

# **Consumer Protection (Fair Trading) (Amendment) Bill**

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**Bill No. 3/2012.**

*Read the first time on 14th February 2012.*

A BILL

*i n t i t u l e d*

An Act to amend the Consumer Protection (Fair Trading) Act (Chapter 52A of the 2009 Revised Edition) and to make related amendments to the Hire-Purchase Act (Chapter 125 of the 1999 Revised Edition) and the Road Traffic Act (Chapter 276 of the 2004 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

### **Short title and commencement**

1. This Act may be cited as the Consumer Protection (Fair Trading) (Amendment) Act 2012 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

### **Amendment of long title**

2. The long title to the Consumer Protection (Fair Trading) Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the word “practices”, the words “and to give consumers additional rights in respect of goods that do not conform to contract,”.

### **New Part I heading**

3. The principal Act is amended by inserting, immediately before section 1, the following Part heading:

“PART I  
PRELIMINARY”.

### **New Part II heading**

4. The principal Act is amended by inserting, immediately before section 3, the following Part heading:

“PART II  
UNFAIR PRACTICES”.

### **Amendment of section 3**

5. Section 3 of the principal Act is amended —

(a) by deleting the word “Act” and substituting the word “Part”; and

(b) by deleting the word “Act” in the section heading and substituting the word “Part”.

### **New Part III**

6. The principal Act is amended by inserting, immediately after section 12, the following Part:

#### **“PART III**

5                   **ADDITIONAL CONSUMER RIGHTS IN RESPECT OF  
NON-CONFORMING GOODS**

#### **Interpretation of this Part**

**12A.**—(1) In this Part, unless the context otherwise requires —

10                   “applicable contract” means —

- (a) a contract of sale of goods;
- (b) a contract for the transfer of goods; or
- (c) a hire-purchase agreement;

15                   “contract for the transfer of goods” has the same meaning as in the Supply of Goods Act (Cap. 394);

                    “contract of sale of goods” has the same meaning as in the Sale of Goods Act (Cap. 393);

                    “delivery” has the same meaning as in the Sale of Goods Act;

20                   “goods” —

- (a) in relation to a sale, has the same meaning as in the Sale of Goods Act; and
- (b) in relation to any other transfer, has the same meaning as in the Supply of Goods Act;

25                   “hire-purchase agreement” has the same meaning as in the Hire-Purchase Act (Cap. 125);

                    “repair” means, in cases where there is a lack of conformity in goods within the meaning of subsection (4), to bring the goods into conformity with the contract;

“transferee” —

- (a) in relation to a contract of sale of goods, means the buyer within the meaning of the Sale of Goods Act;
- 5 (b) in relation to a contract for the transfer of goods, has the same meaning as in the Supply of Goods Act; and
- (c) in relation to a hire-purchase agreement, means the hirer within the meaning of the Hire-Purchase Act;
- 10

“transferor” —

- (a) in relation to a contract of sale of goods, means the seller within the meaning of the Sale of Goods Act;
- 15 (b) in relation to a contract for the transfer of goods, has the same meaning as in the Supply of Goods Act; and
- (c) in relation to a hire-purchase agreement, means the owner within the meaning of the Hire-Purchase Act.
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(2) References in this Part to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act (Cap. 396).

(3) For the purposes of this Part, it is for a transferor claiming that the transferee does not deal as consumer to show that he does not.

(4) For the purposes of this Part, goods do not conform to —

- (a) a contract of sale of goods if there is, in relation to the goods, a breach of an express term of the contract or a term implied by section 13, 14 or 15 of the Sale of Goods Act;
- 30 (b) a contract for the supply or transfer of goods if there is, in relation to the goods, a breach of an express term

of the contract or a term implied by section 3, 4 or 5 of the Supply of Goods Act; and

- 5 (c) a hire-purchase agreement if there is, in relation to the goods, a breach of an express term of the contract or a term implied by section 6A, 6B or 6C of the Hire-Purchase Act.

(5) The following provisions shall not apply to this Part:

- (a) the definitions of “consumer” and “goods” in section 2(1);
- 10 (b) section 2(2); and
- (c) the provisions in Part IV.

### **Application of this Part**

**12B.**—(1) This Part applies if —

- (a) the transferee deals as consumer;
- 15 (b) the goods do not conform to the applicable contract at the time of delivery; and
- (c) the contract was made on or after the date of commencement of section 6 of the Consumer Protection (Fair Trading) (Amendment) Act 2012.

