THE SALE OF GOODS ACT 1979

1. Contracts for the sale of goods are governed by the SALE OF GOODS ACT 1979 (SGA). Not just Consumer Contracts.

2. Recently been amended by the Sale and Supply of Goods to Consumers Regulations 2002 (SGRs) which implemented Directive 1999/44.

3. The SGRs introduced new additional remedies for consumers which became operative from 31 March 2003.

4. If a contract is for the sale of goods (new or second hand goods) the SGA implies certain terms (conditions).

5. These broadly correspond to provisions in the Supply of Goods and Services Act 1982.

6. The most relevant provisions of the SGA are the ones which raise the most consumer complaints. They are as follows:-

   (a) TITLE- The seller has the right to sell the goods (s12).

   Has the seller passed complete title in the goods so that the buyer can use them as he or she pleases?

   (b) DESCRIPTION- The goods will conform to their description (s13).

   The courts have given wide meaning to the term “description.” It has been held to include such matters as:

   (i) Quantity.
   (ii) Colour.
   (iii) Measurements.

1 S.I. 2002/3045.
2 See regulation 1 of S.I.2002/3045.
(iv) Manner of packing.
(v) The date and place of shipment.

(c) **SATISFACTORY QUALITY & FITNESS FOR PURPOSE? (s14).**

**Satisfactory quality points**

The test is set out in **section 14(2A).** That is that goods are of satisfactory quality if they: “meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, price (if relevant) and all the other relevant circumstances.”

Where the **buyer deals as a Consumer,** the “relevant circumstances” referred to at the end of **s.14 (2A)** include “any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.” (s.14 (2D))

For instance this means that if an advert says or implies that goods will have a particular quality, a failure to deliver this will place the retailer in breach of contract.

Effectively a civil remedy for a misleading advertisement.

The quality of the goods includes their **state** or **condition.**

**S14 (2B)** sets out a **non-exhaustive list** of aspects of the quality of the goods:

- **a) fitness** for all the purposes for which goods of the kind in question are commonly supplied;
b) appearance and finish;

c) freedom from minor defects;

d) safety; and

e) durability.

There are some Exceptions regarding quality (or “defences” which the seller can raise) which are set out in section 14(2C). Examples include the following:

(a) something specifically drawn to the buyer’s attention prior to the contract;

(b) buyer examines the goods before the contract is made and that examination should have revealed the unsatisfactory quality of the goods; and

(c) where contract for sale by sample a reasonable examination of the goods would have revealed the unsatisfactory quality.

Fitness for purpose points

Where the buyer expressly or impliedly makes known to the seller any particular purpose for which the goods are bought, there is an implied term that the goods supplied are reasonably fit for that purpose whether or not that is a purpose for which such goods are commonly supplied (see section 14(3)).

An exception to this is where the circumstances show that the buyer does not rely or it is unreasonable for him to rely on the skill or judgment of the seller.

Some extras on section 14
Liability is strict. That means the absence of intent is no defence. The seller will not be able to avoid liability by proving that he didn’t know or could not have known of the defects in the goods.

The seller is only liable where goods are sold in the course of a business. Therefore if the seller is a private seller the principle of caveat emptor may still apply. However, “may” is the operative word here in that the words “in the course of a business” have been construed broadly and purposively by the courts.

Whether or not someone is acting in the course of a business or privately will depend on the particular facts of the case.

6. Can a seller contract out of sections 12, 13 and 14 of the SGA 1979?

Where the sale is with a consumer the seller etc cannot contract out of sections 12, 13 and 14. The provisions are non-excludable because of section 6 of the Unfair Contract Terms Act 1977 (UCTA) which provides that liability for breach of the obligations arising from sections 12, 13 and 14 cannot be excluded or restricted “by reference to a contract term”.

Further, the use of notices, terms or guarantees to exclude such rights is a criminal offence –see the Consumer Transactions (Restrictions on Statements) Order 1976.3

7. Burden of proof for establishing breach of the implied terms under the SGA

Traditionally these are like civil cases and the burden of proof is on the buyer based on a balance probabilities.

However, there is a new presumption introduced by the amendments made by the SGRs.

3 S.I. 1976/1813.
**S.48A (3)** states that any goods which do not conform to the contract of sale (that is they are not of satisfactory quality, fits for purpose or do not match description) **within six months of date of delivery to consumer** will “be taken not to have so conformed at that date”.

So if goods fail within six months of delivery, the burden of proof is reversed. The consumer does not have to prove that there was a problem with the goods when delivered. The seller has to prove that there was not.

8. **What remedies are available to a consumer if there is a breach of sections 12, 13 and 14 of the SGA 1979?**

   (a) **Acceptance** and **Rejection**-
   The right to reject is covered by **sections 34 and 35 of the SGA**.

