

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Consumer Contracts for Goods, Digital Content and Services

Chapter 3 Digital Content

What statutory rights are there under a digital content contract?

Section 36: Digital content to be as described

184. The right for digital content to be as described is similar to the right for goods (section 11). Section 36 clarifies that the digital content must match any description of it given by the trader to the consumer. This is an important right in the digital content context where people may not be able to view the digital content before buying the full version. Even when the digital content matches a trial version, if it does not meet the description (where they differ), then the digital content will be in breach of this section.
185. The policy intention is that matching the description should mean that the digital content should at least do what it is described as doing. It is not intended that "matches the description" should mean that the digital content must be exactly the same in every aspect. This section would not, for example prevent the digital content going beyond the description, as long as it also continues to match the description. This is particularly relevant for updates that may enhance features or add new features. As clarified in section 40, as long as the digital content continued to match the original product description and conform to the pre-contractual information provided by the trader, improved or additional features would not breach this right.
186. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 require traders to provide certain information to consumers before consumers are bound by a contract. The type of information that is required can be split into two categories: information about the digital content (the main characteristics, interoperability and functionality) and other information (e.g. the trader's name and address). In order to implement the obligation to enforce these information requirements the Act makes clear that pre-contractual information will form part of the contract. This section makes clear that the former type of information (about the main characteristics of the digital content or the functionality or interoperability) also forms part of the description.
187. *Subsection (4)* provides that changes to information given pre-contractually about the digital content are only effective when expressly agreed between the consumer and the trader (although it may not be necessary to do so where the pre-contract information itself reflects the fact that the particular potential changes envisaged may be made). That is, if a trader and consumer do not expressly agree the change to the information then if the digital content provided was not in line with this information, this would be a breach of this section. Conversely, if the trader and consumer do expressly agree a change to the description of the digital content, the consumer would not subsequently

*These notes refer to the Consumer Rights Act 2015
(c.15) which received Royal Assent on 26 March 2015*

be entitled to a remedy if the digital content did not meet the original description but did meet the agreed, changed description.