

**THE SUPPLY OF GOODS: A
SINGLE SCHEME OF REMEDIES
FOR FAULTY GOODS**

Impact assessment

JULY 2012

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Title: The Supply of Goods: A single scheme of remedies for faulty goods IA No: Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	Impact Assessment (IA)
	Date: 30/01/2012
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: AMBER
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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, One-Out?	Measure qualifies as
£m	£m	£m	Yes/No	In/Out/zero net cost

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

Normal sale is not the only transaction type through which goods can be supplied; others include hire purchase, conditional sale, etc. Remedies available to consumers if goods are found to be faulty vary according to the particular transaction type. It is not clear what benefits this brings and it is not always clear what particular transaction type has been entered into. This can make it difficult for consumers to be sure of their rights and increases the costs of compliance, dispute resolution and staff training for businesses.

What are the policy objectives and the intended effects?

The policy objective is to reduce compliance costs for business and improve consumer confidence by reducing confusion among retailers and consumers as to the rights and responsibilities of both parties. To achieve this we need to clarify and simplify the consumer law framework by creating a single set of remedies that apply to all contracts for the supply of goods if those goods are found to be faulty.

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.

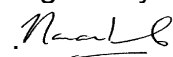
Option 1: Apply the remedies currently available for sales contracts to all transaction types, creating a single, clear scheme of remedies for all supply of goods contracts. The short-term right to reject, followed by first tier (repair/replacement) and second tier (refund/price reduction) remedies, will apply to all supply of goods contracts. The current long-term right to reject which applies to some contracts will be removed.

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 / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

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: Apply the current sale of goods remedies to all transaction types

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 costs identified have been monetised

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

There would be costs for consumers who would have to pursue repairs or replacements before being able to exit certain types of contract after 30 days, whereas previously they could have moved straight to a refund.

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 benefits identified have been monetised

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

Businesses would benefit from being able to offer repairs or replacements, for faults manifesting themselves after 30 days, in cases where that would be cheaper than offering a refund.
Clearer law would reduce the costs associated with dispute resolution, compliance and staff training (particularly for businesses that offer more than one contract type).

Key assumptions/sensitivities/risks

Discount rate (%)

A key risk, as was pointed out by The Council of Her Majesty's Circuit Judges, is that this will operate harshly in some contracts, such as work and materials contracts, where 'it is more often than not that defects may take a substantial time to manifest themselves'. However, consumers will still be entitled to repairs or replacements, followed by refunds if appropriate, and the OFT (including Consumer Direct) said that consumers were little aware of the long-term right to reject, so 'there would be little practical detriment'¹

BUSINESS ASSESSMENT (Option 1)

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

¹ Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.51-2

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**.

Introduction

5. The remedies available to the consumer if goods are found to be faulty vary according to the particular contract type under which the goods were supplied. This adds a layer of complexity to the law and is particularly problematic because it is not always clear which transaction type has been entered into. This can make it difficult for consumers to be sure of their rights, and increases the costs of compliance, dispute resolution and staff training for businesses, particularly those offering more than one type of contract.

Problem under consideration

6. Goods can be supplied under a number of different contract types:

Sale - goods exchanged for money in the familiar way

Conditional Sale - goods supplied on credit, with ownership passed on final payment

Barter or Exchange - goods exchanged for a consideration other than money

Work & Materials - contract for work or services, with incidental supply of goods

Hire Purchase - a hire contract with an option to buy at the end of the hiring period

Hire - a hire contract with no intention that ownership of the goods will pass

7. Consumer detriment can arise under any of these contracts if the goods supplied are found to be faulty. For example, Consumer Direct received 6,736 complaints, relating to defective goods with a market value of about £73 million, which had been supplied under hire purchase contracts in 2011.² Based on OFT methodology we estimate that this equates to around 325,000 problems in the UK as a whole.³
8. Furthermore, the latest available data on consumer detriment, from the OFT in 2008, suggests that there were at least 5.3 million problems with defective goods overall, with an associated consumer detriment

² Consumer Direct Database, 'Data Cube Dec 2010 to Dec 2011' – achieved by comparing Hire Purchase against (01A) Defective Goods

³ OFT, 'Evaluation of a sample of Consumer Enforcement Cases' (2009), p.35 – explains how the OFT 'Consumer Detriment' report, 2008, can be used to estimate the proportion of complaints that reach consumer direct, in order to scale up the initial figure.

of around £480 million.⁴ It is therefore important that the remedies are clear, regardless of how goods are obtained. However, at the moment, these various contracts are regulated by three different statutes:

- (1) Sale of Goods Act, 1979 (**SoGA**)
- (2) Sale of Goods (Implied Terms) Act, 1973 (**SoG(IT)A**)
- (3) Supply of Goods and Services Act, 1982 (**SGSA**)

9. The important differences created by these statutes relate to remedies. The traditional domestic remedy for faulty goods is called the 'right to reject' and involves returning the goods in exchange for a refund.

