

**THE SUPPLY OF GOODS: THE  
REPAIR OR REPLACEMENT OF  
FAULTY GOODS**

Impact assessment

JULY 2012

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<b>Title:</b> <b>The Supply of Goods: The repair or replacement of faulty goods</b> <b>IA No:</b> <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 30/01/2012		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
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<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> AMBER

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			£m   In/Out/zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

If a good is found to have an inherent fault, consumers are entitled to repair or replacement of the good (known as 'first tier' remedies). If the repair/replacement cannot be provided 'within a reasonable time and without significant inconvenience to the buyer' (Sale of Goods Act 1979) then consumers can ask for a reduction in price, or can exit the contract and obtain a refund, subject to a deduction for use ('second tier' remedies). The terms 'reasonable time' and 'significant inconvenience' can be difficult to define, which in turn can make it difficult for consumers to insist on their rights, and can lead to costly disputes for both businesses and consumers.

**What are the policy objectives and the intended effects?**

The policy objective is to improve consumer confidence and reduce some business costs by simplifying and clarifying when consumers can pursue the second-tier remedies of price reductions or refunds. This should reduce the time spent dealing with disputes, reduce training costs for businesses and provide more effective consumer protection in this area.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

We have considered the following options:

Option 0: No change to the current legislation - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.

Option 1: Establish that consumers can pursue second-tier remedies (refund or price reduction) after two failed repairs or a single failed replacement.

Option 2: Establish that consumers can pursue second-tier remedies (refund or price reduction) after a single failed repair or replacement.

Option 3: Establish that consumers can pursue second-tier remedies (refund or price reduction) after two failed repairs or a single failed replacement, save that three or even four failed repairs could be insisted upon where each repair can be clearly shown to have cost less than 5% of the original product value.

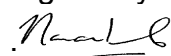
Option 4: Establish that consumers can pursue second-tier remedies if repairs or replacements take more than a cumulative total of 30 or 14 days, regardless of how many separate attempts this involves.

**Will the policy be reviewed?** It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			Yes			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister



Date: 12/07/2012

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Establish that consumers automatically have a right to pursue the second-tier remedies for faulty goods after two repairs or a single replacement. Though consumers will also keep their current right to move to second-tier remedies immediately if a repair or replacement attempt causes 'significant inconvenience' or takes more than a 'reasonable time'..

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

None of the identified costs have been monetised

### Other key non-monetised costs by 'main affected groups'

Some businesses may face costs if their current practice is to offer more than 2 repairs before allowing recourse to a second tier remedy and the courts agree that this does not create "significant inconvenience". However, any such costs will be offset to some extent by avoiding the cost of the additional repairs or replacements which would otherwise have been necessary and they will be lower than for option 2 (below) because more goods could be fixed at the second repair stage.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None of the identified benefits have been monetised

### Other key non-monetised benefits by 'main affected groups'

Consumers will benefit from being able to insist on second tier remedies without any debate after 2 repairs or 1 replacement. Businesses will benefit from a reduction in the costs associated with dispute resolution, staff training and legal costs. Businesses currently offering good consumer service will also face a lower risk of being undercut by less scrupulous rivals.

### Key assumptions/sensitivities/risks

Discount rate (%)

There is a trade off between certainty and flexibility. The risk is that if the limit on the number of repairs/replacements is too low for certain products, the resulting extra refunds might impose a burden on some businesses, particularly those dealing with high-value, complex goods like cars where providing refunds can be extremely costly. However, this option mitigates the risk to some extent, compared to option 2, by allowing two repairs before refunds can be sought, rather than just one. (unless the business has already failed to repair or replace without significant inconvenience or within a reasonable time)

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO? Yes/No	Measure qualifies as IN/OUT/Zero net cost
Costs:	Benefits:	Net:		

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Establish that consumers automatically have a right to pursue the second-tier remedies for faulty goods after a single failed repair or replacement.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

None of the identified costs have been monetised

### Other key non-monetised costs by 'main affected groups'

This could impose costs on businesses by increasing the number of refunds or price reductions which businesses may have to offer, which may be significantly more expensive for the business than repairing the goods in some cases. These costs would be larger than under option one, because fewer goods would get repaired.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None of the identified benefits have been monetised

### Other key non-monetised benefits by 'main affected groups'

This will provide even greater clarity and simplicity by equalising the number of repairs and replacements. It would also provide a potentially greater consumer benefit, by enabling refunds or price reductions to be accessed even sooner, but would thereby transfer greater costs onto business, which may result in businesses having to raise prices, especially for complex goods of high value, such as motor vehicles, which frequently require repairs.

### Key assumptions/sensitivities/risks

Discount rate (%)

This option also involves a trade off between certainty and flexibility. This option increases the risk is that the number of repairs may be too low for some products, compared to option one.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO? Yes/No	Measure qualifies as IN/OUT/Zero net cost
Costs:	Benefits:	Net:		

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Establish that consumers automatically have a right to pursue the second-tier remedies for faulty goods after two repairs or a single replacement, except where each repair costs less than 5% of the original product value, in which case three or even four repairs would be allowed before pursuing second-tier remedies. Again, this would be subject to the second tier remedies having become available already if there had been a failure to repair or replace without 'significant inconvenience' or within a 'reasonable time'.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
None of the identified costs have been monetised					
<b>Other key non-monetised costs by 'main affected groups'</b>					
Consumers will have to accept more repair attempts than under option 1 or 2 in some cases. Under the current law, we believe that it is unlikely that the courts would allow more than two repairs unless they were relatively minor (we have estimated 5%), so this option should just provide clarity and certainty without altering the actual substance of the law a great deal. However, it could increase consumer assertiveness, and therefore increase business costs. It would also increase complexity compared to the other options, bringing associated detriment and making it more difficult for consumers and business to apply on the ground.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
None of the identified benefits have been monetised					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Businesses, particularly those dealing with high-value goods, will be able to make more relatively cheap repairs than under options 1 or 2, before being obliged to offer refunds in some cases.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a risk that disputes could arise over the actual cost of certain repairs, particularly in cases where there is a significant information asymmetry between the consumer and the retailer, regarding the details of the repair work. However, repair costs would have to be itemised on request to minimise this risk.					

## BUSINESS ASSESSMENT (Option 3)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	Yes/No	IN/OUT/Zero net cost

## Summary: Analysis & Evidence

## Policy Option 4

**Description:** Establish that consumers automatically have a right to second-tier remedies if repairs or replacements have not been completed satisfactorily within a cumulative total of days (perhaps 30 or 14 days). Though consumers will also keep their current right to move to second-tier remedies immediately if a repair or replacement attempt causes 'significant inconvenience' or takes more than a 'reasonable time'..

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

#### Description and scale of key monetised costs by 'main affected groups'

None of the identified costs have been monetised.

#### Other key non-monetised costs by 'main affected groups'

Consumers could suffer additional detriment, compared to options 1, 2 and 3, in cases where they had to accept more than 1, 2, 3 or even 4 repairs, but were still not able to establish that it had caused 'significant inconvenience' or taken more than a 'reasonable time'. However, this seems unlikely, and consumers would still benefit from the addition of a 14 or 30 day cap, in those extreme cases where inconvenience or unreasonable time could not be proved until then.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

#### Description and scale of key monetised benefits by 'main affected groups'

None of the identified benefits have been monetised.

#### Other key non-monetised benefits by 'main affected groups'

Businesses, particularly those dealing with high-value, complex goods, would benefit from more opportunities to make quick and minor repairs than under the other options. However, consumers would also benefit from a clear limit which they could insist on without resorting to the courts, and could benefit from faster repairs and replacements, because businesses would be incentivised to act quickly.

