



# Consumer Rights Act 2015

## 2015 CHAPTER 15

### PART 1

#### CONSUMER CONTRACTS FOR GOODS, DIGITAL CONTENT AND SERVICES

### CHAPTER 3

#### DIGITAL CONTENT

##### *What digital content contracts are covered?*

### **33 Contracts covered by this Chapter**

- (1) This Chapter applies to a contract for a trader to supply digital content to a consumer, if it is supplied or to be supplied for a price paid by the consumer.
- (2) This Chapter also applies to a contract for a trader to supply digital content to a consumer, if—
  - (a) it is supplied free with goods or services or other digital content for which the consumer pays a price, and
  - (b) it is not generally available to consumers unless they have paid a price for it or for goods or services or other digital content.
- (3) The references in subsections (1) and (2) to the consumer paying a price include references to the consumer using, by way of payment, any facility for which money has been paid.
- (4) A trader does not supply digital content to a consumer for the purposes of this Part merely because the trader supplies a service by which digital content reaches the consumer.
- (5) The Secretary of State may by order provide for this Chapter to apply to other contracts for a trader to supply digital content to a consumer, if the Secretary of State is satisfied

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that it is appropriate to do so because of significant detriment caused to consumers under contracts of the kind to which the order relates.

- (6) An order under subsection (5)—
  - (a) may, in particular, amend this Act;
  - (b) may contain transitional or transitory provision or savings.
- (7) A contract to which this Chapter applies is referred to in this Part as a “contract to supply digital content”.
- (8) This section, other than subsection (4), does not limit the application of section 46.
- (9) The power to make an order under subsection (5) is exercisable by statutory instrument.
- (10) No order may be made under subsection (5) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

*What statutory rights are there under a digital content contract?*

### **34 Digital content to be of satisfactory quality**

- (1) Every contract to supply digital content is to be treated as including a term that the quality of the digital content is satisfactory.
- (2) The quality of digital content is satisfactory if it meets the standard that a reasonable person would consider satisfactory, taking account of—
  - (a) any description of the digital content,
  - (b) the price mentioned in section 33(1) or (2)(b) (if relevant), and
  - (c) all the other relevant circumstances (see subsection (5)).
- (3) The quality of digital content includes its state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of digital content—
  - (a) fitness for all the purposes for which digital content of that kind is usually supplied;
  - (b) freedom from minor defects;
  - (c) safety;
  - (d) durability.
- (4) The term mentioned in subsection (1) does not cover anything which makes the quality of the digital content unsatisfactory—
  - (a) which is specifically drawn to the consumer’s attention before the contract is made,
  - (b) where the consumer examines the digital content before the contract is made, which that examination ought to reveal, or
  - (c) where the consumer examines a trial version before the contract is made, which would have been apparent on a reasonable examination of the trial version.
- (5) The relevant circumstances mentioned in subsection (2)(c) include any public statement about the specific characteristics of the digital content made by the trader, the producer or any representative of the trader or the producer.

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- (6) That includes, in particular, any public statement made in advertising or labelling.
- (7) But a public statement is not a relevant circumstance for the purposes of subsection (2)(c) if the trader shows that—
  - (a) when the contract was made, the trader was not, and could not reasonably have been, aware of the statement,
  - (b) before the contract was made, the statement had been publicly withdrawn or, to the extent that it contained anything which was incorrect or misleading, it had been publicly corrected, or
  - (c) the consumer’s decision to contract for the digital content could not have been influenced by the statement.
- (8) In a contract to supply digital content a term about the quality of the digital content may be treated as included as a matter of custom.
- (9) See section 42 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

### **35 Digital content to be fit for particular purpose**

- (1) Subsection (3) applies to a contract to supply digital content if before the contract is made the consumer makes known to the trader (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.
- (2) Subsection (3) also applies to a contract to supply digital content if—
  - (a) the digital content was previously sold by a credit-broker to the trader,
  - (b) the consideration or part of it is a sum payable by instalments, and
  - (c) before the contract is made, the consumer makes known to the credit-broker (expressly or by implication) any particular purpose for which the consumer is contracting for the digital content.
- (3) The contract is to be treated as including a term that the digital content is reasonably fit for that purpose, whether or not that is a purpose for which digital content of that kind is usually supplied.
- (4) Subsection (3) does not apply if the circumstances show that the consumer does not rely, or it is unreasonable for the consumer to rely, on the skill or judgment of the trader or credit-broker.
- (5) A contract to supply digital content may be treated as making provision about the fitness of the digital content for a particular purpose as a matter of custom.
- (6) See section 42 for a consumer’s rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

