

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Chapter 4 Services

What statutory rights are there under a services contract?

Section 49: Service to be performed with reasonable care and skill

242. This Section corresponds to section 13 of the SGSA but, as with all the provisions in Part 1 of the Act, it only relates to contracts between traders and consumers, specifically here, where a trader supplies a service to a consumer. It removes the legalistic reference to an ‘implied term’ that is in the SGSA and simply says that every contract where a trader supplies a service to a consumer includes a term that the service must be performed with reasonable care and skill. The standard that the trader must meet in section 49 and in section 13 of the SGSA however is the same and if the trader does not meet the test of “reasonable care and skill”, the trader will be in breach of contract.
243. “Reasonable care and skill” focuses on the way a service has been carried out, rather than the end result of the service. This means that, if a trader has not provided a service with reasonable care and skill, they will be in breach of this right, whatever the end result.
244. This provision does not include a definition of “reasonable care and skill”. This is to allow the standard to be flexible between sectors and industries. It is also to reflect that current case law provides guidance on this meaning and, further, that future case law might elaborate on that guidance. It is generally accepted that relevant to whether a person has met the standard of reasonable care and skill are industry standards or codes of practice. The price paid for the service can also be a factor in determining the level of care and skill that needs to be exercised in order to be reasonable. For example, a consumer might expect a lower standard of care and skill from a quick and cheap repair service than from a more expensive and thorough one.
245. For example, if an individual engages a high-cost, specialized gardener to landscape his/her garden, that gardening service must be provided with reasonable care and skill. If the gardener does not cut and treat the grass to the industry standard, it is likely that a court would find that the gardener did not exercise reasonable care and skill and the consumer would have the right to remedies (explained below).

Section 50: Information about the trader or service to be binding

246. This is a new provision in that there is no corresponding provision in the SGSA. It is incorporated here for two reasons:
- Firstly, there may be consumer detriment where a trader may say something to a consumer, which the consumer then relies on, but which the trader later does not

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

comply with. Whilst it may be the case that the proper legal construction is that these statements are validly incorporated into the contract as express terms, a trader may try to argue that they are not contractually bound by the statement; and

- Secondly, for certain contracts, the 2013 Regulations mandate that certain information must be made available by a trader to a consumer before the consumer is bound by a contract. To enable enforcement of those Regulations, the Act makes clear that these pieces of information will form part of the contract – so that the service must be provided as stated in the information - which cannot be altered unless the parties expressly agree otherwise (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). This part of the 2013 Regulations aims to ensure that consumers are properly informed of key information before they are bound by a contract. Certain services are excluded from the scope of the 2013 Regulations and therefore from this provision, such as financial and gambling services.

247. [Section 50](#) may be considered in two parts to deal with these two objectives above.
248. Firstly, the section requires that that the trader providing the service must comply with information it has provided, orally or in writing (e.g. a description it has given of the service to be provided), where the consumer has taken this information into account when making any decision about the service (including whether to enter into the contract). This information must be read in the context of everything else in the contract and other information given. This is to prevent the consumer being able to rely on some information, where the trader clearly qualified that information when giving it to the consumer. *Subsection (2)* makes this clear.
249. The information given covers both information about the service and other information the trader gives about the trader itself (e.g. information about its trading practices, such as a commitment to paying its workers the minimum wage). Different remedies apply depending on whether the information is about the service or is other information that the trader gives (see below).
250. Secondly, the section explains that information provided which was required under the 2013 Regulations is also to be treated as included in the contract. Therefore, the trader must comply with the information it has provided or be in breach of contract.
251. For both types of information (that required under 2013 Regulations and information provided by the trader voluntarily) this section also makes clear that the trader and consumer can later agree a change to the contract if, for example, circumstances change. A trader will not however be able to change the effect of this information without the agreement of the consumer, unless the information itself reflects the fact that the particular potential changes envisaged may be made (or, in the case of information provided voluntarily by the trader, the trader otherwise qualified the information on the same occasion as providing it). Variation provisions in a contract between a trader and a consumer must also comply with Part 2 of the Act on unfair terms. For neither type of information can the parties agree a change which would deprive the consumer of his or her rights under this Chapter (see section 57).
252. For example, a consumer invites a trader to their home where they agree a contract for the fitting of windows. The consumer chooses that trader to fit wooden windows on the basis that the trader said that it would install and fully finish the frames. If, after fitting the windows, the fitter would only prime the frame and told the consumer to paint them him/herself, the trader would not have complied with the information it gave the consumer, and which the consumer had taken into account. Under the 2013 Regulations, for services within scope, the trader must give the consumer the “main characteristics” of the service and the service must comply with those characteristics. This is in addition to the right that the service must generally comply with any information given to the

consumer by the trader which the consumer takes into account when deciding to enter into the contract

Section 51: Reasonable price to be paid for a service

253. In most cases, a contract will set out the price for the service, and indeed following the 2013 Regulations, traders who are not excluded will be under an obligation to provide information about the price before the consumer is bound by the contract. In addition, the price could be paid up-front when the contract is agreed, in which case the consumer will know the price. If for any reason the price is not known from the outset, this provision sets out that the consumer must pay a reasonable price. What is 'reasonable' is a question of fact. This means that if the question of what is a reasonable price comes before a court and the court makes a decision, the ability of the parties to appeal that decision will be limited once it has been made.
254. This section corresponds to section 15 of the SGSA but updates the language in line with the rest of Part 1.
255. For example, if a home owner engages a plumber to fix an urgent leak, he/she may not take the time to discuss the price before fixing the problem. The price might not be in the contract if the plumber did not know the problem before he/she arrived to fix it. If the leak was fixed in ten minutes and with only a £50 replacement part, £1000 is unlikely to be a reasonable price to pay.

Section 52: Service to be performed within a reasonable time

256. Like the price of the service (discussed above), the time for performance of the service is not always agreed in advance. For situations where a time for performance of the service has not been agreed, this section gives the consumer the right to have the service provided within a reasonable time after the contract is agreed.
257. For example, an individual engages a builder to rebuild a 1 metre high, 25 metre long garden wall. At the outset, the individual agrees the price with the builder, but not a deadline for completion of the work. If, six months later, the work had not been completed, the builder would most likely not have carried out the work within a reasonable time.
258. There is a similar provision in section 14 of the SGSA.

Section 53: Relation to other law on contract terms

259. The provision in this section corresponds to section 16 of the SGSA. It recognises that certain types of contract to provide services are regulated by sector specific legislation (e.g. financial services). In most of those cases, this provision means that the sector specific legislation applies alongside or instead of this Chapter.
260. *Subsection (1)* preserves any enactments or rules of law which impose stricter duties than those imposed by sections 49-52. "Rules of law" means a rule of the common law.
261. *Subsection (2)* means that where Parliament has turned its mind to a particular type of service, and has decided that that service should be subject to particular rules, those rules take precedence over those in the Act. "Enactment" is defined in section 59 to cover primary legislation and also "subordinate legislation", which is defined in the Interpretation Act 1978 as "Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act".