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trading standards law explained

Digital content

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In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

This guidance is for Scotland

Chapter 3 of the Consumer Rights Act 2015 (CRA) covers contracts between a trader and consumer in relation to digital content, as distinct from goods and services, whilst also clarifying that any goods containing faulty digital content are protected by the remedies provided for faulty goods.

Digital content is data that is produced and supplied in a digital form - for example, computer system software, films, downloaded music or mobile phone application software (an app).

Although the CRA sets out the specific rights that consumers have when buying digital content, it recognises that in reality traders supply a mixture of goods, services and digital content - for example, the delivery (service) of a compact disc (goods) containing music (digital content) to a consumer's home. The CRA clarifies what traders need to do when 'mixed contracts' occur, in particular for a mixture of goods and digital content.

Contract law

To better understand the key definitions, it is useful to have at least a basic understanding of contract law. It is therefore suggested that you read 'Consumer contracts: general' before continuing to read this guide.

What is a trader?

If you are a 'person' acting for purposes relating to your trade, business, craft or profession, then you are a 'trader'.

A person can include a partnership, which has a legal identity separate from its members. A person can also be a company, a charity (or other not-for-profit organisation), a Government department, a local authority or a public authority.

If you are a trader that allows another person to act in your name or on your behalf, you would still be responsible for those contracts - for example, if you employ people to make contracts for digital content with your customers or you subcontract with someone else to supply all or part of the digital content.

If you are a trader based outside the UK but market your digital content to UK consumers, you will still be covered by the CRA and should seek specialist advice.

What is a consumer?

For the purposes of this guide, a 'consumer' is an individual who, in their dealings with a trader, is acting for purposes wholly or mainly outside their trade, business, craft or profession. Where a consumer presents themselves as a business (for example, by buying goods for personal use from a trade outlet on a trade account), the law does not consider them to be a consumer.

If the trader claims that the buyer is not a consumer and that the buyer's rights are therefore limited, then it is for the trader to prove this.

Types of 'digital content'

The CRA defines 'digital content' as meaning "data which are produced and supplied in digital form". Therefore, a huge array of digital-format products fall within this definition - for example:

- Video games
- Virtual items purchased within video games
- Television programmes
- Films
- Books
- Computer software
- Mobile phone apps
- Systems software for operating goods - for example, domestic appliances, toys, motor vehicles, etc

In many cases, digital content is supplied in a format that can be physically touched, such as a Blu-ray disc containing a film. Increasingly, however, digital content does not have a tangible form - for example, a film streamed online or a virtual car purchased when playing a video game.

Digital content is not to be confused with the ways by which digital content or goods and services are chosen, purchased, supplied or transmitted. If a trader sells products online using a website, then the use of the website to sell those products is not digital content, it is just a virtual shopping place. The supply, for example, of a mobile telephone contract (calls, texts and data) is not digital content, it is a service for customers to use.

Of course digital content, such as a mobile ringtone, may be sold on a website; once purchased, that digital ringtone product will then be transmitted and downloaded into the consumer's mobile phone.

What the consumer can expect (statutory rights)

Under the CRA, certain standards apply to every transaction for the supply of digital content. The digital content must be:

- Of satisfactory quality
- Fit for a particular purpose
- As described

There are conditions when the application of one or more quality requirements is restricted or not applicable at all. Each of the rights needs to be considered individually to see if it applies in relation to a particular contract.

Of satisfactory quality

Judgements as to whether the quality of a digital product is 'satisfactory' need to be made in terms of the expectations of a reasonable person. It follows that the unreasonable expectations of a consumer are not an acceptable judgement.

