

Draft Consumer Rights Bill – Government Response

Core Consumer Rights

- **Right to clear and honest information before you buy.**
- **Right to get what you pay for.**
- **Right that goods and digital content are fit for purpose and services are provided with reasonable care and skill.**
- **Right that faults in what you buy will be put right free of charge, or a refund or replacement provided.**

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FOREWORD



Confident consumers are vital to building a stronger economy. High levels of consumer confidence means people experiment and shop around which encourages new businesses, boosts competition and creates growth.

Making consumer rights clearer, and ensuring people know where to turn if they have a problem, will help to promote confident consumers.

Last year the Government and the Law Commissions carried out several consultations about reforming consumer law. The responses confirmed that existing consumer law is not working as well as it should be.

Consumers often do not know their rights, and businesses find it costly to understand what they need to do to fulfil their responsibilities. Consumer rights are unclear in the rapidly expanding market of digital products such as phone apps or e-books. And when a court finds a trader has broken the law, consumers hardly ever receive redress.

That's why the Coalition Government is announcing wide-ranging proposals for reform and a draft Bill to illustrate how they would be implemented: the Consumer Rights Bill. The proposals **streamline** key consumer rights so that people can access what they need to know more easily and effectively, and **clarify** the law where it is confusing. The proposals **modernise** consumer law for the digital age, and **enhance** protection for consumers where necessary. Where it is appropriate to reduce business burdens and costs, the reforms also **deregulate**.

We have engaged extensively with consumers, businesses and enforcers, and I am extremely grateful to everyone who has contributed to this process. This period of pre-legislative scrutiny provides further opportunity to test how these proposals will work, and I welcome your comments on them.

A handwritten signature in blue ink that reads "Jo Swinson". The signature is written in a cursive, flowing style.

Jo Swinson
Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs

EXECUTIVE SUMMARY

Consumers struggle to enforce their rights because UK consumer law is unnecessarily complex, ambiguous in places and has not kept up with technological developments. This document sets out a fundamental reform of consumer legislation, which will:

- Streamline key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts into one place
- Clarify the law where it is confusing, or written in legal jargon
- Modernise the framework for the digital age
- Deregulate to reduce business burdens and costs
- Enhance measures to protect consumers, where it is appropriate to do so.

Consumer law already contains a wide range of rights and responsibilities, but these can vary under different circumstances. The reforms aim to enable consumers and businesses to access the law easily, and understand these core consumer rights.

Core Consumer Rights

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- **Right to get what you pay for.**
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The reforms taken together are estimated to be worth over £4 billion to the UK economy over 10 years in *quantified* net benefits. Clarification and simplification mean consumers should spend less time trying to understand their rights, less time and resource applying them, and no longer waste time when they have misunderstood their rights. Businesses should also spend less time having to interpret complex legislation. Where things do go wrong, the proposals allow wider options for redress for both businesses and consumers who have lost out when consumer or competition law has been broken. The proposals also reduce regulatory costs for business. Problems following consumer purchases should be addressed more quickly, with lower complaint handling costs and fewer cases taken to court.

In addition to these quantified benefits, there are a range of economic benefits that have not been quantified. The reforms should deliver market-wide changes by empowering consumers who are confident, experimenting with new products or services and switching suppliers. This should drive innovation and greater competitiveness, and help to build a stronger economy.

This document contains the Government Response to a number of consultations including reports and consultations undertaken by the Law Commissions. The Government is grateful to all those who have taken the time to contribute to these consultations and discussions.

This Government Response is accompanied by a draft Consumer Rights Bill, which Parliament will consider as part of the pre-legislative scrutiny process. Draft regulations to implement the remaining elements of the reform package (the implementation of the EU Consumer Rights Directive and reforms to provide consumer redress for misleading and aggressive practices by traders) will be published shortly.

Although this is a response to consultations that have already taken place, the Government is keen to ensure its proposals are as effective and robust as possible. Therefore, we welcome any further comments on the proposals set out in this document and the draft Bill. The Government published its policy position on private actions in competition law in January this year. However, we are aware of strong and different views of stakeholders about the effectiveness and impact of these proposals. We therefore particularly welcome comments and views on this element of the draft Bill's proposals to help inform a final position and ensure the outcome is as effective as possible.

If you would like to comment further you can do so by using a comment form that is available electronically at:

<https://www.gov.uk/government/publications/draft-consumer-rights-bill>

Comments can be submitted via letter or preferably via e-mail to:

consumerbill@bis.gsi.gov.uk

OR

Consumer Bill Team
Consumer and Competition Policy
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

If commenting, please state whether you are responding as an individual or representing the views of an organisation. It would be helpful to receive comments by 13 September 2013.

Devolution

Regulation of the sale and supply of goods and services is not devolved to Scotland or Wales and is transferred to Northern Ireland. The Minister for the Department of Enterprise, Trade and Investment in Northern Ireland has previously given consent for the inclusion of Northern Ireland in the consultation on these proposals. The UK Government response may inform any decision the Assembly may take to amend any legislation affecting Northern Ireland in this field.

Although competition law is a reserved matter, the changes to the private actions regime take into account the different legal procedures in the devolved nations.

The Government's aim is to ensure consistency of consumer rights across the UK whilst respecting the devolution settlements.

GOVERNMENT PROPOSALS FOR FUNDAMENTAL REFORM OF UK CONSUMER RIGHTS

What do we mean by consumer law?

1. Consumer law affects how we buy a huge range of products and services, from mobile phones to music downloads, from kettles to kitchen extensions, from sofas to software. The law sets out what consumers should expect from what they buy, and what rights and responsibilities consumers and traders have if things do not go to plan. It sets out the circumstances when consumers are entitled to refunds, and what might be the alternatives.
2. When things do go wrong, consumer law can also give powers to enforcement bodies such as Trading Standards to investigate and, if necessary, to bring traders who have broken the law to court. Consumer law provides protection against rogue traders who use threats and lies to make money, particularly from vulnerable consumers.
3. The UK's consumer law has evolved over many years, through different pieces of legislation. It has come from the UK and the EU. At present, 12 separate pieces of legislation cover key consumer rights in the UK, while around 60 pieces of legislation cover the investigatory powers of consumer law enforcers. As a result, consumers and businesses find it confusing to understand their rights and responsibilities.
4. This confusion over consumer law is exacerbated by unnecessary complexity and ambiguity in parts of the law. It has also failed to keep up with technological developments, particularly in the case of digital content. Which? has commented:
"Currently the consumer protection regime is unclear, overly complex and in need of updating to reflect the myriad of different purchases made by today's consumers."¹

Independent research carried out for the Law Commissions² suggests that there is currently a high degree of confusion among UK consumers about what rights they have under consumer law.³ This confusion costs businesses and consumers time and money.

¹ Which? response to BIS consultation, 5 October 2012:
<http://www.staticwhich.co.uk/documents/pdf/which-response-supply-of-goods-services-and-digital-content--299754.pdf>

² The Law Commission for England and Wales and the Scottish Law Commission

³ Law Commission (2009), 'Consumer Remedies for Faulty Goods'

Economic rationale

5. Simplifying and reforming consumer law should make markets work more effectively and drive economic growth. It is widely recognised that well-functioning competitive markets encourage growth by creating incentives for firms to become more efficient and innovative to compete for customers.⁴ Markets can only be fully competitive if consumers are active and confident, meaning that they are willing to challenge firms to provide a better deal, switch between suppliers, and take up new products.⁵
6. Consumer law reform can play a central role in empowering consumers, thereby supporting more effective competition. Greater awareness of consumer rights makes markets work more effectively because consumers will have greater confidence to switch to alternative suppliers or take up new products. This is particularly important in allowing new entrants to compete against the more established firms. For example, in online markets the strength of established brands comes in part from a perceived lack of confidence in the legal protections for consumers purchasing from smaller suppliers. More detail on the costs and benefits can be found at Annex 8.
7. The current landscape of official bodies responsible for empowering and protecting consumers is inefficient and confusing, leaving consumers uncertain who to approach for help and advice when things go wrong. In April 2012 the Government announced a series of reforms to the bodies carrying out consumer functions. The new consumer landscape is designed to support growth by helping markets work better for consumers, enhancing consumer protection and giving greater clarity about where consumers need to turn for help and advice. They will deliver a better deal overall for consumers through clearer responsibilities and better co-ordination between consumer bodies and enforcers.

Consultation

8. The Government has consulted extensively on reforming consumer law. The Department for Business, Innovation and Skills (BIS) has worked with the Law Commissions, sought advice from other experts, and commissioned research on international comparisons as well as the day to day experiences of UK businesses and consumers.
 - a. The Davidson Review (2006), which examined how EU Directives have been implemented in the UK, highlighted consumer law as an area where the implementation had caused additional complexity, by overlaying EU law on top of the existing domestic regime. As a

⁴For references to literature on the links between competition and growth, see OFT (2011), 'Competition and growth'

⁵Mark Armstrong (2008), 'Interactions between competition and consumer policy'

result, the review concluded that the law on consumer remedies was too complex, causing unnecessary burdens on business.⁶

- b. A bench-marking study by the University of East Anglia in 2008, found that the current system of consumer law offers a high degree of protection but is confusing, because it has grown piecemeal over the years.⁷
 - c. Following a 2009 Supreme Court judgement on bank charges, which highlighted difficulties in the law, the Government asked the Law Commissions to bring forward proposals to reform the law on unfair terms in consumer contracts.⁸
 - d. A recent legal research paper commissioned by BIS examined core consumer protections relating to digital content. It found that it was not clear what, if any, legal rights the purchaser of a digital product has if that product proves defective or fails to live up to the consumer's expectations.⁹ The paper concluded that UK law is not rational, effective, accessible or comprehensive in respect of consumer rights in digital products, and that it should be clarified.
 - e. In 2012, BIS commissioned a report by IFF Research Ltd. IFF surveyed 1000 business-to-consumer firms, and completed follow-up interviews with 60 firms, in order to provide quantitative evidence on business practices in relation to consumer rights.¹⁰
 - f. An international literature study by GHK on behalf of BIS in 2012 found widespread agreement from around the world that enhanced consumer legal protection leads to positive economic outcomes, such as increased consumer confidence. GHK found evidence that this results in wider economic growth. For example, in Australia the Productivity Commission estimated that simplifying national consumer law could increase productivity by 0.13 per cent, worth A\$6 billion (equivalent to £7.7 billion in productivity gains for the UK economy) over 40 years.¹¹
9. Most recently, in Autumn 2012, the Government issued a number of consultations proposing measures to reform UK consumer law.¹² A

⁶ HM Treasury, Davidson Report (2006) 40, Chapter 3, Para 3.20

⁷ Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries, a study for BERR by UEA, 2008

⁸ http://lawcommission.justice.gov.uk/areas/unfair_terms_in_contracts.htm

⁹ Bradgate, R. (2010), 'Consumer rights in digital products: A research report prepared for the UK Department for Business, Innovation and Skills', Institute for Commercial Law Studies, Sheffield and BIS, available here: <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products>

¹⁰ IFF report available here: <https://www.gov.uk/government/publications/draft-consumer-rights-bill>

¹¹ GHK report available here: <https://www.gov.uk/government/publications/draft-consumer-rights-bill>

¹² <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

<https://www.gov.uk/government/publications/enhancing-consumer-confidence-through-effective-enforcement-supplementary-legislative-document-for-the-consultation-on-consolidating-and-modernising-consumer-law-enforcement-powers>.

summary of contributions to these consultations can be found at <https://www.gov.uk/government/publications/draft-consumer-rights-bill>. The Government has considered these comments carefully, and is grateful to all those who have taken the time to contribute to shaping the reform of consumer law. In response to these consultations, and to address the problems set out above, the Government is putting forward a programme of reforms including a proposed draft Consumer Rights Bill.

