

A Guide to Consumer Law for Businesses





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Who we are

The Consumer Council is a non-departmental public body established through the General Consumer Council (Northern Ireland) Order 1984.

Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

Our main statutory functions are to:

- Consider any complaint made to it relating to consumer affairs and, where it appears to the Council to be appropriate having regard to any other remedy which may be available to the complainant, investigate the complaint and take such further action in relation thereto as the Council may determine;
- Carry out, or assist in the carrying out of, inquiries and research into matters relating to consumer affairs;
- Promote discussion of, and the dissemination of information relating to, consumer affairs; and
- Report to a Northern Ireland department on any matter relating to consumer affairs which is referred to the Council by that department.

In conducting our work, we do not forget that businesses are consumers too, and in terms of individual complaints, we can assist businesses with energy, water and postal issues. We also offer **free Consumer Council Trained** training sessions for businesses to learn about consumer law, and **Workplace Workshops** for employees to boost their consumer skills and confidence.

If you would like to find out more, please get in touch with us on:

Telephone:
0800 121 6022

Email:
contact@consumercouncil.org.uk

Background to this training

This training is designed to provide businesses in Northern Ireland an introduction to the key consumer protection legislation which covers the sale of goods, services and digital content. It will be relevant to all businesses who trade directly with consumers, whether that is on the high street, or online.

Having a sound knowledge of consumer law will help you deliver best standards in customer care, and will also ensure you and your sales staff know where you stand when trying to resolve consumer complaints.

More detailed information can be found at www.businesscompanion.info

Alternatively, if you would prefer to discuss any aspect of consumer law, or you are dealing with a consumer complaint and want some expert advice, you can ring Consumerline:

Telephone:
0300 123 6262

Email:
consumerline@economy-ni.gov.uk

This helpline is managed by Trading Standards Service in Northern Ireland, and they welcome enquiries from businesses as well as the general public.

Introduction

There are a number of consumer laws that govern how goods, services and digital content are sold; the information a trader must provide to a consumer before the sale; the manner in which they are sold; the way they are priced; the terms used in contracts and notices; and the remedies a

trader must offer if there has been a breach of consumers' rights.

This guide provides a summary of these laws and will signpost you to more detailed guidance.

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1. Consumer Contracts (Information, Additional Charges and Cancellation) Regulations 2013

Summary

The Consumer Contracts (Information, Additional Charges and Cancellation) Regulations 2013 apply to all goods, services and digital content that are sold on premises, or the consumer's home, or via distance selling such as online, telephone or by catalogue.

The Consumer Contracts Regulations 2013 divide the content of the contract into three types:

- **Sales contracts.** This includes contracts for the sale of goods, for example a DVD, and also for the supply of goods and services together (new PVC windows and their installation).
- **Service contracts.** This covers contracts that are for services only - for example a personal trainer or lawyer.
- **Digital content.** The supply of digital data, for example apps, e-books, software downloads or streamed films.



Pre-sale information

The Consumer Contracts Regulations 2013 require you to provide clear, easy to find pre-sale information, using the most appropriate means of communication. So, if you are selling at distance this is likely to be the information you provide online; or verbally if you are selling over the phone or face-to-face.

If you fail to do this, your customer's cancellation rights may be extended by up to a year.

Key information which must be made available is:

- A description of the goods or service, length of contract where appropriate, and total cost of delivery.
- The delivery timeframe, which must not exceed 30 days unless otherwise agreed with the consumer.
- Information about you as the trader including postal address and telephone number.
- A clear explanation of the consumer's right to cancel.
- A link to a cancellation form that consumers can choose to use (applies to web retail only). If they do not use the form, they must still cancel their order in writing. Usually this is done by email.
- A prompt which makes it clear the consumer agrees to pay before money is taken for an online purchase, and how much the total charge will be.
- Any delivery restrictions or limitations – for example if your company does not deliver outside of Northern Ireland. This information must be provided from the outset, rather than at the end of the sales process. Failure to do so is a clear breach of these regulations.
- Specific information about compatibility, functionality and operating system requirements in relation to the sale of digital content.



Cancellation rights for distance sales

- The Consumer Contracts Regulations 2013 provide clear cancellation rights for consumers buying at distance (i.e. online, catalogue, telephone and TV shopping channel). The cancellation, or 'cooling-off' period is **14 calendar days**, and gives the consumer a reasonable length of time to inspect the goods they bought, or to think about whether they wish to proceed with a service.
- Consumers can decide they want a service to start during the cancellation period, but if they subsequently cancel, they must pay for any materials used or services provided prior to their cancellation.
- You must issue the consumer with a refund **within 14 days** of receiving their returned goods, or proof of postage.
- Refunds can be withheld until the consumer has returned the goods.
- You can deduct from the refund if it appears the goods have been used beyond what is reasonable to have inspected the goods. For example, it would be acceptable for a pair of trainers to be returned having been laced up and the wadding removed,

but the soles should not be showing signs of having been worn outside.