#### Key assumptions/sensitivities/risks

Discount rate (%)

There is a risk that 30 days or even 14 days is too long, and that significant inconvenience or reasonable time would always or almost always be breached earlier than this, making this a relatively unhelpful safeguard. One variant on this option might be to apply the 14 day period or even a shorter period, unless the trader offers a replacement good, in which case 30 days may look more reasonable. We will be seeking further feedback on the time limit in consultation.

### BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

# Evidence Base (for summary sheets)

## Background Documents

1. This document forms part of a suite of IAs relating to the supply of goods. An overarching summary of all of these related IAs at a high level is provided at **ANNEX A**.
2. More widely, the proposals set out in this Impact Assessment form a part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. The proposals in this Impact Assessment would require primary legislation to be implemented, which we propose to do via a Consumer Bill of Rights.
3. Following changes to the law it would be our intention that a communications campaign will be initiated in order to inform consumers and those who deal with consumers and also businesses of the changes to the law. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We will discuss awareness raising for businesses with a range of business representative bodies
4. There is further information about the Consumer Law Reform programme in **ANNEX B**.

## Problem under consideration

5. Under current law, if a good is found to have an inherent fault, consumers are entitled to repair or replacement of the good (known as 'first tier' remedies). If repair/replacement is impossible or disproportionate (as compared to the other first tier remedy or one of the second tier remedies) or, having been requested, a repair or replacement is not provided 'within a reasonable time and without significant inconvenience to the buyer' (*section 48C (2)(b) Sale of Goods Act 1979*) then consumers can ask for a reduction in the original price of the good, or can exit the contract and obtain a refund, subject to a deduction for use (known as 'second tier' remedies). Reasonable time and significant inconvenience are to be determined by reference to the nature of the goods and the purpose for which they were required (*section 48B(5) Sale of Goods Act 1979*).
6. Consumer groups and businesses alike recognise that defining the terms 'significant inconvenience' and 'reasonable time' is subjective and can therefore lead to a great deal of uncertainty about how consumer law applies in specific cases. This can result in unnecessarily lengthy and costly disputes for consumers and business alike, and may cause inconsistency in how different consumers are treated in practice.
7. In response to the Law Commissions' consultation in 2009, *Which?* illustrated the problem with an example:

*A car was purchased for more than £30,000. The car developed an electrical fault which meant that control of certain functions of the car was lost. For example, the windows would open without warning, which made it difficult to leave the car parked.*

*Sometimes the effects were more serious. Once the electrical fault caused the engine to start and the car lurched forward whilst parked. Another time the car accelerated to 60 mph without warning. The consumer had to drive the car into a lay-by and apply the brakes while the wheels continued to spin at 60 mph.*

*As a result of a total loss of confidence in the car, the consumer was unable to drive it and was forced to cancel a holiday. The dealer refused the consumer's attempt to reject the car, on the ground that the consumer was out of time for the short-term right to reject. Instead, the dealer attempted to repair the car. After each repair, initially the problems appeared to have been corrected, but would then return soon after.*

*The consumer became locked into a cycle of failed repairs. Each time remedial work was carried out it was done quickly and efficiently and within a reasonable time, and so in practice each repair in isolation could not be said to have caused significant inconvenience; as such it is questionable that the right to rescind was triggered under the CSD. Ultimately,*



*the consumer purchased another car while the faulty car remained in his garage for approximately two years.*<sup>1</sup>

8. More generally, based on the latest available OFT research, we know that in 2008 there were around 400,000 problems relating to 'failures to observe cancellation rights', causing around £21 million worth of consumer detriment<sup>2</sup>, and around 825,000 million problems related to 'difficulty sorting out problems with a retailer or supplier, or problems getting refunds', causing around £83 million worth of consumer detriment. This strongly suggests that substantial benefits could stem from reforms designed to make the process for fully exiting contracts and achieving appropriate redress clearer.<sup>3</sup>
9. Based on the same data set we also estimate that there was a combined total of around 1.28m problems with 'failures or delays in promised repairs' or 'delivery / collection / repair problems', resulting in around £259m worth of consumer detriment. We do not know what proportion of these cases enabled consumers to move to a second tier remedy, or how many involved long cycles of failed repairs, but there is clearly considerable consumer detriment arising in relation to repairs, suggesting that consumer rights in this area need addressing and clarifying.
10. Furthermore, clarity is particularly important because it has been estimated that the cost to the UK economy of handling consumer complaints in all sectors is as high as £24bn p.a. and that the top 10% of cases (those going to mediation/arbitration and/or court) account for nearly 80% of the costs.<sup>4</sup>

## Rationale for intervention

11. All respondents, including all business respondents, that expressed a view in the 2009 Law Commission consultation agreed that the law required clarification in this area.<sup>5</sup> On this basis, there seems to be a wide consensus among stakeholders that a change is necessary.
12. The Government believes that clarifying the repair or replacement process that consumers should have to accept by placing some kind of limit on that process, will make the law easier for consumers and traders to understand, and will align their expectations, leading to fewer disputes.

## Policy objective

13. The policy objective is to improve consumer confidence, and reduce some business costs, by providing simplicity, clarity and certainty in relation to the remedies available for faulty goods, making it clear when consumers can pursue the second-tier remedies of a reduction in price or exiting the contract. This should empower consumers to assert their rights more effectively, whilst reducing the costs of dispute resolution and staff training for businesses.
14. Options 1, 2, and 3 aim to provide this clarity and certainty by prescribing the number of repair or replacement attempts after which consumers will be able to insist on a refund or price reduction, but they do not try to limit the time allowed for each of those attempts beyond the general rule that they must be done within a "reasonable time". This was the approach taken by the Law Commissions<sup>6</sup>, and we agree that these limits alone will achieve our policy objectives of clarity and simplicity without having to impose an additional one-size-fits-all time limit on each repair or replacement attempt. Option 4 takes a different approach of limiting the aggregate time that can elapse when goods are under repair or where the consumer is waiting for a replacement, but not limiting the number of repairs that can be performed within that overall time limit.
15. The stipulations of 'reasonable time' and 'significant inconvenience' are part of European Law, as they come from the Consumer Sales Directive. This is a minimum harmonisation directive, meaning that it is

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<sup>1</sup> The Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.60

<sup>2</sup> 'Consumer Detriment' in this survey covered all genuine problems with goods or services which consumers experienced, excluding 'hidden detriment' which consumers are unaware of – see OFT, 'Consumer Detriment' (Apr, 2008), p.11 for details

<sup>3</sup> OFT, 'Consumer Detriment', (April 2008) - data broken down by Problem Type Category

<sup>4</sup> Peter Eisenegger, Andrew Hart, Arnold Pindar, "'A fuller picture' - A lean process view of consumer law and its enforcement' (July, 2008), a response to 'BERR's Consumer Law Review: Call For Evidence' (May, 2008)

<sup>5</sup> Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.61

<sup>6</sup> Albeit in relation to a new directive, and with a recommendation for consideration of best practice guidance to cover timing

open to Member States to implement it in a way that maintains or imposes greater consumer protection, but the UK may not provide lower levels of consumer protection than are mandated through these terms. . Our prescription of the repair or replacement process which must be followed will be in line with the directive, as long as consumers are always able to proceed to second tier remedies on the grounds of 'significant inconvenience' or 'reasonable time' alone.

