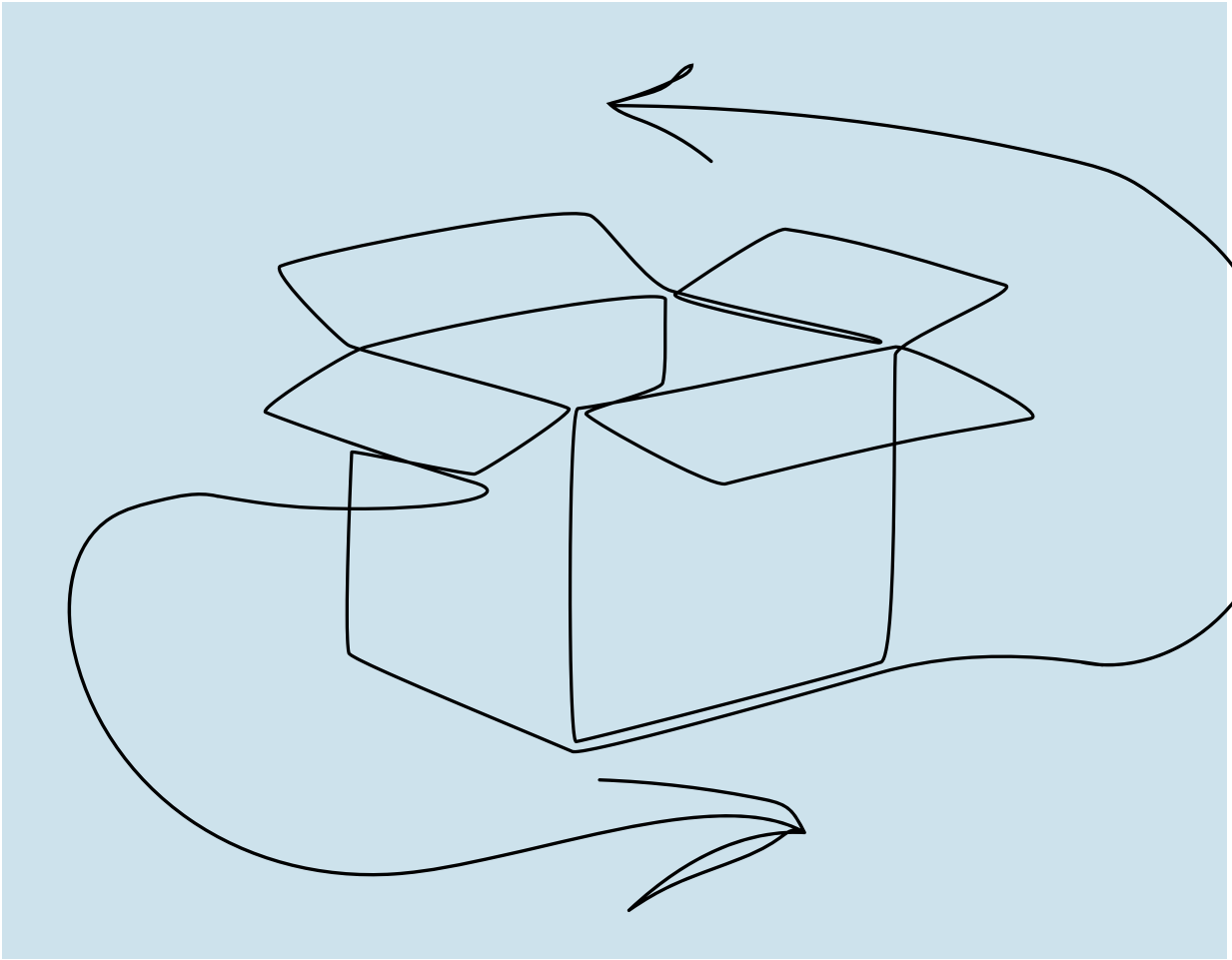
NAJ Code of Practice

CONSUMER LEGISLATION:
RETURNS, REFUNDS AND CANCELLATIONS

Version 1. February 2023.



The following pieces of legislation deal with consumer rights when it comes to returns, refunds and cancellations, whether in store or online;

- **Consumer Rights Act 2015**
- **Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013**

Shaping professional excellence in jewellery businesses and their people

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Consumer Rights Act 2015

(In this Code of Practice it will be known as The Act)

This Act replaces the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Unfair Terms in Consumer Contracts Regulations 1999 when you are dealing with private customers. However, the Sale of Goods Act and the Supply of Goods and Services Act still apply for business-to-business contracts.

