

# CONSUMER RIGHTS ACT 2015

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Consumer Contracts for Goods, Digital Content and Services**

#### *Chapter 2: Goods*

#### **Summary and Background**

40. This Chapter concerns contracts where a trader supplies goods to a consumer. It sets out:
- The rights a consumer has when a trader supplies goods under contract (the notes on section 1 explain how a contract may be formed). These are in effect contractual rights and if they are breached it is therefore a breach of contract;
  - the statutory remedies to which the consumer is entitled if these rights are breached: namely a right to reject the goods within an initial period, a right to repair or replacement and a subsequent right to a reduction in the price (keeping the goods) or to reject the goods for a refund (subject to deduction for use in some cases);
  - that the statutory remedies do not prevent the consumer claiming other remedies from the trader where they are available according to general contract law (e.g. damages); and
  - that the trader cannot limit or exclude liability for breaches of the above rights, in most cases.
41. Currently (that is, until Chapter 2 and section 60 of the Act come into force), provisions relating to contracts to supply goods are contained within several different pieces of law. The SGA, the SGSA and the SGITA each contain provisions which apply, depending on the type of contract. Much of the legislation in place prior to the Act coming into force applies to recipients of goods (whether or not they are consumers), but some protections apply only to consumers.

<i>Contract Type</i>	<i>Description</i>	<i>Current applicable legislation (until Act comes into force)</i>
Sale	Supply of goods in exchange for money.	SGA
Conditional sale	Sale where the consumer pays in instalments and only obtains ownership of the goods when the final payment is made (or other conditions are satisfied), although the consumer	SGA

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(c.15) which received Royal Assent on 26 March 2015*

<i>Contract Type</i>	<i>Description</i>	<i>Current applicable legislation (until Act comes into force)</i>
	may use the goods in the meantime.	
Hire purchase	A contract of hire with an option or condition to buy at the end of the hiring period	SGITA
Barter or exchange	Where goods are exchanged for a consideration other than money	SGSA
Work and materials	Where the contract includes both the provision of a service and the supply of associated goods	SGSA
Hire of goods	A contract of hire where there is no intention that ownership of the goods will be transferred	SGSA

42. The current legislation provides that goods must meet certain standards – such as being of satisfactory quality, fit for purpose, corresponding to descriptions or samples by which they are supplied, and being free from third parties’ rights - and provides that the trader must have the right to sell (or hire) the goods. These matters are treated in the current legislation as “implied terms” of a contract. Implied terms are terms that are not expressly set out in a contract (which are “express terms”) but still form part of the contract.
43. The current legislation categorises these implied terms as “conditions” of the contract or “warranties” (save in relation to Scotland as this terminology does not apply in Scots law, but the legislation provides an equivalent effect). Most of the statutory implied terms are categorised as conditions, breach of which enables the consumer to choose either to treat the contract as terminated or to continue with the contract (i.e. keep the goods) but claim damages. The implied terms regarding goods being free from third parties’ rights are classified as “warranties”, where a breach is relatively less serious but could give rise to a claim for damages. The current legislation also sets out statutory remedies for consumers, where the implied terms regarding quality, fitness for purpose and corresponding to descriptions or samples are breached in contracts other than for hire or hire purchase. The statutory remedies are repair or replacement of goods, followed in some circumstances by termination of contract or receiving an appropriate reduction from the price.
44. In 2008 the Law Commission and Scottish Law Commission consulted on “Consumer Remedies for Faulty Goods”, and published a report in 2009. Some of the provisions in this Chapter build on the Law Commissions’ recommendations.
45. In 2010 the Department for Business, Innovation and Skills (“BIS”) commissioned a report, entitled “Consolidation and Simplification of UK Consumer Law”<sup>1</sup> to examine how existing consumer law might be consolidated and simplified to make it more accessible to consumers, business and their advisers. That report recommended that consumer contract law would be improved if many of the provisions could be brought

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<sup>1</sup> The report was authored by Professor Geraint Howells and Professor Christian Twigg-Flesner available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/31838/10-1255-consolidation-simplification-uk-consumer-law.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31838/10-1255-consolidation-simplification-uk-consumer-law.pdf)

together into a single consumer contract law that so far as possible subjected all consumer supply contracts to the same rights and remedies. The report recommended that the remedies for goods would be made clearer and more accessible by incorporating them into a single piece of legislation and aligning the remedies as much as possible.

46. Following these reports, BIS consulted in July 2012 on proposals for reform of the law regarding contractual supplies to consumers of goods, as well as of services and digital content. This consultation included proposals building on the 2009 and 2010 reports.
47. A draft Bill was published in June 2013<sup>2</sup> and scrutinised by the House of Commons Business Innovation and Skills Committee. The Committee published its report in December 2013<sup>3</sup>.

## **What goods contracts are covered?**

### ***Sections 3-8: Consumer contracts about goods***

48. **Section 3** sets out what contracts are covered by Chapter 2. The provisions contained in this Chapter apply in most cases where a trader agrees to supply goods to a consumer under a contract – such a contract is referred to in the Act as a “contract to supply goods”. Chapter 2 applies whether the goods are supplied immediately or the parties agree that the trader will supply them at a future time. (The terms “trader”, “consumer” and “goods” are addressed in section 2).
49. *Subsection (3)* provides that the Chapter does not apply to certain contracts. Such contracts therefore do not count as “contracts to supply goods”.
50. *Subsection (3)(a)* of section 3 excludes from scope contracts where the goods in question are coins or notes to be used for currency, though coins and notes supplied for another purpose (e.g. bought as a collector’s item) are covered.
51. *Subsection (3)(b)* of section 3 excludes items sold by execution or authority of law. This reflects the CRD and the CSD and excludes from the definition of goods items sold in situations such as a sale by an official under a legal authority to satisfy a debt (e.g. an official authorised to sell off property of a bankrupt).
52. *Subsection (3)(d)* of section 3 serves to prevent a contract from counting as a contract to supply goods and thus the protections under the Act from applying if the agreement is not supported by consideration other than being executed as a deed (as under the law of England and Wales and of Northern Ireland, a contract lacking consideration will only be enforceable if it is made as a deed, a written document whose signature involves certain limited formalities). The meaning of “consideration” is set out in paragraph 31. This subsection does not apply to Scotland. *Subsection (3)(e)* applies in relation to Scotland, as contracts may be gratuitous under Scottish law, which does not require consideration in order to form a contract. The provisions of this Chapter apply only where a contract is not gratuitous; that is, where both parties give something.
53. Under *subsection (5)*, contracts to supply goods also fall within the scope of this Chapter if they involve the transfer of a share in the goods, whether between current owners or if one owner transfers their share to a third party.
54. Whilst this Chapter applies to contracts for the supply of goods, there is some variation in how particular provisions apply according to the contract type (for example some of the provisions apply in a different way to hire contracts as the consumer is not paying for ownership of the goods, but for use of them). *Subsection (6)* indicates that more specific provisions for the particular contract types take precedence.