### **36 Digital content to be as described**

- (1) Every contract to supply digital content is to be treated as including a term that the digital content will match any description of it given by the trader to the consumer.
- (2) Where the consumer examines a trial version before the contract is made, it is not sufficient that the digital content matches (or is better than) the trial version if the digital content does not also match any description of it given by the trader to the consumer.

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- (3) Any information that is provided by the trader about the digital content that is information mentioned in paragraph (a), (j) or (k) of Schedule 1 or paragraph (a), (v) or (w) of Schedule 2 (main characteristics, functionality and compatibility) to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ([SI 2013/3134](#)) is to be treated as included as a term of the contract.
- (4) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (5) See section 42 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

### **37 Other pre-contract information included in contract**

- (1) This section applies to any contract to supply digital content.
- (2) Where regulation 9, 10 or 13 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ([SI 2013/3134](#)) required the trader to provide information to the consumer before the contract became binding, any of that information that was provided by the trader other than information about the digital content and mentioned in paragraph (a), (j) or (k) of Schedule 1 or paragraph (a), (v) or (w) of Schedule 2 to the Regulations (main characteristics, functionality and compatibility) is to be treated as included as a term of the contract.
- (3) A change to any of that information, made before entering into the contract or later, is not effective unless expressly agreed between the consumer and the trader.
- (4) See section 42 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

### **38 No other requirement to treat term about quality or fitness as included**

- (1) Except as provided by sections 34 and 35, a contract to supply digital content is not to be treated as including any term about the quality of the digital content or its fitness for any particular purpose, unless the term is expressly included in the contract.
- (2) Subsection (1) is subject to provision made by any other enactment, whenever passed or made.

### **39 Supply by transmission and facilities for continued transmission**

- (1) Subsection (2) applies where there is a contract to supply digital content and the consumer's access to the content on a device requires its transmission to the device under arrangements initiated by the trader.
- (2) For the purposes of this Chapter, the digital content is supplied—
  - (a) when the content reaches the device, or
  - (b) if earlier, when the content reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.
- (3) Subsections (5) to (7) apply where—
  - (a) there is a contract to supply digital content, and

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- (b) after the trader (T) has supplied the digital content, the consumer is to have access under the contract to a processing facility under arrangements made by T.
- (4) A processing facility is a facility by which T or another trader will receive digital content from the consumer and transmit digital content to the consumer (whether or not other features are to be included under the contract).
- (5) The contract is to be treated as including a term that the processing facility (with any feature that the facility is to include under the contract) must be available to the consumer for a reasonable time, unless a time is specified in the contract.
- (6) The following provisions apply to all digital content transmitted to the consumer on each occasion under the facility, while it is provided under the contract, as they apply to the digital content first supplied—
  - (a) section 34 (quality);
  - (b) section 35 (fitness for a particular purpose);
  - (c) section 36 (description).
- (7) Breach of a term treated as included under subsection (5) has the same effect as breach of a term treated as included under those sections (see section 42).

#### **40 Quality, fitness and description of content supplied subject to modifications**

- (1) Where under a contract a trader supplies digital content to a consumer subject to the right of the trader or a third party to modify the digital content, the following provisions apply in relation to the digital content as modified as they apply in relation to the digital content as supplied under the contract—
  - (a) section 34 (quality);
  - (b) section 35 (fitness for a particular purpose);
  - (c) section 36 (description).
- (2) Subsection (1)(c) does not prevent the trader from improving the features of, or adding new features to, the digital content, as long as—
  - (a) the digital content continues to match the description of it given by the trader to the consumer, and
  - (b) the digital content continues to conform to the information provided by the trader as mentioned in subsection (3) of section 36, subject to any change to that information that has been agreed in accordance with subsection (4) of that section.
- (3) A claim on the grounds that digital content does not conform to a term described in any of the sections listed in subsection (1) as applied by that subsection is to be treated as arising at the time when the digital content was supplied under the contract and not the time when it is modified.

