



The BVRLA Guide to Consumer Rights

British Vehicle and Rental Leasing Association





Index

Introduction	2
Definitions	3
The contract	3
Statutory rights	4
What could be a fault?	5
Burden of proof	6
Remedies	7
Right to reject	7
Repair or replacement	8
Price reduction and final right to reject	9
Examples	10
Exceptions to right to reject	11
Complaints	11
Negligence	11
Misrepresentation	11
Consumer Protection from Unfair trading regulations 2008	12
Trader's identity	12
Penalties	12
Consumer contracts (information, cancellation and additional charges) Regulations 2013	12
Unfair contract terms	13
Further information.....	13
Suggested wording for consumers	14
Annex 1 Existing Consumer Rights	15
Annex 2 Consumer rights from 1 st October 2015	16

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Introduction

From 1 October 2015 the **Consumer Rights Act 2015** will change the rules that relate to the supply of goods and services for contracts provided on or after that date. A single set of rules will apply to contracts where goods or services are supplied, including sale, hire and hire-purchase.

Members will need to ensure that they are aware of the changes, and how these affect the rights of consumers, and how they can ensure that they are best protected.

The new legislation will incorporate the following legislation:

- Supply of Goods (Implied Terms) Act 1973
- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- Sale and Supply of Goods Act 1994
- Sale and Supply of Goods to Consumers Regulations 2002
- Unfair Contract Terms Act 1977
- Unfair Terms in Consumer Contracts Regulations 1999
- Unfair Terms in Consumer Contracts (Amendment) Regulations 2001
- Competition Act 1998
- Enterprise Act 2002

Contracts which are made before 1 October 2015 will continue to adhere to the previous legislation and rules.



Definitions

The definitions used within the Consumer Rights Act have generally been derived from the existing EU definitions in the Consumer Rights Directive, the aim being to ensure key definitions remain consistent across consumer law.

- (1) **Consumer** means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
- (2) **Trader** means a person acting for purposes relating to that person's trade, business craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.

The new Consumer Rights Act will introduce a raft of new rights for consumers, such as:

- A 30-day period to return faulty goods and obtain a full refund;
- Right to one repair within the initial 6 month period following purchase;
- Consumers being entitled to some money back after one failed repair of faulty goods (or one faulty replacement) even if more than 30 days has passed; and
- Consumers being able to challenge terms and conditions which are not fair or are hidden in the small print

The Contract

When a consumer buys goods or services from a trader, a contract is entered into by both parties. A contract is an agreement between two or more parties, which is intended to be legally binding. Under the contract, the consumer agrees to pay the trader a sum of money and/or do something in return for the services the trader supplies.

Usually, a consumer has no automatic right to change his mind and cancel the contract, and if this were to happen this would be a breach of contract. However, there is an automatic right to cancel with most consumer contracts made at a distance. This is a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without a face to face between the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.



Statutory Rights

Under the Consumer Rights Act 2015, certain standards will apply to every contract for a supply of goods and services, and a supplier must ensure that their service and goods meet the following standards:

- **be of a satisfactory quality.** Goods must be of a standard that a reasonable person would regard as satisfactory.
 - (a) Quality is a general term, which covers a number of matters including:
 - fitness for all the purposes for which goods of that kind are usually supplied
 - appearance and finish
 - freedom from minor defects
 - safety
 - durability
 - (b) In assessing quality, all relevant circumstances must be considered, including price, description, and your or the manufacturer's advertising
- **be fit for a particular purpose.** When a consumer indicates that goods are required for a particular purpose, or where it is obvious that goods are intended for a particular purpose and a trader supplies them to meet that requirement, the goods should be fit for that specified purpose.
- **match the description, sample or model.** When a consumer relies on a description, sample or display model the goods supplied must conform to it. If the goods do not conform, an offence may have been committed. For example, if a vehicle does not match the specification on the order form, it does not meet the description of the goods, and the consumer would be within their rights to reject the vehicle.



What could be a fault?