The Act provides different remedies for the customer when things go wrong whether the sale was made face to face, in a shop or online.

Statutory Rights

Any products you supply should comply with the customer's statutory rights; these are that the goods should be

- of satisfactory quality, that is they are of a standard that would reasonably be expected taking into account the price paid and the description. The quality of the goods will include freedom from minor defects, durability, safety and appearance and finish
- fit for any common purpose
- fit for any particular purpose made known to the seller at the time of purchase
- meet any description, including any sample or model

30 day right to reject

If you have supplied a product that does not satisfy the statutory rights, e.g., it is faulty, the customer can reject it within 30 days, beginning the day after delivery of the goods, or ownership of the goods transferring to the consumer. This means you have to refund them in full or, if the customer agrees, you can provide a repair or replacement. If such a repair or replacement fails, the customer may still reject the goods, or may request a price reduction.

During this first 30 days the burden of proof is on the customer to prove that the goods were faulty.

If a problem is found after the first 30 days, the customer can claim a repair or replacement. But they can still request a full or partial refund/price reduction where:

- the repair or replacement is unsuccessful or impossible
- it could cause them significant inconvenience (e.g., take a long time)

The first 6 months

If the fault is found within the first 6 months, the law says it will be assumed that it was there from the beginning.

Between the 30 days and 6 months after the sale the burden of proof passes to the seller. So, unless you can prove otherwise, with an independent expert report for instance, you will need to carry out a repair or replacement to put things right. If this is unsuccessful the customer can still have a full refund (or price reduction/ partial refund if they wish to keep the product).

After 6 months

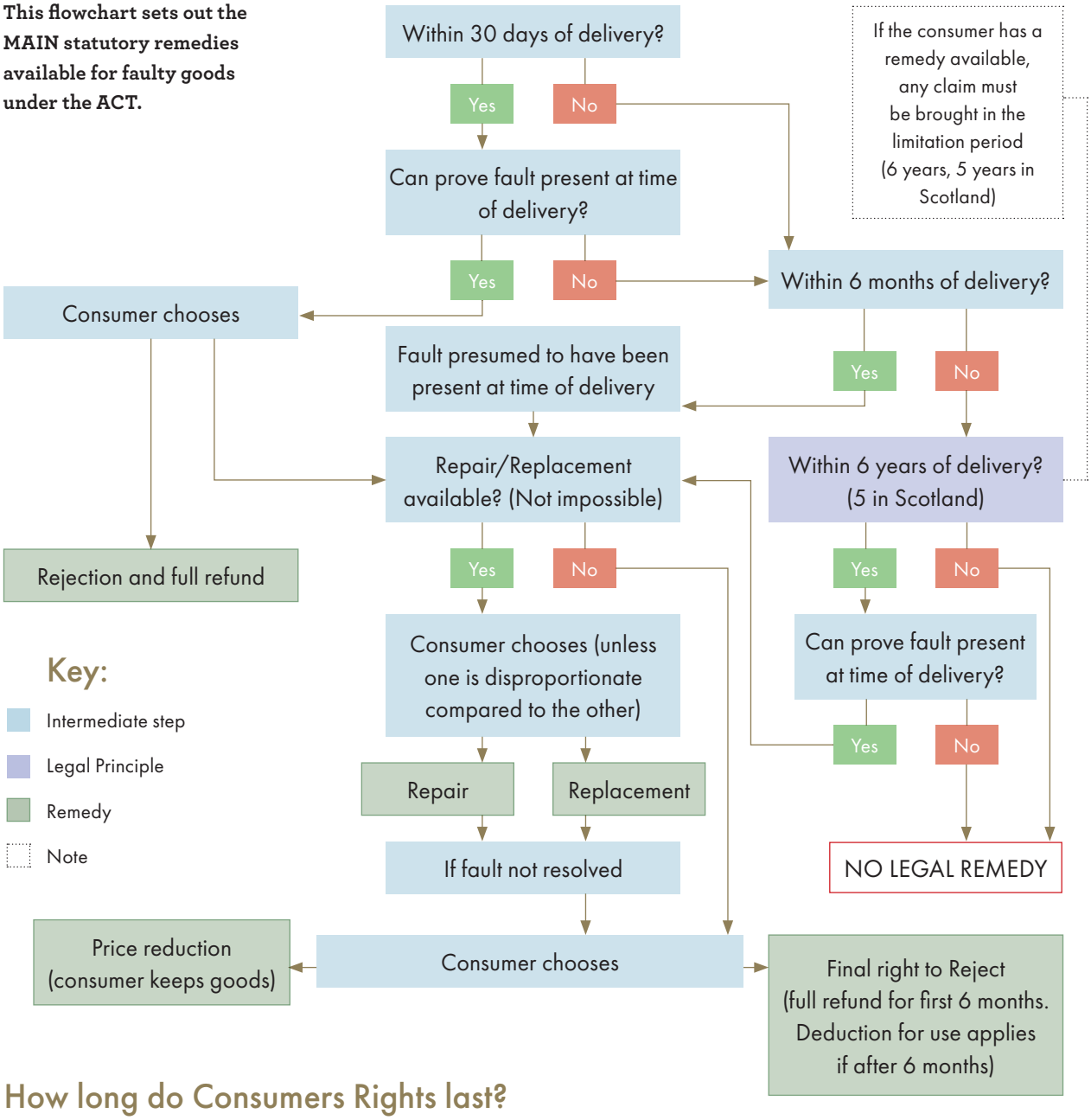
If the fault is found/develops after 6 months, then it will be down to the customer to prove the defect was there at the time of delivery.