   The right to reject has to be exercised within a **reasonable time** or the consumer will be deemed to have accepted the goods under s.35(4).

   The consumer has to have a reasonable opportunity to examine the goods to make sure they are as they should be.

   He cannot lose the right to reject until he has been given that reasonable opportunity. What is reasonable depends on the circumstances.

   If the consumer does not act quickly once he discovers he has a problem with the goods, he may after a reasonable time has elapsed be deemed to have accepted them. This does not mean he is not entitled to compensation for the defect/misdescription but it does mean the right to reject is lost.

   The consumer does not lose the right to reject the goods just because he agrees to give the seller a chance to repair them under the new SGR remedies.

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4 Where the buyer has indicated to the seller that he accepts the goods or does anything that is inconsistent with the seller retaining ownership of the goods.
(b) **Damages**

If the consumer does lose the right to reject, he can still claim damages for breach of contract.

Broadly speaking, the measure of damages for the seller’s breach of contract is the estimated loss caused by the breach.

In the case of faulty goods, the loss is the difference in value between the goods as they were and as they should have been.

The easiest way of calculating this will often be the cost of repairing the goods. If they cannot be repaired then some kind of estimate of what they are worth in their current state would have to be done.

If the fault or misdescription means that the goods are effectively useless then the consumer may be able to claim something very close to the full price anyway. He might have to deduct something for any use that he has managed to make of the goods.

(c) **New Remedies introduced by SGR amendments**

The SGRs introduced a new heading in the SGA headed “**Additional rights of the buyer in Consumer Cases.**”

If the buyer is a consumer and the goods do not conform to the contract of sale at the time of delivery then the buyer has the right to a number of possible remedies. These include:

(i) the right to repair;
(ii) the right to replacement;
(iii) reduction in price; or
(iv) rescission of the contract.

**Repair or replacement (s.48B)**

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5 See Part 5A of SGA. See section 48A onwards.
If the buyer wants to have a repair done or seek a replacement, this can only be requested if the option is not impossible/disproportionate in relation to other available remedies.

The right to a repair will subsist for as long as a consumer can establish that the goods were not in conformity with the contract when sold – ie. Any defect which appears within 6 months of purchase.

A repair/replacement must be done within a reasonable time and without causing inconvenience to the buyer.

The seller must also bear all the costs of doing so.

Price reduction or recission (s.48C)

Applies if the other two options (repair/replacement) are ruled out as impossible/disproportionate or the buyer has tried the repair/replacement option but the seller has failed to achieve this within a reasonable time or without inconvenience to the buyer.

The same points about the length of time that this remedy remains available apply as set out above.

What does this mean in practice?

It can be seen that the consumer now has a choice of remedies and some flexibility in which he chooses. The choice is his. He could start off by asking for a repair or replacement. If that is not available, he could then move to asking for money off the price. These remedies aim to put the consumer in the position he would have been in if the problem with the goods had been apparent at the date of purchase.

If these remedies are unavailable or inappropriate the consumer can still rescind the contract altogether, putting both parties back where they were before the contract was made.
10. **What about Guarantees?**

Another important change for buyers of goods brought in by the SGR relates to guarantees.

SGR provides that a **consumer guarantee** is binding on the person that offers it from the moment goods are delivered as if it were a contract. The conditions of the contract are those set out in the guarantee and any associated advertising.

**The Guarantee binds the Seller as well as the Guarantor** (reg.15(4)) –which is important where a manufacturer has gone out of business –eg Rover: the dealers who had already sold cars are obliged to honour the manufacturer's guarantee, even though the manufacturer has gone bust.

**Regulation 2 of the SGR** defines a consumer guarantee as follows: "any undertaking to a consumer by a person acting in the course of his business, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising."

There is no regulation of the content of the guarantee except it must be:

(i) in English when it accompanies goods offered;
(ii) in plain and intelligible language.

Paragraphs (i) and (ii) also related to the essential particulars necessary for making claims under the guarantee.

**Examples of what that covers include:**

(i) the duration;
(ii) the territorial scope; and
(iii) the name and address of the guarantor.
However, the guarantor is still free to set whatever terms he likes.

11. **Do not forget Ordinary contract law principles/unfair terms law**

   (a) **Breach of express contractual term**-consumer can claim damages and/or perhaps treat the contract as discharged.\(^6\) Much will depend upon the importance of the term and the seriousness and consequences of the breach.

   (b) **Misrepresentation**-giving right to rescind\(^7\) unless it is too late to do so, a right to damages in common law if the supplier was fraudulent, or of course the statutory right to damages under the **Misrepresentation Act 1967**.

   (c) **Negligent mis-statement**- giving rise to an action for damages in tort.

