

# CONSUMER RIGHTS ACT 2015

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

191. This section concerns rights that apply when in order to access digital content it is transmitted to the consumer (for example, where digital content is bought or used via the internet or through a satellite transmission) and makes clear that digital content must be of satisfactory quality, fit for a particular purpose and as described at the point when it reaches either the consumer's device or, if earlier, a trader with whom the consumer has contracted, such as an internet service provider or mobile network operator.
192. Digital content can be supplied on a tangible medium (e.g. on a disk or preloaded on a device or embedded within other goods such as a washing machine which relies on software for its programming) or in other ways, such as through streaming or downloading. When it is not supplied on a tangible medium, it will usually travel through one or more intermediaries before it reaches the consumer's device. Some of these intermediaries, for example an Internet Service Provider ("ISP"), have been chosen by and are within the contractual control of the consumer. Other intermediaries, however, will be within the contractual control of the trader, or under arrangements initiated by the trader. For example, a supplier of streamed movies (the trader) may contract with a content delivery network who will deliver the data from the trader's server to the ISPs who will then deliver the content to the consumer.
193. *Subsection (2)* provides that the trader (T) from whom the consumer purchased the digital content supplies the content at the point that it reaches either the consumer's device (for example, directly to a consumer's satellite dish) or an independent trader within the contractual control of the consumer (such as an ISP), whichever is sooner. T is responsible for ensuring that it meets all the relevant quality standards. A trader which is in the contractual control of the consumer and which only provides a service by which the digital content reaches the consumer is not providing digital content for the purposes of Chapter 3 (see section 33(4)) but may be subject to the provision in Chapter 4 (Services)).
194. Where digital content fails to meet the quality standards because of a problem with the consumer's device or with the delivery service supplied by an independent trader with whom the consumer has contracted (e.g. ISP, mobile network provider, cable provider), T would not be liable for the failure to meet the quality standards as that trader (T) cannot be at fault in any way for the problem and has no way of rectifying it. If the problem is with the consumer's network access provider, then this service provider is liable under the services provision of the Act if, for example, the service is not provided

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

with reasonable care and skill (see Chapter 4). However, where the digital content fails to meet the quality standards because of a problem for which T or an intermediary in the contractual control of T (either directly or indirectly) is responsible, then T will be liable. This is similar to the rules on the passing of risk for goods (section 29) which provide that the trader carries the risk for the goods purchased until they come into the physical possession of the consumer, unless the delivery is arranged by the consumer in which case the consumer takes the risk for the delivery of the goods.

195. *Subsections (3) to (7)* apply to digital content where use of the content in line with the contract requires some digital content to be transferred via the internet between the consumer's device and a server (processing facility) operated by or within the contractual control of T. Examples of this type of digital content would be massively multiplayer online games ("MMOs") and software accessed on the Cloud such as a music streaming facility. *Subsection (5)* provides that for such types of digital content, the consumer should be able to use their digital content in the way described for a reasonable period of time. Where there is an express term in the contract relating to a specific period of time for the use of the digital content in this manner, the express term would apply (e.g. if a consumer expressly pays for 48 hours access to an online journal or for a one month trial period for an MMO game). *Subsection (7)* provides that breach of this provision will give the consumer access to the remedies under section 42. *Subsection (6)* also provides that for these types of contracts for digital content, the quality rights set out in sections 34 to 36 (satisfactory quality, fitness for purpose and meeting the description), should apply to the digital content for that period of time.