When deciding, as a reasonable person, whether the digital content is 'satisfactory', three factors are required to be taken into account and considered together:

- Any description of the digital content

- The price paid
- All other relevant circumstances, but in particular public statements in advertising and labelling

If a trader can show that any of the following circumstances apply, then the public statements are no longer to be taken into account:

- Before any contract was made, the trader could not reasonably have been aware of the statement
- Before the contract was made, the statement had been publicly withdrawn
- To the extent that it contained anything that was incorrect or misleading, it had been publicly corrected
- The consumer's decision to contract for the digital content could not have been influenced by the statement

Quality is a general term that can incorporate many different aspects relating to the state or condition of the digital content; however, it may, where appropriate, be considered in terms of:

- Fitness for all the purposes for which digital content of that kind is usually supplied
- Freedom from minor defects
- Safety
- Durability

Quality does not include the consumer's subjective judgements, such as whether they liked a downloaded piece of music or not.

Most computer systems' software, games and apps have minor defects that are corrected over time with fixes or upgrades. Therefore, a 'reasonable person' might expect the defects to be present and judge any items containing them to be of satisfactory quality.

A trader is not liable for the unsatisfactory quality of a product if any of the following circumstances apply:

- The customer's attention was drawn to an unsatisfactory aspect of the digital content before a contract was made
- Where the consumer examines the digital content before the contract is made and that examination ought to reveal the unsatisfactory aspect
- Where a trial version is examined by the consumer before the contract is made and a reasonable examination of the trial product ought to make the unsatisfactory aspect apparent

Fit for a particular purpose

Where, before a contract is made, a consumer makes known to the trader a particular purpose that they intend to use the digital content for, this becomes a contract term. The consumer may make this particular purpose known to the trader directly or by implication. This fitness for purpose is the case whether or not that purpose is one for which that digital content is usually supplied. Similar requirements ensure that where digital content is hired or purchased on credit, the creditor or hirer is liable for fitness for purpose.

There is an exemption to this requirement if it can be shown that the consumer did not rely on, or it was unreasonable for the consumer to rely on, the skill or judgement of the trader - for example, if a consumer emails the trader and then immediately downloads the app before the trader has had the opportunity to reply to them.

As described

Digital content must match any description that the trader gives to the consumer about it. Every contract to supply digital content has 'as described' as a contract term.

It does not matter if the consumer examines a trial version of the product before the contract is made and the final product matches the trial product or is even better; it is the description that is given to the original digital content that is important.

Certain digital products are upgraded over time. The digital content must continue to match the description, but it can contain additional or enhanced features that are not part of that description.

Certain specific information about the main characteristics, functionality and compatibility of digital products must be given to consumers before they buy. Where information needs to be provided, it is to be treated as a term of the contract and effectively becomes part of the product description. Please see 'Pre-contractual information' below for more information.

How 'free' digital content is dealt with

All of the statutory rights for the supply or intended supply of digital content apply only if the consumer has to pay a monetary price as part of the contract.

Payment may be directly made using money or indirectly by means of some other facility for which money has been paid - for example, a gift voucher, a token or virtual money in a game. Digital content can be sold as an item requiring a single payment or by means of an ongoing subscription allowing access to the digital content over a period of time.

If digital content is given away (for example, free computer system software), then the statutory rights do not apply. This does not mean that the trader is not liable if the digital content causes damage; please see 'Liabilities for digital content given away' below.

Some digital content may be described as 'free', but the way it is supplied means that the statutory rights will still apply to it. This is to cover situations where, for example, a £500 computer is supplied that contains free antivirus software of poor quality.

Digital content is not 'free', and is part of the contract, in the following circumstances:

- A trader supplies digital content to a consumer and both of the following conditions are met:
    - The free digital content is supplied with goods or services or other digital content for which the consumer pays a price
    - The free digital content is not generally available to consumers unless they have paid a price for it, or for goods or services or other digital content

In the example given regarding the £500 computer with free antivirus software included, the software (digital content) is supplied with the computer (goods). To obtain the software separately, you would generally have to either buy it or buy other goods or services, or other software, with which it came 'free'. For the purposes of the CRA, it is supplied as part of a contract costing £500.