Goods are considered to be faulty if they do not meet the standards contained in the Consumer Rights Act 2015. Goods must be safe, fit the description that's given of them and be both of "satisfactory" quality and fit for the purpose for which they're intended. In other words, any defect with the goods.

This issue is likely to cause significant problems for members, as vehicles may have a number of faults which are not always immediately apparent or which manifest themselves at different times during the contract. For example, a consumer may seek to reject a car if they discover a fault with the windscreen after the member has already repaired a noisy exhaust pipe.

A vehicle may be considered faulty if there is a dent when the vehicle is delivered, if the seat cannot be adjusted or even if the DAB radio does not work. There are many issues that a vehicle may have, that would render the vehicle faulty, if the fault leads to the vehicle not being used as described or advertised. For example, if a consumer cannot listen to the vehicle's radio, this would not fit the description of the vehicle, and the vehicle could be considered faulty.

A consumer is allowed a "reasonable " amount of time to check that the vehicle is satisfactory when it is delivered (there's no concrete time given as "reasonable). If the goods aren't satisfactory upon delivery, customers can "reject" them.



Burden of Proof

For the first six months of the contract, the consumer need not produce any evidence that a product was inherently faulty at the time of delivery. In such a case, the member will either accept there was an inherent fault, and will offer a remedy, or dispute that it was inherently flawed. If the latter, when he inspects the product to analyse the cause, he may, for example, point out impact damage that would be consistent with it having been mistreated in such a way as to bring about the fault. However, after the first 6 months, this burden of proof will reverse in favour of the member, and it will be for the consumer to prove that there was an inherent fault when the vehicle was delivered.

Where a member is responsible for proving that the vehicle is of satisfactory quality, they will need to prove the fault was not present using evidence, such as inspection from an independent car dealer or garage into the car's condition.

The onus is therefore on the member to reject a consumers' claim that there is a fault with the vehicle in the first 6 months of the contract. In the event that there is a dispute as to whether the vehicle is faulty, it may be prevalent for members to have the vehicle inspected by an independent car dealer or garage to provide a detailed report on the vehicle as to whether any faults are present. This practice could be included within a member's supplier agreement, with the member meeting the cost of the independent assessment.

If six months has passed since the supply of goods, the burden falls to the consumer to prove the defect was there at the time of delivery. They must also prove the defect was there at the time of delivery if they wish to exercise the short-term right to reject goods. Some defects do not become apparent until sometime after delivery, and in these cases it is enough to prove that there was an underlying or hidden defect at that time.

In these circumstances, the onus is on the consumer to prove that there is a fault with the vehicle. Again, in the event that there is a dispute involving whether the vehicle is faulty, it may be prevalent for members to have the vehicle assessed by an independent garage to provide a detailed report as to whether any faults are present within the vehicle. Again, this practice could be included within a member's supplier's agreements, with the consumer meeting the cost of the independent assessment.

In circumstances where a dispute remains, despite independent evidence having been procured, members should refer the dispute to the BVRLA's conciliation service. Our conciliation service will then provide the member and consumer with a decision as to whether or not the vehicle is faulty, and whether a right to reject exists.



Remedies

Right to reject

If goods are faulty or defective, there is a short period during which the consumer is entitled to reject them. The time limit for exercising the short-term right to reject is the end of 30 days beginning with the first day after these have all happened:

- (a) ownership or (in the case of a contract for the hire of goods, a hire-purchase agreement or a conditional sales contract) possession of the goods has been transferred to the consumer;
- (b) the goods have been delivered, and
- (c) where the contract requires the trader to install the goods or take other action to enable the consumer to use them, the trader has notified the consumer that the action has been taken.

If the consumer asks for repair or replacement during this initial 30-day period, the period is paused so that the consumer has the remainder of the 30-day period, or seven days (whichever is longer) to check whether the repair or replacement has been successful and to decide whether to reject the goods.

If a consumer rejects goods then they are entitled to claim a refund. This could be a full refund or, in the case of hire, a refund for any part of the hire that was paid for but not supplied. For example, if a consumer hires a vehicle for a period of 7 days, and a fault occurs in the vehicle on the third day, the member would refund the remaining 5 days of the hire, as the consumer had use of the vehicle for 2 of the 7 days.

