



How the New Consumer Rights Act Affects the Motor Trade

The Consumer Rights Act 2015 is now the law. From 01 October all consumer contracts will be governed by this Act so what are the main aspects?

Definitions

There have been a few minor changes to the definitions. Whilst it has not changed significantly, a consumer will now be :

"an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession"

What is covered?

The Act covers both contracts for 'Goods' such as the sale of vehicles or parts, and 'Services' where no goods are supplied. A new concept introduced by this Act is the 'Mixed Contract'. This is a contract where both goods and services are supplied. Mixed contracts are common within the motor trade.

Goods

The description of "goods" is now more prescriptive. Previous legislation failed to define "goods" thereby allowing for judicial discretion and flexibility. The CRA now limits the definition to 4 categories of contract:-

- a sales contract;
- a contract for the hire of goods;
- a hire-purchase agreement;
- a contract for transfer of goods.

All of these are relatively straight forward and reflect the current legal interpretation of such contracts. Whilst the difference will be of interest to lawyers, in practice it is unlikely that this will in itself change current legal protections or have a significant affect the motor trade.

Services

"This Chapter applies to a contract for a trader to supply a service to a consumer". ⁴⁸

(1) Consumer Rights Act 2015

That's it. As you can see, the definition of a contract for services is relatively broad. The Act does include some exemptions. It does not cover contracts of employment or apprenticeship, neither does it cover gratuitous contracts (a specialist form of contract that

applies under Scottish law). As the Secretary of State is granted the power to exempt other contracts, this list may grow in the future.

Mixed Contracts

As you would expect, a mixed contract is one which includes 'Goods' and 'Services'. Controls from sections covering both goods and services will apply to this simultaneously.

Statutory Rights

In general the protections for both goods and services remain the same.

Goods

Sections 9 to 18 cover the protections for the sale of Goods. These include :-

- Of satisfactory quality (Section 9)
- Fit for a particular purpose (Section 10)
- As described (Section 11)
- Match any sample provided (Section 13)
- Match a model seen or examined (Section 14)

The presentation of the tests to be applied and the descriptions have been changed to make them easier to understand and apply. The statutory provisions within the Act remain sufficiently similar to the current statutory requirements that courts are likely to apply substantially similar protections to those currently in force. Moreover, given the restating of the principles concerned, this may enable garages to benefit from the clearer definitions.

There are however a few things to note :-

Pre contract information (Section 12)

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 provided requirements at Schedules 1 and 2 for information to be provided to consumers prior to entering into 'on-premises' and 'off premises/distance contracts'. Section 12 (3) of the Act has the potential to result in any pre-contract information becoming binding.

From October, any changes before delivery will have to be expressly agreed with consumers or risk breaching the consumer's statutory protections.

Match a model seen or examined (Section 14)

Whilst the trade does a good job generally and such disputes are rare, we regularly see consumers complaining that they believed certain specifications are included in vehicles ordered from new.

From October it will be necessary that any differences in specification between any demonstrator model and the vehicle ordered will need to be highlighted and sufficient records kept of this. This is likely to require a note of which demonstrator was made available to which customer, the specs of such a vehicle and the specs of the vehicle ordered. This is a particular risk where members stock high spec vehicles as demonstrators.

Another problem will be where models are updated post order but before delivery. Any differences not brought to the consumer's attention, will from October 2015 breach the consumer's statutory protections.

Services

Sections 49 to 53 cover the protections for contracts for services. These include :-

- Service to be performed with a reasonable level of care and skill (Section 49)
- Information about the trader or service to be binding (Section 50)
- Reasonable price to be paid (Section 51)
- Performed within a reasonable time (Section 52)

As with goods, whilst the presentation of the tests to be applied and the descriptions have been changed to make them easier to understand and apply, the statutory provisions within the Act remains sufficiently similar to the current statutory requirements that courts are likely to apply substantially similar protections to those currently in force.

As with goods the notable exceptions are :-

Information about the traders' service is to be binding (Section 50)

This is a new protection and has significant potential to cause complications. Any contract to supply a service will include as a term of the contract: *'anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service'*¹ if it is taken into account by the consumer².

It is unclear as to the extent to which the trader has to be aware of the statements, or whether the consumer's reliance on the same is reasonable.