Modifications and updates

If the original contract for the supply of digital content allows the trader or a third party to modify that content (for example, software upgrades, fixing minor glitches, etc), then the contract's terms regarding

quality, fitness for a particular purpose and description apply equally to the modified digital content as they did to that supplied after the original contract.

It is important to note that any claim as to statutory requirements not being met (for example, an upgrade that was not of satisfactory quality) would be treated as having occurred at the date of the original contract for supply and not the modification date. The importance of this is in relation to the time limit that applies for breach of contract claims to be made (see 'Time limits for court action' below).

The meaning of 'right to supply'

For most digital content, a consumer and trader do not own the product fully. The intellectual property rights in the digital content remain with the originator of the product, or someone else who has bought some or all of those rights. Therefore, if you are a trader supplying digital content, and do not have permission from the intellectual property rights owner, then you do not have the 'right to supply' it. The CRA creates a contract term that where digital content is supplied under a contract, and the consumer pays for it, it is as if the trader did have the 'right to supply' it, even if they do not.

There are severe criminal and civil sanctions for the breach of intellectual property rights, so you should ensure that you do have the right to supply each particular piece of digital content before you do so. For more information, please see 'Intellectual property'.

Unfair contract terms

The CRA also covers the use of unfair terms in consumer contracts. For more information, please see 'Unfair contract terms'.

In addition, any attempt to mislead the consumer about their rights is an offence under Part 4, Chapter 1 of the Digital Markets, Competition and Consumers Act 2024 (DMCCA). See 'Protection from unfair trading (criminal law)' for more information about the DMCCA, which covers traders' duties towards consumers in general.

Remedy for breach

Depending on the nature of the problem, the minimum remedies are, initially, the right to repair or replacement, and secondly, the right to a price reduction.

Repair or replacement

This is the consumer's first step; if they decide that they want the quality defect remedied by means of a repair or replacement, then the trader must:

- Do so within a reasonable time and without significant inconvenience to the consumer
- Bear any necessary costs incurred in doing so, including, in particular, the cost of any labour, materials or postage

However, the consumer does not have the right to remedy a quality defect by means of repair or replacement if it is either:

- Impossible to do so
  or
- Disproportionate compared to another available remedy

For example, a consumer downloads a film on to their device, which has no sound, and the trader agrees that they are responsible for the quality defect. For the consumer to request a repair to the digital content on their device it would be disproportionate compared to the trader providing a replacement download to resolve the problem.

For example, a consumer downloads a film on to their device, which has no sound, and the trader agrees that they are responsible for the quality defect. The consumer requesting a repair to the digital content on their device is disproportionate compared to the trader providing a replacement download to resolve the problem.

The nature of the digital content and the purpose for which it was obtained or accessed by the consumer determines what is a 'reasonable time' and 'significant inconvenience'.

If a consumer has requested or agreed to a repair, then they cannot request a replacement until a reasonable time has been given for the repair to be carried out, as long as significant inconvenience is not caused. The same logic applies if the consumer has requested or agreed to a replacement and then requests a repair.

If the consumer shows that the digital content is defective within six months of its supply, then it is to be taken as being defective on the day it was supplied. This will not be the case if the trader can prove otherwise or this assumption is inconsistent with the circumstances - for example, if a new computer program works well for four months, but ceases to work when another, different program, from a different supplier, is downloaded on to the computer.

Price reduction

The ability for a consumer to have the right to require a price reduction is only triggered if either:

- The remedies of repair and replacement are not possible
  or
- The remedy for either repair or replacement has been requested by the consumer, but this has not been carried out within a reasonable time and without significant inconvenience to them

Where the right to a price reduction is triggered, this must be refunded without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund.

The remedy must be an appropriate reduction in price and may be the full cost of the digital content in appropriate circumstances. If only part of the full price has been paid by the consumer, then the refund would be any money already paid above the reduced price.

