



BRIEFING PAPER

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Consumer Rights Act 2015

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Inside:

1. Introduction
2. Background to the CRA 2015
3. Part 1: sale of goods, digital content and services
4. Part 2: unfair contract terms
5. Implementation, territorial extent & enforcement
6. Possible impact of Brexit on consumer rights

Appendix



Contents

Summary	3
1. Introduction	4
2. Background to the CRA 2015	5
2.1 Why was a new consumer Act needed?	5
2.2 Government consumer strategy	6
2.3 EU Consumer Rights Directive	7
2.4 Changes to the consumer landscape	7
3. Part 1: sale of goods, digital content and services	9
3.1 Overview of the main provisions	9
3.2 Application	10
3.3 Sale of goods	10
Implied rights	10
A right to reject a faulty good	11
Burden of proof	12
3.4 Sale of digital content	12
Implied terms	12
Statutory remedies	13
3.5 Delivery rights in respect of goods and digital content	13
3.6 Sale of services	14
Implied terms	14
Statutory remedies for non-conforming service	14
3.7 Treatment of mixed supply contracts	15
4. Part 2: unfair contract terms	16
4.1 Overview	16
4.2 Unfair terms?	16
Consumer notices	18
5. Implementation, territorial extent & enforcement	19
6. Possible impact of Brexit on consumer rights	20
Appendix	22

Summary

The [Consumer Rights Act 2015](#) (the “CRA 2015”) came into force on 1 October 2015 and represents the biggest overhaul of consumer law for many decades. The CRA 2015 sets out a simple modern framework of consumer rights, with the aim of increasing consumer confidence and make enforcement easier. Specifically, the CRA 2015 is designed to:

- establish a framework that consolidates in one place key consumer rights covering contracts for goods, services and digital content (Part 1);
- reform and consolidate the law relating to unfair terms in consumer contracts (Part 2);
- consolidate and simplify enforcers’ powers as listed in Schedule 5 to investigate potential breaches of consumer law and clarify that certain enforcers (trading standards) can operate across local authority boundaries (Part 3);
- give the civil courts and public enforcement bodies greater flexibility to take the most appropriate action for consumers when dealing with breaches or potential breaches of consumer law (Part 3); and
- introduce easier routes for consumers and small and medium enterprises (SMEs) to challenge anti-competitive behaviour through the [Competition Appeal Tribunal](#) (CAT) (Part 3).

This Library briefing paper briefly outlines the background to the CRA 2015 and then considers its main consumer protection provisions (i.e. **Parts 1 and 2**). Specifically, it looks at new rules in respect of consumer contracts for goods, digital content and services and considers how the Act treats unfair terms in consumer contracts and notices. In the process, this paper outlines the main structural changes to consumer regulatory and enforcement bodies.

1. Introduction

Over the last few years, the UK's consumer protection regime has been reviewed, dismantled and completely rebuilt. Legislative reforms have been made against a backdrop of structural changes to consumer enforcement bodies, creating a new consumer landscape.

In terms of legislative changes, there have been two drivers of change:

- first, the [CRA 2015](#), which received Royal Assent on 26 March 2015; and
- second, the adoption in October 2011 of the EU [Consumer Rights Directive](#) (2011/83/EC) (see **section 2.3** below).

The main aim of the CRA 2015 is to consolidate consumer rights into one place, whilst enhancing consumer protections for consumers and modernising the law to take into account digital advances. The Act is in three parts and contains 10 schedules; each part has a separate objective, namely:

- **Part 1** provides consumer rights and remedies in respect of contracts to purchase goods, services and digital content.
- **Part 2** replaces and expands on the current rules regarding **unfair terms** in consumer contracts and notices. In so doing, it draws on the recommendations of the Law Commission.
- **Part 3** contains miscellaneous and general provisions, including: investigatory powers; amendment of the [Weights and Measures \(Packaged Goods\) Regulations 2006](#); enhanced consumer measures and other enforcement under the [Enterprise Act 2002](#); a duty on letting agents to publicise fees and other information; and certain requirements relating to resale of tickets for recreational, sporting and cultural events. Significantly, Part 3 introduces significant changes to private actions in competition law, including: expanding the jurisdiction of the [CAT](#), the introduction of opt-out collective actions and the establishment of voluntary redress schemes.

This paper is concerned only with the consumer protection measures found in Parts 1 and 2 of the CRA 2015.