20 (2) If this section applies, the transferee has the right —

- (a) under and in accordance with section 12C, to require the transferor to repair or replace the goods; or
- (b) under and in accordance with section 12D —
- 25 (i) to require the transferor to reduce the amount to be paid for the transfer by the transferee by an appropriate amount; or
- (ii) to rescind the contract with regard to the goods in question.

30 (3) For the purposes of subsection (1)(b), goods which do not conform to the applicable contract at any time within the period of 6 months starting from the date on which the goods were

delivered to the transferee must be taken not to have so conformed at that date.

(4) Subsection (3) does not apply if —

- 5 (a) it is established that the goods did so conform at that date; or
- (b) its application is incompatible with the nature of the goods or the nature of the lack of conformity.

### **Repair or replacement of goods**

10 **12C.**—(1) If section 12B applies, the transferee may require the transferor to —

- (a) repair the goods; or
- (b) replace the goods.

(2) If the transferee requires the transferor to repair or replace the goods, the transferor must —

- 15 (a) repair or, as the case may be, replace the goods within a reasonable time and without causing significant inconvenience to the transferee; and
- (b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).
- 20

(3) The transferee must not require the transferor to repair or, as the case may be, replace the goods if that remedy is —

- (a) impossible;
- 25 (b) disproportionate in comparison to the other of those remedies; or
- (c) disproportionate in comparison to an appropriate reduction in the amount to be paid for the transfer under paragraph (a), or rescission under paragraph (b), of section 12D(1).

30 (4) One remedy is disproportionate in comparison to the other if the one imposes costs on the transferor which, in comparison

to those imposed on him by the other, are unreasonable, taking into account —

- (a) the value which the goods would have if they conformed to the applicable contract;
  - 5 (b) the significance of the lack of conformity with the applicable contract; and
  - (c) whether the other remedy could be effected without causing significant inconvenience to the transferee.
- (5) Any question as to what is a reasonable time or significant  
10 inconvenience is to be determined by reference to —
- (a) the nature of the goods; and
  - (b) the purpose for which the goods were acquired.

### **Reduction in amount to be paid or rescission of contract**

**12D.**—(1) If section 12B applies, the transferee may —

- 15 (a) require the transferor to reduce the amount to be paid for the transfer of the goods in question to the transferee by an appropriate amount; or
- (b) rescind the contract with regard to those goods,

if the condition in subsection (2) is satisfied.

- 20 (2) The condition is that —
- (a) by virtue of section 12C(3) the transferee may require neither repair nor replacement of the goods; or
- (b) the transferee has required the transferor to repair or  
25 replace the goods, but the transferor is in breach of the requirement of section 12C(2)(a) to do so within a reasonable time and without causing significant inconvenience to the transferee.

- (3) For the purposes of this Part, if the transferee rescinds the contract, any reimbursement to the transferee may be reduced  
30 to take account of the use he has had of the goods since they were delivered to him.

**Relation to other remedies, etc.**

5 **12E.**—(1) If the transferee requires the transferor to repair or replace the goods, the transferee must not act under subsection (2) until he has given the transferor a reasonable time in which to repair or replace (as the case may be) the goods.

(2) The transferee acts under this subsection if —

(a) he rejects the goods and terminates the contract for breach of condition; or

10 (b) he requires the goods to be repaired or replaced (as the case may be).

**Powers of court**

15 **12F.**—(1) In any proceedings in which a remedy is sought under this Part, the court may, in addition to any other power it has, act under this section.

(2) On the application of the transferee, the court may make an order requiring specific performance by the transferor of any obligation imposed on him by virtue of section 12C.

(3) Subsection (4) applies if —

20 (a) the transferee requires the transferor to give effect to a remedy under section 12C or 12D or has claims to rescind under section 12D; but

(b) the court decides that another remedy under section 12C or 12D is appropriate.

25 (4) The court may proceed —

(a) as if the transferee had required the transferor to give effect to the other remedy; or

30 (b) if the other remedy is rescission under section 12D, as if the transferee had claimed to rescind the contract under that section.

(5) If the transferee has claimed to rescind the contract, the court may order that any reimbursement to the transferee be



reduced to take account of the use he has had of the goods since they were delivered to him.