Other remedies a consumer can take

Provided the consumer is not claiming twice for the same loss, they can take any of the following remedies in addition to, or instead of, the remedies for breach of satisfactory quality, fitness for purpose, description, pre-contractual disclosures and the right to supply:

- Claim for damages
- Receive a refund of money paid if they have not received the product
- Seek to force the trader to fulfil the contract
- Not pay for the product

However, a consumer is not able to treat a contract as ended purely on the basis of a breach of the satisfactory quality, fitness for purpose, description, pre-contractual disclosures or the right-to-supply terms in a contract.

In most cases, the consumer is entitled to a full refund of all money paid for the digital content where there is a failure of the right to supply. The requirements for this refund are the same as those for when a price reduction is triggered, as detailed above.

The only exception to the above full-refund remedy is if the failure of the right to supply only affects some of the digital content purchased. For example, a consumer purchases access to 'streamed music' and the trader loses the right to supply music from a particular record label. The consumer would only be entitled to a refund proportionate to the amount of music provided by that record label made up of the whole volume of streamed music originally provided.

Consumers' rights of redress

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) provide an additional and alternative right of redress for consumers. Where a trader has used misleading or aggressive selling practices, the consumer may be entitled to claim compensation and/or a reduction in price or to cancel the contract completely.

For the time being, consumers' rights of redress are still covered by the CPRs; at some point in the future, they will be covered by the DMCCA. Information on these rights can be found in 'Protection from unfair trading (consumers' rights of redress)'.

Dealing with complaints

Traders are under a legal duty to respond to consumer complaints as quickly as possible and to make their best efforts to resolve those complaints. This means that traders must respond to emails and letters of complaint and that they must return phone calls. Where a complaint appears to be valid, the trader should put things right promptly. If the trader disputes liability, they should give a clear explanation of their reasons.

If a trader has exhausted their own complaints procedure in dealing with a complaint and the complaint remains unresolved, the trader must inform consumers if there is an 'alternative dispute resolution' or other arrangement available to them (whether that is a legal requirement, through membership of a trade association, or simply voluntary). For more information, please see 'Alternative dispute resolution' in Business Companion's Business in Focus section.

Time limits for court action

Consumers can expect products, including products with digital content, not to fail prematurely, even if the reasonable life expectancy of those products is several years. However, there is a time limit that eventually prevents consumers from making a claim through the courts.

A consumer can bring a claim to court within five years of discovering a fault; however, no claim can be

taken to court after ten years from the date of purchase.

This does not mean all products have to last this length of time, but this is the time limit that the law gives a consumer to take legal action.

Liabilities for digital content given away

There has always been liability for digital content that is either given away or paid for if that digital content causes damage because of negligence.

That option still exists if a consumer wishes to use it. For example, a free mobile phone app containing a virus that damages the consumer's phone can lead to a claim of negligence against the trader that supplied the app.

However, the CRA enables a consumer to be able to rely directly on the remedies provided by it for faulty or damaging 'free' digital content without having to rely on civil law precedents. The consumer is able to do this if the digital content causing damage has been supplied under a contract where the consumer has to pay for other goods or digital content to get the 'free' item. For example, a computer magazine that comes with free antivirus software; or where the digital content has been 'bought' by agreeing to act in a particular way, such as filling in a questionnaire or survey or providing personal data.

Damage caused to devices or other digital content

Where digital content is supplied, the consumer is entitled to certain remedies when all of the following apply:

- The digital content causes damage to a device or to other digital content
- The device or digital content that is damaged belongs to the consumer
- The damage is of a kind that would not have occurred if the trader had exercised reasonable care and skill

If all of the above apply, then the trader must offer (and the consumer can request) either of the following remedies:

- Repair of the damage, which must be done within a reasonable time, without significant inconvenience and without cost to the consumer
  or
- Payment of compensation, which must be given without undue delay, and in any event within 14 days of the trader agreeing to pay the compensation. The trader cannot charge the consumer a fee for this

If it is necessary, the CRA gives the consumer the ability to take civil action to enforce these rights on the trader (in other words, take them to court).

Pre-contractual information

The CRA provides a term in every contract for digital content that the pre-contractual information required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) to be provided to consumers is binding.