The consumer would also be released from all outstanding obligations under the contract. A refund must be given without undue delay, and in any event within 14 days of the member agreeing that the consumer is entitled to a refund.



Repair or replacement

When there is a breach of contract, but the consumer has lost or chosen not to exercise his right to reject goods, he will be entitled in the first instance to claim a repair or replacement.

The consumer cannot choose one of these remedies above the other if the chosen remedy is either impossible or disproportionate as compared to the other remedy. For example, if a vehicle is no longer manufactured, it would be impossible for the vehicle to be replaced with that make and model of vehicle, and therefore the only available option remaining is for the vehicle to be repaired. Alternatively, if it is cheaper for a vehicle to be repaired, rather than replaced, a consumer cannot demand for the more onerous option. The Member must be allowed reasonable time to provide the remedy. The remedies fail if, after just one attempt at repair or replacement, the vehicle remains faulty.

A member could provide, within their lease agreement, that a repair is carried out by their chosen garage, and that any fault that occurs with the vehicle must be immediately registered with the member, to ensure that the consumer does not attempt to rectify a fault themselves, for example, by taking the vehicle to their chosen garage.

The consumer does not have to give the member multiple opportunities to repair or replace the fault with the vehicle, although they can do so if they wish. The remedies also fail if they are not provided within a reasonable time and without causing significant inconvenience to the consumer.

In either case, where repair or replacement fails, the consumer is entitled to further repairs or replacement, or they can claim a price reduction or exercise their right to reject. The same rule applies if both repair and replacement are impossible or disproportionate from the outset. For example, if a vehicle cannot be replaced, due to the manufacturer having discontinued the product, and the parts cannot be sourced for the vehicle to be repaired, the consumer can reject the vehicle.



Price reduction and the final right to reject

If repair or replacement is not available, or is unsuccessful, or is not provided within a reasonable time, then the consumer can claim a price reduction or reject the vehicle. Where the repair or replacement fails, are not available, or were not provided within a reasonable time, the consumer can choose whether to keep the vehicle or return it. If he keeps the vehicle, then his claim will be for a reduction in price; if he returns them, he is rejecting them.

A price reduction must be an appropriate amount, which will depend on all the circumstances of the claim.

If the consumer rejects the goods, then he is entitled to a refund.

This refund may be reduced to take into account any use the consumer has had from the goods. For example, a reduction may be made to account for the wear and tear to a vehicle, or the age of the vehicle, and the mileage that has been travelled. Traders would usually not be entitled to make a deduction based upon the consumer's use of the goods if the goods are rejected within the first 6 months following an unsuccessful attempt to fix the fault. An exception to this rule, however, is in relation to motor vehicles. The BVRLA successfully lobbied for an exception to the rule, to allow members to make a deduction during the first 6 months, for use and enjoyment of the vehicle whilst in the possession of the consumer.