5 (6) The court may make an order under this section unconditionally or on such terms and conditions as to damages, payment for the goods and otherwise as it thinks just.

(7) Subject to its jurisdiction under section 5 of the Small Claims Tribunals Act (Cap. 308), a Small Claims Tribunal may, in addition to its powers under that Act, act under this section.”.

10 **New Part IV heading**

7. The principal Act is amended by inserting, immediately before section 13, the following Part heading:

“PART IV  
GENERAL”.

15 **Amendment of First Schedule**

8. The First Schedule to the principal Act is amended by deleting the Schedule heading and substituting the following Schedule heading:

20 “EXCLUDED TRANSACTIONS IN RELATION TO  
CONSUMER TRANSACTIONS”.

**Related amendments to Hire-Purchase Act**

9. The provisions of the Hire-Purchase Act (Cap. 125) specified in the first column of the First Schedule are amended in the manner set out in the second column thereof.

25 **Related amendments to Road Traffic Act**

10. The provisions of the Road Traffic Act (Cap. 276) specified in the first column of the Second Schedule are amended in the manner set out in the second column thereof.

## FIRST SCHEDULE

Section 9

## RELATED AMENDMENTS TO HIRE-PURCHASE ACT

<i>First column</i>	<i>Second column</i>
1. Section 1	<p>Delete subsection (2) and substitute the following subsections:</p> <p style="padding-left: 40px;">“(2) This Act shall apply to hire-purchase agreements or conditional sale agreements made on or after the date of commencement of section 9 of the Consumer Protection (Fair Trading) (Amendment) Act 2012.</p> <p style="padding-left: 40px;">(2A) In the case of agreements made before the date of commencement of section 9 of the Consumer Protection (Fair Trading) (Amendment) Act 2012, this Act shall continue to apply as if that section had not been enacted.”.</p>
2. Section 2(1)	<p>(i) Insert, immediately after the definition of “certificate of entitlement”, the following definition:</p> <p style="padding-left: 40px;">““conditional sale agreement” means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the owner (notwithstanding that the hirer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in that agreement are fulfilled;”.</p> <p>(ii) Insert, immediately after the words “hire-purchase agreement”, wherever they appear in the definition of “dealer”, the words “or a conditional sale agreement”.</p>

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- (iii) Insert, immediately after the words “hire-purchase agreement” in the definition of “guarantor”, the words “or a conditional sale agreement”.
- (iv) Delete the definitions of “hire-purchase agreement” and “hire-purchase price” and substitute the following definition:
  - “hire-purchase agreement” means an agreement, other than a conditional sale agreement, under which —
    - (a) goods are bailed in return for periodical payments to the hirer; and
    - (b) the property in the goods will pass to the hirer if the terms of the agreement are complied with and one or more of the following occur:
      - (i) the exercise of an option to purchase by the hirer;
      - (ii) the doing of any other specified act by any party to the agreement;
      - (iii) the happening of any other specified event;”.
- (v) Insert, immediately after the words “hire-purchase agreement” in the definition of “hirer”, the words “or a conditional sale agreement”.
- (vi) Delete the definition of “owner” and substitute the following definitions:

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“owner” means a person by whom goods are bailed to a hirer under a hire-purchase agreement or a conditional sale agreement and includes a person whom the owner’s rights or liabilities under the agreement have passed by assignment or by operation of law;

“purchase price” means the total sum payable by the hirer under a hire-purchase agreement or a conditional sale agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement;

“regulated agreement” means a hire-purchase agreement or a conditional sale agreement which relates to the goods specified in the First Schedule, but does not include any agreement in which the hirer is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;”.

(vii) Insert, immediately after the words “hire-purchase agreement” in the definition of “vehicle registration fees”, the words “or a conditional sale agreement”.

3. Section 2(2) Delete the words “hire-purchase price” wherever they appear and substitute in each case the words “purchase price”.
4. Section 2(3)
  - (i) Insert, immediately after the words “a hire-purchase agreement”, the words “or a conditional sale agreement”.
  - (ii) Insert, immediately after the words “single hire-purchase agreement”, the words “or a conditional sale agreement, as the case may be,”.