2. Background to the CRA 2015

2.1 Why was a new consumer Act needed?

Prior to the coming into force of the new CRA 2015, there were 12 separate pieces of legislation covering consumer rights, and around 60 pieces of legislation setting out the investigatory powers of consumer law enforcers. This was the result of UK consumer law having developed piecemeal over a period of 30 years. Whilst offering a high degree of consumer protection, this old regime was criticised for being unnecessarily complex, fragmented and, in places, unclear. The law had also failed to keep up with technological change. In addition, there were overlaps and inconsistencies between EU and pre-existing UK legislation.

When introducing the new CRA 2015 in October 2015, the Department for Business, Innovation and Skills (BIS, now replaced by the BEIS), said that despite spending an estimated £90 billion a month, UK consumers found it difficult to understand their legal rights and obligations.¹ This in turn, undermined competitiveness and growth in the economy. It was argued that new transparent rights embodied in a single Act would help consumers to make better choices when they buy and save them time and money. (see **Box 1** below).

Box 1: Policy rationale for introducing the new CRA 2015

“There is general agreement across business and consumer groups that the existing UK consumer law is unnecessarily complex. It is fragmented and, in places, unclear, for example where the law has not kept up with technological change or lacks precision or where it is couched in legalistic language. There are also overlaps and inconsistencies between changes made by virtue of implementing European Union (EU) legislation alongside unamended pre-existing UK legislation.”

[[Explanatory Notes to the Consumer Rights Act 2015](#) (paragraph 5) – Department for Business, Innovation and Skills (BIS)]

As already mentioned, Part 2 of the new CRA 2015 deals with unfair contract terms in consumer contracts and notices. Prior to the coming into force of the Act, the law on unfair terms was contained in two separate pieces of legislation namely, the [Unfair contract terms Act 1977](#) (UCTA 1977) and the [Unfair Terms in Consumer Contracts Regulations 1999](#) (UTCCRs)². Under the UCTA 1977, some contractual terms were automatically non-binding whilst others were subject to a test of reasonableness. The UTCCRs enabled consumers to challenge most non-negotiated terms of a contract on the basis they were unfair. The difficulty was that the UCTA 1977 and the UTCCRs had inconsistent

¹ “[New rights for consumers when buying digital content](#)”, Department for Business, Innovation and Skills press notice, 1 October 2015, GOV.UK, [online] (accessed 6 March 2020)

² The [Unfair Terms in Consumer Contracts Regulations 1999](#) implement the [Unfair Terms in Consumer Contracts Directive](#) (Council Directive 93/13/EEC)

and overlapping provisions, creating uncertainty for consumers and businesses.

The Law Commission, in its report on "[Unfair terms in consumer contracts](#)", described the legislation as difficult to interpret, with regulators and business expressing different views.³ In particular, there was uncertainty attached to the construction of Regulation 6(2) of the UTCCR, by which a term in plain, intelligible language would not be subject to assessment for fairness if it relates to the definition of the main subject matter of the contract or the adequacy of the price (the so called "core terms exemption"). In the 2009 case of [Office of Fair Trading v Abbey National Plc](#),⁴ the Supreme Court held that bank charges for unauthorised overdrafts were not subject to assessment. This led to calls to reform the unfair contract terms legislation and the core terms exemption.

2.2 Government consumer strategy

The Coalition Government published its consumer strategy in April 2011, "[Better Choices: Better Deals – Consumers Powering Growth](#)". Its stated aim was to create a simple, modern framework of consumer law across all sectors. To this end, a series of consultation documents were published between March and November 2012 proposing measures to overhaul and reform UK consumer law. According to the government, the responses received highlighted areas of uncertainty and inconsistency in consumer law and enforcement and provided evidence of consumer detriment.

Consumer reform was subsequently included in the Queen's Speech in May 2013 and a draft Consumer Rights Bill was published on 12 June 2013. This draft Bill was subject to pre-legislative scrutiny by the BIS Select Committee, which published a report on 23 December 2013.⁵ The Government published its response to each of the Committee's recommendations together with its "[Statement on Policy Reform](#)" on 23 January 2014.⁶ On the same day, the [Consumer Rights Bill](#) was introduced in the House of Commons.