- When the main contract has been cancelled, it is your responsibility to terminate all related contracts e.g. insurance cover for a mobile phone or a finance deal for a sofa.
- With regard to digital content, consumers have the right to cancel right up to the point the digital download process begins.



Ban on excessive/hidden charges

The Consumer Contracts Regulations 2013 ban the following practices:

- The use of surcharges (a levy or processing charge) for payment by credit or debit card.
- Only offering a premium rate telephone number for consumers to contact you with a complaint, query, or cancellation of their order. If you offer the option to contact your business by telephone, then at least one of the telephone lines must be charged at basic rate, i.e. the normal geographical or mobile phone rate.

- The use of pre-ticked boxes online where the consumer must remove ticks for optional extras such as insurance, charity donations or car rental.

Queries and Complaints

If a consumer queries or complains that your business has failed to meet any of the stipulations set out in The Consumer Contracts Regulations 2013 the following rules apply:

- You are responsible for proving you have provided the relevant pre-sale information, in a way which is clearly understood and accessible.
- Consumers are responsible for proving they notified their wish to cancel within the 14 day period.

Exceptions

There are some types of contracts The Consumer Contracts Regulations 2013 do not apply to. These include:

- Business to business contracts;
- Financial Services;
- Gambling;
- Items sold on prescription;
- Package holidays, package travel and package tours;
- Timeshare;
- Sale or transfer of property;
- New builds or residential lettings;
- Regular doorstep deliveries such as milk and soft drinks;
- Vending machine sales; and
- One-off telecom connections e.g. public payphones and internet cafés.

Further help and information

For more detailed information see:

<https://www.businesscompanion.info/en/quick-guides/off-premises-sales/consumer-contracts-off-premises-sales>
#Salescontractsservicecontractsdigital content

2. Consumer Protection From Unfair Trading Regulations 2008



The Consumer Protection from Unfair Trading Regulations 2008 place a duty on traders to do business honestly and fairly. It tackles unfair trading practices, including:

- **Misleading Actions**

A commercial practice is misleading if it gives false information or sets out to deceive consumers.

Example: the mileage on a car has been tampered with to show 80,000 miles when it should be 150,000 miles.

- **Misleading Omissions**

A commercial practice can also mislead if it omits or hides material information or provides it in a manner which is unclear, unintelligible, ambiguous or untimely.

Example: Not stating that an additional charge applies e.g. delivery charges or taxes.

- **Aggressive Practices**

A commercial practice is aggressive if it causes a consumer to reach a decision about goods or services that they may otherwise not have made, had they not been subjected to harassment, intimidation or undue influence.

Example: A doorstep trader who pressurises the consumer to pay in cash for home repairs and brings them to the bank to withdraw cash immediately.



Banned practices

The Consumer Protection from Unfair Trading Regulations 2008 also reference 31 specific banned practices. These are automatically viewed as a breach of the Regulations. They include:

- Faking credentials, for example falsely claiming to be a member of the Glass and Glazing Federation;
- Falsely stating that a product will only be available for a very limited time;
- Using scare tactics, for example, stating the consumer's safety is at risk unless they have certain repairs work undertaken;
- Falsely claiming that a product is able to cure illness, dysfunction or malformations;
- Describing a product as 'free' when in fact the consumer has to pay to claim a prize or receive samples;
- Creating the impression that the consumer cannot leave the premises until a contract is signed; or
- Including in an advertisement a direct message aimed at children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

Consumers' right to redress

In addition to the criminal offences you may be liable for if there has been a breach of any of the provisions described above, The Consumer Protection from Unfair Trading Regulations 2008 also provide consumers with the option to seek redress via the civil courts. In order to do this, there are certain conditions that must be met.

1. The consumer does one of the following:

- Enters into a contract to buy a product (goods, services, digital content, etc) from a trader (a business-to-consumer contract);
- Enters into a contract to sell goods to a trader (a consumer-to-business contract); or
- Makes a payment to a trader for supply of a product (consumer-payment contract).

2. The trader has engaged in a prohibited practice i.e. a misleading action or an aggressive practice.

You will be liable for misleading actions or aggressive practices carried out by the producers of goods or digital content you supply if you could be reasonably expected to have known about the prohibited practice. For example, you may be selling a product to the consumer knowing it does not fit the description given to it in the advertisement.