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\(^6\) Consumer is released from some or all liability he may have had in contract.

\(^7\) Remedy developed via equity where parties cancel contract putting them back to the position as if the contract had not existed.
Annex

The Unfair Commercial Practices Directive
2005/29/EC

(a) The OFT is currently working closely with the DTI and other stakeholders on a project to implement and transpose the Unfair Commercial Practices Directive.
(b) It is arguable that Member States’ courts should already be giving effect to this Directive in interpreting laws which are meant to implement it (eg the CCA) (indirect effect).
(c) The Directive is due to be transposed into UK law by June 2007, and to come into force in UK law by April 2008. It will harmonise much consumer protection legislation across the EC. It will also mean some changes to existing UK legislation, ranging from slight amendment to wholesale repeal. This is due to it's 'maximum harmonisation' clause which means that consumer protection laws that fall within its remit must neither exceed nor fail to meet the standards required by the Directive. The idea of this is to make the Common Market work well, so that consumers and business all across the EC know what rules apply, and that they are the same rules. At present, many member states have very restrictive rules, which give additional consumer protection in their own territories. These may exclude foreign businesses, and confuse their own citizens who may wrongly expect the same level of protection when travelling elsewhere in EC. At least that's what the Commission say. The issue of maximum harmonisation is highly controversial, and many academics think it will lead to a reduction in consumer protection generally.
(d) The Directive imposes a general duty 'not to trade unfairly' on all traders. There are five steps in analysing whether a practice is “unfair”. These are considered in more detail below (in reverse order).

I. Is it contrary to the Black list?
II. Is it aggressive?
III. Is it a Misleading Omission?
IV. Is it a Misleading Action?
V. Is it Unfair generally?

(e) An ‘unfair practice’ is one which is (1) contrary to the requirements of professional diligence, and (2) likely
materially to distort consumers’ economic behaviour (ie to impair his ability to make an informed decision and so to take a transactional decision he would not otherwise have taken).

(f) The ‘consumer’ is usually taken to be the average consumer; however if a promotion is aimed at a specific, identifiable group of consumers, it is the average member of that group (eg students, people with limited command of English, people of a particular faith group etc); if as a matter of fact the promotion or the product being sold will be attractive to people because of their age, credulity or a disability, it is the average member of that group (eg SAGA holidays for the elderly, wheelchairs, hearing aids).

(g) In addition to the restriction on trading unfairly, UCPD specifies that traders may not use ‘misleading’ and ‘aggressive’ practices.

(h) A misleading practice can be-

a. A misleading action: where a practice contains information which is untruthful or likely to deceive the consumer, in respect of one of a list of elements (eg the nature of the product, the price, the trader) and it is likely to cause the consumer to take a transactional decision he wouldn’t have taken otherwise.

b. A misleading omission: where a practice omits material that the consumer needs to make an informed decision, and so is likely to cause him to take a transactional decision he would not have taken otherwise. Where the consumer is being asked to make a purchase, he will probably need to be told such things as the characteristics of the product, the price, cancellation rights etc.

(i) An aggressive practice is where a trader uses harassment, coercion or undue influence, which is likely significantly to impair the consumer’s freedom of choice, and thereby is likely to cause him to take a transactional decision he would not otherwise have taken.

(j) The Black List. Additionally, the annex to the Directive lists 31 practices that are considered unfair in all circumstances including falsely claiming to be part of a code of practice, bait and switch promotions, presenting legal rights as distinctive features of the offer, pyramid selling, false claims of medical efficacy, pretending to be selling a good as a consumer, refusing to leave a home when asked, false prize claims.
CHECK LIST ON ADVISING CONSUMERS ON THE
SALE OF GOODS ACT AND CONTRACT
TERMS IN GENERAL

1. IS THIS A CONTRACT AT ALL (ORAL OR WRITTEN)?

2. ESTABLISH IF A CONTRACT WAS MADE (OFFER, ACCEPTANCE, CONSIDERATION, AND INTENTION TO MAKE LEGAL RELATIONS)?

3. IS THERE ANY PAPERWORK (CONTRACT, GUARANTEE, RECEIPT ETC)?

4. WHAT DOES IT SAY?

5. WAS YOUR CLIENT BUYING AS A CONSUMER OR WAS IT RELATED TO HIS BUSINESS (HE MAY BE SELF-EMPLOYED AND SOMETIMES CLIENTS MAKE PURCHASES RELATED TO THAT)?

6. ARE THERE EXPRESS TERMS ON TITLE, FITNESS, DESCRIPTION ETC (E.G. PROMISES ABOUT THE QUALITY OF THE PRODUCT IN TERMS OF PERFORMANCE, DURABILITY ETC)?

