

Are you compliant with the new Consumer Rights Act 2015?

TrustMark has prepared this guidance to help steer you through the Consumer Rights Act 2015, which came into force on 1 October 2015. This is a guide only and not a definitive list of all laws and regulations which a tradesperson, i.e. you and your firm, has to comply with.

This assured advice has been jointly developed by TrustMark and Buckinghamshire and Surrey Trading Standards, as part of a dedicated primary authority scheme.

What is the Consumer Rights Act 2015?

The Act is a major part of the government's reform of UK consumer law and is streamlining complicated law from eight pieces of legislation into one place. The law is now clearer and easier to understand, meaning that consumers can buy and businesses can sell to them with confidence. On the rare occasions when problems arise, you will be able to sort out disputes more quickly and cheaply. The changes are relevant to **ALL** consumers and every business which sells directly to consumers.

How will it affect tradespeople?

Whilst the new legislation brings many changes, the overall picture is that consumers' rights in relation to the supply of goods and services will remain similar to those that applied prior to the 1 October 2015. However, for traders the most significant changes will be increased clarity about when the customer has or has not got the right to reject goods, and a new presumption that consumers should not have to accept multiple attempts at repair or replacement. Where a consumer who has lost the right to reject goods then asks for repair or replacement, the trader has just one chance to get this right before the right to reject is reinstated.

Is Alternative Dispute Resolution (ADR) part of the Act?

The ADR Directive is separate from the Consumer Rights Act, but is just as important. Since the 1 October, ADR is there to help with dispute resolution rather than the more traditional court route. TrustMark is now an approved ADR Provider and has its own service to help all TrustMark-registered firms to become compliant with the new ADR laws. This will bring significant cost benefits to firms and their customers if they find themselves involved in a dispute.

GUIDANCE

The Contract

- ❖ Be aware that different legislation and different rules may apply to contracts you have made before 1 October 2015. In most cases, there will be little difference in the practical steps required by both yourself and the customer in resolving a complaint, but in some cases they may be significant. For example, there may be some cases where a customer has the right to reject goods under an older contract even where they would not have the same right under a newer contract.
- ❖ When a customer agrees that you carry out the work as part of a contract, you are both entering into a legally binding contract. It is essential that both parties agree with the proposed work in order for it to be binding - failure to comply with the terms of the contract is a breach of contract and the person committing the breach normally has to correct it in some way.

- ❖ You don't need to have a written contract, but it is advisable to have any key terms, such as price, standard of work and completion dates, in writing so that there can be no dispute at a later date. The "statutory rights", as detailed in this document, are "implied terms". This means that they exist within the contract, even if the contract makes no reference to them. These rights cannot be cancelled.
- ❖ There are some circumstances where the customer will have an automatic right to a cooling off period at the start of the contract. These will be contracts where the agreement is made, either "off premises" (somewhere other than the seller's own premises, perhaps in the customer's home) or contracts made using "distance communications" (this means by telephone, post or using electronic means). This is under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

What the consumer can expect (statutory rights)

- ❖ The Act now differentiates between 'goods', 'services' and 'goods with services'.

'GOODS'

Implied Terms

There are certain standards that apply to every deal for the 'sale and supply' of goods. If you are transferring or selling the goods, you must have the right to do so and the goods must:

- be of a satisfactory quality.
- be fit for a particular purpose.
- match the description, sample or model.
- be installed correctly.

Remedies

- ❖ If you supply goods that fail to meet the required standards, you are expected to put things right and the customer is entitled to ask you to repeat the work or reduce the price.
- ❖ If a customer wants to resolve a complaint against your firm, there are a series of stages they can take – these are flexible and any part can be used during the negotiation.
 - **Short period to reject:** If a customer feels that the goods are faulty, or do not "conform" with their rights under the contract, then they have a short period to reject the goods and to let you know that this is the case. This period will last for 30 days but can be extended if the customer agrees to a repair or replacement during this period. Alternatively, or after this period, the customer may seek:
 - **Repair or Replacement:** This is where you either repair or replace the goods, for free. But this must be done within a reasonable time and without causing the customer significant inconvenience. You could refuse to do this if you felt the repair was either impossible, or disproportionate, such as a minor fault on high value goods.

The final stage would be:

- **Right to a price reduction or final right to reject:** If you have attempted once to repair or replace the goods and it is not successful, then the customer has the ability to choose either;
 - to keep the goods, and receive a reduction in the price. The reduction must be an suitable amount, and could be up to the full amount of the purchase price, dependent on the circumstances, or,
 - to reject the goods and receive a refund. The goods must be returned to you and the refund may be reduced to allow for any use of the goods. Buy you must be aware that you not allowed to make any deduction in the first six months after purchase.
- ❖ If the customer asks for repair or replacement during this initial 30-day period, the period is paused so that they have the remainder of the 30-day period, or seven days (whichever is

longer) to check whether the repair or replacement has been successful or to decide whether to reject the goods.

The short term right to reject

- ❖ A customer has a short period to reject the goods you have supplied if they do not meet the requirements above. This short-term right to reject goods lasts for 30 days and it does not apply in cases where the only breach relates to an incorrect installation of goods.