16. Therefore, we will consult openly to see whether it is better to limit the number of repairs and replacements or the time taken for repairs and replacements and in either case, at which level the limitation should bite. But, in all cases, the prescribed numbers of repairs/replacements and/or time limits for such processes will be subject to the consumer right to move to second tier remedies sooner if the 'reasonable time' and 'significant inconvenience' stipulations give the consumer greater protection.

## Description of options considered

17. We have considered the following options:

18. **Option 0:** No change to the current legislation - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.
19. All respondents that expressed a view in the 2009 Law Commission consultation agreed that the law required clarification in this area. On this basis, we believe that option 0 would not be appropriate.
20. As an alternative to changing the legislation, we have also considered simply producing guidance or a voluntary code of best practice. However, as with all the changes proposed for faulty goods, many of the high-level benefits are dependent on increased consumer confidence, which is entirely dependent on the reforms being as widely enforced as possible.
21. This legislation as a whole, including this change to the repair / replacement requirements, is designed to boost consumer confidence and therefore competition, ultimately with a view to driving economic growth. In this case, if the scheme was just suggested as voluntary guidance, there would be no guarantee of receiving the same consumer rights in all shops, and so consumers would lose the confidence to shop at the full range of available retailers, and would be much more likely to stick with retailers they already know and trust, to the obvious detriment of new market entrants who could help to boost competition. Furthermore, these consumer rights need to be applied evenly across the retail sector in order to level the playing field at the bottom, so that unscrupulous rivals cannot undercut those retailers offering good consumer protection, whilst those going beyond the legal minimum can earn clear recognition for having done so. For these reasons we do not believe that the desired outcomes on the ground can be achieved without a change to the legislation.
22. **Option 1:** Establish that consumers automatically have a right to pursue second-tier remedies after two repairs or a single replacement. Though consumers will also keep their current right to move to second-tier remedies immediately if a repair or replacement attempt causes 'significant inconvenience' or takes more than a 'reasonable time'
23. The rationale for limiting the number of replacements to one before proceeding to second tier remedies (price reduction or rescission of contract) comes from the results of research that fed into a Law Commission report. This report stated that '*FDS research and feedback from consumer groups universally indicated that most consumers will only accept one attempt at replacement*' and this is '*the usual practice amongst other member states*'.<sup>7</sup>
24. Before their consultation the Law Commissions also said that 'the European Consumer Centres' (ECC) responses to our questionnaire and our discussions with stakeholders 'found that two attempts [at repair] ... seems to be a reasonable approach in most situations'.<sup>8</sup> However, one third of respondents agreed, whilst another third said it should have gone further, namely, to allow a consumer to proceed to a second tier remedy after one attempted repair (or one replacement).<sup>9</sup>

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<sup>7</sup> Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.103

<sup>8</sup> Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.103

<sup>9</sup> Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.61

25. The Law Commissions therefore chose to change their final recommendation (for change within a new directive) to one repair or replacement (our option 2), on the basis that equalising the numbers of repairs or replacements would provide maximum simplicity and clarity.
26. However, after reviewing the consultation responses and engaging with stakeholders we still believe that this option of two repairs or one replacement deserves serious consideration. We are not convinced that the minor benefit, in terms of simplicity, of aligning the number of repairs and replacements outweighs the potential burden placed on businesses by a limit of one repair, particularly for businesses dealing with complex, high-value goods. Having engaged with car manufacturers, for example, we are concerned that obliging them to offer refunds or price reductions after fixing one minor fault may be disproportionate and unduly burdensome.
27. It also seems likely that if consumer cases were taken to court, in many, if not most cases, the court would rule that one repair had not caused 'significant inconvenience' or taken more than a 'reasonable time'. Therefore, limiting the number of repairs to one could well go beyond the immediate policy objective of simply providing clarity and simplicity, and actually impose an entirely new burden on business in many cases.
28. Of course, we have also considered a range of different limits as part of the policy development process. For example we could limit the repairs and replacements both at two, but given the conclusive findings of the FDS and Law Commissions cited above that more than one replacement attempt is generally seen as unacceptable, we have not chosen to explore that option further.
29. Similarly, we could have suggested a higher limit for the number of repairs and indeed have constructed an option based on this (see below Option 3). But we have estimated that in most cases a Court would probably conclude that more than two repairs would cause 'significant inconvenience' to the consumer, so in those cases, allowing more than this could be a fairly meaningless limit. Either consumers would get into costly disputes at a much earlier stage when they felt 'significantly inconvenienced', or they would continue to not achieve the consumer rights to which they are entitled, because they would experience 'significant inconvenience' before reaching the maximum number of repair attempts, and then still have the same problems with moving to second tier remedies.
30. **Option 2:** Establish that consumers automatically have a right to pursue the second-tier remedies for faulty goods after a single failed repair or replacement. The repair or replacement would be deemed to have "failed" wherever it caused "significant inconvenience" or in particular was not provided within a "reasonable time". But it would also be deemed to have failed if the good broke down again.
31. Even though consultation respondents were evenly split between the options of limiting repairs to one or two the Law Commission was persuaded to change their recommendation to one repair or replacement in their final report on the grounds that '*many [respondents] argued that it would be clearer and more consistent to equalise the number of attempts at repair or replacement*'<sup>10</sup> However, as explained, we believe that this limit could place an undue burden on business, particularly in sectors dealing with complex, high-value goods.
32. **Option 3:** Establish that consumers automatically have a right to pursue the second-tier remedies for faulty goods after two repairs or a single replacement, except where each repair costs less than 5% of the original product value in which case three or even four repairs would be allowed before pursuing second-tier remedies. Again, this would be subject to the second tier remedies having become available already if there had been a failure to repair or replace without 'significant inconvenience' or within a 'reasonable time'.
33. Each individual repair would have to be less than 5% of the original value. So even if the first repair was very cheap, if the second was more expensive, the business could not then insist on a third repair.
34. The value of the repair would have to include all associated costs, including the labour and parts, clearly itemised on request by the consumer. For this reason it is envisaged that this exception would only apply to relatively high-value goods, because labour costs alone mean that any repairs on cheap goods are likely to break the 5% threshold.

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<sup>10</sup> Law Commission, 'Consumer Remedies for Faulty Goods' (2009), p.61