If information about the main characteristics, functionality and compatibility of the digital content is

incorrect, then the consumer can seek a repair, replacement or price reduction. For incorrect information that has been provided about any other matter that has to be disclosed under the CCRs, the consumer has the right to recover any costs that they have incurred as a result of the breach.

For more details of the information that must be given, see:

- 'Consumer contracts: distance sales'
- 'Consumer contracts: off-premises sales'
- 'Consumer contracts: on-premises sales'

The costs that can be recovered are the sterling value of the price paid for the digital content, regardless of whether it was paid in real money or some payment facility for which money has been paid - for example, a token, virtual jewels, etc within a video game. The refund must be in real money.

Access to transmission facilities

Some contracts to supply digital content to a consumer involve the use of a processing facility, which allows the trader to receive digital content from the consumer and to transmit digital content to the consumer. Two popular examples of this are where music streaming facilities are accessed on the cloud and where 'massively multiplayer online games' (MMOs) are played. In such contracts, if the contract does not indicate for how long the consumer can access the processing facility (for example, for a month or a year), then it is implied into the contract that the consumer can access it for a reasonable time. What is a reasonable time will depend upon such factors as what the processing facility is being used for, how much has been paid, etc.

Consumer rights summary

To help businesses and consumers understand their rights and responsibilities the Government worked closely with business and consumer groups to develop a plain English summary of the key elements of the CRA. This 'consumer rights summary' is not intended to be a comprehensive guide to consumer rights, but rather a general overview of the key consumer rights, focusing on the most common issues.

There is no legal requirement for you to display this information, but it could help you make things clearer for your customers and staff. The design of the information sheet is a basic layout, and you may want to tailor it according to your business needs - for example, by offering a returns policy that builds on the statutory requirements, or adding examples from your own business (perhaps replacing the words 'digital content' with something that you sell). The words are legally correct and outline your customers' rights, so we suggest tailoring and adding to these words, rather than deleting or altering the wording provided.

The summary is attached below in both PDF and Word formats, the latter to enable you to create your own version more easily:

- Consumer rights summary: digital content (PDF)
- Consumer rights summary: digital content (Word)

Selling goods

If your business also sells goods, please see 'Selling and supplying goods'.

Supplying services

If your business also supplies services, please see 'Supplying services'.

Selling digital content together with goods / services: mixed contracts

For the vast majority of retail transactions on the high street, the digital content that is supplied is included with goods that can be physically handled - for example a car, washing machine, music CD, etc. The goods and digital content are mixed together as a 'mixed contract'.

Where this is the case, the test to be applied is whether the digital content fails to meet the statutory rights that apply to digital content, as detailed above.

If the digital content does not meet the quality requirements, then the goods and digital content are treated as a whole item that does not conform to the contract. The remedies that the trader should offer (and the consumer can request) then become the remedies that are provided for as if the item were goods. This is an important difference, as the remedies for breach of quality requirements in relation to goods include the right to reject, which is not a remedy available for defective digital content alone.

Services may also be involved in the contract, and the CRA sets out how the different elements work together. Please see 'Mixed contracts' for more information.

Further information

The Department for Business, Innovation and Skills (a predecessor of the Department for Business and Trade) produced detailed guidance to help businesses understand the implications of the CRA: *Consumer Rights Act: Digital Content - Guidance for Business*.

Trading Standards

For more information on the work of Trading Standards Services and the possible consequences of not abiding by the law, please see 'Trading Standards: powers, enforcement and penalties'.

In this update

New section: 'Dealing with complaints'.

Last reviewed / updated: July 2026

Key legislation

- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Consumer Rights Act 2015:
  - Part 1, Chapter 3
- Digital Markets, Competition and Consumers Act 2024:
  - Part 4, Chapter 1

Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links go to the legislation.gov.uk website. The site usually updates the legislation to include any amendments made to it. However, this is not always the case. Information on all changes made to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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