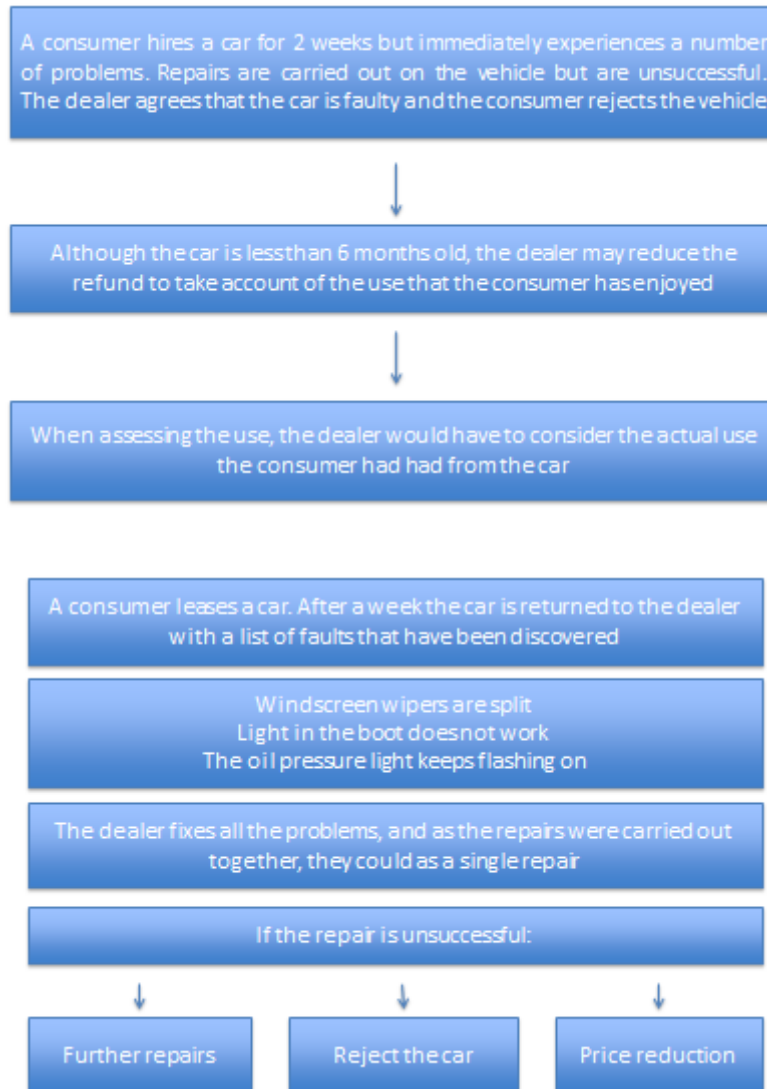
It has been emphasised by the Department for Business, Innovations and Skills (BIS) that a deduction based upon the consumer's use of a motor vehicle is not the same as the shortfall between the purchase price and the second hand market value of the vehicle. However, no deduction can be made for the consumer having the goods simply because the trader has delayed in collecting them.

The consumer may also be able to claim compensation for losses that they have incurred. These losses may include the cost of a replacement vehicle whilst the consumer's car is being independently assessed, or repaired.

Members buying vehicles that prove to be defective, whilst they can ask the supplier (OEM) or supplying dealer to remedy the fault, they are not legally able to reject the vehicle as they are not a consumer (business to business). Members may wish to insert a term in their master supply agreement (indemnify) to protect them in the event the vehicle has been rejected by a consumer because it is faulty.



Examples





Exceptions to the right to reject

- A consumer cannot claim for defects that are brought to his attention before the sale, or if the consumer examines the vehicle before purchase and any defects should have been obvious.
- A consumer has no rights to claim for faults that appear as a result of fair wear and tear.
- A consumer cannot make a claim where it is the consumer, not the member, who is responsible for things going wrong.
- A consumer cannot claim for damage that he has caused.

Complaints

Under the **Provisions of Services Regulations 2009**, traders are under a legal duty to respond to consumer complaints as quickly as possible, and to make their best efforts to resolve those complaints. This requires members to respond to emails and letter of complaints and they must return phone calls. Where a complaint appears to be valid, the member should put things right promptly. If the member disputes liability, they should give a clear explanation of their reasons.

Any complaints that cannot be resolved by the member can be referred to the BVRLA's conciliation service.

Negligence

If a member provides a service, they owe a duty of care to the consumer and to others who might be affected by their work. If their work is substandard, the duty of care may be breached and the person who suffers a loss may be able to make a claim. This may apply even when there is no direct contract between the parties. The duty of care is similar to the standard of reasonable care and skill, and it applies to the standard of work rather than guaranteeing a particular outcome.

Misrepresentation

A misrepresentation is a false statement of fact made by a person or their agent that induces someone else to make a contract with them.

Dependent upon whether the misrepresentation was made fraudulently, negligently or innocently, the party who has relied on the misrepresentation will be entitled to a remedy that may include rescission (which means unwinding or cancelling the contract), refund or compensation.



Consumer Protection from Unfair Trading Regulations 2008

These regulations provide an additional and alternative right of redress for consumers. Where a member has used misleading or aggressive selling practices, the consumer may be entitled to claim compensation and/or reduction in the price or to cancel the contract completely.

