

Consumer protection legislation Guernsey

Service area / [Corporate](#)

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Introduction

The contractual landscape between consumers and traders in Guernsey will soon be changing with the introduction of the consumer protection legislation. The purpose of the legislation is to introduce statutory civil rights for consumers when purchasing goods and services including those in digital format, to ensure the prohibition of unfair trading practices and to grant enforcement powers to authorised officers of the Trading Standards Services and introduce offences and penalties for breaches of the legislation.

The overarching principles behind the legislation are to provide a compatible framework to our neighbouring jurisdictions of the United Kingdom and Europe that provides consumers with legal certainty when dealing with businesses or service providers in Guernsey. It is hoped this will instil greater consumer confidence, encourage new businesses, regenerate growth in the Guernsey marketplace and deliver consistency and equality for consumers entering into contracts across geographical boundaries. This briefing examines the legislation and the benefits intended to be conferred on the public by its introduction and the impact it will have on the local business marketplace.

Evolution of consumer protection in Guernsey

The key drivers behind the requirement for consumer protection rights in Guernsey is the recognition that there is a requirement to introduce clear guidance for consumers in the form of legislation that helps to dispel consumer uncertainty when dealing with businesses or suppliers of services. The availability of a codified set of rights is viewed as a mechanism to encourage business growth, a competitive market and consumer confidence in Guernsey. Guernsey's approach is in

line with that taken in recent years in the UK and more widely, in Europe where focus has been on overhauling and consolidating legislation to ensure 21st century consumer protection legislation that supports 21st century consumer transactions. The overhaul has also taken place in recognition of the requirement to provide clear information regarding their rights to consumers and the rapid expansion of distance selling via the internet and the sale of digital content, for example software or music provided via a download or content streamed to a device.

Introduction of consumer protection legislation in Guernsey

The February Billet D'Etat of the States of Guernsey includes a policy letter dealing with proposals for the introduction of consumer rights legislation in Guernsey, Herm and Jethou. The legislation would be made by Ordinance under the provision of The Trading Standards (Enabling Provisions) (Guernsey) Law 2009 and would not apply to Alderney and Sark. The proposals would add to the existing consumer protection provision afforded by the regulation of weights and measures on the Island. While the existing Weights and Measures (Guernsey and Alderney) Law 1991 provides the legal basis for the Trading Standards Services weights and measures work, the Service's consumer advice and business guidance work does not have a matching statutory basis, with the advice given to consumers being based on the rules of contract law and best practice derived from relevant United Kingdom and European law. The intention of the legislation is to codify into law a consumer protection framework in an equivalent statutory framework.

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Overview of the proposed regulatory framework

The proposed regulatory framework would be based on the following principles:

- introducing statutory civil rights and obligations for the consumer and the trader to contracts relating to the sale of goods and the supply of services;
- taking account of the modern marketplace where more transactions are completed at a distance; and involve digital content such as computer software or music;
- the requirement that traders would not act unfairly to consumers in a way that could affect consumers' decision making process and lead to consumer detriment;
- ensuring the provision of enough information from the trader to the consumer to allow the consumer to make an informed decision, whether the transaction takes place face to face or at distance, such as by telephone or over the internet;
- consumers having reasonable time to consider their options when making a decision, ensuring no undue pressure is exerted within that process;
- the prohibition of unfair contract terms;
- introducing a general safety requirement for consumer products;
- introducing a requirement for traders to indicate the price of products offered for sale;
- introducing enforcement powers of the Trading Standards Services; and
- corresponding offences and penalties for infringements.

Broadly speaking it is proposed that the scope of the Guernsey consumer protection legislation would be similar to that of the consumer protection legislation in the United Kingdom and more widely Europe, subject to certain modifications and adaption where appropriate for the Guernsey economy.

Who will the new legislation impact and how will it help the consumer?