The stated aim of the Bill was to establish, "a framework that consolidates in one place key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts."⁷ This would make consumer law clearer and easier to understand, meaning that consumers could buy and businesses

³ "[Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills](#)", March 2013, [online] (accessed 6 March 2020)

⁴ [Office of Fair-Trading v Abbey National Plc](#) [2009] UKSC 6, [2010] 1 A.C. 696

⁵ House of Commons Business, Innovation and Skills Committee, '[Draft Consumer Rights Bill](#)', Sixth Report of Session 2013-14, HC 697, Volume I, II and III, 23 December 2013, [online] (accessed 6 March 2020)

⁶ '[Consumer Rights Bill: Statement on Policy Reform and Responses to Pre-Legislative Scrutiny](#)' Department for Business Innovation and Skills, Cm 8796, January 2014, [online] (accessed 6 March 2020)

⁷ [Explanatory Notes to the Consumer Rights Act 2015](#) (paragraph 3), [online] (accessed 6 March 2020)

could sell to them with confidence; and consumer disputes could be resolved more quickly and cheaply.⁸

In addition, the Government said the reforms should deliver market-wide changes which, in turn, should drive innovation and greater competitiveness, and help to build a stronger economy. It estimated that reform of consumer law could bring quantifiable net benefits of £4 billion to the UK economy over 10 years.⁹ Outlining the economic rationale for the Bill, the Government said:

The key motivation for simplifying and reforming consumer law is to make markets work more effectively and to drive economic growth.

Well-functioning competitive markets encourage growth by creating incentives for firms to become more efficient and innovative. Markets can only be fully competitive if consumers are active and confident, meaning that they are willing to challenge firms to provide a better deal, switch between suppliers, and take up new products. Consumer law reform can play a central role in empowering consumers and hence supporting more effective competition.¹⁰

2.3 EU Consumer Rights Directive

The new CRA 2015 stands alongside regulations to create a greatly simplified body of consumer law. Taken together, they set out the basic rules which govern how consumers buy goods, services and digital content in the UK and how businesses sell to them.

Specifically, the [Consumer Contracts \(Information, Cancellation and Additional Payments\) Regulations 2013](#), which came into force on 13 June 2014, implements in the UK most of the provisions of the [EU Consumer Rights Directive](#) (2011/83/EU), adopted in October 2011. In brief, the Directive creates new consumer rights where contracts are concluded away from a retailer's shop or premises (for instance, where purchases are made online). A central requirement of the Directive is that consumers are properly informed before any contract is agreed.

In addition, the [Consumer Protection from Unfair Trading Regulations 2008](#) were amended by the [Consumer Protection \(Amendment\) Regulations 2014](#)¹¹ in order to provide consumers with redress rights in respect of misleading and aggressive commercial practices by traders. These changes came into force on 1 October 2014 and apply to contracts made on or after that date.

Increasingly, there is an EU trend to strengthen consumer rights. The Consumer Rights Directive is part of this trend.

2.4 Changes to the consumer landscape

The CRA 2015 also needs to be viewed within the context of other important changes to the UK's consumer landscape. In April 2012, the

⁸ Ibid

⁹ "[Consumer Rights Bill: Statement on Policy Reform and responses to Pre-legislative Scrutiny](#)", Cm 8796, January 2014 [online] (accessed 6 March 2020)

¹⁰ Department for Business, Innovation and Skills, "[Consumer Rights Bill: Proposals on Unfair Contract Terms](#)", Impact Assessment (Final), paragraphs 16 and 17, June 2013, [online] (accessed 6 March 2020)

¹¹ SI 2014 No.870 and SI 2008 No.1277 respectively

Government announced a series of reforms to the bodies carrying out consumer enforcement functions.

Significantly, on 31 March 2014, the Office of Fair Trading (OFT) closed and passed responsibility for consumer law enforcement to [Trading Standards](#) and to the new [Competition Markets Authority](#) (CMA).

Trading Standards is responsible for preventing unfair trading practice (for instance, in advertising, promotion and selling practices) while the CMA is responsible for unfair terms enforcement (for instance, unfair ticket terms and conditions).

3. Part 1: sale of goods, digital content and services

3.1 Overview of the main provisions

With effect from 1 October 2015, **Part 1** of the CRA 2015 changed the rules around what consumers can do if, for example, goods, services or digital content are faulty (see **Box 3** above).

In respect of the **sale of goods**, the new rules are very similar to the previous consumer regime. For instance, recognisable implied terms – “fitness for purpose”, “satisfactory quality”, and “goods corresponding to description” – remain unchanged. There are, however, improved statutory remedies available to consumers.

The Act contains clear rules about what should happen if **a service** is not provided with “reasonable care and skill” or as agreed. (For example, the business that provided the service must bring it into line with what was agreed with the consumer or, if this is not practical, must give some money back.)

In addition, the CRA 2015 gives consumers a clear right to repair or replacement of faulty **digital content** (such as online film and games, music downloads and e-books.)