Enforcement

Goods contracts

This is perhaps the most detailed change to consumer protections and most likely to affect traders the most and therefore attract the most attention. The Act follows a 3 stage process, but the devil is in the detail, and as such the outcomes for traders and consumers are likely to be significantly different :-

¹ Section 51(1) ; Consumer Rights Act 2015

² Section 51(1)(a)&(b) ; Consumer Rights Act 2015

- 1- short term right to cancel
 - a. Partial rejection
- 2- repair *or* replacement; and lastly
- 3- Price reduction / Final right of cancellation

Short term right of rejection/ partial rejection

This will be one of the most contentious changes under the Act for the industry. This right entitles consumers to reject goods and treat the contract as at an end³ for any breach of statutory rights within the first 30 days.

Where a consumer cancels under this right then they are entitled to:-

- The same amount of money paid⁴
- Where they have transferred something other than money the exact same amount as that transferred⁵
- Where the consumer has transferred something other than money which cannot be substituted, the exact same amount of the same thing transferred under the contract⁶

All refunds must be made without undue delay and in any event within 14 days from when the trader agrees to the refund⁷.

Where the goods fail to conform to the contract because they were not installed correctly, or if there is a breach of any contractual terms specifically dealt with within the contract, the consumer has no short term right of cancellation⁸.

Where the consumer has any rights of rejection under the Act it is open to the consumer to only partially reject the goods⁹.

Repair/replacement

If the goods do not conform to the contract, the consumer is entitled to request the repair or replacement of the goods. Thankfully section 23 is significantly similar to the current protections as contained at section 48B of the Sale of Goods Act 1978.

A consumer cannot reject goods outside of the first 30 days without offering at least one opportunity to repair or replace the goods.

³ Section 20(5); Consumer Rights Act 2015

⁴Section 20(10); Consumer Rights Act 2015

⁵ Section 20(11); Consumer Rights Act 2015

⁶Section 20(12) ; Consumer Rights Act 2015

⁷Section 20 (15) ; Consumer Rights Act 2015

⁸ Section 19 (4) ; Consumer Rights Act 2015

⁹Sections 21 (1) & (2) ; Consumer Rights Act 2015

Price reduction or final rejection

Where goods cannot be repaired or replaced, consumers have a right to either a price reduction or a final rejection of the goods, but not both.¹⁰

A consumer will only be able to cancel a contract where :-

- There has been one repair or replacement and the goods still do not conform to the contract¹¹
- Requiring the trader to repair or replace first would be unreasonable (see section 23)¹²
- The consumer has required a repair or replacement but this has not been done within a reasonable amount of time.¹³

The Act only requires one repair *or* replacement¹⁴. Where a vehicle requires a series of repairs to rectify, this can be agreed with the consumer but cannot be required to accept this. It is unclear whether a court will take into consideration any issues repaired as a gesture of goodwill that were not sufficiently serious to breach the statutory protections.

Where a motor vehicle is rejected, a deduction can be made for its use.

Service contracts

In the event of a breach of a service contract the consumer has 2 options :-

- Repeat Performance
- Price Reduction

Repeat performance

This is defined as the right to require the trader to perform the service again. Repeat performance cannot be required if it is impossible.

Price reduction

This is defined as the right to a reasonable reduction in the price paid, and can include a refund of up to 100%.

Other Aspects of the Act

The Act doesn't just deal with statutory rights. It also creates new rights and entitlements with relating to digital content as well as well as sections relating to unfair contract terms.

¹⁰ Section 24 (5) ; Consumer Rights Act 2015

¹¹ Section 24(5)(a) ; Consumer Rights Act 2015

¹² Section 24(5)(b) ; Consumer Rights Act 2015

¹³Section 24(5)(c) ; Consumer Rights Act 2015

¹⁴ Section 24(6) ; Consumer Rights Act 2015

Anyone interested in these aspects should contact the RMI for further discussions as necessary.

Further reading

In the run up to October the RMI will be producing a number of articles concentrating on each of the areas.

In addition the Trading Standards Institute has produced a number of guides for businesses. These provide a good basic understanding of the law in this area and can be found at

<http://www.businesscompanion.info/en/news-and-updates/consumer-rights-act>

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Motor Industry Legal Services

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