Parliamentary Process

10. The final set of reforms, and when they are to be implemented will be subject to Parliamentary timing and consideration.
11. The Government intends that the majority of these reforms will be delivered through primary legislation, in the draft Consumer Rights Bill. In parallel, secondary legislation is being drafted to implement the Consumer Rights Directive and to provide new rights of redress for consumers who have been victims of a misleading or aggressive practice. Consumers, businesses, advisers and enforcers will be able to access easily the information they need, in plain language.
12. The Bill is published in draft alongside this Government Response, at <https://www.gov.uk/government/publications/draft-consumer-rights-bill>.

Secondary legislation to implement the Consumer Rights Directive¹³ and to supplement the law on misleading and aggressive practices¹⁴ will be published in due course. Part of the Consumer Rights Directive was implemented earlier this year, through the Payment Surcharges Regulations, prohibiting excess charges for payment methods, such as credit cards.¹⁵

13. The draft Bill is expected to receive pre-legislative scrutiny in Parliament. As part of this scrutiny, Parliament will wish to seek comments from other interested parties. The Government will consider these comments alongside any submitted directly as well as views provided by Parliament during the scrutiny process.

The Consumer Rights Reform Programme

14. These proposals mainly relate to contracts where a business supplies goods, services or digital content to a consumer, rather than contracts

<https://www.gov.uk/government/consultations/civil-enforcement-remedies-consultation-on-extending-the-range-of-remedies-available-to-public-enforcers-of-consumer-law>.

¹³ http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

¹⁴ The new rights will be based on the existing provisions of the Consumer Protection from Unfair Trading Regulations 2008 (“the CPRs”).

¹⁵ <http://www.legislation.gov.uk/ukxi/2012/3110/contents/made>

between two businesses or two consumers. Consultation responses showed strong and widespread support for applying the proposals to all businesses, regardless of size. There was no support for a micro or small business exemption. We do not therefore propose to exempt micro or small businesses from these proposals. Details of each of the proposed measures are set out in annexes to this document. A summary of the measures is set out below.

*The reforms will **streamline** consumer rights, remedies and enforcement powers so consumers and businesses can access what they need to know more easily and effectively*

15. Through the draft Bill, the reforms will streamline key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts into one place. They will also consolidate and align the inconsistent remedies available for goods supplied under different contract types, such as: sale, work and materials, conditional sale or hire purchase. Through the implementation of the Consumer Rights Directive (in separate secondary legislation), the reforms will bring together consumers' right to cancel a purchase when they buy at a distance or off-shop premises. They will combine and clarify the overlapping and confusing laws on unfair terms in contracts, which are currently a mix of UK and EU legislation. The suite of reforms also introduce a generic set of consumer law investigatory powers set out in one place, and repeal the equivalent powers in around 60 pieces of legislation.

*The reforms will **clarify** the law where it is confusing, or written in legal jargon*

16. The reforms will clarify existing law, and will set out more clearly the quality standards that goods, services and digital content must meet, so that consumers get what they pay for. The draft Bill will make clear in plain words that goods, services and digital content must meet descriptions given before they are sold. Goods and digital content must be fit for purpose, and services must be provided with reasonable care and skill.

17. For example, the draft Bill will set a clear time period of 30 days in which consumers can reject substandard goods and receive a full refund, thus providing clarity to consumers and businesses. It will limit the number of repairs or replacements of faulty goods before retailers must offer some money back, and clarify the extent to which that refund may be reduced to account for the use of the goods the consumer has had up to that point.

18. The Government has accepted most of the recommendations by the Law Commissions, and the draft Bill will clarify which terms in a contract can be challenged in a court to decide whether or not they are fair.

19. The reforms should ensure that consumers can access clear, practical statutory remedies when things go wrong, and make it clear that consumers can always request these rights and remedies where there is a contract between a consumer and a trader.

Clear deadline on right to refund

You buy a microwave, but after three weeks it stops working. Under the reforms you will have a clear right to a full refund as less than 30 days have passed since it was purchased.

*The reforms will **modernise** the legal framework to ensure that consumer law keeps pace with technological developments*

20. The suite of reforms will modernise the consumer law framework by introducing a new regime relating to digital content (such as ebooks and software), and aligning this as far as appropriate with the law covering goods and services.
21. The reforms will introduce clear quality rights for digital content and appropriate remedies when these rights are breached. They will also clarify that the short-term right to reject a faulty product applies only to digital content on a tangible media (eg on a disk), and not digital content provided in other ways (eg over the internet, such as a music download). This should provide clarity in an area where it is currently confusing which laws apply. The draft Bill will also make clear that a trader must take care that digital content does not harm other digital content on a consumer's device.

Updating rights for the digital age

You pay to stream a film over the internet, but it keeps freezing. Your broadband connection is working and you have previously streamed movies successfully from the same provider so there isn't a problem with your media player. Under the new proposals, you would be entitled to a repair or a replacement of the movie.

In practice this would probably mean a repeat of the streaming. If this still failed to work, then you would be entitled to some money back, and the amount would depend on how severe the fault was.

*The reforms will **deregulate** to reduce business burdens and costs*

22. The draft Bill contains measures which deregulate and reduce costs to business. Traders have told the Government that the multiplicity of investigatory powers used by consumer law enforcers leads to confusion and burdens on business. The draft Bill will therefore require that businesses (with some exceptions) receive notice of an inspection from relevant enforcers, including local authority Trading Standards officers. Businesses should be able to make the necessary arrangements for routine inspections, such as making staff available on the day in question, helping to create a co-operative relationship between the officer and the business. The reforms will improve cross boundary enforcement by Trading Standards by removing the barriers which currently prevent them working effectively together.
23. The draft Bill proposes to facilitate faster and lower cost redress for businesses (and consumers) which have been disadvantaged by breaches of competition law.
24. In addition, the simplification reforms mean that businesses should spend less time and money on training staff in complex consumer law, and should also save time and money on dealing with disputes, as staff and customers will be clearer about their rights and responsibilities. Opportunities for cross-border trade within the EU will be enhanced through the Consumer Rights Directive.

Reducing the burden on businesses

With a few exemptions, consumer law enforcers will not use their powers of entry without notice in writing to the occupier at least two working days before an inspection is carried out.

*The reforms will **enhance** measures to protect consumers, where it is appropriate to do so*

25. The draft Bill will introduce a new statutory right that a service must comply with information given by the trader in certain circumstances, even if this is not recorded in the written contract. The suite of reforms will include measures to make it easier for consumers to challenge where they have been bullied or misled into a contract, particularly helping vulnerable consumers (these reforms will be published separately). Through the Consumer Rights Directive, the wider reforms will also introduce a requirement for traders to seek consumers' express consent for any additional payments, and protect consumers from being charged more

than the basic rate for telephoning a trader regarding something they have bought. The draft Bill will give more flexibility for Trading Standards or other public enforcement authorities to seek redress for consumers who have been victims of breaches of consumer law. The courts would be able to attach a range of civil remedies to Enforcement Orders and undertakings, as part of a more flexible and proportionate approach to enforcement.

The Benefits of these Reforms

Benefits for consumers:

- Clearer, more effective consumer rights and more effective sanctions if these rights are breached.
- Right to clear information before you buy.
- Right to get what you pay for.
- Right that goods and digital content will be fit for purpose.
- Right that services will be provided with reasonable care and skill.
- Right that faults in what you buy will be put right, or you will be entitled to some money back
- Right to challenge the fairness of contract terms including charges buried in the small print
- Ability for civil courts to require traders to compensate consumers or take other measures to comply with the law.
- Enhanced ability of businesses and consumers to take action against anti-competitive practices.

Benefits for businesses:

Clarification and simplification of the law will reduce costs and burdens on business:

- Businesses will spend less time and money on training staff in complex consumer law.
- Businesses will save time and money on dealing with disputes, as staff and customers will be clearer about their rights and responsibilities.
- Consolidated investigatory powers to check breaches of key consumer law will make it easier for businesses to understand and work effectively with the powers and operations of enforcers such as Trading Standards.
- Enforcement officers, including Trading Standards officers will be required to give notice when carrying out routine inspections.
- Faster, lower cost redress for businesses which have suffered as a result of breaches of competition law.

Benefits for the economy:

- Simplifying the complex legislative landscape should improve understanding of consumer rights, increasing consumer confidence.
- Consumers will be more likely to switch suppliers or try innovative products or services making markets more competitive, operate more efficiently, and driving economic growth.