Trader's identity

The consumer needs to know, or be able to find out, who he is dealing with. A member's identity and address must be displayed at their place of business, on key business documents and on websites. This information must be made available to consumers before a contract is made and whenever a consumer requests it.

If a member fails to disclose that they are a limited company and there is then a breach of contract, the consumer may be able to claim against the directors of the business as individuals. If a member fails to disclose that they are acting as an agent for someone else, then the consumer may be able to make any claim directly against that member.

Penalties

The **Enterprise Act 2002** creates the ability for enforcement bodies, such as trading standards services, to seek a Court Order preventing the failure to comply with the civil and criminal provisions of various pieces of consumer protection legislation including the Consumer Rights Act 2015. Failure to comply with such a Court Order can lead to a maximum penalty on conviction of an unlimited fine and two years' imprisonment.

Consumer Contracts (Information, cancellation and additional charges) Regulations 2013

These regulations provide consumers with a 14 calendar days cooling off period for most "distance contracts", such as those completed via the internet. They also require certain information to be given to consumers, and members cannot make hidden charges, and additional charges can only be made with the consumer's express agreement.

However, vehicle rental members will not need to provide a cooling off period for vehicle rental services, due to an exception contained in the legislation.

You can find more information on this topic in our fact sheet, distance selling for leasing brokers.



Unfair Contract terms

The Consumers Rights Act 2015 reforms and consolidates the unfair contract terms in consumer contracts. Part 2 of the CRA amends the **Unfair Contract Terms Act 1977** and revokes the **Unfair Terms in Consumer Contracts Regulations 1999**.

Written terms in a consumer contract or notice in writing must be transparent.

Where a clause is not binding as a result of being unfair, the rest of the contract will take effect as far as practicable. A term will be unfair if, contrary to good faith requirements, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

Where a term can have more than one meaning, the interpretation most favourable to the consumer will prevail.

Schedule 2 of the CRA sets out an "indicative and non-exhaustive" list of terms in consumer contracts which may be regarded as unfair. This includes three new "grey list" terms:

- disproportionately high charges where the consumer decides not to conclude or perform the contract, even where the consumer cancels the contract;
- terms allowing the trader to determine the characteristics or subject matter after the consumer is bound; and
- terms allowing the trader to determine the price after the consumer is bound.

A term of a consumer contract must be regarded as unfair if it has the effect that the consumer bears the burden of proof with respect to compliance by a distance supplier.

Members are advised to ensure that their supplier's agreements meet the standards of the Consumer Rights Act 2015, and that there are no terms within the agreement that could be considered unfair.

Further information

The Competition and Markets Authority (CMA) has prepared a series of ['at-a-glance' guides](#) which can be used to assist businesses in understanding what terms are likely to be considered fair and unfair. These guides are aimed primarily at small businesses and operate to try and help them avoid common pitfalls when drafting contractual terms. The guides give basic advice, for instance, that all contractual terms should be "plain and intelligible" and "up-front and open". There are also summaries on terms which are more likely to be considered contentious and be categorised as unfair, such as cancellation charges.

The guides stress the importance of contracts generally, highlighting to businesses that they are to be viewed as a tool to build up a relationship with a consumer and indicating that if the terms contained within them are not fair, then the terms will not form part of the contract with the consumer. The guides also discredit common myths about contracts like the often cited "It's written and signed so it's legal" and "You can hide things in the contractual small print". It is important to note that these guides do not operate to replace the Consumer Rights Act, but merely highlight the CMA's view of how it may operate.

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Examples of suggested wording for consumers

Point of Sale

The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected life of your product you're entitled to the following:

- up to 30 days: if your item is faulty, then you can get a refund
- up to six months: if your faulty item can't be repaired or replaced, then you're entitled to a full refund, in most cases
- up to six years (**please note that, in Scotland, the limitation period is 5 years**): if the item can be expected to last up to six years you may be entitled to a repair or replacement, or, if that doesn't work, some of your money back

You don't have a legal right to a refund or replacement just because you change your mind, but please do ask traders about their returns policy as they may be able to help.