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<sup>2</sup> Draft Consumer Rights Bill (URN: BIS/13/925)

<sup>3</sup> Draft Consumer Rights Bill; sixth report of session 2013-2014

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55. *Subsection (7)* provides that with regard to any of the specific types of contracts defined in the following sections, the provisions apply whether goods are supplied alone or alongside a service and/or digital content.
56. [Section 4](#) defines “ownership of goods” as referred to in Chapter 2 as being the general property in goods, which is the right over goods which an absolute owner has. It can be contrasted with more limited “special property” in a thing, which means that the person with special property can only put the item to a particular use rather than having absolute rights of ownership. The general rule is that ownership of the goods transfers to the consumer when the parties intend it to do so. The intention to transfer the ownership of the goods from the trader to the consumer will be dependent on the terms of the contract, what has been decided between the trader and the consumer and the circumstances of the case. The definition of “ownership of goods” is consistent with the meaning of “property” in goods under the SGA.
57. Section 18 of the SGA sets out the rules (for contracts of sale, to which the SGA applies) for ascertaining intention as to the time that ownership transfers, unless a different intention appears from the contract or circumstances. Section 4 points to this and other specific provisions in the SGA (sections 16 to 19, 20A and 20B) about the passing of property, which will apply for determining when ownership of goods is transferred under a contract of sale of goods (that is, a contract to which SGA applies).
58. [Sections 5 to 8](#) define the types of contract to supply goods to which particular provisions apply, or apply differently.
- Section 5 defines “sales contracts”. This is consistent with the category of “sales contract” under the CRD and certain provisions of this Chapter which derive from the CRD therefore apply to this category of contracts. For a contract to supply goods to be a sales contract, the goods must have a monetary price. The strict legal position may be that a contract where the trader agrees to accept something other than cash, i.e. loyalty points, could be a sales contract but under the Act sales contracts and contracts for the transfer of goods both attract the same rights under sections 9-18 and remedies under sections 19-24. Under section 3(7) the category of “sales contracts” includes contracts under which services or digital content are provided as well as the contract being for transfer of goods.
  - *Subsection (2)* of section 5 clarifies that a contract where the trader agrees to manufacture or produce the goods is a sales contract. For example, where a tailor produces a made-to-measure suit for a consumer, the contract between tailor and consumer would still be a sales contract for the finished suit.
  - *Subsection (3)* of section 5 clarifies that the category of sales contract includes conditional sales contracts where goods are paid for in instalments and the trader retains ownership of the goods until the conditions in the contract have been met, whether the consumer has possession of the goods in the meantime or not.
  - Section 6 defines contracts for the hire of goods, as they apply between a trader and a consumer. The meaning of this provision is consistent with the definitions under sections 6 and 11G of the SGSA (save that it applies only to trader to consumer contracts, as does all of this Part of the Act), but the opportunity is being taken to simplify the wording. A contract for the hire of goods is covered by the Act irrespective of the consideration given by the consumer i.e. whether the consumer pays cash or exchanges goods in return (provided that the contract falls within section 3).
  - Section 7 defines hire-purchase agreements for goods, as they apply between a trader and a consumer. This is consistent with the definitions in section 189 of the Consumer Credit Act 1974 and section 15 of the SGITA, save that it applies only to trader to consumer contracts (as does all of this Part of the Act).

- Section 8 defines contracts for transfer of goods by a trader to a consumer which are not sales contracts or hire-purchase agreements. A contract would be a contract for transfer rather than a sales contract if either (i) there is no monetary value assigned, or (ii) the contract is a mixed contract whether for a monetary price or not and, whilst goods are supplied, the transfer of goods is not sufficiently central to the contract to be a sales contract. If no monetary value is assigned to the goods, this does not preclude money from forming part of the consideration of the contract. For example, if the trader offers goods A in exchange for goods B and a cash fee, no value has been assigned to either goods A or B so the contract would fall under section 8, despite some money changing hands. The statutory rights under chapter 2 (see sections 9-18) are the same for sales contracts and contracts for transfer.

### **What statutory rights are there under a goods contract?**

59. [Sections 9 to 17](#) set out requirements which the goods supplied, or the trader, must meet. Under sections 9 to 14 and 17, the contracts are to be treated as containing terms that the relevant requirements will be met - or, in the case of section 12, certain details are to be treated as a term of the contract. That is to say that the requirements set by these provisions form part of the contract without either party needing to refer to them.
60. [Sections 9 to 11](#) and [13 to 15](#) re-transpose Article 2 of the CSD, regarding conformity of goods with the contract. The original transposition was made in the [Sale and Supply of Goods to Consumers Regulations 2002 \(SI 2002/3045\)](#) which amended the SGA and the SGSA. (A transposition note setting out how the main elements of this Directive are transposed in the Act is annexed to these explanatory notes – please see Annex B).

### ***Section 9: Goods to be of satisfactory quality***

61. This section provides that goods supplied under a contract to supply goods (as defined in section 3 above) must be of satisfactory quality. It details aspects of quality which may be considered when assessing whether the goods are satisfactory – although the section only gives an indication of such aspects, not an exhaustive list. This section corresponds to section 14 SGA, section 10 SGITA and sections 4, 9, 11D and 11J SGSA in so far as they relate to satisfactory quality. But as with all of this Part it only relates to trader to consumer contracts.
62. *Subsection (2)* provides that the test of whether or not the quality of the goods is satisfactory is determined by what a reasonable person would consider satisfactory for the goods in question, taking into consideration all relevant circumstances including any description, the price and any public statements by the trader or producer or their representatives, such as statements made in advertisements or on the labels of goods. For example, a lower standard might be expected of cheap or disposable goods in comparison to an equivalent item that cost more or was advertised as being particularly durable.
63. *Subsections (5) and (6)* provide that the circumstances to be considered include public statements about the goods, for example, any claims made in advertising or labelling. However, under *subsection (7)* such statements are not to be considered as relevant if the trader was not (and could not reasonably have been expected to be) aware of the statement or if the statement was withdrawn or corrected before the contract was made. The statement is also not to be considered if the consumer's decision could not have been influenced by it.
64. *Subsection (4)* provides that if the consumer is made aware of a particular defect before making the contract then that defect will not be grounds for finding the goods to be unsatisfactory. If the consumer examined the goods before making the contract then a defect which should have been revealed by the examination will not be grounds for finding the goods to be unsatisfactory. If the goods were supplied by sample (even if the consumer did not actually examine the sample) then a defect which should have been

revealed by a reasonable examination of the sample will not be grounds for finding the goods to be unsatisfactory.