35. This option would appear to benefit a car retailer if, for example, soon after purchase a fault developed with the windscreen wipers and then with the built in satellite navigation system or the radio and then with the automatic door lock or the display panel. Each individual fault might be minor and might be easily repairable. It might seem disproportionate to allow the entire car to be rejected on just the third fault.
36. However, against this must be set the fact that by allowing for more repair attempts, the limit is less likely to come into effect before the consumer might have been able to prove in court that they had experienced 'significant inconvenience'. Therefore, if the limit is too high, many of the benefits of this policy will be lost, because consumers and businesses will be faced with the same disputes, or consumers will simply not try to access second tier remedies, even when they are probably entitled to them.
37. The Government also believes that the cost for retailers of offering refunds after 2 repairs would be manageable because our reform in this area must be seen alongside our policy options regarding deduction for use (see associated IA). These reforms mean that if a car were to be rejected after the third fault arose, the retailer would be able to reduce the refund to take some account of the consumer's use of the good. Depending on the policy option pursued, this deduction could even be linked to the product value, in which case the losses would be minimal for car manufacturers, because it is likely that there would be accurate data about the second-hand values of high-value goods like cars, and therefore businesses should be able reduce refunds accordingly. As a result, providing early refunds may not represent a disproportionate burden, and therefore Option 3 might only introduce unnecessary complexity.
38. This issue will be explored in the Consultation to verify that the Government's assumptions are correct.
39. **Option 4:** Establish that consumers automatically have a right to second-tier remedies if repairs or replacements have not been completed satisfactorily within a cumulative total of days (perhaps 30 or 14 days). Though consumers will also keep their current right to move to second-tier remedies immediately if a repair or replacement attempt causes 'significant inconvenience' or takes more than a 'reasonable time'.
40. The 30 or 14 days would be measured from, and would include, the day on which the consumer returned the goods, which would include the day on which the consumer posted the goods back, not just the day on which the trader actually received the goods. Equally however, the days would stop being counted on the day that the trader made the repaired or replaced good available for the consumer to collect, and not the day they actually chose to collect it.
41. Traders would also have to provide receipts for repairs or replacements which listed the time taken, but it would then be the duty of the consumer to keep a record of this receipt, so that the cumulative total of days could be tracked over time.
42. This option would be useful in terms of providing simplicity and clarity, because it would address both the terms 'significant inconvenience' and 'reasonable time' at once, (though, of course, a single repair may still fall foul of the significant inconvenience or reasonable time criteria sooner depending on the particular circumstances).
43. It would also allow for more flexibility, as businesses could offer a few longer repairs or lots of minor ones, depending on the product type and problem in question, rather than attempting to force a 'one-size-fits-all' rule onto a whole range of different goods and faults.
44. However, there may be concerns that 30 days, in particular, is a very long time for a consumer to be without goods that he/she has paid for and that for many high value goods "significant inconvenience" is likely to be reached much sooner ( for example, a modern household may struggle to manage without a boiler for 3 days in mid-winter, let alone 30 days) and a multiplicity of small repairs on most items, even if performed swiftly, would still probably constitute "significant inconvenience", given the need to call out a technician and be at home when he calls or call into a shop each time to return the goods. As such this limit might have little effect except in the most egregious cases, where the consumer would probably take action under the current law anyway.

45. An alternative might be to fix the threshold at 14 days, or perhaps even less, but to take account of the lower level of inconvenience if the trader supplies a replacement good without delay (in which case the limit could probably be 30 days quite safely).

## Monetised and non-monetised costs and benefits of each option

### Option 0: No change

46. There are no benefits or costs associated with this option as the status quo is maintained.

### Option 1: Second tier remedies after two repairs or a single replacement

#### Benefits

47. This option would help to deal with the uncertainty of the current situation for both businesses and consumers by setting a limit on the number of repairs or replacements to be attempted before consumers can automatically insist on second tier remedies. This should reduce the cost of dispute resolution for both parties, reduce the cost of staff training for businesses, and greatly empower consumers to enforce rights which they could well already have, but which are currently difficult to enforce.
48. Using the latest available data we have estimated that there were around 2.5m problems with ‘promised repairs’, ‘delivery / collection / repair problems’, ‘cancellation rights’, ‘getting refunds’ and ‘inadequate redress’ in 2008, causing around £364m worth of consumer detriment.<sup>11</sup> It is difficult to know how much of this can be specifically attributed to long repair/replacement cycles (particularly as this figure includes other detriment sources such as delivery and collection problems) but we would certainly expect a clearer process for ending cycles of repairs, and fully exercising cancellation rights, to reduce all these sources of detriment.

#### Costs

49. Allowing easier access to second tier remedies (refunds or price reductions) might impose costs on some businesses, particularly on those selling complex, high-value goods that do not currently provide expedient access to second tier remedies, but instead pursue many repairs or replacements.
50. It is almost impossible to reliably estimate these costs because current law already restricts business ability to pursue a policy of repeated repairs, but its application will vary case by case. In some cases a single repair of a fundamental problem might be sufficient to trigger the ‘significant inconvenience to the buyer’ or ‘reasonable time’ test. In other cases, a court might allow several smaller repairs to continue before allowing a consumer to cancel the contract.
51. The uncertainty over how the law applies probably leads consumers to acquiesce in accepting whatever business offers them in most cases. Assertion of rights is time-consuming and risky if those rights are not clear-cut. Therefore, we expect that in many cases consumers already have a right to insist on a refund after two repairs, so that this change will only be imposing a business cost to the extent that it makes consumers more assertive.
52. There will be other cases where businesses do have to offer refunds before they would have to under the current law. However, these will only impose a cost in the cases where extra repairs would have solved the problem. Where the extra repairs would end in a refund anyway, providing the refund earlier would actually result in a saving for the business.
53. The number of cases in each category will vary by sector and type and seriousness of problem. The consultation will invite feedback on this from business and consumer groups. BIS will also commission in-depth case study research to improve our understanding of the impact before legislating for this change.

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<sup>11</sup> OFT, Consumer Detriment Survey (2008) – the full problem type categories were ‘failure or delay in a promised repair’, ‘delivery / collection / repair problems’, ‘failure to observe cancellation rights’, ‘difficulty sorting out any problems you may have had with a retailer or supplier, or problems getting refunds’ and ‘offers of inadequate redress, including credit notes instead of refunds’

54. In any event, these costs would be lower than for option two because more goods would get repaired at the second repair stage. Furthermore, the extra repair itself would impose no extra costs on business because if it was cheaper to simply move straight to second tier remedies, that would remain an option.

## **Option 2: Second tier remedies after a single repair or replacement**

### Benefits

55. This option would also help to address the uncertainty of the current situation and would provide even greater clarity by making the number of repairs or replacements which must be attempted the same. This would make it easier for consumers to identify their rights and for businesses to reduce the costs of staff training and dispute resolution.
56. This option would also increase consumer protection more than option one. We do not know the exact number of repairs or replacements which are attempted at the moment, or their exact cost, and therefore cannot quantify the exact benefit which consumers would derive from this change. However, the process of 1<sup>st</sup> and 2<sup>nd</sup> tier remedies was implemented by European law, so this option represents the lowest number of repairs or replacements that we could stipulate before a consumer could progress to second-tier remedies, and therefore offers the maximum possible consumer protection.

### Costs

57. The greater increase in consumer protection would result in greater costs for businesses compared to option one. In response to the Law Commissions' consultation the Retail Motor Industry Federation argued that for them, 'rejection or replacement is not a cost effective option' and the Association of Manufacturers of Domestic Appliances (AMDEA) said that high numbers of returns already had 'negative implications' for their industry. Thus, the evidence suggests that forcing them to offer a refund after one repair attempt may create a significant business burden.
58. However, it is also worth noting that the Radio, Electrical & Television Retailers Association, which represents businesses dealing with relatively complex products, suggested a limit of one repair in response to the Law Commissions' consultation, indicating that even within business organisations the balance of costs and benefits will vary.

## **Option 3: Second-tier remedies after two repairs or one replacement. Allow for three or even four repairs when each repair cost less than 5% of the original product value**

### Benefits

59. This option would still provide some clarity for businesses and consumers by prescribing a number of repair or replacement attempts, but the 5% exception would make this less clear than options one and two.
60. For relatively low value items there would be no reduction in consumer protection compared to option one because it is expected that repair costs will always break the 5% threshold for cheaper products, due to the cost of the skilled labour required to fix most goods. For example, if we imagined for illustrative purposes that any repair would cost at least £100 in total, the cheapest product where the 5% exception could operate would have to be worth £2,000. As a result, the vast majority of low value transactions will still benefit from the consumer protection, and resulting benefits, described under option one.
61. This option would, however, be more accommodating towards businesses dealing with high-value, complex goods where the cost of repairs is often significantly less than the value of the good. For example, cars have many small working parts which can individually break. If two small parts break and are repaired at a relatively low cost, and then a third minor fault occurs, refunding the entire car is clearly a much more costly option for the business than providing another repair, and can seem like a disproportionate remedy. Allowing for one more low-cost repair would therefore benefit businesses in these high-value sectors.