3. The prohibited practice was a significant factor in the consumer's decision to make the purchase.

For example, the consumer was prevented from properly considering a deal and shopping around because they were told the offer was only valid for that day, when there was no reason to apply such a strict time limit.

Remedies

There are three main remedies available to a consumer if there has been a breach of The Consumer Protection from Unfair Trading Regulations 2008:

• Right to unwind

This allows the consumer to undo the contract and you must put them back to the position they were in before it was made. For this to happen:



- The consumer must reject within 90 days, starting when the goods are delivered or the service begins.
- It must still be possible to undo the contract. If the goods or digital content have been fully consumed or the service fully completed this would not be possible. However, if it is still possible to return some element of the goods, or reject an element of the service, this would be enough. **Note:** Consumers are entitled to a full refund even though they may have received some benefit from the good or service.
- Consumers must not have already claimed a discount for the same prohibited practice.

• Right to a discount

This right applies where the right to unwind has been lost. This may be because of a delay in complaining or because the goods have been fully consumed. For goods and services costing less than £5,000 there is a fixed-percentage discount ranging from 25% for more than minor issues to 100% for very serious cases.

Above £5,000, if the misleading or aggressive practice led the consumer to pay more than the market price for the product, the price is reduced to the market price.

A consumer may also claim a discount instead of unwinding a contract where the right to unwind still exists but the consumer does not wish to end the contract.

• Damages

Consumers can claim damages if they have suffered reasonably foreseeable losses that exceed the price paid for goods, digital content and services. This can cover alarm, distress, physical inconvenience or discomfort, as well as financial losses suffered as a result of the prohibited practice.

Damages may be claimed in addition to unwinding the contract or claiming a discount. Damages are not payable if you can establish that the prohibited practice occurred due to a mistake, reliance on information supplied to you by another person, an accident or some other cause beyond your control. However, you must show you have taken all reasonable precautions and exercised all due diligence to avoid the prohibited practice occurring.

Further help and information

For more detailed information see: <https://www.businesscompanion.info/en/quick-guides/good-practice/consumer-protection-from-unfair-trading>

3. The Consumer Rights Act 2015



The Consumer Rights Act 2015 sets out your legal obligations with regard to the sale of goods, services, and digital content.

Part 1. The Consumer Rights Act 2015 and the sale of goods

Under **The Consumer Rights Act 2015** and **The Sale of Goods Act 1979** (for purchases made before 1 October 2015) the law says that any goods you sell must be:

- Of satisfactory quality;
- Fit for any particular purpose made known to the seller; and
- As described.

Satisfactory quality

This means that the goods should meet the standard any reasonable person would expect, taking into account the description of the goods, the price paid, and how they were made. Deciding whether something is satisfactory quality

will include the state and condition of the goods such as their appearance, quality of finish, freedom from minor defects, safety and durability.

Example: A brand new, well-known make of wristwatch should be free of any scratches and the clasp on the strap should continue to function properly after an extended period of wear.

Fitness for a particular purpose

Goods should be able to do what it is claimed they should do. This applies to claims made on the packaging, in advertisements, or provided by the salesperson.

If the consumer makes it known to you that they want to use the goods to perform a particular task, and you confirm the goods would be suitable, there would be a breach of contract if the goods then failed to meet that requirement.

Example: If a vacuum cleaner you sell claims to pick up pet hair and fails to perform this function.

As described

The goods you sell must match the description provided in the advertisement, on the packaging, on the website or given verbally by the salesperson. Goods supplied must also mention any models or samples displayed.

Example: An Italian leather bag should be made of genuine leather and manufactured in Italy.

Installation

The Consumer Rights Act 2015 also says goods must be installed correctly if installation is part of the contract.

Delivery

You are responsible for goods until they are delivered into the care of the consumer or someone else they have nominated (e.g. a neighbour). This means that if there is a problem with the delivery, or something happens to the goods in transit, it is you that must liaise with the consumer to resolve the issue, rather than the courier company.

Late deliveries

Deliveries must happen within 30 days, unless agreed otherwise with the consumer. If the delivery timescale is not met the consumer's rights will depend on whether time was of the essence:

- If it was essential that the goods were delivered on time, the consumer has the right to cancel the purchase and get a full refund.
- If the delivery was not time-essential, but another reasonable delivery time cannot be agreed, the consumer is also within their right to cancel the order and get a full refund.

Consumers' right to redress

The contract is made between you and the consumer. Therefore, if a problem arises, or there has been a breach of any of the implied terms outlined previously (satisfactory quality, fit for purpose, as described) it is you rather than the manufacturer who must work to put things right.