### ***Section 10: Goods to be fit for particular purpose***

65. This section provides that if a consumer acquires goods for a specific purpose, and has made this purpose known to the trader beforehand, the goods must be fit for that purpose unless the consumer does not rely - or it would be unreasonable for the consumer to rely - on the skill or judgement of the trader. This section corresponds to section 14(3) SGA, section 10(3) SGITA and sections 4(4)-(6), 9(4)-(6), 11D(5)-(7) and 11J(5)-(7) SGSA, but as with all of this Part it only relates to trader to consumer contracts.
66. *Subsection (2)* makes similar provision for transactions in which the consumer makes the purpose known to a credit broker but actually contracts with another party. For example, a consumer buying goods in a store on a payment plan may make a contract with a finance company (which would be the trader) which is introduced by the store (as credit-broker), with the store selling the goods to the finance company in order for it to sell them to the consumer. In this situation, if the consumer makes the specific purpose known to the salesperson in the store (the credit-broker) that is sufficient and the goods must be fit for that purpose - there is no need for the consumer to also have made it known to the credit provider. "Credit-broker" is defined in section 59.

### ***Section 11: Goods to be as described***

67. This section provides that where goods are supplied by description, the goods must be as described. Goods can be supplied by description even if they are available for the consumer to see and select, for example on the shelves of a shop. This section corresponds to section 13 SGA, section 9 SGITA and sections 3, 8, 11C and 11I SGSA, but as with all of this Part it only relates to trader to consumer contracts.
68. This section also, through *subsections (4) and (5)*, provides that certain information required by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("the 2013 Regulations"), which implement the CRD, forms part of the contract. These regulations require traders to provide certain information to consumers before consumers are bound by a contract. The information required by paragraph (a) of Schedule 1 or 2 of these regulations relates to the main characteristics of the goods. The section establishes that any information that is provided by the trader and that is about the main characteristics – so is of a category mentioned in paragraph (a) of Schedule 1 or 2 of the 2013 Regulations - forms part of the contract. If the information regarding the main characteristics is not complied with, the consumer can pursue the protections for breach of section 11, as set out in section 19.
69. *Subsection (5)* makes clear that any change made to this information before entering into the contract or at a later date will not be effective on the contract unless agreed by both the trader and the consumer (although it may not be necessary to do so where the pre-contract information itself reflects the fact that the particular potential changes envisaged may be made). Nor can the parties agree a change which would deprive the consumer of his or her rights under this Chapter (see section 31).
70. *Subsection (6)* makes clear that the provisions of *subsections (4) and (5)* apply to a contract for sale of second hand goods which are sold at a public auction, if individuals can attend the auction sale in person. Most of the provisions of Chapter 2 do not apply in these circumstances, as explained further in relation to section 2(5).

### ***Section 12: Other pre-contract information included in contract***

71. This section establishes that any other information provided by the trader which is of a category mentioned in Schedule 1 or 2 of the 2013 Regulations, but which does not relate to main characteristics of the goods so does not fall under section 11, also forms part of the contract between the trader and the consumer. If this information is not

accurate then the consumer may recover some money – see section 19(5) - but the other remedies (right to reject, repair, replacement etc) are not available.

72. *Subsection (3)* makes clear that the trader will not however be able to change this information without the consumer's agreement (although it may not be necessary to do so where the pre-contract information itself reflects the fact that the particular potential changes envisaged may be made), so there would be a breach of contract if the information provided was not correct when the contract was made. Nor can the parties agree a change which would deprive the consumer of his or her rights under this Chapter (see section 31).
73. *Subsection (4)* makes clear that the provisions of this section apply to a contract for sale of second hand goods which are sold at a public auction, if individuals can attend the auction sale in person. Most of the provisions of Chapter 2 do not apply in these circumstances, as explained further in relation to section 2(5).

### ***Section 13: Goods to match a sample***

74. Under this section, if a consumer enters into a contract for goods on the basis of a sample, the final goods delivered must match the sample, except that any differences brought to the consumer's attention before the contract is made would not breach this requirement. This differs from the following section (Goods to match a model seen or examined) in that a sample is usually only a representative part of the whole goods in question. An example is a consumer buying curtains after having looked at a swatch of the material. This section replaces section 15 SGA, section 11 SGITA and sections 5, 10, 11E and 11K SGSA for trader to consumer contracts.
75. Where goods are held out as a sample then section 13 will be breached if the full goods supplied do not match that sample or they have a defect which makes their quality unsatisfactory (under section 9) and which the consumer would not have discovered by a reasonable examination of the sample goods.

### ***Section 14: Goods to match a model seen or examined***

76. This section establishes that if the trader displays or provides a model of the goods in question, then the goods received should match that model, except that any differences brought to the consumer's attention before the contract is made would not breach this protection.
77. An example is a consumer viewing a television on the shop floor but receiving a boxed television from the stockroom. Under this section the delivered model should match the viewed model (unless any differences are brought to the consumer's attention before it is bought).

### ***Section 15: Installation as part of conformity of the goods with the contract***

78. **Section 15** makes clear that special rules apply where goods are both supplied and installed by a trader (or the installation is done under that same trader's responsibility). In that case, if the installation service is done incorrectly then the goods remedies apply, with the exception of the short-term right to reject.

### ***Section 16: Goods not conforming to contract if digital content does not conform***

79. **Section 16** makes clear that special rules also apply where goods and digital content are supplied together in one product (e.g. where digital content is supplied on a disk). In that case, section 16 makes clear that if the digital content rights are not met then this will mean the goods are substandard and the consumer has the right to the full suite of goods remedies (including the short-term right to reject).

***Section 17: Trader to have right to supply the goods etc***

80. This section protects the consumer by making it a term of the contract that the trader has the right to sell or transfer the goods or to transfer possession of them, at the point when the transfer of ownership or possession takes place. In some transactions, the sale, transfer or hire will be immediate so the trader will need to have this right at the time the contract is made. In other cases, the parties may agree that the goods will be sold, transferred or hired at a later stage – the trader must have this right at that later time. This section corresponds to section 12 SGA, section 8 SGITA and sections 2, 7, 11B and 11H SGSA. But as with all of this Part it only relates to trader to consumer contracts. The general rule is that ownership transfers when the parties intend it to transfer. For contracts of sale (that is, contracts to which SGA applies), rules on establishing the parties’ intention as to the time ownership transfers - unless a different intention arises from the contract or the circumstances - are found in SGA, in particular section 18 (note, however, that legislation refers to “property” as opposed to “ownership” though the meaning is the same). See the notes on section 4 for further information.
81. The section also guarantees that no other person should have rights over the goods (e.g. a right to use the goods) unless the consumer is made aware of this before making the contract and that the consumer’s possession of the goods should not be disturbed by anyone with rights over the goods (except any rights of which the consumer is made aware). These protections do not apply to hire contracts.
82. In the case of hire contracts, there will be other parties with rights over the goods – for example, the goods will be owned by someone other than the consumer, as the consumer is not contracting to own the goods but only to use them. Under *subsection* (3), the consumer’s use of the goods may only be interrupted by the owner of the goods or by any third party with rights over the goods if the consumer has been informed of that person’s rights over the goods before making the contract.
83. This section does not affect the protection for private purchasers of motor vehicles under section 27 Hire-Purchase Act 1964. Under that provision, where a private purchaser buys a motor vehicle from someone who has it subject to a hire-purchase agreement or conditional sale agreement and does not yet properly own the vehicle (because it is still under the hire-purchase or conditional sale agreement), then, if the private purchaser is a purchaser in good faith and without notice of the hire-purchase agreement or conditional sale agreement, the transaction is treated as if the person selling the vehicle did properly own it.