#### **41 Trader's right to supply digital content**

- (1) Every contract to supply digital content is to be treated as including a term—
  - (a) in relation to any digital content which is supplied under the contract and which the consumer has paid for, that the trader has the right to supply that content to the consumer;

- (b) in relation to any digital content which the trader agrees to supply under the contract and which the consumer has paid for, that the trader will have the right to supply it to the consumer at the time when it is to be supplied.
- (2) See section 42 for a consumer's rights if the trader is in breach of a term that this section requires to be treated as included in a contract.

*What remedies are there if statutory rights under a digital content contract are not met?*

#### **42 Consumer's rights to enforce terms about digital content**

- (1) In this section and section 43 references to digital content conforming to a contract are references to the digital content conforming to the terms described in sections 34, 35 and 36.
- (2) If the digital content does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are—
  - (a) the right to repair or replacement (see section 43);
  - (b) the right to a price reduction (see section 44).
- (3) Section 16 also applies if an item including the digital content is supplied.
- (4) If the trader is in breach of a term that section 37 requires to be treated as included in 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 for the digital content or for any facility within section 33(3) used by the consumer.
- (5) If the trader is in breach of the term that section 41(1) (right to supply the content) requires to be treated as included in the contract, the consumer has the right to a refund (see section 45 for provisions about that right and when it is available).
- (6) This Chapter does not prevent the consumer seeking other remedies for a breach of a term to which any of subsections (2), (4) or (5) applies, instead of or in addition to a remedy referred to there (but not so as to recover twice for the same loss).
- (7) Those other remedies include any of the following that is open to the consumer in the circumstances—
  - (a) claiming damages;
  - (b) seeking to recover money paid where the consideration for payment of the money has failed;
  - (c) seeking specific performance;
  - (d) seeking an order for specific implement;
  - (e) relying on the breach against a claim by the trader for the price.
- (8) It is not open to the consumer to treat the contract as at an end for breach of a term to which any of subsections (2), (4) or (5) applies.
- (9) For the purposes of subsection (2), digital content which does not conform to the contract at any time within the period of six months beginning with the day on which it was supplied must be taken not to have conformed to the contract when it was supplied.
- (10) Subsection (9) does not apply if—

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- (a) it is established that the digital content did conform to the contract when it was supplied, or
- (b) its application is incompatible with the nature of the digital content or with how it fails to conform to the contract.

#### **43 Right to repair or replacement**

- (1) This section applies if the consumer has the right to repair or replacement.
- (2) If the consumer requires the trader to repair or replace the digital content, the trader must—
  - (a) do so within a reasonable time and without significant inconvenience to the consumer; and
  - (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).
- (3) The consumer cannot require the trader to repair or replace the digital content if that remedy (the repair or the replacement)—
  - (a) is impossible, or
  - (b) is disproportionate compared to the other of those remedies.
- (4) Either of those remedies is disproportionate compared to the other if it imposes costs on the trader which, compared to those imposed by the other, are unreasonable, taking into account—
  - (a) the value which the digital content would have if it conformed to the contract,
  - (b) the significance of the lack of conformity, and
  - (c) whether the other remedy could be effected without significant inconvenience to the consumer.
- (5) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—
  - (a) the nature of the digital content, and
  - (b) the purpose for which the digital content was obtained or accessed.
- (6) A consumer who requires or agrees to the repair of digital content cannot require the trader to replace it without giving the trader a reasonable time to repair it (unless giving the trader that time would cause significant inconvenience to the consumer).
- (7) A consumer who requires or agrees to the replacement of digital content cannot require the trader to repair it without giving the trader a reasonable time to replace it (unless giving the trader that time would cause significant inconvenience to the consumer).
- (8) In this Chapter, “repair” in relation to digital content that does not conform to a contract, means making it conform.

