

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Chapter 4 Services

Summary and Background

227. **Chapter 4** concerns contracts where a trader supplies a service to a consumer. It sets out:
- the rights a consumer has when a trader provides a service to them under contract; these are, in effect, contractual rights and if they are breached it is therefore a breach of contract;
 - what the consumer is entitled to request (and the trader must offer) if these rights are breached: that the trader re-performs the service or where that is not possible or feasible provides a reduction in the price paid for the service (we refer to these as “statutory remedies”);
 - that the statutory remedies do not prevent the consumer claiming other actions from the trader where they are available according to general contract law (e.g. a claim for damages, termination of the contract); and
 - that the trader cannot, in effect, limit its liability for less than the contract price.
228. **Chapter 4** applies to all service sectors except where they are expressly excluded from one or all of its provisions. The provisions in this Chapter do not cover contracts of employment or apprenticeships and, where there is legislation that gives more detailed provision about rights or duties of particular services, that legislation will take precedence over the provisions in this Chapter. This Chapter also partially implements Articles 5 and 6 of the CRD; however certain sectors such as financial and gambling services are exempt from those provisions.
229. Currently (that is, until Chapter 4 comes into force) the SGSA provides some protection for recipients of services (whether they are consumers or not) in England, Wales and Northern Ireland (its provisions on services do not extend to Scotland). It sets out that a business supplier of a service must provide that service with ‘reasonable care and skill’ and, if the time and charge have not been agreed, the service must be provided within a ‘reasonable time’ and at a ‘reasonable charge’. The way it does this is by saying that these matters are “implied terms” of a contract. Implied terms are terms that are not expressly set out in a contract (those expressly set out in a contract are called “express terms”). The effect of this is that, even if these matters are not expressly set out in the contract, these implied terms will still form part of the contract and a business supplier of a service must comply with them, unless they are excluded.
230. At the moment, there are no statutory remedies for breach of the SGSA in respect of its provisions relating solely to services.

231. **Section 60** and Schedule 1 make provision for how this new legislation impacts on existing legislation. The SGSA will continue to apply to contracts between businesses.
232. **Chapter 4** does not cover all legal rights and obligations surrounding the provision of services, for example there is a large amount of sector specific legislation that will affect contracts between traders and consumers.
233. In addition, the 2013 Regulations provide that, for all types of consumer contracts within scope, including most service contracts, a trader must provide certain information to the consumer before the contract is entered into.
234. In 2010, BIS commissioned a report, entitled ‘Consolidation and Simplification of UK Consumer Law¹’ to examine how existing consumer law might be consolidated and simplified to make it more accessible to consumers, business and their advisers. That report recommended that consumer contract law would be improved if many of the provisions could be brought together into a single consumer contract law that, so far as appropriate, subjected all consumer supply contracts to the same rights and remedies. The report recommended that this be done using simpler language, such as avoiding specialist legal language including references to ‘implied terms’. The report suggested that remedies for services should be made clearer and more accessible by incorporating them into the legislation.
235. Following the 2010 report, BIS carried out a consultation, from 13 July to 5 October 2012, into proposals for reform of the law regarding contractual supplies to consumers of services, as well as of goods and digital content. This consultation covered most of the recommendations of the 2010 Report, including how to present ‘implied terms’ in easier and more accessible language, whether to introduce statutory remedies and whether to introduce a new ‘satisfactory quality’ standard for all or certain types of services.
236. Following the consultation, BIS published a government response. Most responses to the consultation supported simplification and removal of difficult to understand phrases, and the introduction of statutory remedies for when things go wrong in the provision of services. A draft Bill was published in June 2013² and scrutinised by the House of Commons Business Innovation and Skills Committee. The Committee published its report in December 2013³.

What services contracts are covered?

