

CONSUMER RIGHTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Chapter 2: Goods

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

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

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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 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

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

<i>Statutory right being breached</i>	<i>Statutory remedies that may apply</i>
Consumer to enjoy quiet possession of the goods (section 17(2), (3), (6) and (7))	<ul style="list-style-type: none"> • Statutory remedies do not apply but consumers may claim damages (section 19(9) and (10))

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

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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.