Draft Consumer Rights Bill: summary of reforms with links to draft clauses

Reforming the law on goods, digital content, services, and unfair contract terms		
<p><i>Goods (draft clauses 3 - 34)</i> To clarify and enhance the law on the supply of goods, the Government intends to:</p> <ol style="list-style-type: none"> 1. Set a clear time period of 30 days in which consumers can reject faulty goods and receive a full refund 2. Limit the number of repairs or replacements of faulty goods before traders must offer some money back 3. Set limits on the extent to which traders may reduce the level of refund for faulty goods to take account of the use of the goods the consumer has had up to that point 4. Consolidate and align the inconsistent remedies available for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase 5. Set out more clearly the standards that the goods must meet. 	<p><i>Digital Content (draft clauses 35 - 49)</i> To clarify the law on digital content, the Government intends to:</p> <ol style="list-style-type: none"> 1. Introduce a new category of digital content 2. Introduce appropriate quality rights for digital content, aligning these where possible with quality rights for goods 3. Introduce appropriate remedies where these rights are not met. These remedies will be aligned as far as possible with remedies for goods. 	<p><i>Services (draft clauses 50 - 59)</i> To clarify and enhance the law on services, the Government intends to:</p> <ol style="list-style-type: none"> 1. Introduce a statutory right that services must be provided with reasonable care and skill and that the service must comply with the information given by the trader in certain circumstances. 2. Introduce new statutory remedies when things go wrong. 3. Make it clear that consumers can always request these rights and remedies where there is a contract.
<p><i>Unfair Contract Terms (draft clauses 64 – 78)</i> To clarify and enhance the law on unfair contract terms, the Government intends to:</p> <ol style="list-style-type: none"> 1. Streamline the legislation governing unfair terms in relation to consumer contracts, which is currently found in two separate pieces of legislation, into one place, removing anomalies and overlapping provisions 2. Make clearer the circumstances when the price or subject matter of the contract cannot be considered for fairness and in 		

- particular make clear that to avoid being considered for fairness those terms must be transparent and prominent
3. Clarify the role of and extend the indicative list of terms which may be regarded as unfair (the so-called 'grey list').

Reforming consumer law enforcement		
<p><i>Consumer Law Enforcement (draft clause 79)</i> To streamline and clarify the investigatory powers [and competencies] of consumer law enforcers, the Government intends to:</p> <ol style="list-style-type: none"> 1. Streamline and simplify the investigatory powers of consumer law enforcers and set them out in one place 2. Clarify the law so that Trading Standards Services are able to work across local authority boundaries as simply and efficiently as possible. 	<p><i>Enhanced Consumer Measures (draft clause 81)</i> To enhance the flexibility of enforcers of consumer law, the Government intends to introduce greater flexibility for enforcers to get the best outcome for consumers in the civil courts:</p> <ol style="list-style-type: none"> 1. Redress for consumers who have been disadvantaged from breaches of consumer law 2. Measures from traders who have breached consumer law to improve their compliance and reduce the likelihood of future breaches 3. Measures to give consumers more information so they can exercise greater choice and help improve the functioning of the market for consumers and other businesses. 	<p><i>Private Actions in Competition Law (draft clause 82)</i> To enhance opportunities for businesses and consumers to obtain compensation for losses, and to tackle anti-competitive behaviour, the Government intends to:</p> <ol style="list-style-type: none"> 1. Enhance the powers of the Competition Appeal Tribunal (CAT), the specialist tribunal which hears cases involving competition or regulatory issues. 2. Introduce a limited opt-out collective actions regime for competition law to allow consumers and businesses to bring collectively a case to obtain damages for their losses. This regime will have safeguards to prevent abuse of the system. 3. Promote Alternative Dispute Resolution (ADR) to encourage cases to be resolved outside of court.

Secondary Legislation: summary of reforms

Draft regulations to implement the remaining elements of the Consumer Rights Reform Package, together with accompanying guidance, will be published shortly.

Consumer Rights Directive	Misleading and Aggressive Practices
<p>The Consumer Rights Directive sets out:</p> <ol style="list-style-type: none">1. Information the trader should provide to the consumer2. Cancellation rights for consumers buying in their homes, on the phone or online (including that consumers now in general have 14 rather than 7 days to change their minds)3. That there must be express consent by the consumer for any payments required4. That customer helplines must not be charged at more than the basic rate5. That there must not be excessive charges for payment methods, such as by credit card¹⁶	<p>To enhance opportunities for redress for victims of misleading and aggressive practices, the Government intends to:</p> <ol style="list-style-type: none">1. Introduce a limited private right of redress for consumers who have been victims of misleading and aggressive practices2. Introduce standard remedies for victims of misleading and aggressive practices3. Introduce an entitlement to seek damages.

¹⁶ Already implemented through the Payment Surcharge Regulations available at <http://www.legislation.gov.uk/uksi/2012/3110/contents/made>

Consumer Rights Bill – Detailed Annexes on Proposed Measures

Annex 1:	Goods
Annex 2:	Digital Content
Annex 3:	Services
Annex 4:	Unfair Contract Terms
Annex 5:	Consumer Law Enforcement Powers
Annex 6:	Enhanced Consumer Measures
Annex 7:	Private Actions in Competition Law
Annex 8: Reforms	Economic Impact of the Consumer Rights Bill Suite of

Annex 1: Goods

Summary

Consumer law governing the supply of goods is unnecessarily complex. For example there is not a clear point at which the consumer loses the right to reject faulty goods and get a full refund. It can also be unclear how many repairs or replacements of faulty goods the consumer must accept before they can pursue other remedies (such as getting some money back). This creates uncertainty, leading to costs from unnecessary and prolonged disputes between consumers and retailers, additional staff training and the need to seek legal advice. Changes to the legal framework are required to bring clarity and certainty to both consumers and business.

To clarify and enhance the law on the supply of goods, the Government intends to:

1. Set a clear time period of 30 days in which consumers can reject faulty goods and receive a full refund
2. Limit the number of repairs or replacements of faulty goods before traders must offer some money back
3. Set limits on the extent to which traders may reduce the level of refund for faulty goods to take account of the use of the goods the consumer has had up to that point
4. Consolidate and align the inconsistent remedies available for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase
5. Set out more clearly the standards that the goods must meet.

Clarifying and streamlining the law in this area should:

- Make it easier for consumers to secure redress when their rights in relation to the supply of goods are breached
- Reduce business costs, by allowing traders to resolve disputes quickly and easily, and reduce expense in staff training over consumer rights
- Benefit the market as a whole by increasing consumer confidence, empowering consumers and driving stronger competition between firms.

What's the problem?

Consumer law governing the sale of goods is burdensome for business, and consumers are often poorly informed about their rights. In some cases, consumers do not pursue remedies as they are not aware that a remedy is available to them; in other instances, consumers overestimate their rights. This can lead to costly disputes between consumers and retailers, exacerbated by the fact that in some key areas, the law is unclear as well as complex.

This complexity harms consumers and businesses. An ineffective scheme of consumer rights also stifles competition between firms to produce the best quality products, for the best price.

Consultation box

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content*¹⁷ ran from 3 July 2012 to 5 October 2012, and 47 responses were received for the written consultation, with an additional 178 responses to the shorter online version. A number of stakeholder meetings and roundtables were held between October 2011 and December 2012. The Government has considered these consultation responses carefully in making these proposals.

Detail of measures

1. Set a clear time period of 30 days following purchase in which consumers can reject faulty goods and receive a full refund, providing clarity to both the consumer and trader.
2. After 30 days, or where the consumer does not choose to reject faulty goods initially, clarify that consumers need only accept a single repair or replacement attempt before being able to get some money back if the repair or replacement fails to fix the problem, or a further problem arises.
3. Establish that traders may not, in the first six months after purchase, reduce the level of refund provided to take account of the use of faulty goods the consumer has had up to that point. An exception is where robust third party evidence of the second hand value of the goods exists, in which case the refund may be reduced in the first six months to take account of use, but must be at least that value.
4. Consolidate and align the currently inconsistent remedies available for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase.
5. Set out more clearly the standards that the goods must meet. This will remove references to “conditions” and “warranties” and ‘implied terms’ and replace these with less legalistic language.

Measure 1: Set a clear time period of 30 days following purchase in which consumers can reject faulty goods and receive a full refund, providing clarity to both the consumer and business.

Currently, consumers can reject (and obtain a full refund for) goods which are faulty at the time of purchase until they have ‘accepted’ those goods.¹⁸ Acceptance of bought goods is determined by the consumer acting in a manner inconsistent with the seller's ownership of the goods (for example, this

¹⁷ <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

¹⁸ Goods purchased under a contract of sale, rather than, for example, a work and materials contract.

could be by altering the goods), or retaining the goods beyond a 'reasonable time', without telling the retailer that they reject them.

What constitutes a 'reasonable time' depends on the circumstances, making it difficult for consumers and businesses to know for how long after supply a refund must be given.

In order to make it clear when the right to reject may be exercised the Government intends to set a fixed period of 30 days for the right to reject faulty goods. The 30 days will start following purchase or delivery of the goods, or completion of the contract (whichever is the later). There will be an exception only where goods are perishable and would not be expected to last 30 days.

Repair and replacement should be viable alternatives to rejection. Where a consumer opts for a repair or replacement within the 30 days period, the period for rejection will be extended for the duration of any repair work or the delivery of a replacement. When the repaired or replaced goods are returned to the consumer they will have the remainder of the period (a minimum of seven days) to inspect the goods to ensure they are acceptable, before this right is lost.

Example: A faulty kettle

- *You buy a £20 kettle but after three and a half weeks you find that it no longer boils.*
- *Currently, under the law, it is not clear whether or not you have a right to return the goods and get a refund because it is not clear if three and a half weeks is more than a "reasonable time" including whether this has given you a reasonable opportunity to inspect the kettle.*
- *Under the proposed reform you will have a clear right to a full refund as less than 30 days have passed.*

Measure 2: After 30 days, or where the consumer does not choose to reject faulty goods initially, the Government intends to clarify that consumers need only accept a single repair or replacement attempt before being able to get some money back if that attempt fails to fix the problem, or a further problem arises. These remedies of repair or replacement are known as "Tier 1" remedies.

The trader will be able to offer a single repair or replacement. If this is not provided within a reasonable time and without significant inconvenience to the consumer, it will be clear that the consumer can either keep the goods with a reduction in the purchase price, or return the goods, receiving a refund, which may be subject to some deduction for use in some cases. This is currently the case under the existing law. However, it is not always clear when the next "tier" of remedies is available, if an initial repair or replacement is provided quickly and easily but problems with the goods persist.

If a repair or replacement is provided but does not bring the goods to the standard required (either because the initial fault is still present following the

repair or replacement or a further fault appears) again, the consumer will either be able to keep the goods with an appropriate reduction in the purchase price, or return the goods, receiving a refund (which might not be a full refund). As a result, the scope for dispute will be reduced as a clear test will have been met. A repair or replacement would count once the trader returns the goods or gives the replacement to the consumer. These remedies of reduction in purchase price or terminating the contract and getting a refund are known as “Tier 2” remedies.