62. However, as noted above we envisage our reform in this area being implemented alongside our reform in relation to deduction for use (see associated IA), which would allow businesses to reduce refunds, possibly in line with the actual value of the good, as long as that value could clearly be proved. There is more likely to be clear devaluation data for high-value goods, and for cars in particular, so in these industries any losses incurred by providing a refund could well be extremely limited anyway, whenever the refund takes place.

### Costs

63. Consumers will suffer the costs of accepting one or two more repairs in some cases, where under the other considered options they could insist on a refund. However, we do not know exactly how many repairs are normally pursued at the moment, and so cannot prove whether 3 or 4 repairs would represent a benefit or cost compared to the status quo.
64. It seems likely that in many cases, if consumers took cases of three or four repairs to court, the court would find that three repairs had caused 'significant inconvenience'. However because the court process is expensive and uncertain, consumers are unlikely to pursue this. So even a limit of three or four could actually improve consumer protection in some cases on the ground, because clarity will allow them to assert their right to a second-tier remedy, even if it is a right which they are likely to already have. This could therefore represent a business cost caused by greater consumer assertiveness, rather than an actual change to consumer rights.
65. At the same time however, this option could lead to more disputes with consumers who feel significantly inconvenienced at an earlier stage, or could be leaving consumers in the same position as at the moment, where they would be entitled to second tier remedies in a court at an earlier stage, but are unable to access their rights because of the subjective way in which the law is defined.

### **Option 4: Second tier remedies made available after a fixed aggregate total of days (perhaps 30 or 14 days) spent on repair or replacement attempts**

### Benefits

66. This option has some attractions because it allows for some flexibility to take various circumstances into account, whilst still providing greater clarity and simplicity than the current law. It could deal with some of the issues addressed in option 3 if the aggregate number of days is set at the right level, but without the complexity of a 5% exception rule, because it allows for a greater number of minor repairs, but would still act to limit the number of major repairs that consumers have to endure.
67. Businesses would therefore benefit from this flexibility, and from not being forced to offer costly refunds or price reductions if the repairs or replacements had all been quick, and therefore caused less consumer detriment.
68. Consumers are unlikely to benefit from any substantive change to the law, because we believe that if a case went to court, in almost all cases the court would rule that if repair / replacement attempts had taken more than 14 days, let alone 30 days they would have caused 'significant inconvenience' and taken more than a 'reasonable time'. This is because only high value items are likely to be repeatedly repaired and most high value items (computers, washing machines, cars, boilers, etc.) create significant inconvenience quite rapidly when they don't work.
69. However, in practice consumer cases very rarely go to court, so in reality, as long as the aggregate number of days is set at the right level, consumers should benefit from being able to insist on second tier remedies, and therefore actually receive the rights that they are entitled to more easily and more often.
70. Finally, benefits will also stem from a level of clarity which should reduce the number of costly disputes, and reduce staff training costs for businesses.

### Costs

71. Consumers could suffer some additional costs here, in relation to the other options considered, in cases where they have to accept more than 2, 3 or even 4 repairs before asking for a refund. This might cause

particular detriment in cases where actually organising each repair takes considerable time and effort, for example having to drive back to a distant shop. However, the basic principle that quicker repairs or replacements cause less detriment, and therefore that more could be accepted before refunds are sought, seems like a reasonable one. If, of course, they clearly did cause undue detriment, the 'significant inconvenience' test for recourse to second tier remedies would still be available.

72. The main issue is the time limit itself. We currently lack detailed data on the normal time period which is allowed before it is deemed that a 'reasonable time' has passed, or 'significant inconvenience' has been caused. If this time period is normally only 10 days, then clearly 30 would be an excessive upper limit. We will therefore seek to consult on this issue extensively, in order to better inform our final stage IA. Elsewhere in consumer law 14 day and 30 day time limits exist and for the sake of clarity and simplicity, the Government would prefer to apply as few different time periods as possible, so our preference would be to use one of these periods, but the length of the time period is critical. It needs to strike a balance between allowing businesses to carry out repairs, whilst at the same time acting as a real safety net to prevent consumers from feeling obliged to fall back on the existing general rules. If that happens, there will have been no gain.

## Rationale and evidence that justify the level of analysis used in the IA

73. We have supported the analysis in this IA with the most up-to-date data available on consumer complaints from the Consumer Direct database. We have also used this data, in combination with the OFT Consumer Detriment Survey findings from 2008 (the latest data available), to estimate the overall incidence of, and detriment caused by, problems related to cancellation rights, repairs and refunds.
74. However, there is still a lack of robust data on the specific numbers of repairs or replacements currently attempted and allowed before refunds are offered, and to the best of our knowledge such detailed information would be very difficult to collect because the number can currently change on a case-by-case basis and will vary across different types of consumer product.
75. Therefore, we believe that a full quantification of the costs and benefits of the proposed change would be disproportionately time and resource consuming.
76. The Government has therefore focused on describing the costs and benefits at this stage, and the main affected groups, whilst inviting respondents to the Consultation to comment on the benefits they see arising out of these changes, in order to better inform the final Impact Assessment. BIS will also commission in-depth case study research to improve our understanding of the likely costs and benefits for the final-stage IA.

## Risks and assumptions

77. There is a trade off between certainty and flexibility. One risk is that fixing the number of repairs or replacements or the aggregate time for repairs too low will introduce high costs in certain industries, particularly those dealing with high-value, complex goods, leading to a potentially disproportionate burden on some businesses. The Retail Motor Industry Federation (RMIF) and the Association of Manufacturers of Domestic Appliances (AMDEA) expressed concerns about this issue in response to the Law Commission consultation, as noted above. The Society of Motor Manufacturers and Traders (SMMT) have also expressed concern through informal consultation with BIS.
78. On the other hand FDS research suggests that the costs may be partly mitigated by the fact that 'repairs were seen [by consumers] to be much more relevant for high value than low value items' and that in general, when a fault with a car is not dangerous, 'people are happy to give the car retailer the opportunity to put it right'.<sup>12</sup> The research also found that 'in most circumstances, most consumers would accept a replacement or repair rather than insisting on a refund' because, after all, they bought the product because they needed it. They are particularly likely to accept a replacement if the product was

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<sup>12</sup> FDS 'Appendix A: Qualitative Research into Consumers' Perceptions of Consumer Remedies for Faulty Goods', in The Law Commissions, *Consumer Remedies for Faulty Goods, A Joint Consultation Paper*, (2008), p.157



chosen after much thought or was a well known or expensive brand, both of which are likely to be true for cars or other complex goods.<sup>13</sup>

79. We therefore have contrasting information on the real extent of this risk and will seek to gain a clearer understanding through consultation. It is nonetheless still worth noting that options one and two only stipulate when it becomes possible to insist on a refund. So if consumers would rather continue with free repairs or replacements, they will be equally free to do so, unless the business decides it is cheaper to just offer a refund.
80. The alternative risk is that we fix the clear default threshold for passage to a second tier remedy too high. This would mean that a consumer suffered “significant inconvenience” long before it was clear that he could pursue a second tier remedy. In this case the risk would be that there would be no reduction in disputes or dispute resolution costs because consumers would continue to rely instead on the broad existing tests of “significant inconvenience” or repair/replacement not performed in a “reasonable time”. In fact setting the clear default threshold too high could even increase the number of disputes and/or increase consumer detriment by giving businesses false confidence to resist claims for second-tier remedies, which the Courts would probably grant under the existing tests.