Section 48: Contracts covered by this Chapter

237. This section sets out which contracts are covered by Chapter 4. It follows the structure of the corresponding provision of the SGSA but makes clear that Chapter 4 is only concerned with contracts where a trader provides a service to a consumer (and not where a trader provides a service to another trader or where a consumer provides a service to a consumer or a trader). It also sets out that contracts of employment are not covered by this Chapter.
238. In contrast to the relevant Part of the SGSA, Chapter 4, like the rest of the Act, applies to the whole of the UK, including Scotland.
239. In keeping with the SGSA, Chapter 4 also covers contracts in which the trader does not undertake to provide the service personally, but rather uses a subcontractor (or agent) to perform the service. For example, a house-building firm may engage a specialist glazing firm to perform part of the work that they have contracted with the consumer to

¹ The report was authored by Professor Geraint Howells and Professor Christian Twigg-Flesner available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31838/10-1255-consolidation-simplification-uk-consumer-law.pdf

² Draft Consumer Rights Bill (URN: BIS/13/925)

³ Draft Consumer Rights Bill; sixth report of session 2013-2014

perform, and the house-builder would still be bound by the provisions in this Chapter for the performance of the service by the glazing firm.

240. This section includes a power exercisable by statutory instrument to dis-apply the provisions to a particular service or particular services. There is a similar power in the SGSA, which has been used to dis-apply section 13 (implied term to take reasonable care and skill) of SGSA to the services provided by an advocate in a court or tribunal, by a company director, by a director of a building society and the management of a provident society to that building or provident society and finally to services rendered by an arbitrator in their capacity as such. Contracts of employment are also excluded from the scope of SGSA. Employees are protected by employment specific legislation, such as the Employment Rights Act 1996.
241. This Chapter applies whether the service is supplied immediately or the parties agree that the trader will supply it at a future time.

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 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

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

- 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".

What remedies are there if statutory rights under a services contract are not met?

Section 54: Consumer's rights to enforce terms about services; section 55: Right to repeat performance; and section 56: Right to price reduction

262. The provisions in these sections set out the remedies available to consumers if the statutory rights set out in Chapter 4 are not met. Section 54 also clarifies that there might

be other remedies available, for example, seeking of damages (which may be available under common law).

263. If the service is not provided with reasonable care and skill (and so breaches the provision in section 49) or where the service is not performed in line with information given about the service (and so in breach of section 50), the service will not conform to the contract. If the service does not conform to the contract, the consumer is entitled to require that the service is properly performed, through it (or part of it) being done again. The consumer can also be entitled to request a reduction in price in certain circumstances. These two statutory remedies are available as alternatives (or, in some cases in addition) to remedies available under common law or equity, for example damages and specific performance (see paragraphs 271-273 below). So a consumer does not have to ask for a statutory remedy of re-performance if they would prefer to seek damages, for example. The two statutory remedies are similar to those available to consumers of goods (in section 19 onwards). The way the remedies fit together is also similar to the regime for goods as set out in Chapter 2 – if the consumer asks for the service to be re-performed, a trader must do so within a reasonable time and without causing significant inconvenience to the consumer. A consumer cannot require re-performance if it is impossible, for example this might apply if the service was time specific. If re-performance is not provided within a reasonable time or without causing significant inconvenience to the consumer or is impossible, the consumer is entitled to a reduction in price. The reduction will be of an appropriate amount depending on the circumstances of each individual case.
264. If the information provided about the trader is not complied with (and there is a breach of section 50), the consumer has the right to a reduction in price of an appropriate amount. This is in addition to potentially having access to remedies at common law and equity (see paragraphs 271-273 below).
265. If the service is not provided within a reasonable time (and so breaches the provision in section 52), the consumer has the right to a reduction in price of an appropriate amount. This is in addition to potentially having access to remedies at common law and equity (see paragraphs 271-273 below).
266. A “reduction in price of an appropriate amount” will normally mean that the price is reduced by the difference in value between the service the consumer paid for and the value of the service as provided. In practice, this will mean that the reduction in price from the full amount takes into account the benefit which the consumer has derived from the service. Depending on the circumstances, the reduction in price could mean a full refund. This could be, for example, where the consumer has derived no benefit from the service and the consumer would have to employ another trader to repeat the service “from scratch” to complete the work.
267. In relation to services, however, there may be some cases consumer is able to ask for a reduction in price even where it may be argued that the value of the service as provided has not been reduced by the breach of the consumer’s rights. This could occur, for example, where the trader has not complied with information they gave about themselves. For example, if the trader tells the consumer that they will pay their workers the living wage and this is important to the consumer and a reason why they decided to go with this particular trader, arguably this does not affect the value of the service but the consumer would still have the right to request a reduction of an “appropriate amount” to account for the breach.
268. Where a consumer has the right to ask the trader to re-perform the service the trader must re-perform all or part of the service as needed to bring it into conformity with the contract.
269. Where the consumer has the right to a reduction in price, once the trader and consumer have agreed the consumer is entitled to a reduction in price, any refund for anything paid above the reduced amount must be made without undue delay. In many cases, a trader