Example: A faulty television

- *You buy a new television but after several weeks it no longer turns on and off from the remote control. You complain to the retailer and they replace it, but when the replacement arrives there’s a problem with the sound quality.*
- *The retailer again offers an immediate replacement and can provide it the same day as he has one in stock.*
- *Under the current law you may be obliged to accept the second replacement as the replacement was provided quickly and therefore caused you little inconvenience, even though you may no longer trust the make of TV and would have had to contact the retailer twice by this stage.*
- *Under the new legislation you would have the right to reject the second offer of a replacement and demand some money back.*

Measure 3: Establish that traders may not, in the first six months after purchase (or delivery or completion of contract, if later) reduce the level of refund provided to take account of the use of faulty goods the consumer has had up to that point. An exception is where robust third party evidence of the second hand value of the goods exists, in which case the refund may be reduced in the first six months but must be at least that value.

To provide greater clarity the Government proposes that where a trader provides a refund under the Tier 2 remedy of terminating the contract, within the first six months they cannot normally make any deduction for the consumer’s use of the goods. Thereafter, the trader may deduct an amount to take account of the consumer’s use. Any time that the goods were returned to the trader for repair or replacement (or when the trader has delayed in collecting them for these purposes) will not count towards the consumer’s use. This balances the interests of consumers who may have had limited and/or problematic use of the goods with the interests of businesses not to have to refund the full price if the consumer has also benefited from many months of use before a problem arose.

Where there is robust, independent, third party evidence of the second hand value of the goods, the trader will be able to reduce the refund to take account of use, even if it is still within the first six months, but the refund must be at least this value. The most obvious example where this will operate is in the motor industry, where detailed evidence of vehicle values is readily available. The exception will not be limited to this industry.

Example: Refund for a faulty washing machine

- *Your washing machine, which you bought five months ago is broken. The retailer has attempted a repair but this failed to address the problem and so you want to return the washing machine and get your money back.*
- *Under the current law the retailer is entitled to reduce the refund to take account of the use that you have had of the washing machine.*
- *Under the proposed reforms, because less than six months has passed, the retailer would not be able to apply a deduction unless they can demonstrate, through robust third party evidence, the second hand value of the washing machine, and that an active second hand market exists. In that case the retailer could apply a deduction to take account of your use, but the refund must be at least that value.*

Measure 4: Consolidate and align the currently inconsistent remedies available for goods supplied under different contract types, such as sale, work and materials, conditional sale or hire purchase.

Traders may supply goods to consumers under a variety of contract types. Currently, the forms of redress available to consumers, if their goods are faulty are inconsistent, and depend on the type of contract involved.

The different contract types are as follows:

- Sale: goods exchanged for money in the familiar way
- Conditional Sale: sale where the consumer pays in instalments and only obtains ownership of the goods when he makes the final payment, although he may use the goods in the meantime
- Barter or Exchange: goods exchanged for something other than money
- Work & Materials: goods supplied as part of a contract for work or services
- 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 the consumer will obtain ownership of the goods.

A clearer, simpler and more accessible framework of remedies for faulty goods should lead to better consumer and retailer awareness of their rights and obligations in each situation. The Government therefore proposes that essentially the same rights and remedies should apply to all contracts where a business supplies goods to a consumer. This includes the short term right to reject of 30 days, and one repair/replacement, before moving to a reduction in the purchase price or returning the goods for a refund, which may be subject to a deduction for use in some cases.

However, in hire contracts, because the consumer pays for use, and the ownership of the goods is not transferred, the consumer will not have a statutory right to claim back any payments made for any hire period that they have already had.

Measure 5: Set out more clearly the standards that the goods must meet. This will remove references to ‘conditions’, ‘warranties’ and ‘implied terms’ and replace these with less legalistic language.

The right that goods should be of satisfactory quality and match the description under which they are sold are currently expressed as ‘implied terms’. That means they form part of a contract whether or not they are expressly said or written down in it. However, the current legislation expresses these rights in legalistic language that is not easily understood by consumers or businesses. Consumer rights will be expressed in clearer language which consumers and businesses should find easier to understand.

Annex 2: Digital Content

Summary

It is not clear what, if any, rights consumers have when they purchase defective digital content, such as music downloads or software. This means that some consumers are less likely to be confident and engage in the market, and try new providers of digital content. In contrast, other consumers over-estimate their rights in relation to digital content products, which leads to disputes.

To clarify the law on digital content, the Government intends to:

1. Introduce a new category of digital content in the draft Consumer Rights Bill.
2. Introduce appropriate quality rights for digital content
3. Introduce appropriate remedies where these rights are not met.

Clarifying the law on digital content should:

- Build consumer confidence when purchasing digital content
- Reduce business costs, by allowing traders to resolve disputes more quickly and easily, and reduce staff training costs for consumer rights
- Stimulate innovation and growth, by empowering consumers and driving stronger competition between firms.

What's the problem?

There is significant legal uncertainty around consumer rights in digital content transactions. A recent research paper commissioned by BIS examined core consumer protections (ie that goods are of reasonable quality and fit for purpose, and that services are carried out with reasonable care and skill). The research found that it was not clear what, if any, legal rights the purchaser of a digital product has if that product proves defective or fails to live up to the consumer's expectations.¹⁹

Two different issues arise from this legal uncertainty:

- Consumers are less active in attempting to resolve problems they experience with digital content, meaning that the size of consumer detriment in this area is likely to be greater than estimates suggest.²⁰ Consumer reluctance is likely to arise from a number of factors, including poor understanding of rights and the typical low value of

¹⁹ Bradgate, R. (2010), 'Consumer rights in digital products: A research report prepared for the UK Department for Business, Innovation and Skills', Institute for Commercial Law Studies, Sheffield and BIS, available here: <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products>.

²⁰ <http://conversation.which.co.uk/technology/download-refund-disappointing-faulty-app-store-itunes-android-market/>

digital content. For a small percentage of consumers, this has resulted in them ceasing to use digital content altogether.²¹

- In contrast, some consumers may think that they are entitled to a remedy which the business does not think it is obliged to provide under the current law. In such situations there is a risk that both the business and consumer will spend time and money on an unnecessary dispute. There is also a reputational risk to business if it declines to provide the remedy the consumer wants. In addition, when consumers do experience problems and are unable to claim the remedy they expect, consumer confidence is undermined. This could disadvantage new entrants to the market in particular as consumers are driven towards established brands.

Consultation box

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content*²² ran from 3 July 2012 to 5 October 2012, and 53 responses were received for digital content (the parallel short form consultation had 86 responses for digital content). A number of stakeholder meetings and roundtables were held in September 2012, and during February and March 2013. The Government has considered these consultation responses carefully in making these proposals.

Detail of measures

1. Introduce a **new category of digital content** in consumer law
2. Introduce **new statutory rights for digital content**
3. Introduce **new statutory remedies for faulty digital content**

Measure 1: Introduce a **new category of digital content** in consumer law, with its own bespoke set of rights and remedies.

Digital content will be defined using the definition in the Consumer Rights Directive, as *'data which are produced and supplied in digital form'*.²³ Digital content quality rights (set out below) will be applied to the digital content after the performance of any associated services where the consumer has no choice over who provides that service.

Digital content which has not been paid for with money will be outside of the scope of the digital content quality rights, subject to 3 conditions:

- It will be in scope if it is associated with paid-for digital content, goods or services such as a “free gift” of a computer game given away with a paid-for magazine, where the consumer has a contractual right to these “free gifts”.

²¹ Consumer Focus survey, not yet published

²² <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

²³ <http://register.consilium.europa.eu/pdf/en/11/pe00/pe00026.en11.pdf>

- Free digital content, as well as paid-for digital content, will be subject to the right that it will not harm other digital content on the consumer's device if the trader could have taken steps to make sure the digital content did not cause such harm.
- There will be a reserve power to extend the scope of the digital content provisions should there be evidence in future of detriment, for example where a consumer has given over valuable personal data in exchange for digital content.

Measure 2: Introduce **new quality rights** for digital content:

- The digital content will meet the description under which they were provided. The consumer will be able to rely on any description of digital content provided pre-contractually, including any trial version. This right, combined with the pre-contractual information requirements in the Consumer Rights Directive, is intended to address current consumer detriment caused by lacking, complex and misleading information.
- It will be of satisfactory quality. This is a flexible standard based on the expectations of a reasonable person and so (as with goods) will be able to take into account different features of different digital content products.
- The digital content will be fit for the particular purpose(s) that the consumer made known to the trader was the reason for buying the digital content in question.
- Specific rights relating to the right to modify digital content. As some forms of digital content are frequently updated remotely by the manufacturers of that digital content, the provision will allow for updates within the terms of the contract, provided that the quality of the digital content is not reduced after any updates.
- That the trader has the right to provide the digital content. This right will not affect intellectual property rights and will not give consumer a right to use the digital content if the trader has no right to provide it; rather it will ensure that the consumer has a right to a remedy if provided with digital content that they then have no right to use.
- That the digital content (contractually provided for a price or otherwise) will not cause damage to other digital content including the operating system on the consumer's device where the damage would not have occurred if the trader had taken reasonable care and skill. The intention here is to reflect the existing common law provisions of negligence, but only where there is a contract between the trader and a consumer. If this right is breached, the trader will have to pay for replacing the damaged digital content.

Measure 3: Introduce **remedies** where digital content does not meet the statutory rights.

Where the digital content does meet the description given, is not of satisfactory quality, is not fit for purpose, or does not meet the quality standards following an update, the consumer will be entitled to a repair or replacement of the digital content (this is known as a Tier 1 remedy).

If repair or replacement are impossible or if that is not done within a reasonable time or without significant inconvenience to the consumer, the consumer will be entitled to keep the digital content but receive a reduction from the price of an appropriate amount (known as a Tier 2 remedy).

Example: Streamed movie that keeps freezing.

- *You pay to stream a movie over the Internet, but it keeps freezing. Your broadband connection seems to be working as you aren't having any other problems, and you have previously streamed movies successfully from the same provider so there isn't a problem with your media player. It is clear that the problem lies with the movie provider. What are your rights?*
- *Previously your rights would have been very unclear, especially as the movie was delivered via the internet (and not from a disk).*
- *Under the new proposals, you would be entitled to a repair or a replacement of the movie. In practice this would probably mean a repeat of the streaming. If this still failed to work, then you would be entitled to some money back, and the amount would depend on how severe the fault was.*

If the trader does not have the right to provide the digital content, the consumer will have the right to an immediate refund. Digital content on a tangible medium, such as on a disk, will need to be made available to the trader (e.g. through return). For digital content that is not on a tangible medium, the consumer may be in breach of copyright law if they intentionally retain the digital content and continue to use it.