This means that where you do not agree with the customer, they will have to provide some extra evidence (such as an expert report) before you must put things right. You will then have to carry out a repair or replacement to put things right. If this is not successful the customer can reject the goods for a refund, which may be reduced to take into account the amount of use the customer has had from the goods, or they are entitled to a price reduction/partial refund should they wish to keep the goods.

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This flowchart sets out the MAIN statutory remedies available for faulty goods under the ACT.



How long do Consumers Rights last?

Consumers have up to six years from the date the faulty goods were supplied, to take a claim to the small claims court for faulty goods in England, Wales and Northern Ireland. In Scotland consumers have five years, starting from the time they became aware the goods were faulty.

This doesn't mean that a product has to last six years - just that consumers have this length of time in which to make a claim if a retailer refuses to repair or replace a faulty product.

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Terms and Conditions

You do not have to provide terms and conditions but if you do, they must be fair.

This means they can't benefit you more than the customer. You should ensure that terms are presented in a way that is fair and open and respects the consumer's legitimate rights. Terms and notices should be transparent; that is using plain language, with no legal jargon, capable of being understood and clearly legible. They should also be displayed where they can be easily seen by your customers, that is;

a) on your website or social media pages

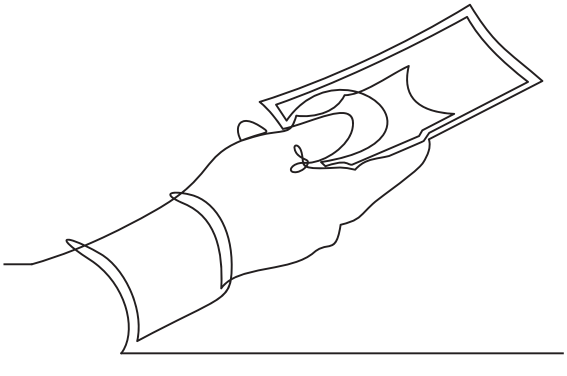
b) attached to any contract documents

c) displayed on a clearly visible notice in store

Terms that attempt to exclude or restrict statutory rights are ALWAYS considered unfair so should never be used. However, you may choose to extend consumers rights, such as giving them a period of time in which to return goods for a refund or exchange when they have changed their mind.

Jewellery for piercings can be excluded from extended consumer rights due to hygiene reasons, as can goods made to a customer's specifications. This must be made clear to the customer, and it is worth reminding them at the point of sale.

You may also have a different returns policy for online and face to face sales. The requirement is to ensure the consumer statutory rights remain unchanged.



Deposits

In some circumstances it may be appropriate to take a deposit from a customer to reserve, or to order goods not held in stock. If your customer cancels and it's not your fault, you've got the right to protect yourself, but the amount you retain must take into account what your business is actually losing as a result. It must not be excessive.

Be clear with customers about your deposits - provide details of when these are required and why and whether some or all of the deposit will be retained in the event that the customer changes their mind. The amount may be higher for different products, as long as it reflects the actual loss incurred by the business.