Box 3: Core consumer rights under Part 1:

Since 1 October 2015, when the Act came into force, consumers have enjoyed the following legal rights:

- **The right to get what they pay for** – all information about the main characteristics of the goods, including statements made in advertising or on labels, to form part of the contract.
- **The right to have product faults put right free of charge or to be provided with a refund or replacement** - clearer tiered remedies if a consumer’s rights are breached, including a mandatory 30-day period in which to reject faulty goods. Traders limited to one opportunity to repair/replace faulty goods (if possible), following which the consumer can demand a discount or return the goods and demand a refund.
- **The right that digital content be fit for purpose** - for the first time, digital content to have its own separate regime of rights and remedies to be applied both to paid-for content (including where paid for with ‘virtual’ currencies) and content that is provided free with paid goods, services or other digital content (e.g. apps and in-app purchases and open source software). Provisions have been drafted to accommodate future developments (for example, content provided in return for consumer data).
- **Right that traders perform services with reasonable care and skill, within a reasonable time** - with the consumer obliged to pay a reasonable price. The consumer has the right to ask for a repeat performance of services not performed properly or, if that is not possible or done within a reasonable time, a right to a price reduction.

In addition, they have benefited from a simplification of enforcement powers - making it easier for consumers to deal with rogue traders.

3.2 Application

The CRA 2015 became law on 1 October 2015, replacing three major pieces of consumer protection legislation - the [Sale of Goods Act 1979](#), the [Unfair Terms in Consumer Contracts Regulations 1999](#), and the [Supply of Goods and Services Act 1982](#). The CRA 2015 was introduced to simplify, strengthen and modernise the law, giving you clearer shopping rights.

Part 1 of the CRA 2015 applies to contracts and notices between a consumer and a trader. For the purposes of the Act, a consumer means:

“[...] an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession.”

This definition of “consumer” applies not only to Part 1 of the Act (which includes the provisions relating to contracts for the supply of goods or services or digital content), but also to Part 2 (which contains the provisions relating to unfair terms). In a dispute, it is the trader who bears the burden of proving that an individual is not a consumer.

A trader is someone acting in connection with a business. The statutory definition is as follows:

“[...] a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf”.

It is clear from this definition that traders remain liable even when acting via a third party (e.g. an agency relationships). This definition includes government departments and public sector authorities.

It is important to note that the CRA 2015 only applies to consumer contracts concluded on or after 1 October 2015.

3.3 Sale of goods

Implied rights

Part 1 of the CRA 2015 has replaced the [Sale of Goods Act 1979](#) (SGA 1979). It largely replicates and restates the terms implied by the SGA 1979 as to the quality standards for goods. Specifically, goods must:

- be of satisfactory quality (the test is what a reasonable person would consider satisfactory for the goods in question and the price paid);
- be fit for purpose (i.e. the goods should be fit for the purpose they are supplied for, as well as any specific purpose the consumer made known to the retailer at the time of purchase);
- match their description (i.e. the goods supplied must match any description given by the retailer, or any models or samples shown to the consumer at the time of purchase);

in addition, Part 1 also includes a new implied term that the trader has the legal right to supply the goods.

If a purchased good is faulty in some way, a consumer's rights under the CRA 2015 are against the retailer (with whom they have a contract) and not the manufacturer.

A right to reject a faulty good

What the consumer can claim by way of redress would largely depend on how much time has passed since the good was purchased.

If the faulty good is returned within 30 days of purchase

Under the CRA 2015, a consumer has a legal right to reject goods that are faulty (i.e. not of satisfactory quality, unfit for purpose or not as described) and obtain a full refund. However, the consumer must act quickly once the fault is discovered. This right to reject the good and obtain a refund is limited to **30 days** from the date of purchase.¹² This is commonly referred to as the "short term right to reject". Time is paused if the consumer agrees to the repair or replacement of the faulty good, with a final right to reject the goods if still faulty (known as the "final right to reject").¹³ The consumer need only accept one repair or replacement before moving on to the final remedies of price reduction or rejection and refund (known as the "final right to reject").

A "short term right to reject"

A "final right to reject"

If the faulty good is returned after 30 days

After 30 days, the consumer will not be legally entitled to a full refund if the good develops a fault. If the consumer is outside the 30-day right to reject period, they must give the retailer one opportunity to repair or replace any goods which are of unsatisfactory quality, unfit for purpose or not as described. In practice, the retailer can normally choose whichever option would be cheapest or easier for it to do. If the attempt at a repair or replacement is unsuccessful, the consumer can then claim a refund or a price reduction if they wish to keep the product.

Under Part 1 of the CRA 2015, a consumer is entitled to a full or partial refund instead of a repair or replacement if:

- the cost of the repair or replacement is disproportionate to the value of the goods or digital content;
- a repair or replacement is impossible;
- a repair or replacement would cause the consumer significant inconvenience;
- or the repair would take an unreasonably long time to complete.