If the digital content significantly harms the consumer's device the consumer will be entitled to damages. The consumer will need to prove that the trader failed to use reasonable care and skill in preventing such harm from occurring.

Unlike faulty goods, which a consumer will be able to reject within 30 days and receive a full refund, consumers will not automatically have a short term right to reject faulty digital content. This is because digital content that is not provided on a tangible medium (e.g. where it is downloaded or streamed) cannot be returned in any meaningful sense. Instead consumers with faulty digital content will only be entitled to money back if the trader cannot repair or replace the faulty digital content without significant inconvenience or within a reasonable time.

However consumers will have a short term right to reject digital content sold on a tangible medium (such as on a DVD or CD) because the disk itself is goods and can be rejected, and for most people the two things form one product.

Example: A CD that jumps

- *You buy a CD but when you play it some of the tracks jump. You try to return it but the retailer says that they don't offer refunds on CDs. What are your rights?*
- *Under current legislation your rights are unclear, but the new law will make it clear that for faulty digital content bought on a tangible medium such as a CD, you are entitled to a refund within 30 days of purchase.*

Annex 3: Services

Summary

Most consumers are not aware of their rights when contracting for services, particularly when things go wrong. This means that consumers are less likely to be confident and engage in the market, and try new service providers. Businesses providing services therefore find it harder to attract new customers. Consumers are also more likely to suffer problems they cannot resolve, while businesses providing services incur the costs of having to interpret the law.

To clarify and enhance the law on services, the Government intends to:

1. Introduce a statutory right that services must be provided with reasonable care and skill, and that the service must comply with the information given by the trader in certain circumstances.
2. Introduce new statutory remedies when things go wrong.
3. Make it clear that consumers can always request these rights and remedies where there is a contract.

Clarifying and enhancing the law on services should:

- Make it easier for consumers to secure redress when their rights are breached
- Reduce business costs, by allowing traders to resolve disputes more quickly and easily, and reduce the expense of staff training on consumer rights
- Stimulate innovation and growth, by empowering consumers and driving stronger competition between firms

What's the problem?

Consumer services law is difficult to understand, and when things go wrong, there is no statutory redress regime to put things right.

It is also unclear whether, or to what extent, businesses can exclude or limit liability for the consumer's statutory rights. Under current law such exclusions or limitations must be "reasonable", but in practice it is hard for consumers and businesses to know what "reasonable" means. The rules on reasonableness and limiting liability and the rules on consumer rights are currently set out in different pieces of legislation.

Legislation does not set out any remedies in relation to the provision of services²⁴, and the common-law is difficult for consumers and businesses to access, let alone interpret. When a service goes wrong, consumers might want the business to put the service right, but in England and Wales this remedy is only given at the court's discretion and there are a number of

²⁴ Except to the limited extent of where goods are installed by a trader.

factors why this does not often happen in practice. In Scotland the position is different, and the courts are more willing to order a remedy to put the service right.

As a result of these problems:

- New market entrants are unable to expand as rapidly as they might, as the absence of accessible consumer law on services reduces consumers' confidence to try out unfamiliar or new businesses.
- Inaccessible law costs businesses money and time; consumers can overestimate their rights, and disputes take longer to resolve.
- Consumers are more likely to suffer problems they are unable to resolve, as they are unlikely to know what they are entitled to demand from the business when things go wrong.
- Poor service provision and detrimental business practices are not challenged, as consumers who receive poor services merely accept this, or are left unsuccessful in their attempts to secure redress.
- Productivity, innovation and growth are inhibited, as consumers do not sufficiently drive competition.

Consultation box

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content*²⁵ ran from 3 July 2012 to 5 October 2012, and 56 responses were received to the questions on services. A number of stakeholder meetings were held throughout the consultation period and roundtables were held on 17-18 September 2012. The Government has considered these consultation responses carefully in making these proposals.

Detail of measures

1. Introduce a **new statutory right** that the service must comply with the information given by the trader in certain circumstances, even if this is not recorded in the written contract. The Government also intends to make the language of the law easier to understand by making clear that the existing consumer protections are statutory rights: that a service must be provided with reasonable care and skill and where the time for the service or the price has not been agreed, that the service must be performed within a reasonable time and at a reasonable price.
2. Introduce **new statutory remedies**. Where a service is substandard, to require the business to put the service right. If that is impossible, or cannot be performed within a reasonable time or without significant inconvenience to the consumer, the business must give a reduction in the price the consumer has to pay.

²⁵ <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

3. Make it clear that the statutory rights will always apply and the **consumer can always request these remedies**, and any attempt by businesses to render them inapplicable will have no legal effect.

Whilst the current legislation covers England, Wales and Northern Ireland, these measures would also extend to Scotland.

Measure 1: Introduce a new **statutory right** that the service must comply with the information given by the trader in certain circumstances, even if this is not recorded in the written contract. The Government also intends to re-state the existing law in clearer terms: there will be a statutory right that the service be provided with reasonable care and skill and where the time for performance or the price for the service has not been agreed, it will be clear that the service must be provided at a reasonable price and within a reasonable time.

In the current legislation there is an 'implied term' that a service must be provided with reasonable care and skill. The Government intends to make the language of the legislation more accessible to consumers to help ensure that both consumers and service providers are aware of this right.

The current law also implies that a service will be provided within a reasonable time, where the timescale to provide the service has not been agreed between the consumer and the trader. Similarly the Government intends to change the language of the legislation to make it more accessible to consumers to help ensure that both consumers and service providers are aware of this right.

Existing law provides that where a price has not been agreed for a service a recipient must pay a reasonable price. This will be made explicit in the new legislation. This will apply in the relatively small number of cases where the price has not already been paid when the contract was agreed, where the price is not set out in the contract and where the process or formula for determining the price is not set out in the contract.

Finally, the Government intends to introduce a new statutory right that a service must comply with the information given by the trader, even if this is not recorded in the written contract, where the consumer takes this into account when making decisions about the service.

The new right will allow the business and the consumer to agree departures from the information given but will not allow the trader to change them unilaterally. The reason the service may not be able to meet the information might be due to unforeseen factors outside the trader's control, or due to developments in the requirement of the service.

Example: window fitter not completing an agreed job

- *You choose a company to fit your wooden windows on the basis that they told you that they would install and finish the frames.*

- *However, after fitting the windows, the fitter would only prime the frame and told you that you would have to paint it yourself. What can you do?*
- *Currently, unless this formed part of the contract, the fitter would not have to paint the frame.*
- *Under the proposed reforms, it will be clearer that these statements will form part of the contract:*
 - *Under the Consumer Rights Directive regulations, in the vast majority of cases the fitter will have to give you the “main characteristics” of the service and the service must comply with those characteristics; and*
 - *Under the Bill the service must generally comply with any information given by the trader to the consumer that the consumer took into account when deciding to enter into the contract*

Measure 2: Introduce new statutory remedies.

New statutory remedies will be introduced alongside those available in general contract law. In most cases consumers and businesses should be able to apply these remedies between themselves, reducing the need for consumers to take their problems to court.

The remedies will be as similar as possible to those available where a consumer’s rights in relation to the purchase of goods are breached.

- Where the business has failed to provide the service with reasonable care and skill, or in compliance with certain information provided, the consumer will have a right to request the business to put the service right (ie re-perform the service, or the element of it that was at fault). The business will have to do so, unless putting the service right is impossible or cannot be done within a reasonable time or without significant inconvenience to the consumer. This is known as a Tier 1 remedy.
- In other cases, there could be a reduction in the price the consumer has to pay for the service by ‘an appropriate amount’; this is known as a Tier 2 remedy. This will be available in two circumstances:
 - Where the business has failed to provide the service with reasonable care and skill (or in-line with certain information provided) and it is impossible to put the service right or this cannot be done within a reasonable time and without significant inconvenience to the consumer; or
 - Where one of the consumer’s other statutory rights is breached:
 - the service does not meet the information given about the trader; or
 - that where the time for performance of the contract is not specified the service is not completed within a reasonable time.

Example: subsidence repairs

- *A consumer has their house treated for subsidence, with a new kitchen floor to be laid and the bedrooms redecorated. But while the bedrooms are fine, the builders just papered over cracks, and the kitchen floor is uneven. The trader accepts that the job was not done with reasonable care and skill.*
- *Neither side really knows how to proceed as there are no remedies set out either in the contract or in the legislation: both the consumer and the trader would probably have to go and seek legal advice. The Bill makes clear that the consumer can request a re-performance of the service to bring it up to scratch, without any extra cost. The trader would prefer this too - rather than a dispute potentially in court.*
- *The trader offers to redo the work the next day and without any inconvenience to the consumer.*
- *Both sides are happy with the outcome of this - it's cheaper for the trader and the consumer gets what they want.*

Measure 3: Make it clear that the **consumer can always request these remedies**, and any attempt by businesses to render them inapplicable will have no legal effect

Under current law businesses are able to exclude or limit their liability to provide a service with reasonable care and skill, if the term doing so is fair. The new law will make it clear that businesses will not be able to exclude their liability to provide the statutory remedies (so they cannot 'contract out' of remedies in the legislation). This will include that a business will not be able to limit their liability to less than the contract price.

Example: a late supper

- *You contract with a catering service to provide a buffet for your partner's birthday party. They tell you that they will deliver that buffet at 6pm on a given Saturday. You agree to pay them £250 after the party.*
- *The buffet is delivered late, at 10pm, as the party is ending. The catering service has breached the information in their contract by not delivering at 6pm.*
- *The catering cannot be repeated, as the party has happened. You are therefore entitled to a reduction in price due to non-compliance with the information provided.*
- *To avoid this reduction in price, the catering service cannot include a term in the contract stating that you are not entitled to a reduction in price if the service is not delivered in line with information given. Likewise, they cannot include a term that you are only entitled to an amount lower than the price, for example £50, if your rights are breached.*
- *Even if such a term is included in the contract, that term is invalid and you are entitled to a reduction in price of an appropriate amount*

As part of the consultation, the Government also asked for comments on additional proposals to move the services regime closer to the regime for

goods, through introducing an outcome based quality standard for certain services to property. Comments received on this issue revealed a wide range of views, and brought out the complexities of such a change. The Government therefore intends to conduct further discussions with stakeholders before making a decision.

