandard goods before traders must offer some money back.</li> <li>• Sets limits on the extent to which traders may reduce the level of refund (where goods are not rejected initially) to take account of the use of the goods the consumer has had up to that point.</li> <li>• Introduces a new category of digital content.</li> <li>• Introduces tailored quality rights for digital content.</li> </ul>

<sup>14</sup> Unfair terms in consumer contracts – advice to BIS, The Law Commission & The Scottish Law Commission, 2013

<sup>15</sup> Enhancing consumer confidence through effective enforcement, BIS, March 2012

<sup>16</sup> Civil enforcement remedies – consultation on extending the range of remedies available to public enforcers of consumer law, BIS, November 2012

<sup>17</sup> Private actions in competition law: a consultation on options for reform, BIS, April 2012 and a government response, BIS, January 2013

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<b>Part</b>	<b>Summary</b>
	<ul style="list-style-type: none"> <li>• Introduces tailored remedies if the digital content rights are not met.</li> <li>• Introduces a new statutory right that if a trader provides information in relation to a service, and the consumer takes this information into account, the service must comply with that information.</li> <li>• Introduces new statutory remedies when things go wrong with a service.</li> <li>• Makes it clear that consumers can always request these rights and remedies when a trader supplies a service to them.</li> </ul>
Part 2 including Schedules 2, 3 and 4	<ul style="list-style-type: none"> <li>• Consolidates the legislation governing unfair contract terms in relation to consumer contracts, which currently is found in two separate pieces of legislation, into one place, removes anomalies and overlapping provisions in relation to consumer contracts.</li> <li>• Makes clearer the circumstances when the price or subject matter of the contract cannot be considered for fairness and in particular makes clear that to avoid being considered for fairness those terms must be transparent and prominent.</li> <li>• Clarifies the role of and extends the indicative list of terms which may be regarded as unfair (the so-called 'grey list').</li> </ul>
Part 3 including Schedules 5, 6, 7, 8, 9 and 10	<ul style="list-style-type: none"> <li>• Consolidates and simplifies the investigatory powers of consumer law enforcers in relation to the listed legislation and sets them out in one place as a generic set<sup>18</sup>.</li> <li>• Clarifies the law so that trading standards are able to work across local authority boundaries as simply and efficiently as possible.</li> <li>• Introduces new powers for public enforcers to seek, through applying to the civil courts: <ul style="list-style-type: none"> <li>— Redress for consumers who have been disadvantaged by breaches of consumer law;</li> <li>— Remedies from traders who have breached consumer law to improve their compliance and reduce the likelihood of future breaches, and/or</li> <li>— Remedies to give consumers more information so they can exercise greater choice and help improve the functioning of the market for consumers and other businesses.</li> </ul> </li> <li>• Includes a power for the Secretary of State to extend the use of the enhanced consumer measures to private designated enforcers providing certain conditions are met and subject to safeguards on their use.</li> <li>• Clarifies the maximum penalties that the regulator of premium rate services can impose on non-compliant and rogue operators.</li> <li>• Establishes the CAT as a major venue for competition actions in the UK.</li> <li>• Introduces a limited opt-out collective actions regime, with safeguards, for competition law.</li> <li>• Promotes ADR for competition cases.</li> <li>• Changes the way in which judges are able to sit as chairs in the Competition Appeals Tribunal (CAT).</li> </ul>

<sup>18</sup> Some specific powers contained in weights and measures and product safety legislation will be retained alongside the new generic set

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<i>Part</i>	<i>Summary</i>
	<ul style="list-style-type: none"> <li>• Imposes a duty on letting agents to publicise fees and a statement of whether or not they are a member of a client money protection scheme and which redress scheme they have joined.</li> <li>• Expands the list of higher education providers which are required to join the higher education complaints handling scheme.</li> <li>• Includes certain requirements relating to resale of tickets for recreational, sporting and cultural events.</li> </ul>

***Impact on existing legislation***

23. The Act brings together key consumer rights from all the enactments listed in paragraph 8 above. It will harmonise existing provisions to give a single approach where appropriate.
24. The provisions in the existing legislation listed below which cover trader to consumer contracts only will be repealed. The provisions which relate to other types of contract (for example contracts between businesses) will remain in the existing legislation.