In circumstances where a repair or replacement is not possible, or an attempt at repair fails, or the first replacement is also faulty, the consumer has a right to reject the goods for a full refund. Alternatively, the consumer has the right to insist on another attempt at repair or a second replacement.

¹² The 30-day period is shorter for perishable goods, and will be determined by how long it is reasonable to have expected the goods to last

¹³ Prior to this new right in the [Consumer Rights Act 2015](#), the consumer had to rely on the common law right to reject within a 'reasonable period'

Burden of proof

Part 1 of the CRA 2015 makes an important distinction between a fault discovered with a good before and after the first 6 months of its purchase.

In brief, if a consumer discovers a fault with the product **within the first 6 months** of purchase, it is presumed to have been there at the time of purchase, unless the retailer can prove otherwise. If an attempt at repair or replacement has failed, the consumer has the right to reject the goods for a refund or price reduction, if they wish to keep the product.

The retailer cannot make any “deductions for use” from the price refund in the first 6 months following an unsuccessful attempt at repair or replacement. The only exception to this rule is motor vehicles, where the retailer may make a “reasonable” reduction for the use the consumer has already had of the vehicle after the first 30 days.

If, however, a fault develops **after the first 6 months**, the burden is on the consumer to prove that the product was faulty at the time of purchase.

The burden of proof switches from the trader to the consumer if a fault is detected after the first 6 months.

3.4 Sale of digital content

Implied terms

For the first time, consumer statutory rights on digital content have been set out in legislation. For the purposes of the CRA 2015, digital content is defined as “data which are produced and supplied in digital form”. By way of example, this would include:

- downloadable apps,
- downloadable films, music, computer games,
- e-books, and
- computer software

The CRA 2015 will apply to digital content when it is supplied:

- for a price; or
- free with goods and services which the consumer has paid for, and would not be generally available to consumers otherwise

In other words, the provisions of the Act do not apply merely because the trader supplies a service by which digital content reaches the consumer.

Digital content must comply with certain standards, these broadly reflect the standard for goods. Specifically, digital content must be:

- of satisfactory quality,
- fit for a particular purpose, and
- as described by the seller.

In addition, the trader must have the legal right to provide digital content to the consumer.

Digital content is defined by the Act as data produced and supplied in digital form.

Statutory remedies

Where digital content does not conform to these implied terms, the consumer can call upon the following statutory remedies:

- repair or replacement of the digital content; or
- a price reduction if a repair or replacement is impossible.

In contrast to the sale of goods, there is no statutory limit on the number of repairs or replacements undertaken by the trader to make the digital content conform, but they cannot do so indefinitely as the repair or replacement must be done within a reasonable time without causing significant inconvenience to the consumer. The price reduction as a result of the breach of contract, can be up to the full amount of the price paid for the digital content (i.e. a full refund).

Unlike with the sale of goods, there is no right to reject non-conforming digital content and obtain a refund of the price. The only exception is where the trader has no right to supply the digital content (e.g. pirated content).

There is no corresponding right on the consumer to return or delete the faulty digital content. It was thought too impractical to impose a requirement for the return of the digital content and many consumers would find it difficult to delete the digital content.

In certain circumstances, the retailer may have to compensate the consumer (i.e. pay damages) if any device or other digital content owned by the consumer is damaged as a result of the faulty digital content downloaded (even where that content was provided free of charge). This would apply in situations where the damage would not have occurred had "reasonable care and skill" been used in the provision of the digital content

3.5 Delivery rights in respect of goods and digital content

The general position is that the retailer is responsible for goods (including digital content) until they are in the physical possession of the consumer or someone appointed by the consumer or delivered to a nominated safe place. If goods are not delivered, a complaint should be made to the retailer (with whom the consumer has a contract) rather than the courier, unless the consumer has arranged their own delivery service.

Under the CRA 2015, there is a default period of **30 days**, during which time the retailer must deliver the goods unless a longer period has been agreed with the consumer.