For straight-forward sales the 'right to reject' expires after a 'reasonable time' (though we are proposing to normalise this at 30 days – see associated IA). This is a **short-term right**.

For goods acquired under any other contract type, the 'right to reject' can only expire after a fault is discovered, if the consumer fails to act or indicates that he has elected not to reject. This is a **long-term right**.

10. The other key difference is that hire and hire purchase contracts are not covered by the European-wide scheme of 'first tier' and 'second tier' remedies. (These remedies must be pursued in order, but the number of 'first tier' remedies which must be attempted before proceeding to the 'second tier' remedies is currently under review – see associated IA).

'first tier' remedies are repair or replacement of the faulty goods

'second tier' remedies are either a deduction from the cost of the product or rescission of the contract, involving return of the goods and a refund.

11. These European remedies were overlaid onto the domestic 'right to reject' remedy, creating the confusing situation represented below:

Contract Type	Relevant Legislation	Remedies Available	
		Right to Reject	1 st & 2 nd tier
Sale	SoGA, 1979	Short-term	Yes
Conditional Sale	SoGA, 1979	Long-term	Yes
Barter or Exchange	SGSA, 1982	Long-term	Yes
Work & Materials	SGSA, 1982	Long-term	Yes
Hire Purchase	SoG(IT)A, 1973	Long-term	No
Hire	SGSA, 1982	Long-term	No

Rationale for intervention

12. Low consumer awareness about consumer rights is well documented, with FDS research for example, finding that 'consumers had a partial and flawed understanding of their rights'⁵. Businesses will also benefit from greater simplicity through reduced compliance and staff training costs, as the BRC pointed out in their response to a Law Commission consultation.⁶

⁴ OFT, Consumer Detriment Survey (2008) – total value for Product Type Categories 'Defective Goods' and 'Goods that were faulty or damaged, lacked durability, wore out very quickly'

⁵ 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.137

⁶ BRC, Response to the Law Commissions' Consultation (2008), p.2 - they pointed out that legal simplicity would 'help to ensure retail staff, among whom there is a high turnover from year to year, are better trained'

13. Although the numerous remedial schemes being dealt with here are just one cause of this complexity, they do make it unnecessarily difficult for consumers to identify their rights, and can make compliance costly and uncertain for businesses, particularly because it is not always clear which transaction type has been entered into.
14. This is demonstrated by the case of *Jones vs. Gallagher* (2004). In this instance the consumers tried to reject a fitted kitchen after 5 months, but the Court of Appeal prevented them from doing so on the grounds that their right to reject had expired. However, the Law Commissions have questioned this judgement because it could have been construed as a 'work and materials' contract, and so would have had a long-term right to reject. They then make the logical conclusion that 'if judges and lawyers are confused by the law in this area, it is unrealistic to expect consumers to understand it.'⁷
15. An independent academic report led by Prof. Twigg-Flesner also recommended standardising these remedial schemes⁸, and a Government White Paper in 2009 said that 'responses to the Consumer Law Review suggested that there would be strong benefits for business, consumers and enforcers from a coherent consolidated law which as far as possible minimised the differences between different types of contract and different manners of purchase'.⁹ It therefore seems necessary and beneficial to simplify the law in this area.

Policy objective

16. The policy objective is to clarify and simplify the consumer law framework by creating a single set of remedies that apply to all contracts for the supply of goods if those goods are found to be faulty. This should reduce compliance costs for business and reduce confusion among retailers and consumers as to the rights and responsibilities of both parties.