When a customer rejects goods they are able to claim a refund. This would be a full refund and it will need to be given within 14 days once agreed.

- ❖ If your customer chooses to reject the goods for a full refund within the short period of time, and if you do not agree that the goods are faulty, it will be for the customer to prove that the goods did not meet the core rights, i.e. the implied terms, during this short period.
- ❖ If your customer chooses repair, replacement, price reduction or the final right to reject, and if the defect is discovered within six months of delivery, it is assumed that the fault was there at the time of delivery unless you can prove otherwise or unless this assumption is inconsistent with the circumstances (for example, obvious signs of misuse).
- ❖ If more than six months have passed, the customer has to prove the defect was there at the time of delivery. Some defects do not become apparent until some time after delivery, and in these cases, it is enough to prove that there was an underlying or hidden defect at that time.

'SERVICES'

Implied Terms

- ❖ If you are supplying a service to a customer, you must meet the following standards:
 - Carry out the service with reasonable care and skill. To avoid disagreements with the customer, it is advisable to clearly state where a particular result has been agreed and where there might be a risk of not being able to achieve the right result.
 - Provide verbal or written information to your customer on which they can then rely. This includes quotations and any promises about timescales or results to be achieved.
 - Carry out the service for a reasonable price.
 - Carry out the service within a reasonable time.

Remedies

- ❖ If you supply services that fail to meet the required standards (as stated above), you are expected to put things right. The customer is entitled to have the service redone or to have the price reduced.
- ❖ The remedies can be thought of as stages and they are flexible and can be used as agreed by both parties during any negotiation.
 - **Repeat Performance:** if the service that you have carried out has not been in compliance with the "statutory rights" (implied terms), the customer can ask you to redo the work. Once agreed, the work must be done within a reasonable time, at no cost to the customer and without significant inconvenience to them. You are not required to redo the work if you are unable to carry it out to the necessary standard.
 - **Price Reduction:** Where the service cannot be repeated, or you are unable to do so within a reasonable time or without causing significant inconvenience to the customer, the customer can request a price reduction, but this would depend on individual circumstances.

Breach of Contract

- ❖ The customer may have other remedies available to them as well, most of which will require a Court order. These include seeking a “specific performance order” or seeking damages, including consequential loss. The new Act does not seek to remove these existing rights, although for most customers the easiest route to resolution will be the Consumer Rights Act.
- ❖ The remedies under the Consumer Rights Act 2015 do not include a right for the customer to have someone else complete the service and then to charge this to the original tradesperson. However, the Act does not take away the customer's existing legal rights, which can include claiming compensation.
- ❖ Normally, a customer will be happy to let the tradesperson put things right, but there are cases where the service has been performed so badly that it would be unreasonable to expect the customer to give the tradesperson a second chance. In cases like these, the customer may be entitled simply to claim the cost of remedial work by another tradesperson.

When the customer is unable to make a claim

- ❖ A customer can't complain about work that you have carried out with reasonable care and skill unless they have agreed a specific outcome or standard with you first and you've failed to achieve that outcome or standard.
- ❖ A customer is unable to claim for goods that have defects if you have brought those defects to their attention before the sale or where they have examined the goods before the purchase (and so should have seen the defects themselves).
- ❖ A customer can't complain if they are responsible for things going wrong. For example if the customer has gone against your advice and they ask you to use inappropriate materials or methods to carry out the work, or to take short cuts to save money and, as a result get a disappointing result. However, if you agree to do the work on this basis, it is advisable to make a written record of what has been agreed, and to inform the customer of the risks of poor results.
- ❖ A customer can't complain about defects or damage that they have caused, or if they have changed their mind and no longer want the goods or services. This situation is different if the contract allows them to change their mind under a cooling-off period or right to cancel, such as those available under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- ❖ A customer has no rights to claim for faults that appear as a result of fair wear and tear.

Dealing with complaints

- ❖ You are under a legal duty to respond to customer complaints as quickly as possible, and to try and resolve those complaints as best as you can, such as responding to emails and letters of complaint and returning phone calls. Where a complaint appears to be valid, you should put things right promptly. If you dispute liability, you are expected to give a clear explanation of your reasons.

Displaying your identity

- ❖ You must display your identity and business address on key business documents and on websites so the customer knows who they are dealing with. This information must also be made available to customers before a contract is made and whenever else they request it.

Further Information

For further information about the Consumer Rights Act 2015, visit the Business Companion website:

[The sale and supply of Goods from 1 October 2015](#)

[The supply of services from 1 October 2015](#)

[Consumer contracts off-premises sales](#)

Some scenarios to consider

Q. A homeowner feels a builder has done a poor job and is refusing to pay the bill. They are also refusing to let the original builder put things right and simply want to replace the builder with another firm.

A. Strictly, under the Consumer Rights Act 2015, the customer has to accept one of the remedies under the act, and therefore if the householder does not want the trader to carry out any further work, the matter will fall outside of the act.