#### **44 Right to price reduction**

- (1) The right to a price reduction is the right to require the trader to reduce the price to the consumer by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount).
- (2) The amount of the reduction may, where appropriate, be the full amount of the price.
- (3) A consumer who has that right may only exercise it in one of these situations—

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- (a) because of section 43(3)(a) the consumer can require neither repair nor replacement of the digital content, or
  - (b) the consumer has required the trader to repair or replace the digital content, but the trader is in breach of the requirement of section 43(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.
- (4) A refund under this section must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (5) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.
- (6) The trader must not impose any fee on the consumer in respect of the refund.

#### **45 Right to a refund**

- (1) The right to a refund gives the consumer the right to receive a refund from the trader of all money paid by the consumer for the digital content (subject to subsection (2)).
- (2) If the breach giving the consumer the right to a refund affects only some of the digital content supplied under the contract, the right to a refund does not extend to any part of the price attributable to digital content that is not affected by the breach.
- (3) A refund must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund.
- (4) The trader must give the refund using the same means of payment as the consumer used to pay for the digital content, unless the consumer expressly agrees otherwise.
- (5) The trader must not impose any fee on the consumer in respect of the refund.

#### *Compensation for damage to device or to other digital content*

#### **46 Remedy for damage to device or to other digital content**

- (1) This section applies if—
- (a) a trader supplies digital content to a consumer under a contract,
  - (b) the digital content causes damage to a device or to other digital content,
  - (c) the device or digital content that is damaged belongs to the consumer, and
  - (d) the damage is of a kind that would not have occurred if the trader had exercised reasonable care and skill.
- (2) If the consumer requires the trader to provide a remedy under this section, the trader must either—
- (a) repair the damage in accordance with subsection (3), or
  - (b) compensate the consumer for the damage with an appropriate payment.
- (3) To repair the damage in accordance with this subsection, the trader must—
- (a) repair the damage within a reasonable time and without significant inconvenience to the consumer, and

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- (b) bear any necessary costs incurred in repairing the damage (including in particular the cost of any labour, materials or postage).
- (4) Any question as to what is a reasonable time or significant inconvenience is to be determined taking account of—
  - (a) the nature of the device or digital content that is damaged, and
  - (b) the purpose for which it is used by the consumer.
- (5) A compensation payment under this section must be made without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to the payment.
- (6) The trader must not impose any fee on the consumer in respect of the payment.
- (7) A consumer with a right to a remedy under this section may bring a claim in civil proceedings to enforce that right.
- (8) The Limitation Act 1980 and the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (NI 11)) apply to a claim under this section as if it were an action founded on simple contract.
- (9) The Prescription and Limitation (Scotland) Act 1973 applies to a right to a remedy under this section as if it were an obligation to which section 6 of that Act applies.

*Can a trader contract out of statutory rights and remedies under a digital content contract?*

#### **47 Liability that cannot be excluded or restricted**

- (1) A term of a contract to supply digital content is not binding on the consumer to the extent that it would exclude or restrict the trader's liability arising under any of these provisions—
  - (a) section 34 (digital content to be of satisfactory quality),
  - (b) section 35 (digital content to be fit for particular purpose),
  - (c) section 36 (digital content to be as described),
  - (d) section 37 (other pre-contract information included in contract), or
  - (e) section 41 (trader's right to supply digital content).
- (2) That also means that a term of a contract to supply digital content is not binding on the consumer to the extent that it would—
  - (a) exclude or restrict a right or remedy in respect of a liability under a provision listed in subsection (1),
  - (b) make such a right or remedy or its enforcement subject to a restrictive or onerous condition,
  - (c) allow a trader to put a person at a disadvantage as a result of pursuing such a right or remedy, or
  - (d) exclude or restrict rules of evidence or procedure.
- (3) The reference in subsection (1) to excluding or restricting a liability also includes preventing an obligation or duty arising or limiting its extent.
- (4) An agreement in writing to submit present or future differences to arbitration is not to be regarded as excluding or restricting any liability for the purposes of this section.

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- (5) See Schedule 3 for provision about the enforcement of this section.
- (6) For provision limiting the ability of a trader under a contract within section 46 to exclude or restrict the trader's liability under that section, see section 62.