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. **Option 1:** *Apply the current sale of goods remedies to all transaction types.*
20. This would have two main consequences:
- (1) the SoGA (1979) rules on the short-term right to reject would apply to all contracts and the long term right to reject would cease to apply
- (2) hire and hire purchase contracts would be subject to the European-wide scheme of pursuing 'first tier' remedies of repair or replacement, before the 'second tier' remedies of rescission or a reduction in price.
21. The resulting remedial scheme would then be as follows:

Contract Type	Relevant Legislation	Remedies Available	
		Right to Reject	1 st & 2 nd tier
Sales	Consumer Bill of Rights	Short-term	Yes
Conditional Sale	Consumer Bill of Rights	Short-term	Yes
Barter or Exchange	Consumer Bill of Rights	Short-term	Yes
Work & Materials	Consumer Bill of Rights	Short-term	Yes
Hire Purchase	Consumer Bill of Rights	Short-term	Yes
Hire	Consumer Bill of Rights	Short-term	Yes

⁷ Law Commissions, 'Consumer Remedies for Faulty Goods (2009)', p.50

⁸ Prof. Twigg-Flesner (ed.), 'Consolidation and Simplification of UK Consumer Law' (Nov 2010), p.85

⁹ BIS, 'A Better Deal for Consumers, Delivering Real Help Now and Change for the Future' (July 2009), p.80

22. The Government strongly believes that the short-term right to reject defective goods in sales contracts should not be denied to consumers. It is a particularly potent remedy because it is easy to understand and assert. Consumers know that they can get their money back if the product is not as promised, provided they act quickly. This inspires confidence and makes them more prepared to try unknown brands and new retailers. Without such consumer confidence markets would be less dynamic, market entry would be harder and competition weaker leading to less innovation, weaker growth, and eventually higher prices for consumers.
23. FDS research indicates that although consumers are generally unaware of their legal rights, most are aware that they have a legal right to a refund for faulty goods, and value it highly. Follow-up quantitative research specified that 94% of consumers said the right to a refund was important to them, and 37% that the right to a refund made them more confident about buying an unfamiliar brand.¹⁰ Equally, however, in the interests of business, the Government believes that this right should only be available for a limited time. Extending the time for rejection could potentially encourage abuse by some consumers who may use an item for a period of time, and then seek a refund when they no longer need it.
24. We believe that the short-term right to reject was able to earn the support of the 'vast majority'¹¹ of respondents to the Law Commissions' consultation because it strikes the right balance between consumer protection and business needs. For this reason the alternative option of extending the long-term right to reject has not been considered. The third possible option of extending hire and hire purchase remedies has been rejected. Therefore, achieving an acceptable consolidated remedial scheme would necessarily entail applying the general sales remedies to all contracts.
25. Respondents to the Law Commissions' consultation were evenly split when asked about applying the sales remedies to all other contracts, apart from hire. Half agreed with the OFT (including Consumer Direct) that the benefits of simplicity outweighed any loss of consumer rights, whilst others, including The Council of Her Majesty's Circuit Judges argued that the long-term right should be maintained for contracts where defects may take substantial time to manifest themselves. Ultimately, the Law Commissions recommended uniform remedies, partly because they were concerned that a long-term right to reject could enable more 'free hire' abuse, and partly for the sake of simplicity.
26. The academic report led by Prof. Twigg-Flesner agreed that the importance of simplicity was paramount, and therefore argued that uniform remedies should be extended even further to cover hire contracts. The Government agrees that this would further the stated aim of simplicity and clarity, because it would allow consumers to pursue the same remedial scheme regardless of how they came into possession of the faulty good.
27. The only necessary distinction would be regarding refunds in the case of hire contracts. Currently the long-term right to reject does not allow for a refund of hire payments made up to that point. We propose that this exemption should continue to apply in the case of the 'second tier' remedy of rescission. This could be provided for by means of a special rule or a 'deduction for use' calculation, depending on our reforms in that area (see associated IA).

Monetised and non-monetised costs and benefits of each option

Option 0: No change

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

Option 1: Apply the current sale of goods remedies to all transaction types

Costs

29. This simplification measure would involve removing the long-term right to reject from a number of contracts. This will impose, at least on paper, a cost on consumers by reducing their protection, and thereby confer an equivalent benefit onto business. We lack robust data on the current use of the long term right to reject, but in reality we expect that this transfer will be relatively small and are working on

¹⁰ The Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.25

¹¹ The Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.21

the assumption that the long-term right to reject is little known and rarely used. The Law Commissions also made this assumption, pointing to the case of *Jones vs. Gallagher* (2004), as cited above, where they suggested that even judges and lawyers may have struggled to understand the law.