Examples:

- A consumer ordered an engagement ring that was customised to suit their requirements, the customer then decided not to proceed with the purchase. The business has paid for the work to be carried out on the ring and so may retain the deposit to cover this cost and any loss of profit.
- A consumer orders a particularly small size ring, which would not normally be held in stock, and has to be specially ordered by the business. If the consumer does not then go ahead with the purchase, the business may lose money if it has to be returned to the supplier, or if it cannot be returned to the supplier and has to be sold on at a lower price. They may retain some or all of the deposit.
- A consumer pays a deposit to reserve a watch that is normally held in stock, they then decide not to proceed with the purchase. Where there is no identifiable financial loss to the business it would not be fair to retain the deposit. However, the business may wish to retain an element of the deposit to cover the loss of profit and other costs involved.

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Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013

These regulations provide cancellation rights for consumers in certain circumstances, and details information that should be given to consumers before you enter into a contract with them. These regulations replace The Consumer Protection (Distance Selling) Regulations 2000. involved.

Distance Selling

You must provide certain information if you are selling goods or services by mail order, online or by phone. This is called distance selling. The information which you must provide includes:

- a description of the goods or services
- the total price of the goods or services
- how the customer will pay for the goods or services and when they will be provided.
- all additional delivery charges and other costs (and if these charges can't be calculated in advance, the fact that they may be payable)
- details of who pays for the cost of returning items if the customer has a right to cancel
- details of any right to cancel - you also need to provide, or make available, a standard cancellation form to make cancelling easy although the consumer is not under any obligation to use it
- information about the seller, including their geographical address and contact details

Right to cancel

The customer has a 14-day cooling-off period to change their mind for any reason; in the case of goods, from the date of the delivery of the goods, or 14 days from entering into a service contract.

This means that in addition to all the normal information you give the consumer you must also provide them with clear details of how they can cancel if they wish to. You should provide a cancellation form to use if they wish.

You must tell the customer they can cancel their order up to 14 days after their order is delivered. This is separate from their right to reject goods for not complying with their statutory rights.

Contracts that do not have a right to cancel

Certain contracts do not have a right to cancel. Where you are suppling goods that are made to the customer's specification or are personalised, the customer does not have the opportunity to change their mind. However, this exemption does not apply to items made to a customer's specification simply by combining stock items.

Certain goods will be unsuitable for return if they are unsealed, due to health protection or hygiene reasons, in particular jewellery for body piercings. If such goods are unsealed customers will lose their right to cancel. You should ensure this is made clear to customers, and the goods should be sealed in a clear bag so they can still be viewed by the customer without damaging the seal. Other jewellery such as rings and watches will not be covered by this exemption.

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FAQs

What if a customer changes their mind about a bespoke item?

'Bespoke' or 'custom-made' goods are included in the wide definition of 'goods' in the Act. This means that consumers still have access to the consumer remedies including if the goods do not meet the required standards (being goods of satisfactory quality, which are fit for purpose, match any description provided and correspond to sample (where relevant)).

Where you may normally have a period of time for consumers to change their mind and return goods for a refund, you will probably want to restrict this right for bespoke goods. This should be made clear to the consumer, and in any terms and conditions you have displayed.

Bespoke goods sold online are excluded from the cancellation rights.

It is essential that, if you are provided with a design by a consumer which would, if followed, lead to the production of a product which was not up to the required standards, that this fact is made very clear to the customer before you start work. We would discourage members from taking on such work.

If you do, to give yourself as much protection as possible, your comments on the design and any advice you give should be recorded in writing. Provided you have given this advice, if the customer wants you to nevertheless proceed with their original design and this does create the faults as you identified, the customer will not have access to the consumer remedies for goods in respect of those faults.

What if I sell a watch which then requires new batteries within the 30 days from the date of sale?

Watches will, of course, be considered as 'goods' under the Act. As such, they must be of satisfactory quality, fit for purpose, match any description provided and correspond to sample (where relevant).