Supply of Goods (Implied Terms) Act 1973	For business to consumer contracts the provisions of the Supply of Goods (Implied Terms) Act 1973 (“SGITA”) will be replaced by the Consumer Rights Act 2015. It will be amended so that it covers business to business contracts and consumer to consumer contracts only.
Sale of Goods Act 1979	For business to consumer contracts this will mainly be replaced by the Consumer Rights Act 2015 but some provisions of SGA will still apply, for example, rules which are applicable to all contracts of sale of goods (as defined by that Act – essentially these are sales of goods for money), regarding matters such as when property in goods passes. The SGA will still apply to business to business contracts and to consumer to consumer contracts.
Supply of Goods and Services Act 1982	For business to consumer contracts, this Act’s provisions will be replaced by the Consumer Rights Act 2015. The SGSA will be amended so that it covers business to business contracts and consumer to consumer contracts only.
Sale and Supply of Goods Act 1994	This Act amended the SGA and the SGSA and as such will be superseded by provisions in the Consumer Rights Act 2015 for business to consumer contracts.
Sale and Supply of Goods to Consumers Regulations 2002	These will be replaced by provisions in the Consumer Rights Act 2015.
Unfair Contract Terms Act 1977	In respect of business to consumer contracts the Act’s provisions will be replaced by the

18 Some specific powers contained in weights and measures and product safety legislation will be retained alongside the new generic set



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	Consumer Rights Act 2015. The UCTA will be amended so that it covers business to business and consumer to consumer contracts only.
Unfair Terms in Consumer Contracts Regulations 1999	These will be replaced by the Consumer Rights Act 2015.

***Territorial extent and application***

25. The Act extends to England and Wales, Scotland and Northern Ireland as described below.
26. [Parts 1 to 3](#) largely extend to the whole of the UK. Some of Part 3 does not apply to Scotland or Northern Ireland because of the differences in the law. For example, the provision relating to the Competition Appeal Tribunal issuing injunctions in private actions does not apply to Scotland, and some of the legislation which Part 3 proposes to amend does not extend to Scotland or Northern Ireland, e.g. the Sunday Trading Act 1994. Chapter 3 of Part 3 (duty on letting agents to publicise fees) extends only to England and Wales, and applies in relation to the fees charged by agents in the course of the letting and management of privately rented property in England and Wales. However, the requirement for letting agents to publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined applies only to England. The obligation to expand the requirement to join the complaints handling scheme in higher education applies to England and Wales on the basis that the original legislation extends to England and Wales only.

***Which country's law governs the contract?***

27. European Regulation EC 593/2008 on the law applicable to contractual obligations sets out the rules as to which country's law applies to consumer contracts. It is known as the "Rome I Regulation". It confirms that it is open to a consumer and a trader to choose the law of any country to govern their contract. Where they do not choose, if a trader pursues its activities in or directs its activities to the UK, (whether the trader is in the UK or not) and the contract covers those activities, the Rome I Regulation provides that a contract with a consumer habitually living in the UK will be governed by UK law. Even if the consumer and trader do choose another country's law to govern their contract, the Rome I Regulation provides that where the trader pursues or directs its activities to the UK and the consumer is habitually resident in the UK, any UK protections that parties cannot contract out of under UK law (such as the key protections covered by this Act) will still apply. Depending on the circumstances, pursuing or directing activities might, for example, include having a website translated into English or with a '.uk' web address from which consumers in the UK can purchase goods, services or digital content in sterling.
28. Some of the provisions regarding goods and unfair terms will also apply in other circumstances, due to protections in the Directives from which these derive. See the notes on sections 32 and 74 below.

***Transposition of EU Directives***

29. The Act does not itself implement EU Directives for the first time with the exception of certain parts of Articles 5, 6 18, 20 and 23 of the CRD which are implemented in Part 1 as detailed above in paragraph 9. Other than this, the Act replaces earlier legislation which has implemented EU Directives, most of which is set out in paragraph 9 above.