30. Furthermore, in 2011 Consumer Direct recorded 6,736 complaints about defective goods bought under hire purchase, and 10,205 complaints about products purchased by 'other credit' (not hire purchase)¹². On paper consumer rights under these contract types will be diluted by this option, but the fact that consumers are having to resort to the Consumer Direct helpline, suggests that their existing long-term right to reject is not preventing consumer detriment anyway. Nevertheless, this assumption will be tested in the consultation.

Benefits

31. The central benefit stemming from this reform would be the much greater level of simplicity and clarity it would provide, for business and consumers alike. Academic experts, in Prof. Twigg-Flesner's report, and legal experts, in the Law Commissions, have described the current law as a 'a complex and technical issue',¹³ or 'too complex for consumers and retailers to understand'¹⁴ respectively, and so we expect that aligning the remedies available for all supply of goods contracts will represent a significant improvement.
32. This is important because consumer cases very rarely get taken to court, so in order for consumers to properly access and insist on their rights, it is essential that the law can be easily understood and remembered. On the basis of the FDS findings noted above, which illustrate consumer familiarity with the short-term right to reject, the Law Commissions concluded in their consultation that, 'consumers know that if the good was not as promised, they can return it and get their money back, provided they act quickly',¹⁵ and so aligning all supply of goods remedies with this basic principle should make this consolidated regime as effective as possible on the ground.
33. For example, the clarity and simplicity of this consolidated remedial scheme should reduce the business costs of compliance, dispute resolution and staff training, particularly for businesses offering more than one type of contract, because it will be clear to both parties what the remedies should be, regardless of the exact contract type involved. It should also reduce the need for both businesses and consumers to take legal advice, and reduce the number of cases reaching the stage of litigation.
34. Businesses will also benefit from a legal position which means that after 30 days, they can offer repairs or replacement goods instead of immediate refunds, whenever this represents a saving. Again, we lack robust data on the current use of the long-term right to reject, and so cannot accurately estimate the extent of this benefit. However, as explained, we agree with the Law Commissions' assumption that this right is rarely used in practice, and therefore the benefit to businesses of removing it will be limited.
35. However, there is reason to believe that SMEs may benefit disproportionately from simplification measures like these, because the Association of Convenience Stores and the Federation of Small Businesses both argue that awareness of the current law is especially low among small businesses. This is reinforced by an OFT report which found that 'SMEs in particular are likely to have less awareness of the detail of consumer protection laws, and how they can access relevant information to assist compliance.'¹⁶

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

36. We lack specific data on how many problems are specifically generated by inconsistent remedies or difficulties with classifying contracts. We also lack specific data on how often the long-term right to reject is actually used, and therefore cannot quantify the costs or benefits of these changes. 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.

¹² Consumer Direct Database, 'Data Cube Dec 2010 to Dec 2011'

¹³ Prof. Twigg-Flesner (ed.), .), 'Consolidation and Simplification of UK Consumer Law' (Nov 2010), p.12-13

¹⁴ Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.97

¹⁵ Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.85

¹⁶ OFT, 'Consumer Law and Business Practice, Drivers of compliance and non-compliance' (2010), p.6

Risks and assumptions

37. The Council of Her Majesty's Circuit Judges argued that the long-term right should be maintained for contracts where defects may take substantial time to manifest themselves. However, the universal availability under these proposals of the first tier remedies of repair and replacement would mitigate any consumer detriment arising in such cases.
38. We are also basing this policy proposal on the assumption that the long-term right to reject is poorly understood and rarely used. We are aware that this is a large assumption due to the limited evidence currently available; however we feel that it is justified given the expert advice and feedback on which it is based. The academic report edited by Prof. Twigg-Flesner, for example, stated in no uncertain terms that 'a consumer seeking to identify his legal rights will first have to work out how the transaction he has entered would be classified – a complex and technical issue few consumers will be able to undertake'.¹⁷
39. The Law Commissions also strongly supported this assumption by pointing to two distinct areas of potential confusion in relation to this law. Firstly, like Twigg-Flesner they thought that distinguishing between contract types 'can be highly technical' and gave examples where the outcome is not at all clear, by stating, for example, that 'if a consumer trades in their old car in exchange for another second hand car this might be analysed as two separate sales or as a non-sale exchange contract'.¹⁸
40. Secondly, they further argued that 'even once the type of contract has been correctly analysed, the difference between acceptance and affirmation (or waiver in Scotland) is in many cases too complex for consumers and retailers to understand'.¹⁹ As has been described above, this is clearly supported by the case of *Jones vs. Gallagher*, where there may have been confusion between whether the long or short-term right to reject should apply, and which led the Law Commissions to conclude that 'if judges and lawyers are confused by the law in this area, it is unrealistic to expect consumers to understand it'.²⁰
41. Finally, we are also reassured by the fact that half of the Law Commission respondents, including the OFT and Consumer Direct, also thought that the benefits of simplifying this particularly opaque area of law would outweigh the costs. Thus, we are aware that we currently lack specific quantitative evidence to support our assumption that the long term right to reject is little understood or used, but we have based it on a clear weight of expert opinion, which suggests to us that any cost involved in removing it is likely to be outweighed by the general benefit of a simpler system of remedies. However, we will of course be seeking more detailed evidence through evidence gathering exercises and formal consultations in order to better inform our final-stage IAs.