Remedies

How much time has passed since purchase will determine what remedies are available:

First 30 days

The Consumer Rights Act 2015 gives the consumer the right to reject the goods and request a full refund if the problem becomes apparent within the first 30 days.

Exceptions

- **Digital** - If it is a digital download such as music or a games app, the consumer can ask for a repair or replacement, and if that is not possible, they can request a price reduction.
- **Perishable** - Goods such as flowers or food items can have a shorter period of time in which to request a refund, and this will take into account the life-span of the goods.
- **Motor vehicles** – If you are a car trader you can make a reasonable deduction from your refund to reflect the use the consumer has had from the vehicle within the first 30 days.

Repair or replace

If a problem becomes apparent after 30 days, and up to six months after the purchase, the law assumes the goods must have been faulty when they were purchased. The consumer must give you one opportunity to repair or replace.

They may also choose to request a repair or replacement within the first 30 days instead of a refund. You will be required to action this within reasonable time and without causing any great inconvenience to the consumer. **You can decide which option (repair or replacement) is the most cost effective option.**

You must bear any of the costs involved, such as returning the item to the manufacturer for repair.

If neither a repair or replacement option is possible, the consumer can request a refund, although this may not be for the full amount to take account of the use they have had of the goods.

If a repair or a replacement is not successful the consumer has the right to request a refund up to 100% of the price they paid. Or the consumer may prefer to request a further attempt at a repair or replacement. Or, they may choose to keep the goods, with a price reduction.

Tip: The key is to work with the consumer to find a satisfactory remedy, offering choices wherever possible in order to reach a good outcome. It will be helpful for you to put yourself in their shoes, and to consider what you would find satisfactory.

Burden of Proof

• First six months

If a fault occurs in the first six months, the law assumes the goods must have been faulty in the first instance. If you dispute this, for example you may feel the consumer has failed to follow care instructions, it is up to you to prove otherwise.

• After six months

If the problem occurs after the first six months, and you dispute that the goods are faulty, the consumer may need to take steps to prove otherwise. This may mean getting an independent expert report, or researching whether other consumers have experienced a similar problem.

Up to six years:

Both **The Consumer Rights Act 2015**, which came into force on 1 October 2015, and the previous **Sale of Goods Act 1979**, state a consumer has up to six years in which to complain to the trader.

This will be based on what is a reasonable length of time to expect goods to last. This will take into account what the goods are, how they were made, and what price was paid. Other factors that will have a bearing include whether the consumer has followed the

care or installation instructions, if the goods were used in the way they were intended, and whether they have been maintained well.

Credit notes

If the consumer is entitled to a refund, repair or replacement they do not have to accept a credit note instead. However, if the consumer is returning the goods because they have changed their mind, you may voluntarily offer a credit note as a token of goodwill. You can apply your own set of rules to credit notes, including setting expiry dates.

Proof of purchase

When a consumer returns goods, faulty or otherwise, you are entitled to ask for proof of purchase. A receipt is the easiest way to prove purchase but bear in mind if the goods were paid for by card a credit or debit card statement can also be used. Even having an eyewitness statement from someone that accompanied the consumer can be enough for a Small Claims Court.

Having the labels attached, or the original packaging the goods came in does not act as proof of purchase.

Consequential loss

If the consumer suffers injury or damage to other goods or property as a direct result of a faulty or wrongly described product, they may be able to make a claim. For example, if a faulty

refrigerator causes the weekly food shop to go to waste. Claims for consequential loss do not normally cover distress, inconvenience or disappointment.

Second-hand goods

The same laws described in this section apply to the sale of second-hand goods, so goods must be as described and fit for purpose. However, because the goods are second-hand, the standard for meeting the 'satisfactory quality' conditions will not be so high, as the items may have minor defects.



Sale goods

Consumers have the same legal rights during sale times as ordinary times. The only exception is where goods are marked "shop soiled" or "seconds", in which case they are knowingly buying something that is in poorer condition.

However, if another unspecified fault is discovered, the consumer will be entitled to the usual remedies (refund, partial refund, repair or replacement).

No refunds

It is illegal to display notices that state for example, "No Refunds" or "Sold as Seen". These notices are viewed as an attempt to remove a consumer's rights and to

deter them from making a legitimate complaint.

Unfair terms

The Consumer Rights Act 2015 makes it easier for consumers to challenge hidden fees and charges. Unless a contract term is both prominent and transparent, it can be assessed for fairness.

