



## New consumer rights to impact suppliers of digital content

### What is digital content?

Digital content is defined as data produced and supplied in digital form and the new rights will mean that any debate over whether digital content can be classified as goods or not will become irrelevant. Digital content includes software, music, films, e-books, computer games and applications or “apps”. The new rights will apply to all paid-for digital content, content which is supplied free alongside paid-for content and content paid for with a facility, such as a token, virtual currency, or gift voucher, that was originally purchased with money. The sale of digital content can require a single payment or be by means of an ongoing subscription allowing the consumer access to digital content over a period of time. In addition, the Government retains and reserves the right to extend consumer protection in the future to allow for changing business practices, for example where consumers have given over something other than money which has a value, such as personal data, in exchange for digital content.

The rights will apply to contracts between consumers, individuals acting in their personal capacity, and traders who are persons acting for purposes relating to their trade, business, craft or profession. A trader includes not just companies but government departments, local and public authorities plus charities for some purposes.

The Consumer Rights Act brings together, improves and updates consumer legislation. According to the Department for Business, Innovation and Skills *“It will make consumer law clearer and easier to understand, meaning that consumers can buy and businesses can sell to them with confidence”*.

### What are the new rights?

The new quality rights for digital content are very similar to those for tangible goods under the Act and so should not come as a surprise for business:

### The new quality standards

Digital content must be:

- of satisfactory quality;
- fit for purpose; and
- meet any description.

#### ■ Satisfactory quality

The standard is that which a reasonable person would consider satisfactory taking account of the description, price and other relevant factors, such as “any public statement about the specific characteristics of the digital content”. The requirement that digital content be free from minor defects will be measured against reasonable expectations. The standard is therefore flexible and a greater burden will be placed on more complex and expensive software.

#### ■ Fit for the particular purpose

Where a consumer makes known to the trader that the content is being bought for a particular purpose, there is an implied term that the content will be reasonably fit for that purpose.

#### ■ Match their description

Digital content must match any descriptions given, for example in relation to main characteristics, functionality and compatibility. The Act states that where a consumer examines a trial version, it is not sufficient “that the digital content matches (or is better) than the trial version if the digital content does not also match any description of it given by the trader to the consumer”.

#### ■ Modifications must meet quality requirements

Traders may specify that they are allowed to make ongoing modifications to digital content, but all changes must meet the requirements of quality, fitness for purpose and match their description.

- **Not cause damage to other digital content or devices**  
Consumers will be entitled to a remedy where digital content causes damage to a device or other digital content where that damage would not be caused if the trader had used reasonable care and skill.

The Act also provides that it will be implied that traders have the right to supply the digital content. This reflects the fact that traders will not usually own content, but will be supplying it under licence.

## Remedies

- Repair or replacement.
- Price reduction.
- Repair or compensation for damage to device or content.
- Refund.

## Remedies

Again, the remedies available for digital content are similar to those for tangible goods but with differences to reflect the intangible nature of digital content.

- **Repair or replacement**  
If digital content does not meet the quality standards consumers will be entitled to repair or replacement of the content.
- **Reduction in price**  
Where repair or replacement is impossible, or if not done within a reasonable time or without significant inconvenience to the consumer, the consumer will be entitled to keep the digital content but receive a reduction in price. This refund can be up to the full amount paid for the content.
- **Repair of damage**  
Where digital content damages a consumer's device or other digital content, the trader will be obliged to repair the damage or provide financial compensation. The consumer will need to prove that the trader failed to use reasonable care and skill to prevent the harm.

## Refund

Where the trader does not have the right to provide the content, the consumer will be entitled to an immediate refund. If the breach only affects some of the digital content purchased, the right to a refund will not extend to the unaffected digital content. If the content is provided on a tangible medium such as a CD, the goods will need to be made available to the trader to get a refund but, in relation to downloaded digital content, there is no duty on the consumer to return or delete the digital content.

## Impact on businesses

Businesses will need to ensure that their terms and conditions and any relevant contracts such as end user licences, reflect the rights and remedies under the Act. The quality rights and corresponding remedies cannot be excluded and so contracts and download processes will need to be reviewed for compliance. With the Act coming into force from 1 October 2015, businesses supplying digital content should be aware that changes are likely to be needed and should make sure they are prepared in good time.

## Contacts

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