7. IF THERE ARE EXPRESS TERMS HAVE THOSE TERMS BEEN BROKEN AND HOW?

8. THE CONTRACT MAY STATE WHAT REMEDIES ARE AVAILABLE TO CONSUMER

9. REMEMBER IN RELATION TO 1-8 ABOVE THE SALE OF GOODS ACT PROVIDES A MINIMUM OF WHAT SHOULD BE PROMISED AND NOT BROKEN AND THE CONSEQUENCES IF THOSE PROMISES ARE BROKEN –A SELLLER MAY HAVE PROMISED MORE THAN THIS BUT CANNOT PROMISE LESS

10. IF THERE IS NOTHING IN WRITING OR THERE IS AN ATTEMPT TO EXCLUDE OR RESTRICT THE SGA TERMS
11. REMEMBER TO LET CLIENT TELL HIS OR HER STORY (WHO SAID WHAT AND WHY).

12. OFTEN A GOOD IDEA TO LET THEM TELL IT FIRST, THEN ASK QUESTIONS TO ENSURE YOU HAVE GOT ALL THE POINTS YOU NEED TO GIVE CLEAR ADVICE?

13. YOUR ADVICE SHOULD ULTIMATELY TELL CLIENTS WHAT THEIR OPTIONS ARE

They can either do nothing (because the seller has complied with the law) or something (acceptance, rejection, repair, replacement, repudiation, rescission, damages).

14. BUT REMEMBER TO FIND OUT WHAT IT IS THEY ACTUALLY WANT

USEFUL READING OR OTHER SOURCES

1. OFT WEBSITE AND GUIDANCE BOOKS.  
   http://www.oft.gov.uk.
2. ‘CONSUMER LAW AND PRACTICE’ by Lowe and Woodcroffe.
3. ‘STATUTES ON COMMERCIAL AND CONSUMER LAW’ by Blackstone’s.
4. TRADING STANDARDS CENTRAL:  
   http://www.tradingstandards.gov.uk/
5. WHICH:  
   http://www.which.co.uk/whichextra/content/main/home.jsp.
7. EUROPA HEALTH AND CONSUMER PROTECTION  
   http://europa.eu.int/comm/dgs/health_consumer/index_en.htm

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Consumer Credit (Agreements) Regulations 1983 (as amended) – contents of agreements (Aide Memoir)

These rules apply to agreements entered into before 31st May 2005

NB. THIS IS AN AIDE MEMOIRE ONLY. IT MAY CONTAIN ERRORS AND IS NOT A SUBSTITUTE FOR READING THE REGULATIONS.

Consumer Credit Agreements

1. Each regulated agreement
   a. Must be easily legible and use type colour which is easily distinguishable from the background (reg. 6(2));
   b. Must contain the information in sched 1;
   c. The information about Financial and Related Particulars (sched 1 paras 3 to 19) must be shown together as a whole, and not interspersed with any information other than sub-totals or cross references (reg.2(4));
   d. Where information about the Particulars in Sched 1 paras 9 to 11 cannot be ascertained, it should be estimated based on reasonable assumptions, which must be stated in the agreement (reg.2(2));
   e. Must have a Signature box (reg. 2(7), sched 5);
   f. And a Statement of protection and remedies available to debtors under the CCA (reg.2(3), sched 2);
   g. Must embody any security (reg.2(8)).

2. The information an agreement must contain (reg.2(4):

3. Nature of the agreement: (All types) (Sched 1, para 1)
   a. a heading stating doc is a Hire Purchase, Conditional Sale, and Agreement regulated by CCA;
   b. if applicable “pawn receipt”
   c. if applicable “partly” regulated

4. Parties to the agreement: (all types) Name and postal (and other) address of creditor and debtor (para 2).

5. Financial and related particulars – These must be shown together as a whole and not interspersed
   a. a description of the goods, services, land to be acquired under the agreement (for restricted-use debtor-creditor-supplier agreements for fixed sum credit for a transaction) (para 3)
   b. the Cash Price of the above goods etc (para 4). The cash prices and total cash price may be shown in a schedule to the agreement if it is a restricted use debtor-creditor-supplier agreement for fixed sum credit to finance purchased of more than one item of goods etc, as long as the total cash price and a ref to the schedule is in the agreement at this point (reg.2(5))
   c. the amount of any Advance Payments to be made before credit is given and if applicable, the nature of those payments (all types) (para 5)

   d. amount of credit
      i. for restricted-use, debtor-creditor-supplier agreements for fixed sum credit (unless the total amount payable is no greater than the cash price and there is no advance payment): the
difference between cash price and total of any advance payments; (para 6)

ii. for other fixed sum credit: the amount of credit given; (para 7)

for running account credit: the credit limit, (para 8)

e. Credit limit - Agreements for running-account credit - expressed as-

i. sum of money

ii. statement that credit limit will be determined from time to time

and notice of it will be given

iii. sum of money together with statement that credit may vary, or

iv. in cases not falling within a, b and c above, either a statement indicating the manner in which credit will be determined or one indicating that there is no credit limit (para 8).

