

# CONSUMER RIGHTS ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### *Chapter 2: Goods*

#### **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

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for ownership of the goods, but for use of them). *Subsection (6)* indicates that more specific provisions for the particular contract types take precedence.

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

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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.