Direct costs and benefits to business calculations

42. In an ideal world with infinite resources, in order to quantify and monetise all the relevant costs and benefits data would be needed on:
- (a) The value of all the refunds currently given under the long-term right to reject, after the first 30 days.
 - (b) The cost of repairing or replacing faulty goods supplied under hire and hire purchase contracts
 - (c) the cost of repairing or replacing all those returned goods which would previously have been refunded under the long term right to reject
43. (d) The value of simplification and clarification would also have to be taken into account. This would include the costs related to time spent on disputes, legal advice sought, court time and staff training.
44. The OIOO figure could then be calculated as (costs) – (benefits):
- $$(b + c) - (a + d) = \text{OIOO figure}$$
45. We would expect this to show a reduction in the burden on business.

¹⁷ Prof. Twigg-Flesner (ed.), 'Consolidation and Simplification of UK Consumer Law' (Nov 2010), p.12-13

¹⁸ Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.97

¹⁹ Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.97

²⁰ Law Commissions, 'Consumer Remedies for Faulty Goods (2009), p.50

Wider impacts

Competition assessment

46. 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. Such rights only serve to drive competition, however, if the consumer is aware of them, which puts a premium on simplicity and clarity in consumer law.
47. 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.
48. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves by limiting the right to reject whilst extending the 1st and 2nd tier remedies. These uniform remedies should be easier to understand, and therefore give consumers confidence about obtaining goods under any contract type. However, additional rights (such as long-term access to immediate refunds) are best left to the market.

Impact on small firms

49. 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.²¹
50. Ethnic minority businesses are concentrated within this sector²². 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 Asian²³.
51. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present complexity of 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 stressful²⁴.
52. 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.
53. 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.
54. 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.

Summary and preferred option with description of implementation plan

55. Apply the remedies currently available for sales contracts to all transaction types, creating a single, clear scheme of remedies for all supply of goods contracts.

²¹ BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

²² 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.

²³ 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. Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

²⁴ J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100

56. 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.²⁵
3. Our proposals are based on research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law'²⁶ 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'²⁷.

