

**THE LAW COMMISSION AND SCOTTISH LAW COMMISSION**  
**CONSUMER REMEDIES FOR FAULTY GOODS**  
**SUMMARY OF RESPONSES: OVERVIEW**

**INTRODUCTION**

- 1.1 In November 2008, the Law Commission and the Scottish Law Commission published a joint Consultation Paper on consumer remedies for faulty goods.<sup>1</sup> This document summarises the 53 written responses we received to that paper.
- 1.2 Under traditional UK law, consumers who buy goods which do not conform to contract have the right to return those goods and obtain a full refund, provided they act reasonably quickly (within “a reasonable time”). This is known as “the right to reject”. By contrast, under the European Consumer Sales Directive, consumers’ first recourse is to repair or replacement. The Consultation Paper identified significant and unnecessary complexities in the way these two sets of remedies interact. Consultees overwhelmingly agreed that there was a need to clarify and simplify the law in this area.

**IS THERE A NEED TO RETAIN THE RIGHT TO REJECT?**

**The proposed European directive on consumer rights**

- 1.3 In October 2008, the European Commission published a proposal for a new directive to harmonise consumer rights across member states.<sup>2</sup>
- 1.4 The proposed directive raises the issue of whether the UK right to reject should be abolished. For example, where a consumer buys a microwave which goes wrong within two weeks, should they be entitled to return the microwave and get their money back? Or should the consumer first accept a repair or replacement, and obtain a refund only in the event of further problems?
- 1.5 A literal interpretation of the proposed directive suggests that the right to reject would no longer be compatible with EU law, although the European Commission has indicated that this was not their intention.<sup>3</sup> Negotiations on the proposed directive are continuing, and the future of the right to reject is an issue which will need further clarification during those negotiations.

**Consultees’ views**

- 1.6 Our consultation shows widespread support for retaining the right to reject, among both consumer and business groups. A large majority of consultees agreed with our provisional proposal that the right to reject should be retained as a short-term remedy of first instance.

<sup>1</sup> Consumer Remedies for Faulty Goods (2008) Joint Consultation Paper, LCCP 188 / SLCDP 139.

<sup>2</sup> Proposal for a directive on consumer rights, COM 2008 614/3, see [http://ec.europa.eu/consumers/rights/cons\\_acquis\\_en.htm](http://ec.europa.eu/consumers/rights/cons_acquis_en.htm).

<sup>3</sup> Commissioner Kuneva at the IMCO Committee hearing on the Consumer Rights Directive 2 March 2009 and at the 10<sup>th</sup> Anniversary European Consumer Day on 13 March 2009.

- 1.7 The right the reject was thought to be simple and well-understood, providing an effective tool which prevents consumers from becoming locked into a cycle of failed repairs. Consultees argued that it bolsters consumer confidence and encourages higher standards.

### **Consumer views**

- 1.8 The Law Commissions also commissioned an opinion poll on this issue. Just over 1,000 people were questioned from February to March 2009.
- 1.9 Most consumers were aware of the right to reject: they valued it and wished to retain it. Faced with the microwave example discussed above, 79% of consumers were aware they were entitled to a refund; and 94% said that this right was important to them. The vast majority (89%) thought the right to a refund should be retained, even though the other remedies of repair or replacement were available.
- 1.10 Consumers gave a wide range of reasons for valuing the right to a refund. For example, a refund was thought to be important if the item was not fit for its purpose; if it turned out to be dangerous; to prevent having to wait for repairs; or if the retailer behaved unreasonably.

### **Clarifying the right to reject - a 30-day normal period**

- 1.11 The main reported problem with the right to reject is uncertainty over how long it lasts. In the Consultation Paper, we provisionally proposed setting a period of 30 days in which consumers should normally exercise the right to reject. We proposed a limited amount of flexibility to extend or reduce this period in some circumstances.
- 1.12 Strong arguments were put in favour of our proposal for a 30-day normal period, although several respondents argued that the period was too short. Whilst most respondents agreed that the period should be extended or reduced in some circumstances, there was less consensus about what those circumstances should be.

### **Minor defects**

- 1.13 A large majority of consultees agreed with our proposal that legal protection for “minor” defects should not be reduced. Consultees felt that disputes about what constituted a minor defect would detract from the simplicity of the right to reject. In addition, many considered that the current law encourages higher standards in the quality of goods.

### **Reforming the Consumer Sales Directive - clarifying when consumers may move to a second tier remedy**

- 1.14 The provisional proposals in our Consultation Paper relating to the Consumer Sales Directive (CSD)<sup>4</sup> were put forward as part of the current debate within the EU about how the CSD should be reformed.

<sup>4</sup> Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, Official Journal L171 of 07.07.1999 p 12.

- 1.15 In the Consultation Paper, we concluded that clarification was required about how a consumer can move from first tier to second tier remedies. All respondents who expressed a view appeared to agree that the law requires clarification in this area. Over two-thirds of respondents felt that consumers should be able to proceed to a second tier remedy after a set number of failed replacements or repairs; that is after one failed replacement, and either one or two failed repairs.

### **Damages**

- 1.16 In the Consultation Paper, we provisionally proposed that the right to damages should be retained in UK law. Consultees strongly supported this proposal, recognising that damages provide a vital remedy for consequential loss.

### **Integrating the CSD remedies with the right to reject**

- 1.17 We considered how the right to reject might be better integrated with the CSD remedies in order to make the remedies regime simpler. In the Consultation Paper, we provisionally proposed that the different remedies should be combined in a single instrument by use of the concept of rejection. A new provision in the Sale of Goods Act could provide that the consumer buyer of faulty goods can *reject* them with three possible remedies of first instance: termination plus full refund; or alternatively the consumer can request repair or replacement. Almost all of those who responded to this question supported our proposal.

### **Consumer education**

- 1.18 There was widespread agreement about the urgent need for consumer education, but less consensus on how this should be achieved. A majority of those who responded favoured a summary of consumer legal rights at point of sale, whether in the form of a notice or a leaflet. A majority also agreed that information about how consumers could find out more about their rights should be available at point of sale, such as a reference to Consumer Direct.

### **Assessing the impact of reform**

- 1.19 Almost all respondents agreed that reform is necessary and that the balance of costs and benefits favours retaining the right to reject with appropriate clarification. They also agreed that the loss of the right to reject would be likely to undermine consumer confidence.

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