3.6 Sale of services

Implied terms

The CRA 2015 also applies to consumer contracts for services. Services can be provided alone without goods (such as dry cleaning, entertainment, hairdressing etc.) or may be provided with goods (such as repairing a vehicle, double glazing, building a conservatory, installing a kitchen etc). Under the Act, the following minimum standards are implied into a consumer contract for services:

- the trader must perform the consumer service with reasonable care and skill;
- where the price is not contractually agreed in advance, the price paid for the service must be reasonable;
- where a timescale for performing the service is not agreed in advance, the service must be performed within a reasonable time; and
- any spoken or written voluntary statement made by the trader (about the trader or the trader's service) may be a binding contractual term where the consumer relies on it when deciding to enter into the contract or making any decision about the service after entering into the contract.¹⁴

It follows from this that a service will be "non-conforming" if it is not performed with reasonable care and skill, not performed within a reasonable time, or not performed in line with information given about In certain circumstances, goods will not be in conformity with the contract if they have been incorrectly installed by the trader.¹⁵

In respect of the provision of services, the CRA provides specific statutory remedies where none previously existed.

Statutory remedies for non-conforming service

Where services do not conform to the contract, the following statutory remedies are available to consumers:

- right to require "repeat performance"; or
- right to a reduction in price

In respect of a repeat performance, the trader must either repeat the element of the service that is inadequate or perform the whole service again at no extra cost to the consumer, within a reasonable time and without causing the consumer significant inconvenience.

The consumer can claim a price reduction when:

- the service is not performed in line with information given about the trader;
- the service has not been performed within a reasonable time;
- it is impossible to re-perform the service; or
- the consumer has requested a repeat performance, but the service has not been re-performed within a reasonable time or without significant inconvenience to the consumer

¹⁴ Section 50(1) and (2) of the [Consumer Rights Act 2015](#)

¹⁵ Section 15 [Consumer Rights Act 2015](#)

Depending on the severity of the problem, a refund might be up to 100% of the original price. The trader must make the agreed refund to the consumer within 14 days.

It is expressly provided in the CRA 2015 that the existence of these statutory remedies does not prevent the consumer from seeking other remedies such as damages or specific performance, provided that they do not recover twice for the same loss.

3.7 Treatment of mixed supply contracts

It is possible to agree a contract which provides for a mixed supply of goods and services or digital content. In such cases, the CRA 2015 expressly states that the goods provisions apply to the relevant goods, the services provisions to the relevant services and the digital content provisions to the relevant digital content.¹⁶

¹⁶ Under the previous legislation, different regimes (either under the [Supply of Goods and Services Act 1982](#) or [Sale of Goods Act 1979](#)) were applied depending on whether goods were transferred under a services contract or sales contract

4. Part 2: unfair contract terms

4.1 Overview

Part 2 of the CRA 2015 replaces and expands on the current rules regarding **unfair terms** in consumer contracts and consumer notices. In so doing, it draws on the recommendations of the Law Commission.

Specifically, Part 2 amends the [Unfair Contract Terms Act 1977](#) in relation to business-to-consumer contracts and repeals the [Unfair Terms in Consumer Contracts Regulations 1999](#). Unfair terms in business-to-business contracts will remain subject to existing legislation (i.e. outside the scope of the CRA 2015).

Terms used in
contracts and notices

The new regime introduced by the CRA 2015 includes:

- a “fairness test” for enforceability of terms;
- a provision that the main subject matter of the contract or terms that set the price are only exempt from the test of fairness if they are “transparent” and “prominent”;
- a “grey list” of potentially unfair clauses in consumer contracts, which has been extended; and
- the application of the fairness test to consumer notices (and not just contracts)

4.2 Unfair terms?

Part 2 (including Schedules 2, 3 and 4) clarifies and consolidates the legislation on unfair terms in “business to consumer” contracts and notices.¹⁷ The law is now set out in one place. The main points to note are as follows:

- A court is now under an obligation to consider contractual terms for fairness, even if neither party to the proceedings raises fairness as an issue. This means that terms may be held to be unfair by the court even when the consumer has not complained of unfairness.
- There is a requirement for consumer contract terms and notices to be fair. Terms will only be binding upon the consumer if they are fair. It defines “unfair” terms as those which put the consumer at a disadvantage, by limiting the consumer’s rights or disproportionately increasing their obligations as compared to the trader’s rights and obligations.¹⁸

This section also sets out factors that a court should take into account when determining whether a term is fair, notably that it should consider the specific circumstances existing when the term

¹⁷ Part 2 of the [Consumer Rights Act 2015](#) amends the [Unfair Contract Terms Act 1977](#) (in relation to business to consumer contracts) and revokes the Unfair Terms in Consumer Contracts Regulations 1999

¹⁸ No exclusion or limitation for liability for death or personal injury arising from negligence will be valid

was agreed, other terms in the contract and the nature of the subject matter of the contract. This assessment is known as the “**fairness test**”.¹⁹ Where a term can have more than one meaning, the interpretation most favourable to the consumer will prevail.