The majority of trader/consumer transactions will be regulated by the new legislation and will apply to most, if not all, of the dealings of a household with companies and individuals providing services such as plumbing, the fitting of domestic appliances, electrical contracting, furnishings, the provision of services and so on. The legislation will also apply to a contract for a trader to supply goods and services to a consumer and will codify into Guernsey law already familiar legal terms such as, goods being "fit for purpose", "of satisfactory quality" and "corresponding to description".

Where a contract deals with the supply of services by a trader to a consumer, the consumer's statutory rights will include rights that; the service undertaken will be performed with reasonable care and skill and within a reasonable time and that any information provided by the trader, either verbally or in writing, will form part of the contract if the information is taken into account by the consumer when deciding whether or not to enter into the contract. To strike the balance between

consumer rights and consumer obligations it is proposed the legislation will include a provision that will require the consumer to pay a reasonable price for the services if no price is fixed in the contract.

It is hoped the legislation will ensure a balanced relationship between consumer and trader through the prohibition of unfair contract terms. The legislation proposes a contract term will be deemed unfair if it puts a consumer at a disadvantage by limiting the consumer's rights or disproportionately increases the consumer's obligations compared to those of the trader. Examples of unfair practices are; where the trader is seeking to exclude or limit liability where they may be in breach of a contract, where the contract entitles the trader to deliver a substantially different contract from that previously agreed, where the consumer is required to pay a disproportionately high sum in compensation, or where the consumer decides not to conclude or perform the contract, or where the contract allows the trader to change the terms of the contract without affording the consumer a corresponding right in terms of their obligations. The legislation will propose that such unfair contract terms will not be binding on the consumer.

The legislation will also include provisions prohibiting certain practices or any term of a contract which seeks to exclude or limit a trader's liability in circumstances where the contract is not performed in accordance with the consumer's statutory rights such as with reasonable care and skill.

The safety of products on the market is another issue highlighted as high on the list of consumer concerns. It is proposed the legislation will define safe consumer products and make provision for a general safety standard under the legislation. Where any product is deemed unsafe or dangerous, the law will provide the Trading Standards Services with effective powers which will include the imposition of penalties to deal with them. The general safety requirement will apply to any product put on the market for consumers including those provided in the delivery of a service but will not apply to second-hand products supplied as a product to be repaired or reconditioned prior to being used. However the responsibility for ensuring products are safe will rest with the producer of the product and where the product is not produced in Guernsey responsibility will remain with the manufacturer's agent or representative in Guernsey or other importer of goods.

For consumers, two of the most fundamental considerations when determining value for money and ultimately their satisfaction as part of a consumer contract are price and quality. The new legislation encompasses the provision of easy access to unambiguous price information for the consumer. With the exception of the price lists in licensed premises there is no legislation currently controlling the display of prices. Under the new legislation it is proposed there be a requirement to price mark or give an indication of the price of goods on offer for sale at the retail level. Furthermore, the giving of false information about the price of a product or how a price will be calculated would be a misleading action and failing to give

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material information would be a misleading omission, both of which would be prohibited as unfair trading under the new legislation. It is proposed that the selling price of a product is provided to consumers in writing in a form that is clear, legible, unambiguous, easily identifiable, in Sterling and inclusive of any taxes. This form of price marking will apply to shops, catalogues produced in Guernsey and online marketplaces based in Guernsey. Any breaches of the requirements would constitute an offence.

What areas are not covered by the new Guernsey consumer protection legislation?

Where the rights and obligations of the consumer are regulated by sector specific legislation, some aspects of the new consumer legislation will not apply to contracts dealing with particular types of goods and services. Examples of this are the sale of real property, contracts for the construction of new buildings and contracts for financial services. These will continue to be regulated by the existing prescribed legislation, rules and associated codes of conduct.