Annex 4: Unfair Contract Terms

Summary

Current legislation allows courts to consider, in certain circumstances, the fairness of terms in contracts. Where a court finds that a term in a contract is unfair, the term is not binding on the consumer and cannot be enforced. However, the law governing whether terms can be regarded as unfair is very complex, creating uncertainty for consumers and businesses. This has led to costly legal cases, which have still not fully resolved when a term can be assessed for fairness.

To clarify and enhance the law on unfair contract terms, the Government intends to:

1. Streamline the legislation governing unfair terms in relation to consumer contracts, which is currently found in two separate pieces of legislation, into one place, removing anomalies and overlapping provisions
2. Make clearer the circumstances when the price or subject matter of the contract cannot be considered for fairness and in particular make clear that to avoid being considered for fairness those terms must be transparent and prominent
3. Clarify the role and extent of the indicative list of terms which may be regarded as unfair (the so-called 'grey list').

Clarifying and streamlining the law in this area should:

- Reduce uncertainty and therefore legal disputes between businesses and consumers escalating to the courts about whether a term in a contract is unfair
- Give more certainty to businesses about how they can avoid certain terms being challenged as unfair (for example, by making the price and subject matter transparent and prominent)
- Give more confidence to consumers to enter into contracts especially where they have not focussed on or understood the 'small print'
- Benefit the market as a whole by increasing consumer confidence, empowering consumers and driving stronger competition between businesses.

What's the problem?

There have been high profile court cases concerning whether a term or terms in consumer contracts are unfair, or can be assessed for fairness. These have provided some guidance, but also revealed problems in the current law. Some protection in law is necessary because consumers often cannot or do not wish to investigate the detail of every contract term before they sign-up to an agreement. Consumers are focused on the product or service they are purchasing rather than the contract.

This leaves the door open to unscrupulous traders who may deliberately try to get a consumer to enter a contract which hides onerous requirements and creates a significant imbalance in the parties' rights and obligations. This could be done by, for example, writing the unfair term in overly-legalistic or opaque language.

However, this needs to be balanced against businesses' need to be able to trade without the prospect of every single term being open to challenge. Contracts are a necessary part of providing certain products and services, and should enable rather than hinder consumers and businesses in that market.

In 2005, the Law Commission and Scottish Law Commission concluded, following an earlier consultation, that the law on unfair terms is particularly complex.²⁶ Uncertainty about how the law should be applied has a negative impact on growth. It reduces consumers' confidence in being able to resolve problems or seek redress and it makes businesses more risk averse and raises the costs to doing business where they are unsure how a court might view the terms of their contracts.

Consultation box

In 2012, BIS asked the Law Commission and the Scottish Law Commission to look again at unfair contract terms in the light of some high profile legal cases and they undertook a consultation to provide up-to-date evidence about the problems and to get views on potential remedies. Their analysis of the consultation and their advice to BIS was published on 19 March 2013.²⁷

The summary of consultation responses published alongside this document contains the Government's response to the Law Commissions' recommendations in detail.

Detail of measures

Measure 1: Streamline the legislation governing unfair terms in consumer contracts, currently found in two separate pieces of legislation, into one place, removing anomalies and overlapping provisions. This will allow businesses, consumers and those advising them to understand more easily the circumstances in which terms can be assessed for fairness.

Measure 2: Make clearer the circumstances when the price or subject matter of the contract cannot be considered for fairness. In particular, make clear that in order not to be considered, that term must be transparent and prominent in the contract with the consumer.

Currently the law exempts from assessment for fairness terms that relate to the price or the subject matter of the contract. These form the 'essential bargain' between the consumer and trader and therefore it is reasonable to

²⁶ http://lawcommission.justice.gov.uk/consultations/unfair_consumer_contracts.htm

²⁷ http://lawcommission.justice.gov.uk/docs/unfair_terms_in_consumer_contracts_advice.pdf

expect they will be scrutinised by the consumer prior to agreeing the contract. The draft Bill will require that terms about the 'essential bargain' of the contract must be transparent and prominent; otherwise they may be assessed for fairness.

The main change from the current position is the requirement for *prominence*. It aims to prevent circumstances where extra charges or requirements which relate to the overall subject or price of the contract get buried in the 'small print' and are therefore not clear to the consumer at the time they agreed to enter into the contract.

Example: mobile phone deals

- A consumer signs up to a mobile phone contract for £20 a month for 200 texts and 100 minutes. After the consumer agrees to the deal they discover that their neighbour has got the same handset but is paying only £15 a month for 300 texts and 150 minutes.
- The first consumer challenges the mobile phone company, arguing that her deal is unfair.
- The company made sure that the monthly price and the texts and minutes available were clearly explained, in plain English, when she agreed the contract and were prominent and transparent in the contract.
- Under our proposals, the company would have the certainty of knowing that the consumer could not challenge the deal for fairness, as the terms were transparent and prominent. In other cases, price and other key terms can be challenged as unfair by consumers, if left to the 'small print'.

Measure 3: Clarify the role of and extend the indicative list of terms which may be regarded as unfair (the so-called 'grey list').

The current law contains a schedule of examples of terms (the 'grey list') which cover situations where consumers may not at the outset pay sufficient attention to or understand the implications of the terms. They are an indicative and non-exhaustive list of terms which *might be* regarded as unfair, but it is unclear whether they are there to aid consideration as examples or whether those terms are presumed to be unfair so a court should automatically assess them for fairness. Examples of terms on the 'grey list' include price escalation clauses that do not give the consumer a corresponding right to cancel the contract.

The draft Bill will make clear the role of the 'grey list' and specifically that terms on the grey list can be assessed for fairness, even if they cover the price or subject matter of the contract. Terms covering the price or subject matter will only be exempt from assessment for fairness if they are transparent and prominent (as above) and if they are not on the grey list.

In line with the proposals from the Law Commissions and responses to their consultation, the draft Bill will also enhance the 'grey list' of terms to reflect

recent case law. The new legislation will therefore amend the grey list to additionally cover:

- Terms which permit the trader to claim disproportionately high sums in compensation or for services which have not been supplied, where the consumer has attempted to cancel the contract. These are also known as 'early termination clauses'
- Terms which give the trader discretion to decide the amount of the price after the consumer has become bound by the contract.
- Terms which give the trader discretion to decide the subject matter of the contract after the consumer has become bound by it.

Example: cancelling a gym membership

- *You take out a 12 month gym membership as a New Year's resolution. Monthly payments are £89. When signing up, you don't read a clause in the small print that requires you to pay for the whole 12 months if you cancel your membership. In March your resolution fades and you want to cancel but are faced with a bill for 9 months: £801. Is this unfair?*
- *Currently, it is not clear which way a court would rule. They might regard the clause as being to do with the price of the contract and whether or not, under the existing law, they can consider this as unfair is unclear.*
- *The new proposals will make it clear: a court can assess early termination clauses for fairness.*

Annex 5: Consumer Law Enforcement Powers

Summary

The UK's consumer law enforcement regime is regarded as one of the best in the world. However, the large body of consumer law which has built up piecemeal over time adds complexity to the enforcement regime. This reduces the effectiveness and efficiency of consumer law enforcers, such as local authority Trading Standards Services and the Office of Fair Trading (OFT).

To streamline and clarify the powers of consumer law enforcers, the Government intends to:

1. Consolidate and simplify the investigatory powers of consumer law enforcers and set them out in one place
2. Clarify the law so that Trading Standards Services are able to work across local authority boundaries as simply and efficiently as possible.

The benefits of consolidation and radical simplification of consumer law investigatory powers and setting them out in one place include:

- Removing overlapping and sometimes inconsistent powers will make them more transparent so that both businesses and enforcers are clearer as to what officers' powers are in any given circumstance, reducing the likelihood of disputes over officers' powers.
- Regulatory burdens on businesses will be reduced through the addition of enhanced safeguards before the more intrusive powers can be used, such as the requirement on enforcers to give reasonable notice to businesses of routine inspections.
- Removing bureaucratic legislative restrictions so that enforcers are able to tackle rogue traders operating nationally or regionally in a more efficient and cost effective way. This will reduce consumer harm and protect law-abiding businesses from unfair competition caused by rogue traders. This will in turn empower consumers, encourage competitive markets and promote growth.

What's the problem?

Investigatory powers vary across consumer law making them unclear for both businesses and enforcers. The investigatory powers of consumer law enforcers are currently scattered in around 60 pieces of consumer law. These powers include powers of entry and inspection and seizure of goods and documents. Slight variations in the powers across the legislation cause confusion and potential disputes with officers as it is difficult for businesses and enforcers to know what officers' powers are in every circumstance leading to unnecessary costs to business.

The current law enabling Trading Standards to work across local authority boundaries is open to different interpretations and this is causing confusion amongst enforcers. This results in reduced effectiveness and efficiency of the enforcers to tackle rogue traders operating across local authority boundaries which are causing consumer harm, damaging consumer confidence and presenting unfair competition to reputable businesses.²⁸

Consultation box

The consultation on *Enhancing Consumer Confidence through effective enforcement: Consultation on consolidating and modernising consumer law enforcement powers*²⁹ ran from 28 March 2012 to 20 June 2012, and 103 responses were received. A number of stakeholder meetings and roundtables were held during 24 May to 1 November 2012. The Government has considered these consultation responses carefully in making these proposals.

Detail of measures

1. **Consolidate and simplify the investigatory powers of consumer law enforcers** and set them out in one place. Enhanced safeguards will be added, such as the requirement for officers to give reasonable notice of inspections.
2. **Clarify the law so that Trading Standards Services are able to work across local authority boundaries** as simply and efficiently as possible by including a power to this effect.

Measure 1: Consolidate and simplify the investigatory powers of consumer law enforcers and to set them out in one place as a generic set based on the powers contained in Part 4 of the Consumer Protection from Unfair Trading Regulations 2008.

Consumer law investigatory powers include powers of entry, test purchasing and inspection of products, powers to break open containers and powers to seize goods and documents. The powers are found in around 60 pieces of consumer law covering unfair trading legislation, rules on product safety, weights and measures and sale of counterfeit goods. Whilst many powers are similar across this legislation, slight variations cause confusion and disputes amongst enforcers and businesses. In setting out the powers in a generic set the powers will be aligned as far as possible across consumer law to simply them and reduce the likelihood of disputes as to officers' powers. The equivalent powers in the existing legislation will then be repealed.