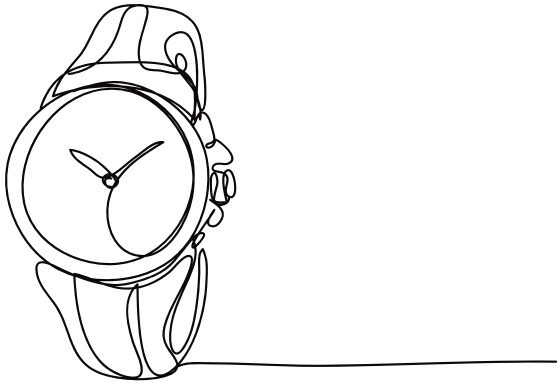
Batteries ; A consumer can reasonably expect a watch battery to last longer than 30 days. Therefore, if the batteries run out within the first 30 days the watch will be considered to be of unsatisfactory quality. As such the consumer will be entitled to rely on their 'short term right to reject', or they could choose to request repair or replacement, provided that they bring it to your attention within 30 days from the date of purchase. If the batteries prematurely expire after 30 days they may also be able to request a repair or replacement.

Does the Act cover second hand goods?

The Act does cover goods bought second hand, as well as goods bought at a discount price in a sale.

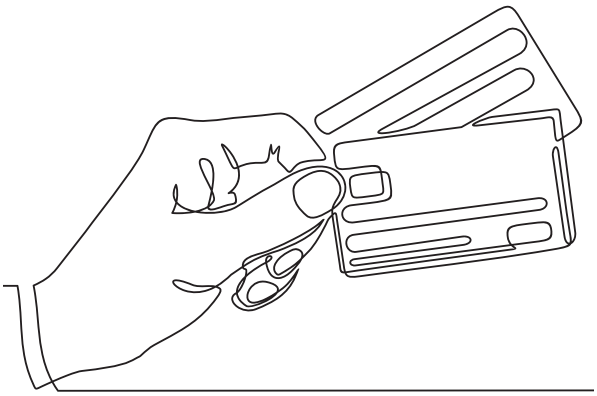
However, the requirement that goods be of satisfactory quality does not apply to a particular defect where:

- that particular defect has been pointed out to the consumer before purchase
- the consumer inspects the goods before agreeing to buy them and the defect is one they would have easily spotted



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What is a Section 75 claim?

If the consumer paid for goods with a credit card with a cost between £100 and £30,000 the credit card company will be jointly liable with the seller if the goods are not of satisfactory quality and the consumer will be entitled to a refund from either the seller or the credit card provider under Section 75 of the Consumer Credit Act.

What terms and conditions can I stipulate regarding earring returns?

Example text: "Pierced Jewellery; In the interest of hygiene and for the protection of all our customers, earrings and pierced jewellery are excluded from our exchange and refund policy. This exclusion arises from a health and safety consideration and to prevent the spread of infections. This exclusion is in the interest of hygiene and for the protection of all our customers. This does not affect your right to return earrings for a refund/exchange /replacement if they are found to be faulty."

Do I have to give a customer their money back if they make a purchase in store and then subsequently change their mind?

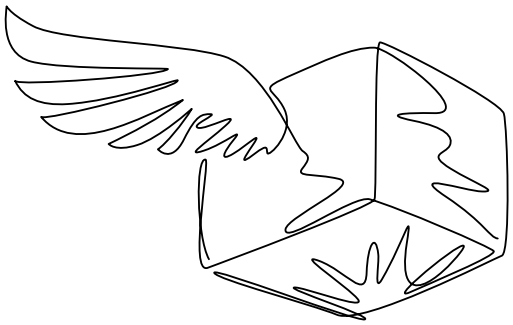
No, the customer does not have an automatic right to get their money back if they change their mind about an item and there is nothing wrong with it.

If there is a problem or fault with the item, they have access to the remedies provided in the Act.

How do I manage unexpected problems with repairs?

When items are taken in for repair, unexpected problems can arise that were impossible to notice during the initial inspection. Any issues should be brought to the attention of the customer as soon as possible, and a discussion should be held as to how they wish to proceed, with an amended price if necessary. It would be worth adding to your terms and conditions, or notice displayed an appropriate statement such as:

"Prices for any repairs are provided in good faith based on initial inspection of the jewellery. In some cases, we may encounter unforeseeable problems once we begin work on the jewellery which could make the repair more expensive or impossible. In this case we will contact you without delay to agree a mutually acceptable way forward."



Useful Links and Further Reading

- Consumer Rights Act 2015 (legislation.gov.uk)
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (legislation.gov.uk)

PRIMARY AUTHORITY PARTNERSHIP WITH
Buckinghamshire&Surrey trading standards

Buckinghamshire Council est. 2020 | Surrey County Council

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NAJ Disciplinary Procedure Tree

