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The Hon Lord Drummond Young
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Dear Lord Drummond Young

On behalf of the Scottish Government, I would like to thank you for providing the joint report of the Law Commission and the Scottish Law Commission on *Consumer Remedies for Faulty Goods* (Law Com No 317, Scot Law Com No 216). The substance of the report relates to matters which are currently reserved to Westminster, notably by section C7 of Schedule 5 to the Scotland Act 1998, and pending any adjustment to that legislation it will be for the UK Government to take forward further work. However, these matters have a bearing on the central purpose of the Scottish Government, which is to create a more successful country where all of Scotland can flourish through increasing sustainable economic growth, and it is from that perspective that I offer these comments.

For the efficient functioning of the economy, the relationship between businesses and consumers is of fundamental importance. On one hand, to bring products and services to market, businesses – particularly small and medium-sized enterprises – require confidence that they will be able to secure appropriate payment: they need protection against rogue consumers who might seek to withhold payment or make returns for spurious reasons. On the other hand, when purchasing products and services, consumers require confidence that they will have suitable redress if they encounter difficulties: they need protection against businesses which, knowingly or accidentally, are involved in the supply of substandard work. An appropriate consumer protection and trading standards regime has an important role in securing this framework. The Commissions' report is helpful in reviewing some key components of this regime and making recommendations for enhancing it.

The thrust of the report's recommendations seems well founded and the objective of better integrating the traditional UK remedies with European remedies is particularly worthwhile. As the reports highlights, however, better integration within the UK does not necessarily

entail complete harmonisation across the EU. While there is doubtless a strong economic case for maximum harmonisation and the removal of unnecessary barriers to trade, it is certainly not obvious that the benefits associated with uniformity would justify sacrificing our traditional right to reject. The report is right to highlight this important issue. In this context, the recommendation that the time limits for bringing a claim should continue to be those applying to general contractual claims within England, Wales and Scotland is to be welcomed.

The essential yardstick for evaluating proposals for reform in this area must be their anticipated outcomes, specifically in terms of equity, consumer confidence and economic development. On that basis, in the absence of any compelling arguments to the contrary (e.g. it does not appear to have been suggested that the existing regime leads to significantly higher costs for consumers in the UK) there is certainly much to be said for the report's recommendation that the 'right to reject', with appropriate limitation and clarification, should remain a central part of our consumer protection regime. That seems clearly to have been the view of most of your consultees.

Consultees do seem to have been slightly more divided on the issue of rescission and deduction for use. As your report points out, the UK chose – unlike several other Member States – to take up the option afforded by the Consumer Sales Directive of allowing retailers to give a less than full refund when faulty goods are returned, in order to take account of the consumer's use of those goods throughout what might be a substantial trouble-free period. Although several consultees appear to have favoured the retention of this option, I note that on balance the report – in common with the EC's proposal – favours its removal. It will be interesting to learn whether stakeholders have significant concerns about this. However, an initial assumption would be that this recommendation should not be unduly problematic, given that other Member States seem to have coped for some years without having the option of deduction for use.

The reaction of stakeholders to this and the other recommendations will need to be taken into account in due course, but for the time being I welcome the report and its constructive and timely review of key consumer protection issues. I hope that it will be possible for the UK Government to progress this work and confirm that the Scottish Government will be supportive of such endeavours.

I am copying this letter to Lord Justice Munby, Chairman of the Law Commission, and to Kevin Brennan, Minister for Further Education, Skills, Apprenticeships and Consumer Affairs at the UK Government's Department for Business, Innovation and Skills.

Yours sincerely



Fergus Ewing