Rationale for intervention

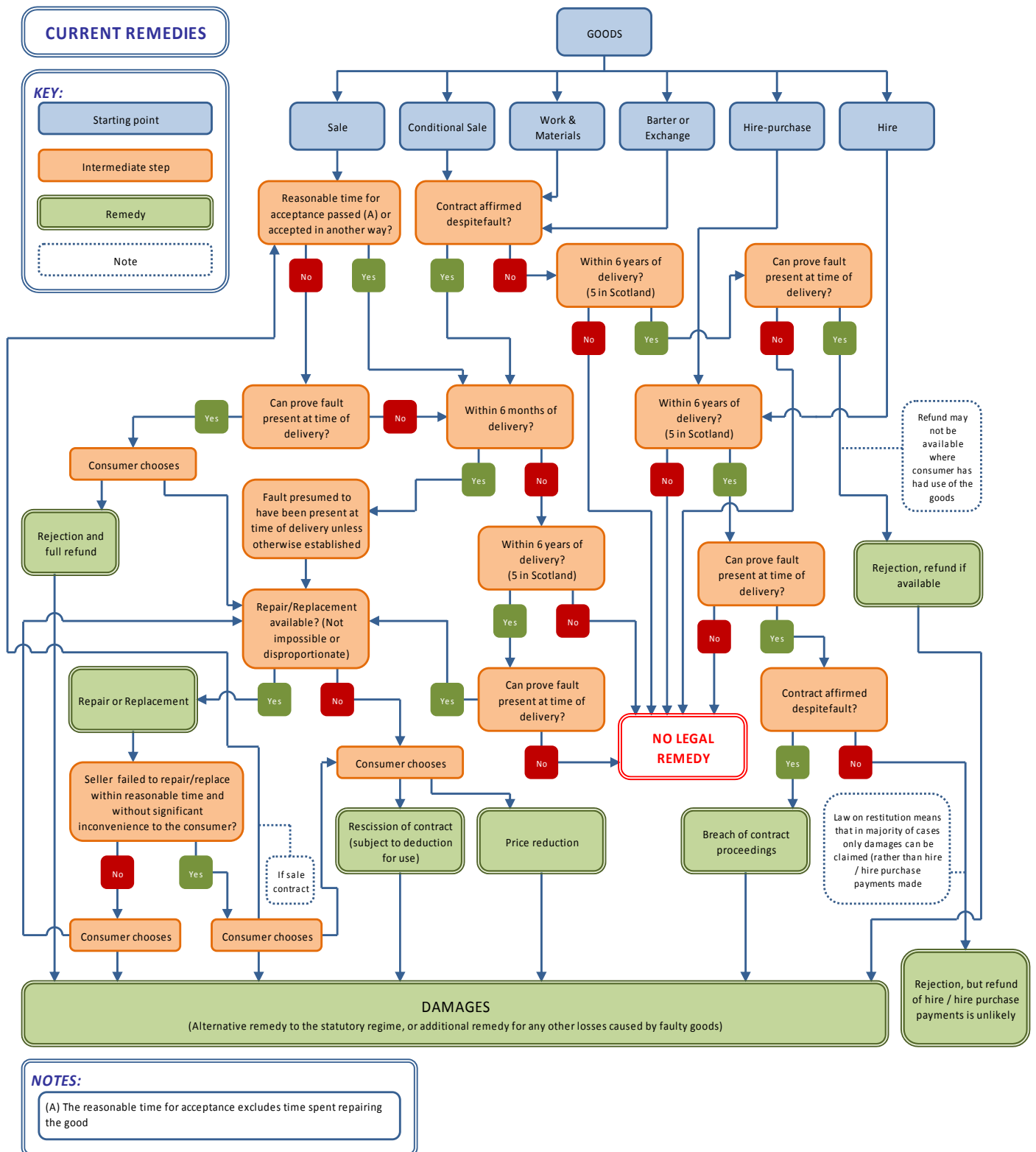
4. Responses to the Consumer Law Review (2008), the Law Commission and Scottish Law Commission's report on Consumer Remedies for Faulty Goods (2009) and research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law' (2010) all suggested there would be strong benefits for 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.²⁸
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.

²⁵ BIS, 'A Better Deal For Consumers: Delivering Real Change Now and Help for the Future' (July, 2009), p.80

²⁶ Prof. Twigg-Flesner & Prof. Geraint Howells (eds.), 'Consolidation and Simplification of UK Consumer Law' (Nov, 2010)

²⁷ Law Commissions, 'Consumer Remedies for Faulty Goods' (2009)

²⁸ 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.²⁹
26. Ethnic minority businesses are concentrated within this sector³⁰. 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 Asian³¹.
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 stressful³².
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.

²⁹ BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

³⁰ 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.

³¹ 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. Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

³² 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 programme³³ 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 2009³⁴. In 2005 the Law Commission recommended simplification of Unfair Contract Terms law³⁵. 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 law³⁶. 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 transactions³⁷. 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 services³⁸.
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 place³⁹, measures to empower consumers to challenge anti-competitive practices⁴⁰, 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.

³³ www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape

³⁴ Davidson Report 2006 www.bis.gov.uk/files/file44583.pdf;
http://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf

³⁵ http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf

³⁶ Benchmarking the performance of the UK framework supporting consumer empowerment.. www.bis.gov.uk/files/file50027.pdf

³⁷ www.bis.gov.uk/files/file52071.pdf

³⁸ 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

³⁹ The RPC has recently reviewed Impact Assessments and a consultation is ongoing (May 2012).

⁴⁰ 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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URN 12/959