## Direct costs and benefits to business calculations

81. We expect the clarity on refunds to impose a small business cost overall, depending on the level at which the thresholds are set. However, these have not been quantified. Even in an ideal world with infinite resources, quantifying and monetising all the relevant costs and benefits accurately would be extremely complicated in this case. For Option 1, for example, this would require data on:
- (a) the total value of those goods across all sectors which are currently being repaired more than twice or replaced more than once (and so would now have to be refunded)
  - (b) the average number and total cost of the repairs or replacements currently offered, beyond the first two repairs or one replacement
  - (c) the proportion of long repair / replace cycles that resolve the case, and the proportion that end in refund anyway.
  - (d) current practice regarding deductions for use, and the ways in which this would change if refunds occurred sooner
  - (e) expected consumer behaviour regarding when consumers would actually choose to pursue refunds, regardless of when they were allowed to do so
82. To the best of our knowledge businesses do not keep records to this level of detail and we believe that trying to obtain this information would therefore be a disproportionate effort.
83. Furthermore, all of this data is likely to vary considerably between industries, so any overall cost/benefit would have to be a carefully weighted average based on the various industry sizes.
- (f) The value of simplification and clarification would also have to be taken into account. This would include the costs saved from reduction of disputes, less legal advice sought, less court time and lower staff training costs.
84. The OIOO figure would be essentially then be the cost of providing refunds in those cases which are currently just subject to further repairs or replacements, minus the savings from no longer having to provide those repairs or replacements and the benefits of greater clarity. In the cases where extra repairs or replacements resolve the problem, an early refund would normally represent a cost (though it depends on how effectively businesses can apply deductions for use and re-sell the returned items when calculating the level of refunds), but in cases where the repairs/replacements failed completely and a refund followed anyway, an earlier refund would represent a saving. Therefore knowing the proportion of each type of case would be essential.

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<sup>13</sup> FDS ‘Appendix A: Qualitative Research into Consumers’ Perceptions of Consumer Remedies for Faulty Goods’, in The Law Commissions, *Consumer Remedies for Faulty Goods, A Joint Consultation Paper*, (2008), p.156

85. Finally the impact of (e) and (f) would also have to be estimated, which in both cases would require some fairly extensive research, making obtaining an overall cost/benefit figure difficult and out of proportion with the scale of the proposed change at this stage.

## Wider impacts

### Competition assessment

86. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
87. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at an excessive price.
88. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

### Impact on small firms

89. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.<sup>14</sup>
90. Ethnic minority businesses are concentrated within this sector<sup>15</sup>. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian<sup>16</sup>.
91. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful<sup>17</sup>.
92. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.
93. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.
94. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

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<sup>14</sup> BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

<sup>15</sup> Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See [www.berr.gov.uk/files/file38247.pdf](http://www.berr.gov.uk/files/file38247.pdf).

<sup>16</sup> For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at [http://www.london.gov.uk/mayor/economic\\_unit/docs/asian\\_businesses.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf). Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

<sup>17</sup> J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100

## Summary and preferred option with description of implementation plan

95. We have chosen not to recommend a particular policy option at this stage because, although we have used the best available statistics throughout, we currently lack the data that would be necessary to quantify and monetise the specific impact of each policy on different sectors of the economy. We are therefore presenting the most viable options for consideration, and will seek through various evidence gathering exercises and formal consultations to obtain more detailed data on the likely impact of each option.
96. The government's intention is to implement this proposal through the planned Consumer Bill of Rights with a tentative implementation date of 2014 (subject to the findings of consultations and the Parliamentary timetable). A post-implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

## Supply of Goods Impact Assessments: Overarching Explanation

### Problem under consideration

1. At present many businesses and consumers are unaware, or unclear, about their rights and obligations, leading to disputes that are costly for business and consumers, and preventing consumers from effectively pursuing their rights.
2. Responses to the Consumer Law Review which took place in 2008 suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase, including digital downloads.<sup>18</sup>
3. Our proposals are based on research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law'<sup>19</sup> as well as the above-mentioned Consumer Law Review and the Law Commission and Scottish Law Commission's 2009 report on 'Consumer Remedies for Faulty Goods'<sup>20</sup>.

### Rationale for intervention

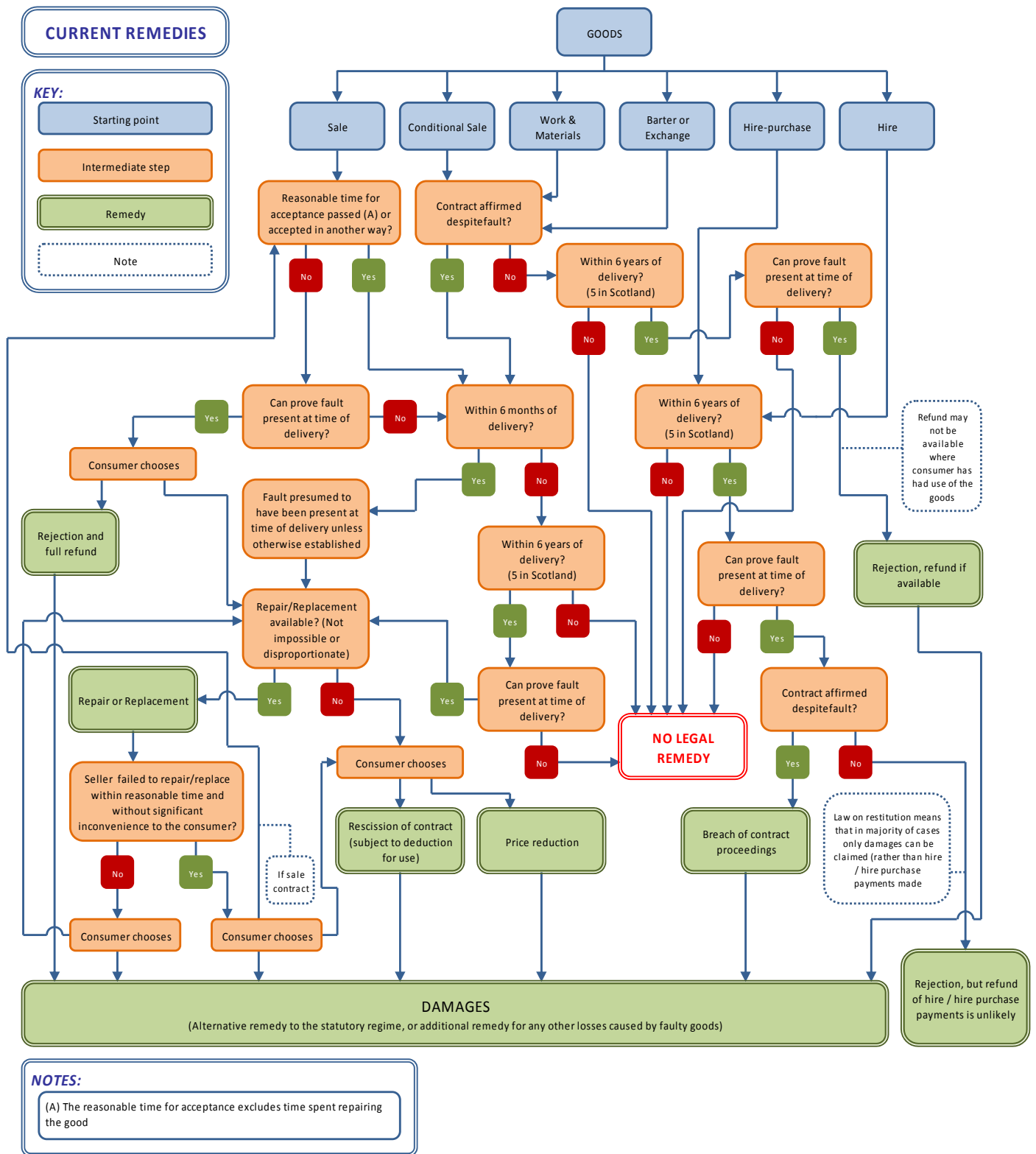
4. Responses to the Consumer Law Review (2008), the Law Commission and Scottish Law Commission's report on Consumer Remedies for Faulty Goods (2009) and research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law' (2010) all suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase. Such changes would make the law more accessible, increasing both business and consumer awareness of their rights and obligations.
5. Consumer sales in the UK were worth £5,774 million per week in the first quarter of 2011 (the latest data available) and there is evidence that the scale of consumer detriment in the UK is large. The latest available research conducted by the OFT estimated that the total consumer detriment related to problems with goods and services, amounted to around £6.6bn in 2008. Of this, around £481 million specifically related to problems with 'defective goods' and 'goods that were faulty, damaged or lacked durability', and the overall detriment caused by goods will be much higher given their additional involvement in other recorded sources of detriment, such as 'repair problems'. This equates to a minimum of 5.38 million problems with goods in the UK, suggesting that the scale of the problem to be addressed here is considerable.<sup>21</sup>
6. The Retail Red Tape Challenge concluded in July 2011 that there would be significant gains to be made by rationalising and clarifying consumer law. Reform of the law on sale of goods is a part of the Government's response.
7. To illustrate the complexity of the current law, the following flowchart shows the scheme of remedies for the supply of faulty goods.