This is a summary of your key rights. For detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

Contracts made at a distance

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 say that within 14 days of receiving your goods, in most cases, you can change your mind and get a full refund.

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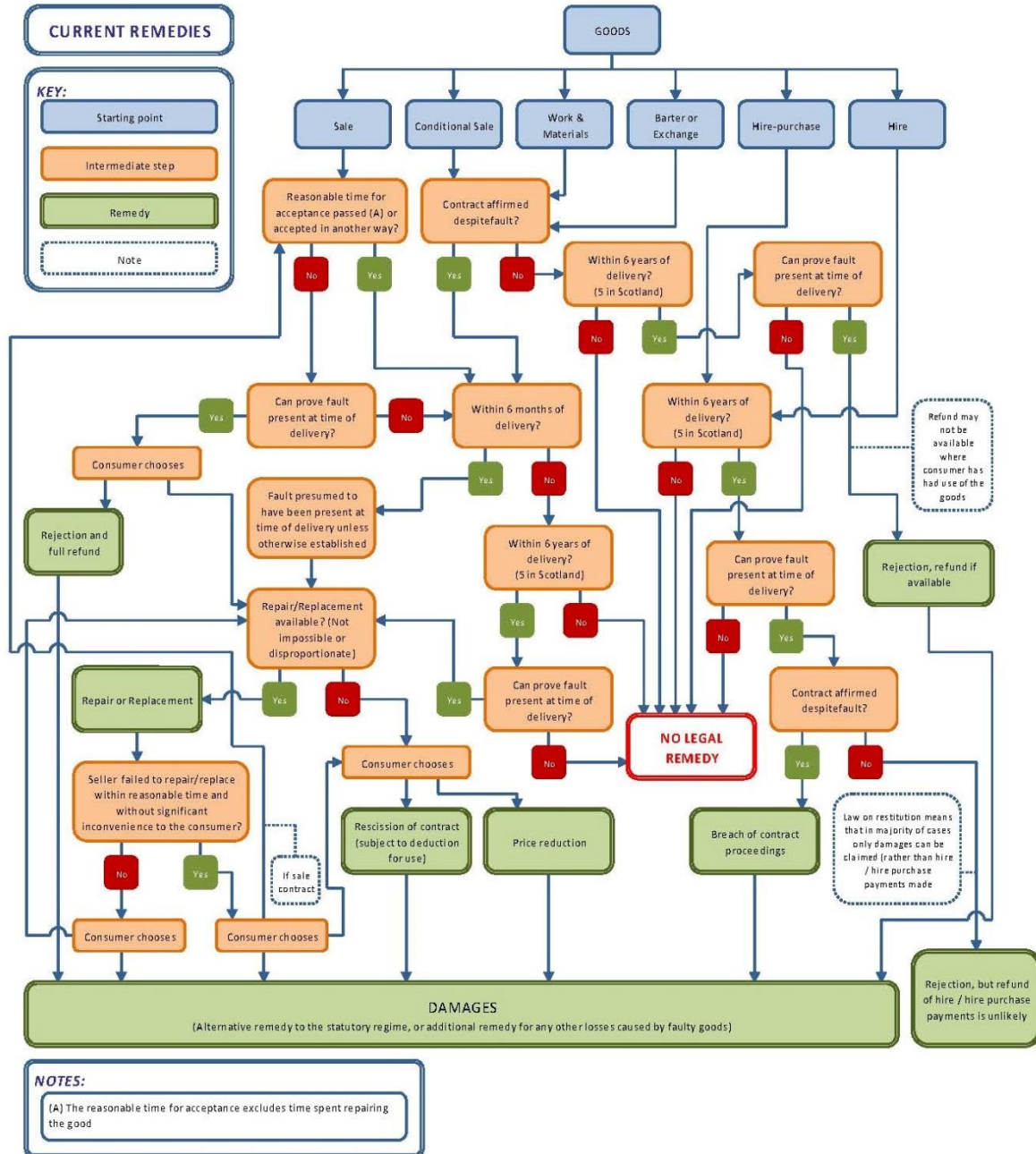
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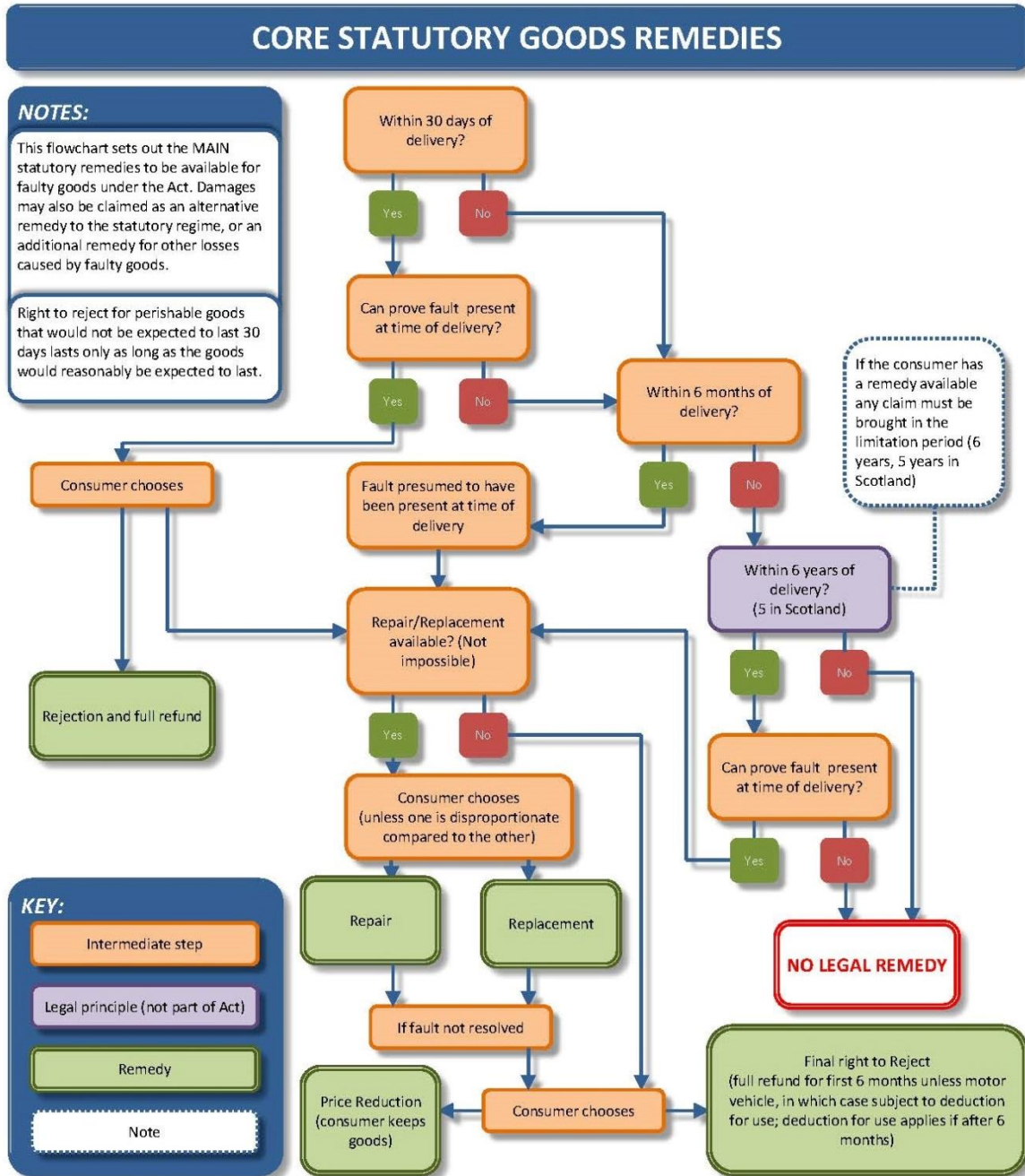
Annex 1



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