***Section 18: No other requirement to treat term about quality or fitness as included***

84. This section corresponds to section 14(1) of the SGA, but for contracts between a trader and consumer. The section serves to state that, unless there is an express term concerning the quality of the goods or the goods’ fitness for a particular purpose, or a term implied by another enactment, the contract should not be treated as including any such terms, other than those set out in sections 9, 10, 13 and (where it applies) 16.

**What remedies are there if statutory rights under a goods contract are not met?**

85. [Sections 19 to 24](#) set out the remedies that apply if the consumer’s statutory rights covered in sections 9 to 17 are not met.
86. [Sections 19](#) and [23 to 24](#) re-transpose Article 3 of the CSD (originally transposed by the Sale and Supply of Goods to Consumers Regulations 2002 which amended the SGA and the SGSA). (A transposition note setting out how the main elements of this Directive are transposed in the Act is annexed to these explanatory notes – please see Annex B).



**Section 19: Consumer's rights to enforce terms about goods**

87. Depending on the statutory right which is breached, the consumer may have a short-term right to reject, a right to have the goods repaired or replaced and/or (if this is not possible or fails to address the fault) a right to have the purchase price reduced (and keep the goods) or a final right to reject the goods, or a right to recover certain costs. *Subsections* (1) and (3) to (6) outline these rights and also serve to signpost the reader to the relevant sections that detail these remedies and their application.
88. *Subsection* (2) makes clear that if a statutory right is breached due to the goods not conforming to the relevant term (e.g. to be of satisfactory quality), if the non-conformity is due to the materials supplied by the consumer, then this does not count as a failure to conform to the contract.
89. *Subsection* (5) makes clear that if the trader is in breach of any pre-contract information required to be treated as part of the contract by section 12, the consumer has the right to recover any costs which they incurred as a result of the breach. The consumer can recover the amount of these costs up to the full price of the goods (so they could receive a full refund), or the full amount they already paid (if they had only paid in part for the goods). This applies equally where there is other consideration given instead of a price – the cap on the recoverable costs would be the value of that consideration. If the consumer incurs costs or losses above this amount, they may be able to seek damages for breach of contract (see *subsection* (9)).
90. Under *subsection* (6), if the requirement for the trader to have the right to sell or transfer the goods or possession of them (section 17(1)) is breached, the consumer has a right to reject the goods, as described further in section 20. The right to reject in this instance is not a short-term right to reject nor a final right to reject, therefore section 22 and section 24 respectively do not apply. The other rights provided by section 17 – that no other person should have rights over the goods, unless the consumer is made aware of this before making the contract and that the consumer's possession of the goods should not be disturbed by anyone with rights over the goods – are covered by *subsections* (9) and (10), as breach of these rights does not give rise to a right to reject or the other statutory remedies, but the consumer may seek damages.
91. *Subsection* (7) makes clear that the availability of remedies specified in *subsections* (3) to (6) is subject to the particular rules for delivery of the wrong quantity and instalment deliveries in sections 25 and 26. If a trader delivers the wrong quantity of goods then the remedies will be determined by section 25. If the parties agree that the goods will be delivered in instalments, any entitlement to exercise the short-term right to reject or the right to reject under section 19(6) will be determined in accordance with section 26.
92. *Subsection* (8) states that the remedies for a breach of a term in the contract about the time or period for the delivery of goods are set out in section 28.
93. *Subsections* (9) and (10) serve as a reminder that the statutory remedies set out in section 19 do not mean the consumer cannot pursue other remedies, as an alternative or addition to the statutory remedies but the consumer may not recover more than once for the same loss. For example, in some cases the consumer may exercise the short-term right to reject and receive a refund, and also claim damages for additional loss caused by the non-conformity of the goods. In other cases, a consumer may prefer to claim damages instead of pursuing one of the statutory remedies.
94. *Subsection* (11) outlines the other common law remedies that the consumer may be able to seek, such as claiming damages or relying on the breach to relieve the consumer of the obligation to pay the price or some of it (essentially setting the breach off against the price), and that the consumer may pursue equitable remedies. For a breach of an express term (that is a term which the parties expressly agree to) the consumer may be able to treat the contract as at an end, depending on the status of that term. For example, if the consumer and the trader agree an express term in the contract that is so important

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that a subsequent breach of that term by the trader would leave the consumer deprived of substantially the whole benefit that was intended from the contract, the consumer could treat the contract as at an end.

95. *Subsection* (12) provides that the consumer is only entitled to treat the contract as at an end for breach of one of the statutory rights in sections 9-11, 13-16 or 17(1) by exercising a right to reject under Chapter 2. This overrides any common law right to terminate the contract for breach of the terms which these sections require to be treated as included in the contract.
96. *Subsection* (13) clarifies that references in Part 1 to treating a contract as “at an end” have the same meaning as treating a contract as “repudiated”. This means that, where a consumer treats a goods contract as at an end under the Act, the consumer may also be able to recover damages for non-performance of the whole contract by the trader.
97. *Subsections* (14) and (15) provide that, if a breach of the statutory rights – for example a fault - arises in the first 6 months from delivery, it is presumed to have been present at the time of delivery unless the trader proves otherwise or this presumption is incompatible with the nature of the goods or the particular breach or fault. This applies where the consumer exercises their right to a repair or replacement or their right to a price reduction or the final right to reject. This does not apply where the consumer exercises the short-term right to reject. These subsections correspond to section 48A(3) and (4) of the SGA and section 11M(3) and (4) of the SGSA.
98. For goods, sections 19 and 20 provide that in certain situations the consumer has the right to terminate the contract and receive a refund. Where the contract is a mixed contract with a goods element, this means (unless the contract is severable, see paragraph 100 below) that the consumer has the right to terminate the whole contract (both the goods and non-goods elements) and receive a refund of the price of the contract (or for money already paid towards the full price of the contract). If the consumer wishes to continue part of the contract, it is open to the parties to agree to do so.
99. For example, a consumer contracts with a trader to source for them and then install a kitchen. When the trader has finished the work, the granite worktops (the goods) are badly scratched and not fit for purpose. The consumer may ask for their money back, that is any money paid for both the installation service and the kitchen units.
100. As a further example, a consumer purchases a mobile phone handset (goods) with a network service contract. The phone keeps crashing so they return it to the trader. The consumer has the right to ask for a refund for both the phone and service, however in practice they may want to continue with the service to use with another phone, and the consumer and trader could agree to that. The consumer’s right to terminate a whole contract (as explained in paragraph 98) is subject to the rules on severable contracts which are explained in paragraphs 119 to 121 below (and in paragraph 124 where partial rejection is concerned).
101. In summary, the statutory remedies that potentially apply for breach of the consumer’s statutory rights are as follows:

<i>Statutory right being breached</i>	<i>Statutory remedies that may apply</i>
Goods to be of satisfactory quality (section 9)	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Goods to be fit for particular purpose (section 10)	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> </ul>

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<b><i>Statutory right being breached</i></b>	<b><i>Statutory remedies that may apply</i></b>
	<ul style="list-style-type: none"> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Goods to be as described (section 11), including conforming to information re material characteristics under the CRD	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Conformity with contract information provided pursuant to the 2013 Regulations (section 12)	<ul style="list-style-type: none"> <li>• The right to recover costs incurred, up to the contract price (section 19(5))</li> </ul>
Goods to match a sample (section 13)	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Goods to match a model seen or examined (section 14)	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Incorrect installation of goods (by trader or under trader's responsibility) (section 15)	<ul style="list-style-type: none"> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Goods not conforming to contract if digital content does not conform (section 16)	<ul style="list-style-type: none"> <li>• The short-term right to reject (sections 20-22)</li> <li>• The right to repair or replacement (section 23)</li> <li>• The right to a price reduction or the final right to reject (section 24)</li> </ul>
Trader to have right to sell or transfer the goods or to transfer possession (section 17(1))	<ul style="list-style-type: none"> <li>• The right to reject (section 20)</li> </ul>
Goods to be free from any charge or encumbrance not disclosed or known (section 17 (2) and (5))	<ul style="list-style-type: none"> <li>• Statutory remedies do not apply but consumers may claim damages (section 19(9) and (10))</li> </ul>
Consumer to enjoy quiet possession of the goods (section 17(2), (3), (6) and (7))	<ul style="list-style-type: none"> <li>• Statutory remedies do not apply but consumers may claim damages (section 19(9) and (10))</li> </ul>

102. As set out above, the terms that are to be treated as included in the contract in sections 9-17 are contractual terms and if they are not met it means there is a breach of contract. The common law (that is, law that is set out in cases decided by judges) already provides certain remedies for breach of contract. Subsections (9) to (11) of section 19 serve as a reminder that the consumer may – instead of (or, in some cases, in addition to) pursuing the statutory remedies set out in section 19 and subsequent sections – seek common law or other (equitable) remedies. These may include damages, specific performance or (in Scotland) specific implement, or a right to treat the contract as terminated for breach of an express term in some cases (see also paragraph 94).
103. "Damages" refers to the common law remedy of financial compensation paid by one party to the other. For example, where a trader is in breach of a term that this Part requires to be treated as included in a contract, the court may order the trader to pay damages to the consumer. Generally, an award of damages for breach of contract is

intended to compensate the injured party for loss suffered. In some, less frequent, cases the court may award damages which go beyond simply compensating the consumer for loss suffered – e.g. a court can sometimes award nominal damages, where there is a breach of contract but no loss, or aggravated damages to compensate for mental distress. For a breach of a term that this Part requires to be treated as included in the contract, the general rule is that damages are intended to put the consumer in the same position as if there had not been a breach. The level of damages awarded will depend on the specific circumstances and the term which the trader has breached. Typically, damages would cover the estimated loss directly resulting from the breach, in the ordinary course of events: if the consumer keeps the goods, this would generally be the difference between the value of the goods, service or digital content received by the consumer and the value had there not been a breach. Damages may cover loss or damage caused by the faulty goods, for example, where a faulty washing machine damages clothing while in use. There are legal tests to be satisfied for a consumer to recover damages: a person can only recover damages for loss which was caused by the breach (of the term required by the Act) and which was sufficiently foreseeable; and the consumer cannot recover for loss which they could reasonably have acted to limit or mitigate.

104. “Specific performance” is a direction a court can make, to compel a party to perform their obligations under a contract. It is an equitable remedy, meaning it is not available to consumers as a right, but at the court’s discretion. It will not be ordered if damages (see above) are adequate to compensate the consumer – generally, damages will be adequate unless the subject matter of the contract is unique, as the consumer can use damages to buy a replacement. “Specific implement” is similar to “specific performance” for Scotland, and there are likewise specific circumstances where that may be used. In referring to specific performance or specific implement, this section does not seek to codify the law as to when specific performance or specific implement might be available, but the references serve as a reminder that it may be an alternative remedy to the statutory remedies. Section 58 gives more detail on the powers of the court in proceedings where a remedy is sought.
105. Under the law of England and Wales and of Northern Ireland, claims for breach of contract are subject to a limitation period of six years from the date of the breach of contract, whereas in Scottish law the limitation period is five years. Because the protections provided under this Part of the Act operate on the basis of contract law, the consumer has 6 years (or 5 years in Scotland) within which they may pursue remedies for breach of one of the statutory rights. This does not mean that a consumer may seek a remedy under the Act for any fault arising in goods at any time in the six (or five) years following delivery, but only if one of the statutory rights is breached. The statutory right under section 9 (goods to be of satisfactory quality) will only be breached if goods are not of the standard which a reasonable person would consider to be satisfactory, taking into account circumstances including the price and any description given. This test of reasonableness is provided under section 9(2). For example, the statutory right may not be breached and so a consumer would not be able to obtain a remedy if, say, a very cheap kettle stopped working fully after four years, as a reasonable person might not expect a bottom of the range kettle to last that long.

### ***Section 20: Right to reject***

106. This section serves to explain the remedies of short-term right to reject, final right to reject and the right to reject under section 19(6), and how these operate.
107. The section establishes that when the consumer has one of these rights to reject and chooses to exercise it, this means rejecting the goods and terminating the contract. The section also provides what the consumer must do to exercise the right.
108. *Subsection (5)* sets out what the consumer must do to exercise one of these rights: they must indicate to the trader that they are rejecting the goods and treating the contract as at an end.