<sup>18</sup> BIS, 'A Better Deal For Consumers: Delivering Real Change Now and Help for the Future' (July, 2009), p.80

<sup>19</sup> Prof. Twigg-Flesner & Prof. Geraint Howells (eds.), 'Consolidation and Simplification of UK Consumer Law' (Nov, 2010)

<sup>20</sup> Law Commissions, 'Consumer Remedies for Faulty Goods' (2009)

<sup>21</sup> OFT, 'Consumer Detriment Survey', (April 2008) - data broken down by Problem Type Category & then converted to 2011 prices based on inflation



8. On the basis of the expert advice received as part of the above listed reviews, and recognising both business support for this approach and the significant scale of potential consumer gain, the Government is persuaded that intervention is warranted at this time.

## Policy objective

9. The policy objective is to reduce business costs by clarifying the law, and thereby also to empower consumers and undermine rogue traders. By making the law clearer and more accessible the new law should make consumers more confident to assert their rights, thereby contributing to dynamic markets, adventurous purchasing, competition and growth.

## Policy Proposals

10. The government has identified 5 individual policy proposals, each with a number of options. The list below provides a summary of our preferred options, showing how each fits within three broad themes:
  - Clarity and understanding of the law – this theme covers issues stemming from the complexity of the language of the current legislation and from lack of consumer awareness of the law.
  - Lack of definition – this theme covers areas where the current framework does not provide clear-cut answers (either intentionally or unintentionally) to some common issues.
  - Lack of consistency – this theme includes issues caused by inconsistencies within the law.

### **Clarity and understanding the law**

11. Along with a general approach to drafting the Bill which will aim to use simple, modern language, we have a single proposal that falls within this category:
  - Establishing a statutory scheme of guarantees and clearly stated remedies for breach of these guarantees. This would replace the current “implied terms” model in which quality standards are applied to the underlying contract, necessitating an understanding of contract law to fully appreciate the specifics of the consumer’s rights.

### **Lack of definition**

12. Proposals detailed below that fall within this category are:
  - Establishing a period of 30 days, within which the good may be returned for a full refund if a fault is identified. At present there is an undefined period for inspection and return of a faulty good and this lack of definition has been highlighted by both business and consumer groups as a source of dispute and therefore cost.
  - This would clarify the current situation where a consumer may only access the second tier remedies if a repair/replacement is impossible or disproportionate, or has not been provided within a “reasonable time” and without “significant inconvenience” to the consumer. (If such circumstances arose before the fixed number of repairs/replacement or time limit had been met, then the consumer would still be able to access second-tier remedies at that point.) At present these terms are unclear, leading to many costly disputes.
  - Establish a minimum refund (as a proportion of the amount paid) that a consumer can expect to receive on exiting the contract through the second tier remedy of rescission. At present the retailer is entitled to make a deduction from the refund to account for the use that the consumer has had of the goods prior to the fault manifesting; however, no guidance is available on how this deduction should be calculated.

### **Lack of consistency**

13. There is a single proposal that falls into this category:
  - Align the remedies for all transaction types for the supply of goods. At present, different remedies apply, depending on the type of contract that has been entered into. In many cases it is not clear what type of agreement the contract forms, so it is difficult to establish what remedies are available to the consumer.

Our proposal is that the remedies currently available for sale of goods should be extended to other transaction types.

14. **N.B.** It should be noted that the current framework applies (and the new one will continue to apply) to goods of an enormous range of type and quality. At present, in the Sale of Goods Act 1979, for goods sold in the course of a business, “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” (s.14(2A)). This requirement will be retained, and therefore in order to access any of the consumer remedies this ‘reasonable person’ test will first have to be met.
15. For this reason, there has been no attempt to distinguish between the quality of different goods when stipulating the remedies to which consumers are entitled. If, for example, the good was so cheap that no reasonable person would expect it to still be working (or in the same condition) after 4 years, then clearly no consumer remedies would be available on the basis of its quality being unsatisfactory at that time. All of the remedies are only available for goods that ought to be functioning properly at the time the problem arises, but are not. The older a good becomes, the less plausible perfect functioning becomes and some parts are expected to wear out faster than others. If even an expensive car develops a faulty battery after 4 years, for example, the consumer would not expect a remedy based on the good being faulty at the time of sale. But if a quality car suffered an engine blow-out after 4 years of normal use, the consumer might have a claim as this would generally not be expected.

## Overall Costs and Benefits

### Benefits

16. Making consumer rights more accessible and straightforward to understand for both business and consumers should speed up the time taken to resolve disputes, reduce staff training costs and make litigation less likely. A more effective consumer regime would help provide a level playing field for law abiding business by undermining businesses which trade off the opaqueness and complexity of the law to exploit consumers. This will also increase consumer confidence, which should contribute towards increasing competition and innovation, which are key drivers of economic growth.

### Costs

17. There will be transition costs for businesses and consumer advisers in understanding the new rules and updating training courses, guidance materials and internal company documents which deal with consumer law. Improved consumer awareness and confidence may result in short term costs to some businesses related to dealing with consumers pursuing their rights, who may previously have “suffered in silence”. There will be some instances where consumers will have to wait longer to exit the contract as a result of our proposal to limit the short term right to reject and there may be some costs as well as benefits to business from the proposals to clarify the law by fixing a minimum value for refunds available at the rescission of contract. There may also be costs for some businesses arising out of proposals to limit the number of mandatory failed repairs to 2 (after which the consumer is entitled to rescind the contract). Some sellers of high-cost items may be able at present to insist on a longer cycle of repairs, if the repairs are relatively minor.

## Rationale and evidence that justify the level of analysis used in the IAs

18. The level of analysis possible for the individual proposals varies in accordance with the availability of data and so detailed rationale for the level of analysis is covered in the relevant sections below.
19. High-level figures demonstrating the scale of the problem in general terms are readily available, but in a number of areas more detailed evidence does not exist. For example, we recognise that in a number of the proposals it would be ideal to have evidence of the number of cases where a particular remedy is utilised by consumers but we are informed that retailers do not generally keep records to that level of detail.