Impact on the business and service providers

The introduction of the legislation will require those traders and service providers who are in scope of the law (including the providers of legal services) and where they are providing services to an individual/consumers, to first, update the manner in which they enter into agreements with consumers ensuring they provide the full, required information at that time and second, to review and update their terms of business to deal with new requirements under the legislation such as the consumer's cancellation rights and a statutory "cooling off period". In the case of distance and off-premises contracts it is proposed to introduce a consumer's general right to cancel without reason and without incurring liability within a normal cancellation period of 14 days from the date on which the contract was made. The right to cancel will be subject to restrictions in circumstances where, for example, the consumer has requested a trader to attend to urgent repairs or the goods were made to the consumer's own specification. Businesses and traders will need to think carefully about consumers' new rights and their approach to customer complaints and what remedies can be used and when. Additionally businesses and suppliers of services should assess all contracts, marketing materials, telephone scripts, websites and consumer notices to ensure they comply with any defined fairness criteria.

The practical steps Guernsey businesses may want to take when amending their terms of business will include; meeting the prominence requirement, i.e. the requirement for a business to make sure the consumer is clear with regard to the main subject matter of the contract which includes ensuring the price is clear, unambiguous, that it is stated in plain, intelligible language, not hidden in the small print and to ensure they outline to the consumer the remedies available to them should they not be satisfied including the managing of any refunds or replacements, product descriptions and notices regarding any relevant "cooling off period". Businesses and traders should

review the processes they use to manage non-confirming goods including digital content and services and adjust them to fit the proposed new consumer remedies under the legislation. Staff training in relation to the new legislation and reviewing the information they provide to consumers about themselves, their products and services and ensuring its accuracy will also be paramount to avoid falling foul of the new legislation.

The fact that pre-contractual information may be considered an implied term of any resulting contract also means that point of sale material and literature given to assist sales staff must be up-to-date and accurate to avoid any claims for compensation.

It will also be important for businesses and suppliers of services to review the way in which consumer complaints are handled and ensure that customer service teams are familiar with the changes before the legislation comes into force.

When things go wrong, what are the remedies available to consumers?

Depending on the circumstances different remedies will be available to the consumer and will include; the right to repeat performance, the right to reject goods, partially or in full, the right to a repair or replacement, the right to a price reduction and the right to reclaim damages or recover money paid.

Offences

Those businesses or traders in breach of the legislation could be found guilty of offences associated with product safety, failure to give necessary information and failure to comply with price marking requirements. Furthermore, it is proposed legislation is created to cover offences such as obstructing an enforcement officer in the exercise of his duties and failing to comply with requirements imposed by enforcement officials.

Trading Standards Services

Under the proposals the Commerce and Employment Department will be expressly empowered to authorise officers of the Trading Standards Services to enforce the legislation once introduced. The proposed legislation would expand the statutory scope of the duties currently undertaken by the Trading Standards Service. Authorised Officers would be granted powers of entry, inspection, and seizure of documents, consumer products and other evidence. It is anticipated the introduction of codified rights for consumers will benefit the management of consumer complaints received by the Trading Standards Service because transactions would take place within a clearly defined framework where the rights and obligations of each party are clearly stated that may lead to a decrease in the time spent on each complaint. It remains to be seen what the financial cost and impact on this may be in terms of budget and resource requirement to manage the service and enforcement process properly.

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Cost

While it is envisaged the introduction of a codified framework of consumer rights is expected to provide clarity for consumers in their transactions with businesses, the proposed legislation will widen the scope of the statutory duties of the Trading Standards Service. Where the new legislation leads to an increase in demand for the Service, then it will almost certainly require a redirection of resource and budget to ensure the implementation and management of the new legislation is successful and meets consumer needs, the impact of which is as yet unknown. Conversely for those businesses caught by the new legislation there is the potential for increased prices and charges to cover off operating costs in relation to amending, updating and implementing policies within their own businesses to ensure they do not fall foul of the new legislation and to monitor and ensure compliance.

Conclusion

Based on the criticism of the Consumer Rights Act 2015 in the UK following its coming into force, it is imperative that for the implementation of effective consumer protection rights in Guernsey to be successful, Guernsey should take full note and consideration of the criticisms of the UK Act and ensure it produces clear, unambiguous, consumer friendly legislation.



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