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109. *Subsection (6)* clarifies that, as long as the meaning of the indication is clear, it does not matter what form it takes.
110. *Subsection (7)* provides that when the right to reject is exercised by the consumer, the trader has a duty to refund the consumer and from this time the consumer must make the goods available for collection by the trader, or if agreed, return the rejected goods to the trader.
111. *Subsection (8)* clarifies that any reasonable costs of returning rejected goods to the trader (except where the consumer returns the goods in person to where they obtained physical possession of them) is to be borne by the trader. This includes the trader paying postal costs. This applies whether or not the consumer has agreed to return the goods, as mentioned in *subsection (7)*.
112. *Subsection (8)* does not prevent a consumer from pursuing a damages claim. For example, a consumer might wish to do so in circumstances where returning the goods to the place that the consumer obtained physical possession of them does incur quite substantial costs for the consumer.
113. *Subsection (10)* provides that where a refund is to be provided and the original payment (or part of it) was made with money, the consumer is entitled to money back for the money they paid, so the trader may not substitute store vouchers, credit or an equivalent in place of the required monetary refund.
114. If money was not used to pay for the goods, under *subsections (11)* and *(12)*, the consumer is not entitled to money back but the “refund” would be a return of whatever the consumer gave in exchange for the goods (see examples below). If this cannot be returned to the consumer due to the nature of the exchange, then, under *subsection (18)* and *(19)*, the consumer may not demand a refund but may pursue a damages claim. The consumer still has a “right to reject” (that is, to reject the goods and treat the contract as at an end) in this situation, but the means of obtaining money back is different. Examples of situations where these subsections may apply include:
- A toy “bought” with vouchers collected from cereal packets. In this case it would be possible to return equivalent vouchers (even though they would not necessarily be the actual vouchers that the consumer cut out) and a “refund” could therefore take that form under *subsection (11)*.
  - A microwave supplied to the consumer by a trader specialising in refurbishment of white-goods, in exchange for the consumer’s old fridge-freezer. In this case, if the fridge-freezer was still available in an unchanged state, then this could be returned to the consumer as a “refund” under *subsection (12)*, but if it was no longer available, or had been refurbished, then a refund would not be possible.
115. Where money formed part of what the consumer used to pay for the goods but the rest was “paid for” with something else (something non-monetary), the consumer is still entitled to a refund for the money that they paid and return of the other property transferred if possible. The consumer may pursue a damages claim for any loss for which they cannot claim a “refund” (of money or property) under section 20.
116. *Subsection (13)* provides that, in the specific case of hired goods, the consumer may not claim a refund on any money paid (or whatever was transferred in place of money) for hire that the consumer enjoyed. Any refund will only cover money paid for a period of hire that was lost due to the contract being ended. For example, if a consumer hired goods for 1 month and paid in advance, but after 3 weeks a fault manifested so the consumer exercised their short-term right to reject, the consumer would only be able to seek a refund for the remaining 1 week when the goods would not be used. The consumer may also have a claim in damages to compensate them for some of the hire charges paid during the period in which the consumer had the faulty goods but before they rejected them. Under *subsection (18)(c)*, if something other than money was transferred in exchange for the hire of the goods, and this cannot be divided to

account for the time that the consumer has not had use of the goods, no refund may be pursued. The consumer could instead claim damages. If what the consumer transferred can be divided but not into the portion to which the consumer would be entitled under subsection (13), a refund of the division can be pursued, even if this is less than the proportional amount transferred by the consumer for the period of use of the goods. The consumer could then claim damages for the remainder.

117. *Subsection* (14) establishes that for contracts other than hire, and where payments for the goods are made over time (conditional sale and hire purchase contracts), any claim for a refund can only be made against money that has already been paid up to that point. For example if a £500 washing machine was found to be faulty after the consumer had paid £350, the maximum refund would be £350.
118. *Subsection* (15) requires a trader to provide any refund due to the consumer without undue delay and at the latest within 14 days from when the trader agrees that the consumer is entitled to it. For example, if a consumer rejects goods because of a technical fault which cannot be seen without testing or detailed examination, the 14-day period would start once the trader had carried out the appropriate tests and found the goods were indeed faulty. In contrast, if it was clear from looking at the goods that they breached the relevant requirement under the Act, there is unlikely to be any reason for the trader not to agree immediately that the consumer is entitled to a refund. In any case, there must be no undue delay, so the trader could not delay payment unnecessarily, for example in order to wait for time-consuming tests which are completely irrelevant. *Subsection* (16) provides that, where the consumer paid money under the contract, the refund must be given in the same form as the original payment unless the consumer agrees otherwise. For example, a consumer who paid cash should receive cash rather than, say, a cheque unless they agree to this. Under *subsection* (17), no fee may be charged for the provision of a refund.
119. *Subsections* (20) and (21) clarify how rejection of goods works where a contract is severable. That is where the contract was intended to be divisible, so different parts of the consideration can be assigned to different parts of the performance – e.g. an agreement to pay pro-rata for some goods supplied, no matter whether others are supplied.
120. Where a contract is severable, if the fault is with goods in one part of the contract, the consumer has a right to reject those goods and effectively terminate that part of the contract. Beyond that it is a question of the circumstances as to whether the consumer may or may not reject other goods and effectively terminate the whole of the contract.
121. *Subsections* (20) and (21) do not apply in relation to Scotland.

### ***Section 21: Partial rejection of goods***

122. This section clarifies the consumer's rights around partial rejection of goods. If the consumer has the right to reject the goods because some or all of them do not conform to the contract then the consumer can reject some or all of them. If the consumer rejects only some of the goods they cannot reject any of the goods which do conform to the contract. That is, the consumer can:
  - reject all of the goods (conforming and non-conforming);
  - reject all of the non-conforming goods (but none of the conforming goods); or
  - reject some of the non-conforming goods (and keep some of the non-conforming goods and all of the conforming goods).
123. If the consumer has the right to reject an instalment of goods because some or all of them do not conform to the contract, then the consumer can reject some or all of the goods in the instalment. If the consumer rejects some of the goods they cannot reject any of the goods in the instalment which do conform to the contract.

124. If the contract is severable and the consumer has the right to reject goods supplied under one part of the contract because they do not conform to the contract, then the consumer can reject some or all of those goods. If the consumer chooses to reject only some of the goods they are entitled to reject, they cannot reject any of those goods which do conform to the contract.
125. In this section, conforming to the contract means conforming to any of the requirements of the contract. This includes conforming to all of the terms which the Act requires to be treated as included in a contract to supply goods, including under section 17. In this way, conforming to the contract has a wider meaning than in sections 19 and 22-24, which do not cover conformity to the terms required by section 17.
126. The provision is in effect consistent with section 35A of SGA, although section 35A provides that acceptance of some goods does not prevent rejection of others, whereas that concept of acceptance does not apply under the Act. This section therefore provides clarity that the consumer nonetheless has equivalent rights to reject in part.
127. *Subsections* (3) and (4) correspond to section 35(7) of the SGA and provide that where the goods form part of a “commercial unit” (defined in subsection (4)) the consumer may not reject some of the goods in that unit but keep others. For example, if furniture was sold as a three-piece-suite, but there was a fault with one of the chairs, the consumer would not be entitled to reject only the chair.