20. Additional evidence will be sought during and through the consultation exercise and research will be commissioned to help develop the evidence base further. Our approach to this is set out in the relevant sections.

## Risks and assumptions

21. Risks and assumptions associated with the individual proposals are covered in detail in their respective sections, below. A risk that has been identified for two of the proposals is that they may lead to an increase in fraudulent behaviour among some consumers. We believe that in both of the relevant proposals, the benefits in terms of simplicity and reduction in disputes outweighs any increase in fraud that might reasonably be anticipated, but this will be tested in the consultation.

## Wider impacts

### Competition assessment

22. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
23. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at a higher price.
24. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

### Impact on small firms

25. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.<sup>22</sup>
26. Ethnic minority businesses are concentrated within this sector<sup>23</sup>. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian<sup>24</sup>.
27. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful<sup>25</sup>.
28. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.
29. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.

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<sup>22</sup> BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

<sup>23</sup> Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See [www.berr.gov.uk/files/file38247.pdf](http://www.berr.gov.uk/files/file38247.pdf).

<sup>24</sup> For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at [http://www.london.gov.uk/mayor/economic\\_unit/docs/asian\\_businesses.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf). Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

<sup>25</sup> J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100



30. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

## Implementation Plan

31. The government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of mid 2014 (subject to the findings of consultations and the Parliamentary timetable). A post implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

## The Consumer Law Reform Programme

1. In response to the Retail Red Tape Challenge the Secretary of State for Business announced a consumer law reform programme<sup>26</sup> to clarify and simplify consumer rights. The consumer law reform programme aims to streamline and modernise rights found currently in 12 pieces of legislation and the investigatory powers of Trading Standards officers found scattered in around 60 pieces of legislation.
2. Consumer protection regulations have developed piecemeal over many decades, with confusing overlay of European legislation onto domestic legislation in recent years. Businesses complain that the complexity of the law imposes costs and uncertainty on them and consumer groups complain that consumers cannot understand their rights and so cannot enforce them. Even academics and lawyers complain that the law is too complex. The consumer law reform programme will overhaul this regime setting out a simpler framework in plain English that provides certainty where there is lack of clarity, removes overlaps and unnecessary rules, and updates the law where it is required.
3. The proposals for reform of consumer law will take forward the recommendations and conclusions of numerous academic research reports and public consultations over the last few years. The Davidson report in 2006 concluded that UK law on Sale of Goods was unnecessarily complex and this was reviewed by the Law Commission who made recommendations in 2009<sup>27</sup>. In 2005 the Law Commission recommended simplification of Unfair Contract Terms law<sup>28</sup>. The University of East Anglia concluded in 2008 that the UK consumer protection regime had three key weaknesses – uneven enforcement, weak redress for consumers when things go wrong and excessively complex law<sup>29</sup>. A review of this regime in 2008 led by the Better Regulation Executive concluded that much consumer legislation could be simplified and modernised so that consumers and those dealing with consumers are clearer about the framework surrounding their transactions<sup>30</sup>. This review revealed strong support across the board for consolidating the legislation, making it much clearer and more accessible. Two further pieces of academic research have more recently made recommendations relating to consumer law for digital content and how the law could be simplified for goods and services<sup>31</sup>.
4. At the heart of the package of reform BIS will be bidding for a parliamentary slot for a Consumer Bill of Rights. The core of the Bill will overhaul core consumer rights in relation to faulty goods and poor services, and update the law to clarify rights for consumers when purchasing digital content. The Bill will also provide a generic set of Trading Standards investigatory powers in one place<sup>32</sup>, measures to empower consumers to challenge anti-competitive practices<sup>33</sup>, and possibly introduce civil court sanctions for breaches of consumer law and provide more effective powers for Local Authorities to regulate street trading.
5. The Bill will be accompanied by a package of secondary legislation that is intended to come into force at the same time using similar language. This will include implementation of the Consumer Rights Directive, updating and clarifying unfair contract terms legislation, and providing a clearer route for consumers to redress after misleading or aggressive practices.

<sup>26</sup> [www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape](http://www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape)

<sup>27</sup> Davidson Report 2006 [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf);  
[http://lawcommission.justice.gov.uk/docs/lc317\\_Consumer\\_Remedies\\_In\\_Faulty\\_Goods.pdf](http://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf)

<sup>28</sup> [http://lawcommission.justice.gov.uk/docs/lc292\\_Unfair\\_Terms\\_In\\_Contracts.pdf](http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf)

<sup>29</sup> Benchmarking the performance of the UK framework supporting consumer empowerment. [www.bis.gov.uk/files/file50027.pdf](http://www.bis.gov.uk/files/file50027.pdf)

<sup>30</sup> [www.bis.gov.uk/files/file52071.pdf](http://www.bis.gov.uk/files/file52071.pdf)

<sup>31</sup> [www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products);  
[www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law)

<sup>32</sup> The RPC has recently reviewed Impact Assessments and a consultation is ongoing (May 2012).

<sup>33</sup> The RPC has recently reviewed an Impact Assessment and a consultation is ongoing (May 2012).

6. We believe that the proposed Consumer Law Reform programme will reduce business compliance costs, for example by business spending less time on staff training in consumer law and reduced time and legal expense spent settling disputes with consumers. Retailers tell us they spend time dealing with consumers who are misinformed about their rights, often thinking that they have more rights than is the case, and that they tend to err on the side of caution when settling disputes where the law is unclear.
7. We also believe that the new framework of consumer law will empower consumers to assert their rights. Empowered consumers should stimulate competition and innovation since well protected, well informed consumers are likely to be more open to new market entrants and innovative products. The proposed reforms will therefore contribute to growth as companies seek commercial success through innovation and targeting consumer needs, rather than by misleading them and/or fobbing them off with poor quality goods and services. A clear consumer protection framework helps create a level playing field; those businesses which fail to comply with the law can be tackled through enforcement (private and public), ensuring that honest businesses are competing on a level footing against each other and not against rogues.
8. Whilst we have a fairly robust body of evidence about failings in the existing law and about consumer experiences, behaviour and understanding of consumer law, we need to gather more evidence about business behaviour in order to make a more informed assessment of the impact of the consumer law reform programme as a whole. Government believes that the case for change is very strong, but that the impact of specific change options needs more work.
9. Alongside the formal consultation process, we are therefore planning to gather additional input from different sized retailers and service providers in several sectors in order to estimate better the current baseline and from there make meaningful estimates of likely impact of our proposals. From early discussions with business groups it will probably not be possible to collect all the evidence we would like in enough granularity, for example retailers tell us that they do not always record under which law or whether as a goodwill gesture they offer consumers a refund so they would find it difficult to relate their data back to the Sale of Goods Act. However we are planning a pragmatic approach consisting of sampling, surveys and focus groups to gather, in particular, evidence of costs of implementing any change in consumer law (such as training and communication costs), current practice in resolving disputes, and estimates of the cost of legal advice.
10. We will also explore consumer understanding of the terminology used in consumer law and in the proposed new framework, so that we can adopt a plain English approach where possible.
11. The impact of the changes in the law will rely on consumers and those who deal with consumers knowing about and understanding the new framework of consumer law, and also on its effective enforcement. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice and the enforcement of consumer law through Trading Standards. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We are also engaging with Trading Standards and other enforcers to ensure that they are aware of the proposed changes and actively engaging in the policy development process. We will discuss awareness raising for businesses with a range of business representative bodies.

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