NB: the following information can be estimated on reasonable assumptions; the assumptions must be set out in the agreement (reg.2(2)).

f. the total charge for credit for fixed sum credit agreements (except those which have irregular repayment intervals, the TAP may vary, the TCC may vary or the TAP is not more than cash price)

i. with or without a list of its constituent parts (para 9).

g. the total charge for credit for running-account credit and fixed sum credit agreements excluded from (f) (except those where the TAP is not more than cash price),

i. rate(s) of interest,

ii. total amount of other charges included in the total charge for credit to be provided under the agreement (para 10).

h. the total amount payable: for agreements for fixed sum credit (except those where the total payable or other items may be varied etc): the total of any advance payment, the amount of credit, and the total charge for credit (para 11)

NB: Where information in paras 9, 10 and 11 is not ascertainable, it should be estimated, based on reasonable assumptions, which must be stated in the agreement (reg.2(2)).

i. the timing of repayments (all types) (para 12)

i. the dates of repayments,

ii. the frequency and number of repayments with the date of the first payment and/or

iii. how the dates of repayment will be determined

j. the amounts of repayments (all types – practically) (para 13, 14) expressed as

i. a sum of money,

ii. a proportion of a specified amount,

iii. both or

iv. a statement of how the amount will be determined

k. the APR – must be denoted as “APR” or in full, with “variable” if applicable, and be afforded no less prominence than the other Financial and Related Particulars, and statements in Sched 2 (Forms 5 to 10) (reg.2(6)). It must be calculated in accordance with the Total Charge for Credit Regs and Sched 7 (reg.1(2)).

i. for debtor-creditor-supplier agreements for running account credit, where the debtor pays on specified occasions, there is a credit limit and charges are either fixed for each transaction or
calculated as a proportion of the price payable under the transaction: the APR should be shown calculated both(1) on the assumption that the debtor is given credit equalling the credit limit and he repays it by the payments specified and (2) that the amount advanced is 1/3 of the credit limit, (para 16, 17)

ii. for all other types: the APR (or a statement that the total amount payable is not more than the cash price or calculated) (para 15)

I. where APR may vary:
   i. a statement that no account has been taken of the variation;
   ii. and the circumstances in which and when this variation may occur) (para 18,19, 19A)

6. **Schedule 2 Statements** Forms 5,7,& 9, where agreement is a HP or Conditional Sale agreement for land or goods:
   a. the relevant statements as to rights on termination and repossession must be included;
   b. these must be shown together as a whole with the Financial and Related Particulars (without interspersing), unless they are referred to (reg.2(4)).

7. **Other information**
   a. **Security**
      i. where an article is taken in pawn –a statement that article taken and description of it (para 20)
      ii. all other agreements were security is provided –a description of the security and the item offered (para 21)
   b. **Charges on default**
      i. an indication of any charges payable on default.

8. **The Signature Box**
   a. Must be in the form in Sched 5
   b. Must be adjacent to a box from
      i. Sched 2 Form 1 to 4 (if cancellable under s.58(1))
      ii. Sched 2 Part II (if an item is taken in pawn) (reg. 2(7))

9. **Statement of Rights and Remedies**
   a. Must be included (in so far as they have not been included under the above rules);
   b. Setting out the statements of protection and remedies as applicable (reg. 2(3)).

**The Minimum Prescribed Terms** (Reg. 6, Sched 6)
   a. Amount of Credit or the Credit Limit
   b. The Rate of Interest
   c. How the debt is to be repaid
   d. Any power of the creditor to vary what is payable
   e. The document must be signed by the debtor

THIS IS INTENDED AS AN AIDE MEMOIRE ONLY. IT SHOULD NOT BE TAKEN AS DEFINITIVE LEGAL ADVICE AND MAY CONTAIN ERRORS. IT IS NOT A SUBSTITUTE FOR READING THE RELEVANT LAW.
POINTS TO NOTE ON BILLS OF SALE

Applicable law: the Bills of Sale Act 1878 and
the Bills of Sale Act (1878) Amendment Act 1882.

Definition: in s.4 of the Bills of Sale Act 1878, includes-
“bills of sale, assignment, transfers, declarations of trust without transfer or
receipts for purchase moneys of goods, and other assurances of personal chattels,
and also powers of attorney, authorities, or licences to take possession of personal
chattels of security for any debt, and also any agreement, whether intended or not to
be followed by the execution of any other instrument, by which a right in equity to any
personal chattels, or to any charge or security thereon, shall be transferred.”