<i>First column</i>	<i>Second column</i>
5. Section 2(4)	Insert, immediately after the words “hire-purchase agreement”, the words “or a conditional sale agreement”.
6. Part II	Delete the word “HIRE-PURCHASE” in the Part heading and substitute the word “REGULATED”.
7. Sections 3, 4(1), 5(1) and (2), 7(1) and (2), 8(1) and (2)(b), 9, 10(1), 11(1), (3) and (5), 11A(1), (2) and (4), 12, 13(1), 14(1), (2) and (6), 15(1), (2), (3), (4) and (6), 17(1) and (2), 18, 19, 20(2), (3), (5) and (6), 21(1), 23(2), 24, 25, 26(2) and (4), 27(1), 29(1), (2) and (3), 32(1), (4) and (5), 33, 34(a), 35(a), 36(1), 37(a), 38, 39(1), 40, 41(1), 42, 43, 44(1)(a), 47(2)(a) and 49(2)(b)	Delete the word “hire-purchase” wherever it appears and substitute in each case the word “regulated”.
8. Sections 3, 9, 11, 11A, 34 and 38	Delete the word “hire-purchase” in the section headings and substitute in each case the word “regulated”.
9. Section 5	Delete the word “Hire-purchase” in the section heading and substitute the word “Regulated”.
10. Part III	Delete the Part heading including the words “Warranties and conditions” and substitute the following Part heading:

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## “PART III

## IMPLIED TERMS”.

11. Section 6

Repeal and substitute the following sections:

**“Implied terms as to title**

**6.**—(1) In every hire-purchase agreement, other than one to which subsection (2) applies, there is —

- (a) an implied term on the part of the owner that he will have a right to sell the goods at the time when the property is to pass; and
- (b) an implied term that —
  - (i) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the hirer; and
  - (ii) the hirer will enjoy quiet possession of the goods except so far as it may be disturbed by any person entitled to the benefit of any charge or encumbrance so disclosed or known.

(2) In a hire-purchase agreement, in the case of which there appears from the agreement or is to be inferred from the circumstances of the agreement an intention that the owner should transfer only such title as he or a third person may have, there is —

- (a) an implied term that all charges or encumbrances known to the owner and not known to the hirer have been disclosed to the hirer before the agreement is made; and

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- (b) an implied term that neither —
- (i) the owner; nor
  - (ii) in a case where the parties to the agreement intend that any title which may be transferred shall be only such title as a third person may have, that person; nor
  - (iii) anyone claiming through or under the owner or that third person otherwise than under a charge or encumbrance disclosed or known to the hirer, before the agreement is made,
- will disturb the quiet possession of the hirer.

(3) The term implied by subsection (1)(a) is a condition and the terms implied by subsections (1)(b), (2)(a) and (2)(b) are warranties.

### **Bailing or hiring by description**

**6A.**—(1) Where under a hire-purchase agreement goods are bailed by description, there is an implied term that the goods will correspond with the description, and if under the agreement the goods are bailed by reference to a sample as well as a description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(2) The term implied by subsection (1) is a condition.

(3) Goods shall not be prevented from being bailed by description by reason only that, being exposed for sale or bailment, they are selected by the hirer.

*First column**Second column***Implied undertakings as to quality or fitness**

**6B.**—(1) Except as provided by this section and section 6C and subject to the provisions of any other written law, there is no implied term as to the quality or fitness for any particular purpose of goods bailed under a hire-purchase agreement.

(2) Where the owner bails goods under a hire-purchase agreement in the course of a business, there is an implied term that the goods supplied under the agreement are of satisfactory quality.

(3) For the purposes of this Part, 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, the price (if relevant) and all the other relevant circumstances.

(4) For the purposes of this Part, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of 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.

(5) The term implied by subsection (2) does not extend to any matter making the quality of goods unsatisfactory —

- (a) which is specifically drawn to the attention of the hirer before the agreement is made;



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- (b) where the hirer examines the goods before the agreement is made, which that examination ought to reveal; or
- (c) where the goods are bailed by reference to a sample, which would have been apparent on a reasonable examination of the sample.

(6) Where the owner bails goods under a hire-purchase agreement in the course of a business and the hirer, expressly or by implication, makes known —

- (a) to the owner in the course of negotiations conducted by the owner in relation to the making of the hire-purchase agreement; or
- (b) to a dealer in the course of negotiations conducted by that dealer in relation to goods sold by him to the owner before forming the subject matter of the hire-purchase agreement,

any particular purpose for which the goods are being bailed, there is an implied term that the goods supplied under the agreement are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the hirer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the owner or dealer.