²⁸ Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087 Session 2010–2012, page 8, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

²⁹ Department for Business, Innovations and Skills, March 2012, <https://www.gov.uk/government/consultations/consultation-on-consolidating-and-modernising-consumer-law-enforcement-powers>

At the same time to protect civil liberties, we will add enhanced safeguards to the powers, such as the requirement for officers to give reasonable notice to businesses, subject to certain exemptions, and restricting powers to enter wholly or mainly private dwellings so that a warrant is required to exercise a power of entry to these premises.³⁰ This is a key response to the Retail theme of the Government's Red Tape Challenge in July 2011 which aims to reduce regulation. This will reduce cost and disruption to businesses, saving an estimated £4 million per year. Details of the powers making up the generic set and the changes we are making to the powers are outlined in the Impact Assessment for the Generic Set of Powers.³¹ However, notice need not be given where it would defeat the purpose of the officers' visit, such as where evidence may be destroyed or where a breach of law is suspected. This will ensure that the ability of Trading Standards to carry out spot checks, where appropriate, and tackle rogue traders is not diminished. Some of these powers may be subject to change pending decisions on the proposals on communications data.

Measure 2: Clarify the law so that Trading Standards Services are able to work across local authority boundaries as simply and efficiently as possible.

The current law enabling Trading Standards to work across local authority boundaries is open to different interpretations, causing confusion amongst enforcers. This has caused particular difficulties for the Scambuster and Illegal Money Lending teams which work on a regional basis. Clarifying the law will make it easier for Trading Standards Services to tackle the £4.8 billion of consumer harm caused by rogue traders which operate across local authority boundaries.³² It will also support the National Trading Standards Board (NTSB), which was established in April 2012, and has the responsibility for coordinating Trading Standards enforcement both regionally and nationally.³³ This will help improve consumer confidence and protect law-abiding businesses from unfair competition posed by these rogue traders.

The Government also intends to remove specific restrictions to officers' powers under the Weights and Measures Act 1985 limiting them to the local

³⁰ As outlined in the Protection of Freedoms Act 2012 requiring the review and consolidated powers of entry and to improve safeguards to their use. This implements the Government's commitment in Coalition: our programme for government, page 11, HM Government, May 2010, http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

³¹ Enhancing consumer confidence: Generic set of consumer law powers Impact Assessment, Department of Business, Innovation and Skills, 01 May March 2013, Link: <https://www.gov.uk/government/publications/draft-consumer-rights-bill>

³² Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087SesSIon 2010–2012, page 8, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

³³ Empowering and protecting consumers: Government response to the consultation on institutional reform, Department for Innovation and Skills, April 2012, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-510-empowering-protecting-consumers-government-response.pdf>

authority area in which the inspector is appointed.³⁴ This will increase businesses' choice of local authority when requesting verification of their regulated weighing and measuring equipment regulated.

Businesses that operate across local authority boundaries can form a Primary Authority relationship with a local authority which then takes the lead in providing advice and guidance to that business, including developing a national inspection plan. In addition, proposals in the Enterprise and Regulatory Reform Act (ERR Act) have put these inspection plans on a statutory footing. This will ensure that these businesses are not subjected to unnecessary or duplicate checks and tests by Trading Standards.

Example: investigating a rogue trader

- A Scambuster team may be investigating a rogue trader who has misled a number of consumers across a region into having expensive major roofing repairs carried out on their homes.
- To ensure that one lead authority can take proceedings in relation to all the breaches by the trader they have uncovered, the Scambuster team seeks memoranda of understandings with all their neighbouring local authorities. This takes significant time and resource away from work that can directly help consumers and businesses.
- Under the new regime, the law will be clear that the lead prosecuting local authority is able to deal with all the breaches committed by the rogue trader, wherever they were committed in England and Wales.

The consultation also made three other proposals which the Government does not propose to take further as part of these reforms.

The Government does not propose to legislate on the right for Trading Standards to present civil cases in the County Court. It will be for the National Trading Standards Board and the Trading Standards Institute (TSI) to take this forward with an Approved Regulator and make an application to the Legal Services Board. Government intervention through a legislative change is therefore not required.

If Trading Standards professionals are able to present civil cases in County Courts it will remove the need for local authorities to hire external lawyers for simple civil cases, reduce their enforcement costs and encourage the use of civil enforcement as appropriate. This supports the Government's commitment to reduce use of the criminal law for relatively minor offences.³⁵

However, the Government agrees with respondents to the consultation that the most appropriate route for Trading Standards to seek rights to present cases in County Courts is through an Approved Regulator authorised under the Legal Services Act 2007. An Approved Regulator will provide assurance

³⁴ Section 79(1) Weights and Measures Act 1985

³⁵ And prevent a proliferation of unnecessary new criminal offences. The Coalition: our programme for government, page 11, HM Government, May 2010, http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

that Trading Standards professionals who carry out this work achieve appropriate competencies and that their competencies are adequately monitored and effectively maintained. This provides a cost effective model which is flexible to meet the differing needs of individual Trading Standards Services. Government intervention is therefore not required.

The Government proposes to maintain the existing mechanism for calibration of local authorities' measurement standards rather than amend the legislation to change the traceability route for local authorities. Government has decided not to amend the law as a result of responses to the consultation which estimated that it would result in a net cost to local authorities. Given that the current mechanism remains fit for purpose, the proposed change can not be justified on economic grounds.

To retain the existing statutory weights and measures qualification and to support the development of a non statutory competency Code of Practice by the Trading Standards Community and Local Authorities. The Government proposes to retain the existing statutory position without the need for further regulation. It would also provide an opportunity for a new non statutory Code of Practice building on the existing TSI & Better Regulation Delivery Office (BRDO) qualification and competency frameworks which would give business and consumers assurance of officers' competency.

Annex 6: Enhanced Consumer Measures

Summary

Effective enforcement of consumer law is key to competitiveness and growth. The vast majority of businesses who are compliant with the law are disadvantaged by non-compliant businesses. However, public enforcers like Trading Standards Services lack flexibility in the ways that they can achieve better outcomes for consumers and compliant businesses when dealing with breaches of consumer law.

To enhance the flexibility of enforcers of consumer law, the Government intends to introduce greater flexibility in the civil courts through the use of enhanced consumer measures, aimed at one or more of:

1. Redress for consumers who have been disadvantaged from breaches of consumer law
2. Measures from traders who have breached consumer law to improve their compliance and reduce the likelihood of future breaches
3. Measures to give consumers more information so they can exercise greater choice and help improve the functioning of the market for consumers and other businesses.

Enhancing the range of actions enforcers can take will help target their interventions more effectively which in turn will help improve their role in making markets function more effectively. For example, giving enforcers access to interventions that allow them to agree or require measures which help ensure the same or similar breach of consumer law does not recur.

What's the problem?

When purchases of goods or services go wrong, the available actions which enforcers can take on behalf of consumers are limited. The main formal sanction is a criminal prosecution. While this can benefit consumers as it prevents the spread of instances of illegal trading, there is generally no direct remedy to victims of the breach.

As an alternative to criminal prosecution, consumer law enforcers can seek a civil Enforcement Order to stop the infringing practice. However, measures such as these will not generally result in redress for individual consumers who have suffered as a result of the breach nor does it allow courts to require actions that may help prevent breaches of consumer law by the same trader in the future.

While criminal prosecution will always remain the most appropriate method for dealing with out and out rogues, there is a clear gap between the limited civil powers set out above and criminal prosecution. To close this gap, the Government consulted on proposals to extend the range of measures available under the civil law enforcement regime.

Consultation box

The *Consultation on Extending the Range of Remedies Available to Public Enforcers of Consumer Law* was published on 5 November 2012 and closed on 31 December 2012.³⁶ 63 responses were received to the consultation from a number of different organisations including from individuals, businesses, business representatives and consumer organisations. The Government has considered these consultation responses carefully in making these proposals.

Detail of measures

The Government intends to give public enforcers, businesses and the courts greater flexibility to identify the most appropriate and proportionate measure to deal with a particular breach. Safeguards will be put in place for businesses to ensure that even where they have breached consumer law, any redress or other remedies are:

- Proportionate, the costs of the redress or measures to be put in place are not higher than the level of detriment or the harm caused by the initial breach in consumer law
- Just and reasonable, the measures need to be deliverable by the trader and not require them to undertake activities that would prevent them from performing effectively.

Measure 1: Redress for consumers who have suffered loss from breaches of consumer law

The new measures will encourage those businesses that have breached consumer law to put in place schemes aimed at offering redress to consumers. Where individual consumers can be identified, such schemes will aim to offer redress directly to those individuals, for instance by contacting all affected consumers and paying a sum agreed with the enforcer or one that has been mandated by a court. The Government's aim is that the business would propose a scheme which they would agree with the relevant enforcer. Where a business is unwilling to propose an appropriate scheme, the enforcer could seek a requirement through civil courts that the trader offers redress to consumers.

Example: petrol pumps dispensing less fuel than has been paid for

- *Consumers complain to a local trading standards authority that a petrol station was dispensing less fuel than they had paid for. Trading Standards visit the retailer and discover that three pumps are not accurate and are dispensing less fuel than customers thought they were paying for.*

³⁶ <https://www.gov.uk/government/consultations/civil-enforcement-remedies-consultation-on-extending-the-range-of-remedies-available-to-public-enforcers-of-consumer-law> Consultation on extending the range of remedies available to public enforcers of consumer law

- *While the amount of detriment caused can be accurately estimated, only those consumers who paid by credit or debit card can be identified.*
- *Using the new powers, trading standards work with the company to put in place positive measures to put the situation right and ensure that the company did not profit from the consumer detriment. The trading standards officer and the company estimate that the detriment caused by the faulty pumps equated to £100,000.*
- *The company agrees that they will contact and offer redress totalling £50,000 to those consumers they can identify and, as consumers who have suffered loss, make a donation of £50,000 to a local fuel poverty charity.*
- *Where a business is unwilling to propose appropriate measures, it may be appropriate for the enforcer to take action through the civil courts, who may then order the business to offer redress and make such a donation.*

Measure 2: Improving business compliance and reducing the likelihood of future breaches.

The new law will allow greater flexibility in how breaches of consumer law are dealt with. It may not be possible or cost effective to find and offer redress to consumers for any loss they have suffered. Nor does redress necessarily change future behaviour. The new legislation will support a greater range of measures to support future business compliance with the law and reduce the likelihood of future breaches. To retain flexibility and to tailor the appropriate response, the new legislative changes will not set out a prescribed list of what these actions might be, but examples of possible measures might include:

- Appointing a compliance officer
- Introducing a complaints handling process
- Improving record keeping.