Some examples of terms that may be considered unfair include:

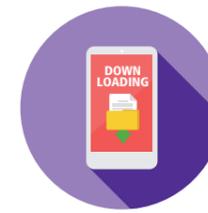
- terms and conditions hidden in the small print;
- a clause that unfairly gives the trader an advantage; or
- excessive fees or hidden charges.

Warranties and guarantees

Warranties and guarantees can provide added benefits, such as cover for accidental damage, but they do not add to or take away from a consumer's statutory rights. So if a fault or problem occurs after the warranty or guarantee expiry date, you are still legally obliged to work with the consumer to put things right in accordance with The Consumer Rights Act 2015.

All warranties and guarantees are legally binding and they must be:

- written in plain English;
- available to view before purchase;
- state they do not affect the consumer's statutory rights.



Part Two: The Consumer Rights Act 2015 and the sale of digital content

When consumer law was updated on 1 October 2015 with the introduction of the **The Consumer Rights Act**, it provided consumer protection for things that can go wrong with digital content sales. These include downloaded or streamed music, films, games, e-books and smart phone apps. It also applies to digital content installed or used in household appliances and cars etc.

As with 'physical' goods, digital content must be:

- of satisfactory quality
- fit for a particular purpose
- as described.

If not, the consumer has the right to a repair or replacement of the digital content they have bought. If neither of those options are possible, or they do not fix the problem, the consumer can ask for a reduction in price, up to the full amount depending on the circumstances.

If the faulty digital content damages the consumer's device, or corrupts other digital content they own, you will need to compensate them for this. This applies even if the original content was provided free of charge, such as a free trial.



Part 3. The Consumer Rights Act and the sale of services

Under **The Consumer Rights Act 2015**, (and the **Supply of Goods and Services Act 1982** for transactions made before 1 October 2015), the law says that any services you provide must be:

- Carried out with reasonable care and skill;
- Finished within a reasonable period, if no time limit was agreed in advance; and
- Charged at a reasonable price, if a price was not agreed in advance.

The Consumer Rights Act 2015 also states that a service must conform to any information you provide about yourself, or the service you are providing. This is either in writing or verbally.

It means if you make a statement about what service you will undertake, for example re-plastering a wall, or about yourself as a trader, for example membership of a particular trade association or guild, and this influences the consumer's decision to enter into a contract with you, or choose a particular solution, you are legally bound by the statement if it proves to be wrong.

Furthermore, where a service includes the supply of materials, for example building work, the goods must be:

- of satisfactory quality;
- fit for any particular purpose; and
- as described.

If the service you provide fails to meet any of these conditions, the law says you must:

- put things right at no extra cost to the consumer;
- within a reasonable time; and
- without causing the consumer significant inconvenience.

In circumstances where the service cannot be carried out again (for example wedding catering), or it cannot be done within a reasonable time, or without significant inconvenience, you should offer a price reduction. This could be up to 100% of the cost and must be provided within 14 days of reaching the agreement with the consumer.

Further help and information

For more detailed information see <https://www.businesscomparison.info/en/quick-guides/goods/The-sale-and-supply-of-goods>

4. When the consumer is not entitled to claim against their consumer rights

There are some situations in which the consumer cannot make a claim under the The Consumer Rights Act 2015. These are:

- When the defect has been brought to their attention before the sale, or should have been readily evident;
- When they are responsible for the damage caused;
- If they just change their mind about wanting the goods (although your own returns policy may mean you offer them a goodwill gesture);
- If the item has been used for a purpose it is not designed for, and you were not made aware of the intention to use it for this purpose;
- For damage that is due to fair wear and tear; or
- In instances where the consumer has attempted to fix the problem prior to making you aware of the issue.



Conclusion

Consumer legislation provides a framework to enable businesses to respond constructively to complaints from consumers.

Many businesses will see consumer goodwill as their priority and will happily go over and beyond what they are required to do under legislation.

If you need further information, please contact The Consumer Council at:

Address:
**Floor 3 Seatem House,
28-32 Alfred Street,
Belfast, BT2 8EN**

Telephone:
028 9025 1600

Email:
contact@consumercouncil.org.uk

Website:
www.consumercouncil.org.uk

Or Northern Ireland Trading Standards Service at:

Address:
**176 Newtonbreda Road,
Belfast, BT8 6QS**

Telephone:
0300 123 6262

Email:
tss@economy-ni.gov.uk

Website:
**www.economy-ni.gov.uk/topics/
consumer-affairs**

Further details and guidance can be found at the Department of Business, Energy, Industrial Strategy's (BEIS)

Website:
www.businesscompanion.info



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Consumer Council Northern Ireland



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