(7) An implied condition or warranty as to quality or fitness for a particular purpose may be annexed to a hire-purchase agreement by usage.

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(8) Subsections (1) to (7) apply to a hire-purchase agreement made by a person who in the course of a business is acting as agent for the owner as they apply to an agreement made by the owner in the course of a business, except where the owner is not bailing in the course of a business and either the hirer knows that fact or reasonable steps are taken to bring it to the notice of the hirer before the agreement is made.

(9) The terms implied by subsections (2) and (6) are conditions.

### **Samples**

**6C.**—(1) Where under a hire-purchase agreement goods are bailed by reference to a sample, there is an implied term —

- (a) that the bulk will correspond with the sample in quality;
- (b) that the hirer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) that the goods will be free from any defect, making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample.

(2) The term implied by subsection (1) is a condition.

### **Modification of remedies for breach of statutory condition in non-consumer cases**

**6D.**—(1) Where in the case of a hire-purchase agreement —

- (a) the hirer would, apart from this subsection, have the right to reject them by reason of a breach on the part of the owner of a term implied by section 6A, 6B or 6C(1)(a) or (c); but

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- (b) the breach is so slight that it would be unreasonable for him to reject them,

then, if the hirer does not deal as consumer, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty.

(2) This section applies unless a contrary intention appears in, or is to be implied from, the agreement.

(3) It is for the owner to show —

- (a) that a breach fell within subsection (1)(b); and  
 (b) that the hirer did not deal as consumer.

#### **Exclusion of implied terms**

**6E.** An express term does not negative a term implied by this Part unless inconsistent with it.

#### **Special provisions as to conditional sale agreements**

**6F.**—(1) Section 11(3) of the Sale of Goods Act (Cap. 393) (whereby in certain circumstances a breach of a condition in a contract of sale is treated only as a breach of warranty) shall not apply to a conditional sale agreement where the buyer deals as consumer.

(2) A breach of a condition (whether express or implied) to be fulfilled by the seller under any such agreement shall be treated as a breach of warranty, and not as grounds for rejecting the goods and treating the agreement as repudiated, if (but only if) it would have fallen to be so treated had the condition been contained or implied in a corresponding hire-purchase agreement as a condition to be fulfilled by the owner.

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(3) In subsection (2), “corresponding hire-purchase agreement” means a hire-purchase agreement relating to the same goods as the conditional sale agreement and made between the same parties and at the same time and in the same circumstances and, as nearly as may be, in the same terms as the conditional sale agreement.

**Interpretation of this Part**

**6G.** In this Part —

- (a) “business” has the same meaning as in the Sale of Goods Act (Cap. 393);
- (b) references to dealing as consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act (Cap. 396).”.

12. Part IV
- (i) Delete the Part heading including the words “Statutory rights of hirers”.
  - (ii) Insert, immediately before section 7, the following Part heading:

“PART IV  
HIRERS

*Statutory rights of hirers”.*

13. Section 22(2)(a)
- (i) Delete the words “hire-purchase agreement” and substitute the words “regulated agreement”.
  - (ii) Delete the words “hire-purchase debt” and substitute the words “debt under the regulated agreement”.
14. Section 32
- Delete the word “hire-purchase” in the section heading and substitute the words “regulated agreement”.

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15. First Schedule	<p>(i) Delete the Schedule reference and substitute the following Schedule reference:</p> <p style="padding-left: 40px;">“Section 2(1)”.</p> <p>(ii) Delete the Schedule heading and substitute the following Schedule heading:</p> <p style="text-align: center;">“LIST OF GOODS RELATING TO DEFINITION OF “REGULATED AGREEMENT” ”.</p>

## SECOND SCHEDULE

Section 10

### RELATED AMENDMENTS TO ROAD TRAFFIC ACT

<i>First column</i>	<i>Second column</i>
1. Section 2(1)	<p>Insert, immediately after the definition of “Registrar”, the following definition:</p> <p style="padding-left: 40px;">““replacement vehicle” means a vehicle to which a permit issued under section 10A for another vehicle has been transferred pursuant to rules made under section 10A(4)(<i>ha</i>);”.</p>
2. Section 10A(4)	<p>(i) Insert, immediately after the word “issued” in paragraphs (c), (e), (g) and (k), the words “or transferred”.</p> <p>(ii) Insert, immediately after the word “issue” in paragraphs (f) and (g), the words “or transfer”.</p> <p>(iii) Delete paragraph (h) and substitute the following paragraphs:</p> <p style="padding-left: 40px;">“(h) provide for the transfer of permits under this section at any time prior to the registration of a vehicle authorised by the permit;</p>