### ***Section 22: Time limit for short-term right to reject***

128. This section establishes the minimum time limit of 30 days for the short-term right to reject. The one exception (established under *subsection* (4)) is that for perishable goods which would not be reasonably expected to last longer than 30 days, the period for exercising the short-term right to reject lasts only as long as it would be reasonable to expect those goods to last.
129. The 30 day period begins the day after the latest of the following:
- The consumer obtains ownership of the goods (i.e. the consumer buys the goods) or, for hire, hire-purchase or conditional sales, obtains possession.
  - The goods have been delivered.
  - If applicable, the trader has notified the consumer that any actions required before the goods may be used (including installation, if needed) have been completed by the trader.
130. This section also provides that the 30 day period will not run during any repair or replacement (the waiting period). On return of the goods to the consumer, the consumer has the remainder of the 30-day period, or 7 days (whichever is longer), within which they can still exercise the short-term right to reject if the goods still breach the standards set by the Act.
131. *Subsection* (8) details when the waiting period starts and ends. The period starts on the day the consumer requests the repair or replacement and ends on the day that the consumer receives the repaired or replacement goods.

### ***Section 23: Right to repair or replacement***

132. This section details a consumer’s right to insist on repair or replacement of faulty goods, the cost of which must be borne by the trader. This includes the trader bearing any costs involved in the removal of an installed item and reinstallation of a replacement. A replacement would usually need to be identical, that is of the same make and model and if the goods were bought new then the replacement would need to be new.
133. Once the consumer has opted for a repair or replacement of the goods, he or she may not ask for the other of these, or exercise the short-term right to reject, without first

allowing the trader a reasonable time to complete that chosen remedy. However, if waiting a reasonable time would cause the consumer significant inconvenience then the consumer can pursue an alternative remedy without doing so.

**Section 24: Right to price reduction or final right to reject**

134. This section provides for the consumer's rights to reduction of the purchase price or to reject the goods and obtain a (partial) refund. These are generally available if repair or replacement of the goods has not been possible or has not corrected the fault. Under *subsection (4)*, if the consumer transferred something other than money for the goods, and the thing transferred cannot be returned in the same state or divided sufficiently to give back to the consumer the appropriate amount the consumer may not seek a reduction in the purchase price.
135. This section largely corresponds to section 48C of the SGA and section 11P of the SGSA, but there are some changes as outlined below.
136. The section provides that, if repair or replacement was impossible or if the consumer's goods continue to be substandard after the consumer has either:
- already undergone one repair or replacement of the goods by the trader; or
  - sought a repair or replacement but this was not carried out within a reasonable time or without significant inconvenience to the consumer,
- the consumer may either:
- keep the goods and insist on a reduction in the price; or
  - reject the goods and obtain a refund which may, in some circumstances, be subject to a deduction to take account of any use the consumer has had of the goods.
137. For the purposes of determining when one repair has been carried out, *subsection (7)* provides that, where the repair is carried out on the consumer's premises, the repair is not complete until the trader indicates to the consumer that the repairs are finished. This means that a single repair may be carried out over more than one visit, without triggering the right to a price reduction or the final right to reject until the trader notifies the consumer that it is complete.
138. Where the consumer requests that a number of faults be repaired, and these repairs are provided together, this counts as a single repair.
139. If the consumer opts to keep the goods and require a reduction in price the question of what is an appropriate amount will depend on the circumstances and the remaining functionality of the goods. It is intended that the reduction in price should reflect the difference in value between what the consumer paid for and the value of what they actually receive, and could be as much as a full refund or the full amount already paid.
140. Where the trader is required to provide a refund because the consumer had paid more than the reduced price, the refund must be provided to the consumer without undue delay and at the latest within 14 days from when the trader agrees that the consumer is entitled to it. Where the consumer paid money under the contract, the refund must be given in the same form as the original payment unless the consumer agrees otherwise. No fee may be charged for the provision of a refund. (See paragraph 118 for further details.)
141. *Subsections (10) to (13)* provide that if the final right to reject is exercised within 6 months of delivery of the goods (or, if later, transfer of ownership or the trader having completed and notified the consumer of any required action), the trader must generally give the consumer a full refund. After the first 6 months, the trader may apply a deduction to the refund to account for the use that the consumer has had. There is an exception if the goods consist of a motor vehicle (as defined in *subsections (12) and*



(13)). In this case a deduction for use may be made in the first 6 months. Vehicles such as mobility scooters (referred to as invalid carriages in other legislation) are excepted from the definition of motor vehicle for these purposes.

142. Subsection (10)(b) provides an order making power to extend the exemption to the 6 month rule to other types of goods. Under *subsections* (14) and (15), the power would be exercisable if the inability to apply a deduction for use to those goods in the first 6 months causes significant detriment to traders. It is subject to the affirmative resolution procedure.

## **Other rules about remedies under goods contracts**

### ***Section 25: Delivery of wrong quantity***

143. This section corresponds to section 30 of the SGA, but is not limited to sales contracts and as with all of this Part it only relates to trader to consumer contracts.
144. This section provides that the consumer may reject the goods if the wrong quantity is delivered, but if they choose to accept the goods then they must pay the contract rate for what they receive. If more is delivered than was contracted for, the consumer has the additional option to reject the excess and keep the contracted amount.
145. This section only entitles the consumer to reject goods: rules of contract law will determine whether or not the contract can be treated as at an end. This reflects the existing position under the SGA.

### ***Section 26: Instalment deliveries***

146. This section corresponds substantively to section 31 of the SGA, but is not limited to sales contracts and as with all of this Part it only relates to trader to consumer contracts.
147. Under this section the consumer is not required to accept delivery in instalments unless they agree to it. If they do agree and one or more of the deliveries is defective (for example because the goods in that instalment are substandard), depending on the circumstances, the consumer may have a right to damages or to reject the goods in the relevant instalment(s), or to treat the whole contract as ended. Which of these rights applies depends on the specific circumstances and must be judged on a case-by-case basis. However, *subsection* (5) provides that, if a delivery of an instalment fails to comply with section 28, it is section 28 that applies, and not section 26.

### ***Section 27: Consignation, or payment into court, in Scotland***

148. This section is based on section 58 of the SGA, but is not limited to sales contracts and as with all of this Part it only relates to trader to consumer contracts.
149. This section applies where a trader is pursuing payment from a consumer for goods that a consumer could otherwise have opted to reject but chose not to, including where the consumer argues, in answer to a demand for payment, that the price should be reduced due to the trader's breach. It provides that a Scottish court may require that consumer to pay the outstanding price (or part of it) to the court or a third party under court authority, or to provide other security. This serves to provide comfort for the trader, that the consumer will pay if the court finds that the consumer is obliged to pay the price.