Where a clause is not binding as a result of being unfair, the rest of the contract will take effect as far as practicable.

- A contractual term can be deemed to be unfair even if it has been individually negotiated with the consumer. The CRA 2015 goes further than both the previous law and the EU’s [Consumer Rights Directive](#) (2011/83/EC). (However, in practice, few consumer contracts are individually negotiated).
- Part 2 of the CRA 2015 makes it clear that the main subject matter of the contract or terms that set the price are only exempt from the test of fairness if they are “transparent” and “prominent”²⁰ (see **Box 5** below).

The core terms exemption

Box 5: Transparency and prominence requirements

A significant change in the CRA 2015 relates to “relevant terms”; relevant terms are terms specifying the main subject matter of the contract or setting the price. These terms are not subject to the ‘fairness’ test provided that they are both:

- **transparent:** in plain and intelligible language and, if in writing, legible;
- **prominent:** brought to the consumer’s attention in such a way that the average consumer (who is well informed, observant and circumspect) would be aware of the term.

Prior to the CRA 2015, the law included the “transparency” requirement but not the “prominence” requirement. The fact that a relevant term does not meet these requirements does not make it automatically unfair; however, it exposes that term to additional scrutiny.

- Part 2 clarifies the role of, and extends the indicative list of, terms which may be regarded as unfair, the so-called “**grey list**” found in Schedule 2 (see **Box 6** below). Terms on the grey list are not automatically unfair but may be used to assist a court when considering the application of the fairness test to a case. Equally, terms not found on the list may be found by a court to be unfair by application of the fairness test.

¹⁹ See also **Section 63** of the [Consumer Rights Act 2015](#) as regards the “grey list” of terms that may be used to assist a court when considering the application of the fairness test

²⁰ **Section 64** of the [Consumer Rights Act 2015](#)

Box 6: Three additional terms to the “grey list”

Schedule 2 of the CRA sets out an ‘indicative and non-exhaustive’ list of terms in consumer contracts which may be regarded as unfair. This includes three new ‘grey list’ terms. These are terms which have the object or effect of:

- allowing the trader to decide the characteristics of the subject matter after the consumer is bound;
- allowing disproportionate charges or requiring the consumer to pay for services which have not been supplied when the consumer ends the contract;
- allowing the trader discretion over the price after the consumer is bound

Consumer notices

Consumer notices were not expressly covered in previous legislation.²¹

The CRA 2015 treats consumer notices in much the same way as contract terms; the test for unfair consumer notices is the same as that for unfair terms.

A “consumer notice” is a notice that relates to rights or obligations between the trader and the consumer or restricts the trader’s liability. Written terms in consumer notices (as with consumer contracts) must be transparent (in plain and intelligible language and legible if written). It is important to note that a notices does not have to be in writing; it can be any communication or announcement intended to be seen or heard by a consumer.

Consumer notices are explicitly included in the regime

²¹ The UTCCRs banned unfair terms in contractual notices but had no effect on non-contractual consumer notices

5. Implementation, territorial extent & enforcement

Much of the consumer protection provisions of the CRA 2015 came into force on **1 October 2015**. In terms of its territorial extent, the CRA 2015 extends to England, Wales, Scotland and Northern Ireland.

However, some parts of the Act include separate rules for Scotland. (For example, due to contract law being different in Scotland, the Act refers to the Scots law remedy of “specific implement”, which is used to compel performance.)

Several different public and private bodies enforce consumer law, including:

- Local authority Trading Standards Services
- [Financial Conduct Authority](#) (FCA)
- The [Competition and Markets Authority](#) (CMA)
- [Ofcom](#)
- [Information Commissioner's Office](#) (ICO)
- [Which?](#)

The CRA 2015 consolidates enforcers' powers to investigate potential breaches of consumer law and enables public and private enforcers to impose enhanced consumer measures.

In addition, the Act provides easier routes for consumers to challenge anti-competitive behaviour through the [Competition Appeal Tribunal](#) (CAT).

6. Possible impact of Brexit on consumer rights

A wide range of EU Directives and Regulations implemented in the UK deal with an array of consumer protection rights from unfair practices and misleading marketing practices to distance selling. EU consumer law creates a minimum standard for consumer law and safety standards which every EU member state must meet, some, such as the UK with the [Consumer Rights Act 2015](#), choose to give consumers enhanced “gold plated” rights and protections. Currently, this means that when consumers buy goods and services from other EU countries they can rely on rights and safety standards which are the same as or like those in the UK. In addition to harmonised consumer rights, EU consumer protection legislation also gives UK consumers the right to enforce their consumer rights in the EU (and vice versa).