<i>First column</i>	<i>Second column</i>
	( <i>ha</i> ) provide for the transfer of permits under this section to facilitate the replacement of defective vehicles;”.
3. Section 11	<p>Insert, immediately after subsection (7), the following subsection:</p> <p>“(7A) In respect of a replacement vehicle —</p> <p>(<i>a</i>) the tax chargeable under subsection (1)(<i>a</i>) shall apply as if the replacement vehicle had been first registered under this Act on the same date as the defective vehicle which it replaced; and</p> <p>(<i>b</i>) the tax chargeable under subsection (1)(<i>b</i>) shall apply as if the replacement vehicle had been used or kept on any road in Singapore since that same date.”.</p>
4. Section 19(2)	Insert, immediately after the words “general licences”, the words “and provisions as to the transfer of licences to replacement vehicles”.
5. Section 23(2)	Delete the word “The” and substitute the words “Except as otherwise prescribed, the”.
6. Section 34(1)	<p>(i) Delete the word “and” at the end of paragraph (<i>q</i>).</p> <p>(ii) Delete the full-stop at the end of paragraph (<i>r</i>) and substitute the word “; and”, and insert immediately thereafter the following paragraph:</p> <p>“(s) to regulate the registration and licensing of a replacement vehicle, and to deem the date of registration of the replacement vehicle to be the same as that of the vehicle which it replaced for any of the purposes of this Act.”.</p>

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## EXPLANATORY STATEMENT

This Bill seeks to amend the Consumer Protection (Fair Trading) Act (Cap. 52A) to give consumers additional rights in respect of goods that do not conform to applicable contracts, and to make related amendments to the Hire-Purchase Act (Cap. 125) and the Road Traffic Act (Cap. 276).

Clause 1 relates to the short title and commencement.

Clause 2 relates to the amendment of the long title to the Consumer Protection (Fair Trading) Act.

Clause 3 inserts a Part heading immediately after the long title to designate sections 1 and 2 as Part I of the Act relating to “Preliminary”.

Clause 4 inserts a Part heading immediately before section 3 to designate sections 3 to 12 as Part II of the Act relating to “Unfair Practices”.

Clause 5 replaces the references to “Act” in section 3 and its section heading with references to “Part”.

Clause 6 inserts Part III (sections 12A to 12F) relating to additional consumer rights in respect of non-conforming goods. Where goods fail to conform to an applicable contract at the time of delivery, the transferee (dealing as a consumer) has the right to require the transferor to repair or replace the goods within a reasonable time and without causing significant inconvenience to the consumer. If repair or replacement is impossible or disproportionate, or if the transferor fails to repair or replace the goods within a reasonable time and without significant inconvenience to the consumer, then the consumer may require the transferor to reduce the amount to be paid for the transfer of the goods by an appropriate amount, or rescind the contract.

The new section 12A relates to the interpretation of Part III. It defines “applicable contract” as a contract of sale of goods, contract for the transfer of goods or hire-purchase agreement. The terms “contract of sale of goods”, “contract for the transfer of goods”, “hire-purchase agreement”, “delivery”, “goods”, “transferee” and “transferor” are defined with reference to their meanings in the Sale of Goods Act (Cap. 393), the Supply of Goods Act (Cap. 394) or the Hire-Purchase Act, as appropriate. The term “repair” means to bring goods into conformity with contract. References to dealing as a consumer are to be construed in accordance with Part I of the Unfair Contract Terms Act (Cap. 396) and it is for the transferor claiming that the transferee does not deal as consumer to show that he does not. Subsection (4) provides that goods do not conform to the various applicable contracts if there is a breach of an express term of the contract or specified terms implied by the relevant Acts. Subsection (5) provides that certain provisions (relating specifically to unfair practices) in the Consumer Protection (Fair Trading) Act do not apply to Part III.