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will be able to give money back at the time of agreeing that the consumer is entitled to a reduction in price. For example, in a hairdressers, if a consumer had already paid in cash, the owner would be able quickly to provide money back from the till. However, where a refund cannot be given at the time of agreeing that the consumer is entitled to that reduction, the refund must be given without undue delay and within 14 days of that agreement at the latest. For example, for a design service provided online, it may take 3-4 days to process the payment to the consumer. To be without “undue delay” the refund should be given as soon as the trader is able to give it. A factor out of the trader’s control, such as a bank processing time, would be unlikely to be considered an “undue delay”.

270. The refund must be in the same form as the original payment unless the consumer agrees otherwise. So for example if the consumer paid for the service by credit card the refund should be to their credit card, unless the consumer agrees that a cheque is acceptable. The trader cannot charge the consumer a fee for the payment of the refund.
271. As set out in paragraph 227 above, the terms that are to be treated as included in the contract in sections 49-52 are contractual terms and if they are not met it means there is a breach of contract. The common law (that is, law that is set out in cases decided by judges) already provides certain remedies for breach of contract. Section 54 provides a reminder that the consumer may, instead of (or, in some cases, in addition to) pursuing the statutory remedies set out in this section and subsequent sections, seek common law remedies of damages or treating the contract as at an end where for example the breach is very serious, or the equitable remedy of specific performance or (in Scotland) specific implement.
272. "Damages" refers to the common law remedy of financial compensation paid by one party to the other. For example, where a trader is in breach of a term that this Part requires to be treated as included in a contract, the court may order the trader to pay damages to the consumer. Generally, an award of damages for breach of contract is intended to compensate the injured party for loss suffered. In some, less frequent, cases the court may award damages which go beyond simply compensating the consumer for loss suffered – e.g. a court can sometimes award nominal damages, where there is a breach of contract but no loss, or aggravated damages to compensate for mental distress. For a breach of a term that this Part requires to be treated as included in the contract, the general rule is that damages are intended to put the consumer in the same position as if there had not been a breach. The level of damages awarded will depend on the specific circumstances and the term which the trader has breached. Typically, damages would cover the estimated loss directly resulting from the breach, in the ordinary course of events. This would generally be the difference between the value of the goods, service or digital content received by the consumer and the value had there not been a breach. There are legal tests to be satisfied for a consumer to recover damages: a person can only recover damages for loss which was caused by the breach (of the term required by the Act) and which was sufficiently foreseeable; and the consumer cannot recover for loss which they could reasonably have acted to limit or mitigate.
273. “Specific performance” is a direction a court can make, to compel a party to perform their obligations under a contract. It is an equitable remedy, meaning it is not available to consumers as a right, but at the court’s discretion. It will not be ordered if damages (see above) are adequate to compensate the consumer – generally, damages will be adequate unless the subject matter of the contract is unique as the consumer can use damages to buy a replacement. "Specific implement" is similar to "specific performance" for Scotland, and there are likewise specific circumstances where that may be used. In referring to specific performance or specific implement, this section does not seek to codify the law as to when specific performance or specific implement might be available, but the references serve as a reminder that it may be an alternative remedy to the statutory remedies. Section 58 gives more detail on the powers of the court in proceedings where a remedy is sought.