Now the UK has left the EU, there is a **transition period** until 31 December 2020 (with the possibility of extension for up to two years) while the UK and EU negotiate additional arrangements. During this period, EU law has the same legal effect in the UK as it has within the EU; it is interpreted and applied in accordance with the same methods and general principles as those applicable in the EU. The stated purpose of the transition being to smooth the path until the permanent future relationship is confirmed. It follows from this that during the transition, consumers buying goods and services from other EU countries would be able to rely on consumer law and safety standards which are the same as or like those in the UK. However, the UK will have no role in consumer policy decision-making.

The precise implications for UK consumer rights **post transition**, would largely depend on what our future permanent relationship with the EU will look like. Crucially, whether the UK retains any sort of access to the European Single Market, and if so, how much and in return for what? What should be apparent is how entwined UK and EU consumer law is, and how complex the process of untangling it (if desired) would be.

Since many of our consumer rights are based on EU Directives now enshrined in UK law, they would continue to apply post transition unless the UK Government decides to change the law. This means that consumers would continue to enjoy similar rights but as a matter of law only and only within the UK jurisdiction. In the short-term, it is thought extremely unlikely that the Government would make major changes to the UK’s consumer regime given its recent overhaul in 2015.

If it is not possible to achieve any kind of trade agreement by the end of the transition period, UK-EU trade would be governed by WTO rules. It is difficult to predict how this would impact on consumer rights in the UK, however, the following points should be noted:

- As already mentioned, many consumer rights would stay the same even after the UK has left the EU – until they are updated, removed or overhauled by Parliament in the future.

- However, the EU alternative dispute resolution and online dispute resolution regime would no longer apply to cross border sales between UK/EU consumers and businesses. UK consumers and businesses would still be able to obtain redress through other alternative dispute resolution forums in the UK, but these would not be suitable to resolve cross-border disputes.
- In terms of enforcement, enforcers from other EU member states would lose the right to bring or continue consumer enforcement proceedings in the UK. In respect of UK enforcers, they would maintain the same investigatory powers relating to infringements of specified retained EU law. However, they would no longer be able to use these powers for infringements of the laws of other EU member states.

In other words, UK consumers would need to check the contractual terms and consumer protection offered by an EU seller. If something goes wrong with a purchased good and a UK court makes a judgment, the enforcement of that judgement may be more difficult as the UK would no longer be part of the EU.

- National authorities with responsibility for consumer enforcement (“competent authorities”) were obliged by the Consumer Protection Cooperation (CPC) Regulation, to work together to promote cross-border consumer protection coordination and enforcement between Member States. The CPC Regulation has been updated to extend and strengthen its remit; the revised Regulation came into force on 17 January 2020. Given the importance of this protection to consumers, the UK government may need to negotiate a similar scheme of cooperation.

Appendix

Impact of the CRA 2015 on existing legislation

[Supply of Goods \(implied Terms\) Act 1973](#) (SGITA) – For “business to consumer” contracts the provisions of SGITA will be replaced by the CRA 2015. It will be amended so that it covers “business to business” contracts and “consumer to consumer” contracts only.

[Sale of Goods Act 1979](#) (SGA) – For “business to consumer” contracts this will mainly be replaced by the CRA 2015. The SGA will still apply to “business to business” contracts and to “consumer to consumer” contracts.

[Supply of Goods and Services Act 1982](#) (SGSA) – For “business to consumer” contracts, this Act’s provisions will be replaced by the CRA 2015. The SGSA will be amended so that it covers “business to business” contracts and “consumer to consumer” contracts only.

[Sale and Supply of Goods Act 1994](#) – This Act amends the SGA and the SGSA and as such will be superseded by provisions in the CRA 2015 for business to consumer contracts.

[Sale and Supply of Goods to Consumers Regulations 2002](#) - This Act will be repealed. The regulations will be replaced by provisions in the CRA 2015.

[Unfair Contract Terms Act 1977](#) (UCTA) – In respect of business to consumer contracts the Act’s provisions will be replaced by the CRA 2015. The UCTA will be amended so that it covers business to business and consumer to consumer contracts only.

[Unfair Terms in Consumer Contracts Regulations 1999](#) (UTCCR) – The UTCCRs have been revoked and replaced by the CRA 2015.

The [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) remain in force in full other than certain elements relating to the contractual effect of pre-contract information to be provided by the trader to a consumer which are now moved in the same form to the CRA 2015.²²

[Source: [Explanatory Notes](#) to the *Consumer Rights Act 2015*]

²² It should be noted that the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) had already replaced legislation on distance selling

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