The new section 12B provides that Part III applies if the transferee deals as consumer and the goods do not conform to the applicable contract at the time of delivery. Part III will only apply to contracts made on or after the date of commencement of clause 6 of this Bill. Subsection (2) provides for the consumer's right to require repair, replacement, reduction of the purchase price or rescission. Subsection (3) imposes a rebuttable presumption that goods which do not conform to the applicable contract within 6 months of the date of delivery of the goods already did not so conform at the time of delivery. The presumption is rebuttable if it is established that the goods did conform at the time of delivery or if the presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

The new section 12C relates to the consumer's right to require repair or replacement of the goods. The transferor must repair the goods within a reasonable time and without causing significant inconvenience to the consumer, and must bear any necessary costs incurred in doing so, unless the remedies are impossible or disproportionate. Subsection (4) provides the considerations to be taken into account in determining whether a remedy is disproportionate. Subsection (5) provides that the question as to what is a reasonable time or significant inconvenience is to be determined by reference to the nature of the goods and the purpose for which the goods were acquired.

The new section 12D provides that the consumer may require a reduction of the amount paid for the transfer of the goods (that is, in the case of a contract of sale, the purchase price) or rescind the contract only if repair or replacement is impossible or disproportionate, or if the transferor fails to repair or replace the goods within a reasonable time and without causing significant inconvenience to the consumer. Subsection (3) provides that the reimbursement of a consumer who rescinds the contract may be reduced to take account of the use that he has had of the goods since their delivery.

The new section 12E requires the consumer to give the transferor a reasonable time to repair or replace the goods as required before seeking an alternative remedy.

The new section 12F sets out the powers of the court in relation to the rights of the consumer under Part III. Subsection (7) clarifies that, subject to the jurisdiction of the Small Claims Tribunals (SCT) under section 5 of the Small Claims Tribunals Act (Cap. 308), the powers of the SCT to act under this section are in addition to its powers under that Act.

Clause 7 inserts a Part heading immediately before section 13 to designate sections 13 to 20 as Part IV of the Act relating to "General".

Clause 8 amends the First Schedule to the principal Act by substituting the Schedule heading to make it clear that the First Schedule only relates to consumer transactions and not Part III of the principal Act.



Clause 9 makes related amendments to the Hire-Purchase Act, as set out in the First Schedule to this Bill —

- (a) to align the implied terms under the Hire-Purchase Act with those under the Sale of Goods Act and the Supply of Goods Act, so far as appropriate; and
- (b) to allow the new implied terms to apply to all hire-purchase agreements, without the limitations in the First Schedule to the Hire-Purchase Act which apply to the rest of the Act.

Clause 10 makes related amendments to the Road Traffic Act, as set out in the Second Schedule to this Bill, to facilitate the replacement of defective motor vehicles pursuant to the rights under the new Part III of the Consumer Protection (Fair Trading) Act. The amendments will enable rules to be made under the Road Traffic Act to allow the transfer of the certificate of entitlement of a defective vehicle to its replacement in prescribed circumstances, and for consequential adjustments to the registration and licensing arrangements and related fees and taxes applicable to the vehicles concerned.

The First Schedule sets out related amendments to the Hire-Purchase Act.

New section 1(2) of the Hire-Purchase Act clarifies that the Hire-Purchase Act, as amended, applies to hire-purchase agreements and conditional sale agreements made on or after the date of commencement of clause 9 of this Bill. Subsection (2A) clarifies that, in the case of agreements made before that date, the Hire-Purchase Act continues to apply as if it was not amended.

New sections 6 to 6G, in Part III of the Hire-Purchase Act, are based on the English Sale of Goods (Implied Terms) Act 1973 and update the implied terms relating to hire-purchase agreements and conditional sale agreements.

The term “regulated agreement” is defined in section 2(1) to mean a hire-purchase agreement or a conditional sale agreement which relates to the goods specified in the First Schedule, but does not include any agreement in which the hirer is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement. This term is used throughout the Hire-Purchase Act, except in Part III, to preserve the existing limitations in the First Schedule and existing section 2(2). The implied terms in Part III therefore apply to hire-purchase agreements and conditional sale agreements generally, without those limitations.

The Second Schedule sets out related amendments to the Road Traffic Act.

**EXPENDITURE OF PUBLIC MONEY**

This Bill will not involve the Government in any extra financial expenditure.

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