It is a very wide definition, encompassing most documents which transfer a
right to personal goods as security, but possession does not pass to the lender.

This raises an issue that even an ordinary consumer credit agreement, which
is secured on some chattel (and is not a HP or Conditional Sale agreement), could in
fact be a bill of sale….

Form, Content and Registration

Correct Form: A bill of sale is void unless in the form set out in the Schedule to the
1882 Act (see s.9) (although this form may be adapted for the sake of clarity):

“This Indenture made the …… day of ……, between AB of …… of the one
part, and CD of …… of the other part, witnesseth that in consideration of the sum of
£…… now paid to AB by CD, the receipt of which the said AB hereby acknowledges [or whatever else the consideration may be], he the said AB doth assign unto CD, his executors, administrators and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £……., and interest thereon at the rate of …… per cent per annum [or whatever else may be the rate]. And the said AB doth further agree and declare that he will duly pay to the said CD the principal sum aforesaid, together with the interest then due, by equal payments of £…… on the day of ……[or whatever else may be the stipulated times or time of payment]. And the said AB doth also agree with the said CD that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security].

“Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said CD for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act 1882.

“In witness etc
“Sealed and signed by the said AB in the presence of me EF [add witness’ name, address and description]”

The Schedule to the Bill of Sale: s.4 of the 1882 Act requires that all the items on which the debt is secured be set out in a Schedule at the end of the Bill of Sale, and these must be specifically described. It is void against any goods of which the debtor was not the true owner at the time of execution (s.5).

The Essential Contents of a Bill of Sale: Without which the bill is void
1. Date of the bill
2. Names and addresses of the Parties
3. Statement of the true consideration given
4. Acknowledgement of receipt of the advance
5. An assignment by way of security of personal chattels capable of specific description
6. That it is a monetary obligation (rather than any other) that is secured
7. Statement of the sum secured, the rate of interest and the repayment instalments
8. agreed terms for the maintenance and defeasance of the security (ie that upon payment of the principal sum plus interest, the bill shall be void)
9. a clause limiting the grounds of seizure to those set out in s.7 (these are usually set out in full)
10. Execution by the debtor
11. Attestation by a credible witness who is not a party to the bill
12. A schedule describing the secured chattels (this description must not appear within the body of the bill)

**Registration Requirements:** s.8 of the 1882 Act requires that

The duly attested bill of sale must be registered within 7 days of its execution. The correct process is to file the bill with the Filing Department, Royal Courts of Justice, Strand. The lender’s copy of the bill will then have a Supreme Court Stamp, and the bill will be entered on the Register at the RCJ.

**Consumer Credit Act Requirements:** In addition to the above, where the consideration is under £25,000, the CCA must be complied with.

1. There must be a consumer credit agreement which complies with the Consumer Credit (Agreements) Regulations 1989 rules (see separate handout)
2. A description of the security must be set out in the consumer credit agreement, or the bill of sale must be referred to
3. The bill of sale must be presented to the debtor at the same time as the consumer credit agreement, and referred to within the consumer credit agreement (see CCA s.61)
4. The bill of sale (as a document referred to in the consumer credit agreement) must always be sent at the same time as the consumer credit agreement. A signed copy of the agreement must be sent to the consumer following execution (see CCA ss.62 & 63).

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**What to do if default is alleged**

**Repossession:** the Creditor can only seize the secured goods for one of the five reasons set out in s.7 of the 1882 Act.

**The Five Grounds for Seizure (s.7):**

1. Default in payments or the performance of any covenant which is (a) contained in the Bill and (b) necessary for maintaining the security.
2. Bankruptcy of the debtor or the seizure of the goods from him for rent, rates or taxes.
3. If the debtor fraudulently removes the goods from his premises.
4. If the debtor unreasonably refuses to produce his last receipt for rent, rates or taxes.
5. If execution has been levied against the goods under any judgement at law
Consumer Credit Agreements: Where the bill of sale is part of a consumer credit agreement, the creditor must serve notice under s.87 of the CCA giving the debtor 7 days to remedy the default.

At this point, the debtor can apply to Court for a Time Order, under s.130 of the CCA, so that he can have longer than the 7 days to remedy the default.

The s.7 Proviso: even where the goods have been seized, s.7 of the 1882 Act provides that where any of the five grounds has been relied on, the debtor may apply to the High Court, within 5 days of any seizure. If the judge is satisfied that the debtor can take some step to remove the basis of the ground (eg by payment of arrears etc), he may order that the creditor be restrained from removing or selling the goods, or make any order as may seem just.