There is nothing within the act that stops someone taking the matter to the Courts. And it is there, if the parties are unable to come to a negotiated solution, that the Judge will make a decision, and decide on the amount of damages (financial compensation) that may be forthcoming, if any. However the builder may argue that the householder is not acting reasonably in refusing to allow him/her to put right what has gone wrong.

Q. A kitchen unit is supplied and installed by a single firm. After six months of use, the homeowner reports the kitchen unit as defective. The homeowner wants the kitchen unit replaced. The kitchen firm believes the defect to be a manufacturing fault, so not their responsibility.

A. Unfortunately for the firm, it is the “party” who has the contract with the customer. That has always been the case in consumer law, and that won't change. Therefore if the firm believes that the fault is down to a manufacturing defect, the fault would have been present at the time of purchase, and they are liable to deal with the customer. The kitchen firm may have a claim against the manufacturer who supplied them if their contract allows this.

Q. A sink is purchased by the homeowner from a DIY store and a local plumber asked to install it. The homeowner complains to the firm that the sink has been damaged during installation and wants a new one.

A. The customer has the right to ask the plumber to carry out the work again if the sink has been damaged during installation. Dependent on the damage and the type, the plumber may consider that such work cannot be done to the required standard (reasonable care and skill), in which case there would have to be a negotiation over a possible price reduction. In these circumstances, the customer may be able to seek substantial loss for such things as a wasted sink, if they have to go and buy another one, and then find another plumber to install the second sink.

Q. The quality of decorative finish is not to the exact specification that the homeowner agreed with the decorator at the start of the project, even though the work is not technically defective and could normally be described as acceptable.

A. This sort of situation is where it is essential to have a written contract prior to any work being carried out. If the decorator can demonstrate that they have told the customer that the finish may differ, then the customer will find it much harder to reject minor imperfections. But if the customer has not been told, or if the decorator is unable to prove that they have told them, then the customer may have more of a claim.

Q. A week after a new shower was fitted, a leak is discovered and the homeowner wants the plumbing repaired immediately and at no cost, even though by now the plumbing firm is extremely busy on another job out of the local area.

A. If both parties agree that the shower has been installed incorrectly then the plumber must fix the shower as soon as possible, even if they are busy elsewhere. The shower should have been installed correctly in the first place i.e. to the standard of a competent tradesperson and it is therefore their responsibility to correct it for the homeowner.

Q. A contract agreed between a homeowner and builder on an extension specifies that a certain brand of insulation will be used, but the homeowner discovers that a cheaper substitute has been used. The homeowner wants it all replaced with the brand named in the contract, even though this will involve demolishing and reinstating some work already completed by the builder.

A. If there is a written contract stating that the builder would use a specific brand of insulation, and they have not, then the builder is clearly in breach of the contract. In the event that the only solution would be to demolish part of the building, then it is likely that the builder would argue that the work is not possible, and then there would be a discussion between the parties as to a price reduction.

If it was possible to change the insulation without demolishing the building, then it may be preferable to do that work. If this is the case, then this would have to be at no cost to the customer and without causing significant inconvenience. Dependent on the exact circumstances, there may also be an issue under the Consumer Protection from Unfair Trading Regulations 2007 as well.

Q. A customer insists on a replacement shower but the item is no longer manufactured and there aren't any in stock.

A. A tradesperson can offer the customer a repair, a reduction in the price or rejection of the shower. A repair will only be acceptable if this does not cause the customer significant problems.

Q. An electrician cannot determine whether the lights they fitted are faulty or whether the lights are now not working due to misuse. What should they do?

A. If the customer wishes to use the 'short-term' right to reject the goods, then they must prove that the fault is not as a result of misuse. If the customer claims a repair or replacement (or, if these fail, a price reduction or rejection) within six months of delivery, it is up to the electrician to prove misuse. After six months, the onus falls back on to the customer. In any case, if the electrician cannot agree on the cause of the fault, they may wish to get a second opinion - for example, from the manufacturer or an independent expert.

Q. A company supplies and installs a lockable patio door. The lock stops working. The lock itself is not of satisfactory quality.

A. In theory, a customer could reject the door for a full refund. However, given that the customer would have to make the door "available" for the trader to come and remove, which would leave the customer with a big hole in the wall with no door, we consider that a more practical solution would be that the customer should allow the trader to repair or replace the lock. If the repair or replacement lock does not resolve the problem, then the customer can reject it, or accept the lock with a price reduction. In practical terms, we would expect a customer to allow a further repair or replacement of the lock to resolve the situation.

Q. A homeowner is to have one new window installed. As the installers take it off their van the customer notices a large scratch on one of the glass sealed units which does not meet the industry's visual quality standards on glass. The customer informs the installer immediately, prior to any installation, that they reject the window.

A. The customer can reject the whole window immediately or within 30 days, and should allow the trader to provide a repair or replacement. The trader on a later date brings the window back with a new sealed unit, but the new sealed unit also has a large scratch which does not meet the standards. In this scenario, the customer can then opt to reject the window and have a full refund, or opt to accept the window with the scratched glass, but with a price reduction. Of course, there is nothing to stop the consumer accepting further replacements of the glass sealed unit if they so wish.