274. In summary (see above and the sections themselves for more detail), the remedies that apply for breach of the consumer’s statutory rights are as follows:

<i>Consumers’ statutory right being breached</i>	<i>Remedies that apply</i>
Service not performed with reasonable care and skill (section 49)	<ul style="list-style-type: none"> • The right to ask for a repeat performance (sections 54 and 55) • And, if that is impossible, or not done in a reasonable time or without significant inconvenience: • The right to a reduction in price (sections 54 and 56)
Service not performed within a reasonable time (section 52)	<ul style="list-style-type: none"> • The right to a reduction in price (sections 54 and 56)
Service not performed in-line with information provided concerning the service (section 50)	<ul style="list-style-type: none"> • The right to ask for a repeat performance (sections 54 and 55) • And, if that is impossible, or not done in a reasonable time without inconvenience: • The right to a reduction in price (sections 54 and 56)
Service not performed in-line with information provided concerning the trader (section 50)	<ul style="list-style-type: none"> • The right to a reduction in price (sections 54 and 56)

275. For example, a consumer has his/her house treated for subsidence, with a new kitchen floor laid and bedrooms redecorated. But, whilst the bedrooms are fine, in the kitchen the builder has just papered over cracks, and the kitchen floor is uneven. The builder accepts that the job in the kitchen was not done with reasonable care and skill. In this case, the consumer can insist that the builder re-does the relevant work without any extra cost to the consumer. If the builder does not do that within a reasonable time, the consumer would be entitled to a price reduction of an appropriate amount. The amount would reflect that only some of the work was not done with reasonable care and skill.

276. For example, if a decorator is engaged to paint a room in a certain high quality paint, stating in advance that he/she will do so, and the consumer took this into account when deciding whether to enter into the contract with this decorator, and the decorator uses lower quality paint, the consumer would be entitled to have the room repainted in the agreed paint and, if that was impossible or couldn’t be done for another (say) ten weeks, the consumer would be entitled to a reduction in price. If the decorator claimed to have a certain qualification and the consumer only wanted to contract with someone with this qualification, which the decorator did not in fact have, the consumer would be entitled to a price reduction. If the decorator were to arrive to paint the room one year after being engaged to do so, that delay would entitle the consumer to a reduction in price. A reduction in price could be of the full amount.

Can a trader contract out of statutory rights and remedies under a services contract?

Section 57: Liability that cannot be excluded or restricted

277. This section addresses “contracting out” of the consumer’s statutory rights as established under sections 49, 50, 51 and 52. It also makes clear that a trader cannot limit its liability for breach of these sections to less than the contract price.

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278. As regards the consumer's statutory rights as established under section 49 (service to be performed with reasonable care and skill) and section 50 (information about the trader or service to be binding) the trader cannot "contract out" of complying with those rights. That is, the parties cannot agree in their contract that the trader has no responsibility in relation to those rights. They also cannot limit their liability for breach of those sections to less than the contract price.
279. As regards the consumer's statutory rights as established under section 51 (reasonable price to be paid for a service) and section 52 (service to be provided within a reasonable time) the trader can dis-apply these sections by specifying the price (so that section 51 and the default rule which it imposes does not apply) or time (so that section 52 and the default rule which it imposes does not apply) for providing the service. Where these sections do apply, the trader cannot limit their liability for breach of those sections to less than the contract price.
280. Even if a term does not contravene this section (i.e. does not limit its liability to less than the contract price) it is still subject to Part 2 (Unfair Terms).
281. For example, a decorator cannot get around complying with the statutory rights by asking a consumer to sign a contract to paint a room where the contract includes a term such as 'the decorator accepts no responsibility if the paint work is not completed with reasonable care and skill'. If this is in the contract, that term will be invalid.
282. This section also provides that an agreement to submit disputes to arbitration is not covered by the bars on excluding or restricting liability. It should be noted however that paragraph 20 of Schedule 2 makes clear that a term requiring the consumer to take disputes exclusively to arbitration may be regarded as unfair. Furthermore, the Arbitration Act 1996 provides that a term which constitutes an arbitration agreement is automatically unfair (under Part 2 of the Act) if the claim is for less than an amount specified in an Order made under section 91 of the Arbitration Act. This amount is currently set at £5000 in the [Unfair Arbitration Agreements \(Specified Amount\) Order 1999 \(SI 1999/2167\)](#). It is possible that this amount may change from time to time.