## **Other rules about goods contracts**

### ***Section 28: Delivery of goods***

150. This section implements Article 18 of the CRD and will replace regulation 42 of the 2013 Regulations. It applies only to sales contracts between traders and consumers for goods. Sales contracts are defined in section 5. If the parties have agreed that the goods are to be delivered in instalments, this section applies to delivery of each instalment.

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“Delivery” is defined in section 59. In addition to section 28, the rules about delivery in section 29 of SGA apply to sales contracts, with the exception of section 29(3) SGA.

151. Under this section, unless a separate agreement is reached between the consumer and trader, the trader must deliver the goods to the consumer and must do so without undue delay and within 30 days after the contract is made.
152. Where the goods are to be delivered immediately at the time the contract is made, this counts as an agreement between the parties as to the time for delivery. Therefore, if goods are not delivered immediately, the consumer is able to terminate the contract if immediate delivery was essential; otherwise, the trader may deliver again within a period specified by the consumer. It is expected that in most cases where a consumer purchases goods expecting to receive them immediately, that immediate delivery will be essential in the circumstances.
153. Where the trader refuses to deliver the goods or delivery within the initial timeframe was essential (either because the consumer told the trader that it was essential or this was implicit from the circumstances) then the consumer may treat the contract as at an end if the trader fails to meet the initial delivery period. The consumer does not have to give the trader a further opportunity to deliver in these circumstances. Examples of goods for which delivery within the initial delivery period might be taken to be essential would include a wedding dress or birthday cake.
154. In cases other than those above then, if the trader fails to deliver the goods on an agreed date or within the 30 days, under *subsection (7)*, the consumer may state a further reasonable timeframe within which the trader is required to deliver the goods.
155. If the trader again fails to deliver the goods in this time frame, then the consumer may treat the contract as at an end.
156. The consumer may choose to reject some of the goods rather than treating the contract as at an end, or, where the goods have not been delivered, the consumer may cancel their order for some or all of those goods. For example, if goods are delivered after the periods required by this section, the consumer may wish to reject some of the goods but keep others, as some may no longer be of use to the consumer. If some goods are delivered on time but others are outstanding, the consumer may wish to cancel the order for some or all of the outstanding goods.
157. *Subsection (14)* makes clear that the provisions of this section apply to a contract for sale of second hand goods which are sold at a public auction, if individuals can attend the auction sale in person. Most of the provisions of Chapter 2 do not apply in these circumstances, as explained further in relation to section 2(5).

***Section 29: Passing of risk***

158. This section determines where risk relating to the goods supplied under a sales contract lies before and after transfer of physical possession of the goods to the consumer. Under the section, the risk lies with the trader until the consumer has physical possession of the goods, at which point risk is transferred to the consumer. However, if the consumer stipulates that the trader must use a carrier of the consumer’s choosing, and that carrier was not offered by the trader as an option, the risk transfers to the consumer at the time that the goods are passed to the carrier.
159. *Subsection (6)* makes clear that the provisions of this section apply to a contract for sale of second hand goods which are sold at a public auction, if individuals can attend the auction sale in person. Most of the provisions of Chapter 2 do not apply in these circumstances, as explained further in relation to section 2(5).

### ***Section 30: Goods offered with a guarantee***

160. This section replaces regulation 15 of the Sale and Supply of Goods to Consumers Regulations 2002. These regulations transposed the CSD and regulation 15 implemented Article 6 of the CSD. This section therefore serves to transpose Article 6 again. Under this section, a guarantee provided alongside the goods without extra charge is legally binding. In particular, the guarantee must:
- be written in plain, intelligible language and, if the goods are offered in the UK, in English,
  - include the name and address of the guarantor,
  - state that the consumer has statutory rights (under this Act) regarding the goods which are not affected by the guarantee,
  - state the duration and territorial scope of the guarantee,
  - state the essential details for making claims under the guarantee, and
  - be made available to the consumer in writing and within a reasonable time.

### **Can a trader contract out of statutory rights and remedies under a goods contract?**

### ***Section 31: Liability that cannot be excluded or restricted***

161. This section serves to prevent traders from contracting out of the consumer's statutory rights under sections 9 to 16, as well as sections 28 and 29 on time of delivery and the passing of risk and, for contracts other than hire, the requirement on right to title contained in section 17. This section also has the effect that any term in a contract which seeks to prevent the consumer from having access to the statutory rights and remedies or to make exercising these rights less attractive to the consumer by either making it more difficult and onerous to do so, or by placing the consumer at a disadvantage after doing so, will also be void. For hire contracts, *subsections* (5) and (6) provide that section 31 does not prevent the parties from contracting out of the protection that the trader must have the right to transfer possession or that the consumer must enjoy quiet possession (under section 17), but a term seeking to exclude or limit these protections is subject to the test of fairness in section 62.
162. This section corresponds to sections 6 and 7 of the UCTA, but as with all of this Part it only relates to trader to consumer contracts. The section also serves to implement Article 25 of the CRD (in relation to those Articles of the CRD implemented in this Chapter) and Article 7(1) of the CSD.
163. This section also provides that an agreement to submit disputes to arbitration is not covered by this bar on excluding or restricting liability. It should be noted however that paragraph 20 of Schedule 2 makes clear that a term requiring the consumer to take disputes exclusively to arbitration may be regarded as unfair. Furthermore, the Arbitration Act 1996 provides that a term which constitutes an arbitration agreement is automatically unfair (under Part 2 of the Act, once it comes into force), if the claim is for less than an amount specified in an Order made under section 91 of the Arbitration Act. This amount is currently set at £5000 in the [Unfair Arbitration Agreements \(Specified Amount\) Order 1999 \(SI 1999/2167\)](#). It is possible that this amount may change from time to time.

### ***Section 32: Contracts applying law of non-EEA state***

164. The parties to a contract may agree that the contract is to be governed by the law of a particular country. This might be because the trader is based in a country other than the UK. The Rome I Regulation governs which laws apply to those contracts. In

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some circumstances, despite another law being chosen, laws of the consumer's habitual residence apply if they cannot be derogated from by agreement. See paragraph 27 for further details.

165. This section provides that most of Chapter 2 will apply to protect a consumer under a sales contract (as defined in section 5), where a contract has a close connection with the UK, even if the contract states the law of a non-EEA State applies (the EEA is the European Economic Area of the EU plus Iceland, Liechtenstein and Norway). The provision is included to comply with Article 7(2) of the CSD, which requires that the consumer should not be deprived of its protection, where a contract has a close connection with a Member State, even if the contract states the law of a non-Member State applies. It does not cover section 28 and 29, nor restriction of liability under sections 28 and 29, as these derive from the CRD which does not have this requirement.