For further information: see Halsbury's Laws on Bills of Sale

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Consumer Credit (Agreements) Regulations 1983 (as amended) – contents of agreements (Aide Memoir)

These rules apply to agreements entered into after 31st May 2005

Consumer Credit Agreements

10. Each regulated agreement
   a. must contain the prescribed information in the prescribed order.
   b. These must be shown together as a whole
   c. and must not be preceded by any information apart from trade names, logos etc
   d. or interspersed with any other information apart from subtotals of total amounts or cross references to the terms of the agreement.
   e. Where information about financial particulars is not ascertainable, it should be estimated, based on the assumptions in Sched 1 para 10, or reasonable assumptions (which must be stated in the agreement) (reg.2(2))

11. The information and order is as follows (reg.2(4):

12. Nature of the agreement: (All types) (Sched 1, para 1)
   a. a heading stating doc is a Hire Purchase, Conditional Sale, Fixed Sum Loan, Credit Card or generic Credit Agreement regulated by CCA;
   b. if applicable “pawn receipt”
   c. if applicable “partly” regulated
   d. if applicable “secured on”…

13. Parties to the agreement: (all types) Name and postal (and other) address of creditor and debtor (para 2).
14. “Key Financial Information” (heading)
   a. amount of credit
      i. for restricted-use, debtor-creditor-supplier agreements for fixed
         sum credit (unless the total amount payable is no greater than
         the cash price and there is no advance payment): the difference
         between cash price and total of any advance payments; (para 6)
      ii. for other fixed sum credit: the amount of credit given; (para 7)
      iii. for running account credit: the credit limit, (para 8)
   b. the term of the agreement
      i. for agreements of fixed duration for running-account credit: the
duration of the agreement (para 8A)
      ii. for fixed sum credit: the duration or minimum duration of the
agreement (para 8B)
   c. the total amount payable: for agreements for fixed sum credit (except
those where the total payable or other items may be varied etc): the
total of any advance payment, the amount of credit, and the total
charge for credit (para 11)
   d. the timing of repayments (all types) (para 12)
      i. the dates of repayments,
      ii. the frequency and number of repayments with the date of the
first payment and/or
      iii. how the dates of repayment will be determined
   e. the amounts of repayments (all types –practically) (para 13, 14)expressed as
      i. a sum of money,
      ii. a proportion of a specified amount,
      iii. both or
      iv. a statement of how the amount will be determined
   f. the APR –must be denoted as “APR” or in full, with “variable” if applicable (reg.2(6)). It must be calculated in accordance with the
Total Charge for Credit Regs and Sched 7 (reg.1(2)).
      i. for debtor-creditor-supplier agreements for running account
credit, where the debtor pays on specified occasions, there is a
credit limit and charges are either fixed for each transaction or
calculated as a proportion of the price payable under the
transaction: the APR should be shown calculated both(1) on
the assumption that the debtor is given credit equalling the
credit limit and he repays it by the payments specified and (2) that
the amount advanced is 1/3 of the credit limit, (para 16, 17)
      ii. for all other types: the APR (or a statement that the total
amount payable is not more than the cash price or calculated)
(para 15)

15. “Other Financial Information” (heading)
   a. a description of the goods, services, land to be acquired under the
agreement (for restricted-use debtor-creditor-supplier agreements for
fixed sum credit for a transaction) (para 3)
   b. the Cash Price of the above goods etc (para 4). The cash prices and
total cash price may be shown in a schedule to the agreement if it is a
restricted use debtor-creditor-supplier agreement for fixed sum credit
to finance purchased of more than one item of goods etc, as long as
the total cash price and a ref to the schedule is in the agreement at
this point (reg.2(5))
   c. the amount of any Advance Payments to be made before credit is
given and if applicable, the nature of those payments (all types) (para
5)
d. **the total charge for credit** for fixed sum credit agreements (except those which have irregular repayment intervals, the total repayable may vary, the charges may vary or the total payable is not more than cash price)
   i. with a list of its constituent parts,
   ii. the rate(s) of interest on the credit
   iii. and a statement of how and when interest charges are calculated and applied (para 9)
e. **the total charge for credit** for running-account credit and fixed sum credit agreements (except those within para 9(a)-(c))
   i. with a list of its constituent parts,
   ii. rate(s) of interest,
   iii. whether rate is variable,
   iv. statement of how and when interest charges are calculated and applied (para 10)
f. **statement of the order or proportions of amounts paid by debtor will be applied to different parts of the agreement** –where amount paid is less than total amount due (all types where different interest/charges apply to different parts of the agreement) (para 14A)
g. where APR may vary (in which circumstances and when this may occur) (para 18, 19, 19A)

16. **“Key Information”** (heading)
a. **Security**
   i. where an article is taken in pawn –a statement that article taken and description of it (para 20)
   ii. all other agreements were security is provided –a description of the security and the item offered (para 21)
b. **Charges** (all types) –a list of any charges payable in default, and an indication of any terms which provide for charges not previously set out above (para 22)
c. **Cancellation rights** (where no right to cancel) (para 23)
d. **Amount payable on early settlement** (for fixed-sum credit for a term of one month plus) –examples based on amount of credit actually provided or £1000 or £100, showing how much would be payable if debt paid at ¼, ½ and ¾ of term; together with statement that no account taken of variations (para 24)
e. **Statement of protection and remedy as appropriate from Sched 2**

17. **Signature Box**
a. which must be in the prescribed form selected from Sched 5 (reg.2(7))
b. and accompanied by a consent form –if
   i. the agreement includes a principle and subsidiary agreements documented in one form and the subsidiary agreement is optional insurance, or
   ii. the consumer is entering into a separate contract of insurance and the insurance is funded by credit
c. and a separate box from Sched 2, if the agreement is cancellable, can be withdrawn from, or involves an item taken in pawn

18. Where there is a subsidiary agreement to finance an insurance to cover accident, sickness or unemployment; a shortfall insurance; or an insurance on the goods (reg.2(8)), the heading in Sched 1 (para 1) or Sched 8 (para 1) may be replaced with (reg.2(9))
a. A heading and signature box for the principle agreement
b. A statement in Form 14 in Sched 2
c. Another statement (not Form 16) available under the CCA.

19. **The Minimum Prescribed Terms** (Sched 6)
a. Amount of Credit or the Credit Limit
b. The Rate of Interest
c. How the debt is to be repaid
d. Any power of the creditor to vary what is payable
e. The document must be signed by the debtor

**Hire Agreements**

20. Each regulated agreement must:
   a. Contain the prescribed information (reg.3(1)) in the prescribed order
   b. These must be shown together as a whole
   c. and must not be preceded by any information apart from trade names, logos, reference number of the agreement etc
   d. or interspersed with any other information apart from subtotals of total amounts or cross references to the terms of the agreement (reg3(4)).
   e. Where information about financial particulars is not ascertainable, it should be estimated, based on the assumptions in Sched 1 para 10, or reasonable assumptions (which must be stated in the agreement) (reg.3(2))

21. The content and order of Hire Agreements is as follows:

22. **Nature of the agreement** (all types) (Sched 3 para1):
   a. heading stating doc is a “hire agreement regulated by CCA"
   b. if applicable “secured on” and address of land secured on.

23. **Parties to the agreement** (all types) (para2): name and postal address of owner and hirer.

24. **“Key Financial Information”** (heading)
   a. **Description of goods** (all types) (para 3): list or description of goods hired (this can be in a schedule, as long as is referred to –reg.3(5))
   b. **Advance Payments** (if applicable) (para 4): the amount of advance payment, and nature in case of cancellable agreement
   c. **Hire Payments** (all types) (para 5):
      i. Amount of each hire payment (other than advance payment)
      ii. Timing of the payments —expressed in terms of dates to be made, frequency and number of payments (plus date of first payment) and/or how dates will be determined
   d. **Other Payments** (if applicable) (para 6) made by hirer or a relative, to the owner
      i. The amount (or how determined) of any payment for installation, care maintenance or protection of goods; any insurance premium; any payment on termination of the agreement
      ii. The timing of payments (ie, date, frequency, and/or how date determined)
   e. **Variable Payments** (all types) (para 7):
      i. The circumstances in which hire or other payments may be varied (unless due to VAT)
      ii. The time at which such variation may occur
   f. **Duration of Hire** (all types) (para 8)
      i. if the goods are to be hired for a fixed or minimum period;
      ii. the duration of that period

25. **“Key Information”** (heading)
   a. **Security** (all types) (para 9): description of the security and the subject matter
   b. **Charges** (all types) (para 10):
      i. List of any charges payable to the owner on the hirer doing or not doing something, contrary to the agreement
ii. Indication of any term allowing any other charges  
c. Cancellation rights (if applicable) (para 11) statement that agreement not cancellable  
d. Statement of protection and remedies as appropriate from Sched 4

26. **The Signature Box** as appropriate from Sched 5

27. **The Separate Box** if the agreement is cancellable, containing the appropriate statement from Sched 4.

28. Any security MUST be contained in the agreement

29. **The Minimum Prescribed Terms** (Sched 6)
   
   a. How the hirer is to pay the hire payments, which may be expressed in any way  
   b. Any power of the owner to vary what is payable  
   c. The document must be signed by the hirer

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Please note that this document is an aide memoir only, and is not necessarily strictly accurate. It is a simplified version only, and should not be used as an alternative to reading the Regulations themselves.