Again, the Government's aim is that the business would propose measures which they would agree with the relevant enforcer. Where a business is unwilling to propose appropriate measures, the enforcer could seek a requirement through civil courts to implement measures that improve business compliance or help improve the way the market works.

Example: a rapidly expanding business

- *A successful, expanding furniture retailer has quickly grown from 3 to 15 outlets. Due to its rapid expansion and increased scale of operations the company has inadvertently breached consumer law by making false claims on the speed of delivery for their goods.*
- *A number of consumers complain to trading standards departments as the furniture they have ordered and paid for has not arrived and the company has not been able to give them a revised delivery date. A Trading Standards officer visits the company and identifies that the company is not purposely breaching consumer law, but has done so simply as a result of a new larger network and infrastructure.*

- *Using the new powers the trading standards officer works with the company to identify the best way of addressing the breaches of consumer law, and the company agrees to put in place the following measures:*
 - *A commitment to provide revised delivery dates within a fortnight for customers who have not received their goods*
 - *Appointing a compliance officer with a good understanding of the business to ensure that false promises regarding delivery times are no longer made and consumer complaints are dealt with as soon as possible*
 - *An improved consumer complaints handling system alongside additional training for staff*
- *The company avoids formal prosecution and quickly improves its handling of consumer complaints.*

Measure 3: More information for consumers enabling greater choice and improving the functioning of the market.

The new legislation will support a greater range of measures to give consumers more information and improve the future function of the market for the consumer and other businesses. Examples of possible measures might be:

- Signing up to an established customer review / feedback site;
- Providing consumers who have an on-going relationship with the business who breached consumer law with the details of other suppliers' products or services to promote switching.

As above, to retain flexibility the new legislative changes will not set out a prescribed list of what these measures might be. Again, the Government's aim is that the business would propose appropriate measures which they would agree with the relevant enforcer but where a business is unwilling to propose a scheme, the enforcer could seek a requirement through civil courts to implement measures to give consumers more information and improve the market.

Example: requiring further information to be available to consumers

- *A mobile phone supplier encourages a number of existing customers to sign up to a particular tariff after claiming that it is the cheapest and most appropriate for them.*
- *Following a number of complaints it is established that the tariff offered resulted in much higher phone bills and was unsuitable for the vast majority of consumers who had signed up to it.*
- *Using the new powers, the regulator works with the company to provide redress directly to those consumers who have suffered detriment.*
- *In addition the court orders the company to sign up to an established customer review / feedback site so potential customers are able to take the breach into account when deciding which company to use.*

- *Should the business be unwilling to propose appropriate measures, it may be appropriate for the enforcer to take action through the civil courts, who may then order the business to take the measures.*

Annex 7: Private Actions in Competition Law

Summary

Competition creates growth, and a strong competition regime ensures the most efficient and innovative businesses can thrive. It drives investment in new and better products, pushes prices down and improves quality, resulting in benefits for consumers.

In private actions, one or more parties (for example an individual, business or a charity) take another to court over a matter of competition law. The remedies will vary, but might commonly include one or more of damages, an injunction (an order from a court prohibiting an individual or business from a certain type of activity) or making a contract void.

To enhance opportunities for businesses and consumers to obtain compensation for losses, and to tackle anti-competitive behaviour, the Government proposes to:

1. Reform the Competition Appeal Tribunal (CAT), the specialist tribunal which hears cases involving competition or regulatory issues.
2. Introduce a limited opt-out collective actions regime for competition law to allow consumers and businesses to bring collectively a case to obtain damages for their losses. This regime will have safeguards to prevent abuse of the system.
3. Promote Alternative Dispute Resolution (ADR) to encourage cases to be resolved outside of court.

We published our policy position on private actions in January this year³⁷. However, we are aware of strong and different views of stakeholders about the effectiveness and impact of these proposals. We therefore particularly welcome comments and views on this element of the bill's proposals to help inform a final position and ensure the outcome is as effective as possible.

What's the problem?

Research by the OFT shows that businesses view the current approach to private actions as one of the least effective aspects of the UK competition regime. Anti-competitive behaviour can result in lower output, higher prices, and reduced choice and innovation. However, challenging anti-competitive behaviour is beyond the resources of individual consumers and many businesses, particularly SMEs. Cartels are covert and other anti-competitive practices are often difficult to identify. Establishing the situation that would have existed in the absence of the anti-competitive behaviour is complex, and will often require costly expert economic input.

³⁷ <https://www.gov.uk/government/consultations/private-actions-in-competition-law-a-consultation-on-options-for-reform>

Consultation box

The consultation *Private Actions in Competition Law: Consultation on options for reform* ran from 24 April 2012 to 24 July 2012, and 129 responses were received. A number of stakeholder meetings and roundtables were held during between May and July 2012. The Government has considered these consultation responses carefully in making these proposals, and a detailed Government Response was published on 29 January 2013.³⁸

Detail of measures

Measure 1: Reform the Competition Appeal Tribunal (CAT).

This would include allowing the CAT to hear stand-alone cases, as well as follow-on cases, and grant injunctions.

Follow-on cases are where an infringement of competition law has been found by a competition authority (notably the OFT, European Commission and some sector regulators). In such a case, the claimant must show how the claim relates to their own case.

Stand-alone cases occur where an infringement has not been found by the competition authority. The claimant must therefore first show a breach of competition law, and if this is established, may then attempt to show how it relates to their case. A fast-track regime for SMEs will be established to issue swifter and cheaper redress.

Example: Supplier withholds spare parts

- *A medium-sized car garage in England relies on spare parts being supplied by a larger supplier in another part of England.*
- *The supplier has started withholding spare parts to drive up prices.*
- *The garage has started suffering from losses and losing custom, and is now at risk of going out of business.*
- *Previously, the garage would have had to take costly legal action in the High Court against the supplier, which may have bankrupted the business in the process.*
- *Under these proposals, the garage could take the case to the CAT. If it appeared that prolonging the situation would bankrupt the garage, the CAT could act quickly and fast-track the case to provide an injunction, resulting in the supplier having to restart their supply.*

Measure 2: Introduce a limited opt-out collective actions regime, with safeguards, for competition law.

Under the current regime, only Which? can take forward a group, or “collective” action (a case bought forward on behalf of a group of consumers), and on an “opt-in” basis. This means that only consumers who actively join

³⁸ <https://www.gov.uk/government/consultations/private-actions-in-competition-law-a-consultation-on-options-for-reform>

the action could benefit from any damages. The current regime also requires consumers to provide evidence of eligibility for a product that they possibly purchased several years earlier.

Under the proposed reforms, any representative group or trade association could take forward an action, and eligible consumers or businesses would automatically be included in the proposals, ie they would have to “opt-out” if they didn’t want to be included in the action. To prevent US style class actions we are implementing a range of safeguards including: certification by the CAT that the case is suitable for opt-out, maintaining the loser pays rule, no treble damages and no contingency fees (percentage of the damages awarded as a success fee).

Example: price fixing in package holidays

- *Four holiday companies are suspected of price fixing package holidays.*
- *The OFT undertakes an investigation, and issues a multi-million pound fine to the companies involved.*
- *Previously, for any damages to be awarded, only Which? would have been able to take forward a case and eligible consumers would have had to sign up to the regime.*
- *Under these proposals, a consumer organisation could take forward a case for damages. Additionally, all eligible consumers, who live in the UK, would be automatically included as eligible in being awarded damages unless they opt-out of the case.*

Measure 3: Promote ADR to ensure that the courts are the option of last resort.

The Government intends to establish a new opt-out collective settlement regime in the CAT and giving the new Competition and Markets Authority (CMA) a limited role in certifying redress schemes.

Under the collective settlement regime, a consumer organisation and a business which has broken competition law could jointly approach the CAT to agree on a level of damages without having to take a case through the court process. Any settlement would then be binding on eligible consumers, unless they opted-out of the settlement in the same manner as the opt-out collective actions regime.

Under the certifying redress scheme, the CMA could approve a consumer compensation scheme put forward by a business which had broken competition law.

Example: A toy manufacturer is being investigated for suspected price fixing

- *The CMA is investigating a toy manufacturer for price fixing and determines that it is a case in which settlement may be appropriate. The toy manufacturer decides to settle the case and simultaneously offer a voluntary compensation scheme to affected consumers.*
- *Under the current regime, there would be no guarantee to consumers that the compensation scheme is fair.*

- *Under these proposals, the manufacturer would have to follow a set process, as laid out in secondary legislation, to reach a level of compensation that was fair, just and reasonable. If the CMA decided to consider the application, it would have to certify that the scheme had followed the process, and if the scheme was offered alongside a settlement offer to the CMA (i.e. not after the CMA issues the fine), the manufacturer could qualify for a reduction in fine of up to 10%.*
- *Alternatively, after the investigation, a consumer group and the manufacturer could jointly approach the CAT with the intention of settling. The CAT can hear evidence from both sides, and then certify that the compensation is fair, just and reasonable. This aspect would operate on an opt-out basis, so all consumers would automatically be included unless they opted out.*

Annex 8: The Economic Impact of the Consumer Rights Bill Suite of Reforms

The entire suite of Consumer Rights reforms are estimated to be worth over £4 billion to the UK economy over 10 years in *quantified* net benefits. These net benefits include the impact on consumers, business and the public sector from the Bill (£1.7 billion) and its associated secondary legislation (£2.73 billion).

In addition to these quantified benefits there are a range of economic benefits that have not been quantified. The reforms would deliver market-wide changes through promoting confident consumers, experimenting with new products or services and switching suppliers which in turn should drive innovation, greater competitiveness and deliver new opportunities for economic growth.

The main quantified impacts are summarised below. Alongside this Government Response document, Impact Assessments have been published with more detail on the specific proposals in the Draft Bill.³⁹

Main quantified benefits for business

- Simpler complaint handling because the law is easier to understand for business and consumers amounting to £9.3 million per year
- Less need for ongoing legal advice because laws are easier to interpret and apply, resulting in benefits of £3.9 million per year
- Savings from fewer court cases because the law is easier to understand and complaints are resolved more easily equating to £3.5 million per year
- Reduced training costs because the law is easier for staff to understand and is no longer based on the firm's interpretation estimated at £2.8 million per year
- Savings to business from preventing anti-competitive practices valued at £12.2 million per year
- Savings from changes to Trading Standards inspections of £4.1 million per year
- Savings for exporters from harmonisation of the consumer regime across the EU from the Consumer Rights Directive of £358 million per year (this is not part of the Bill but integral to the wider suite of consumer legislation reform)

Main quantified costs for business

- Initial costs of complying with new consumer rights (including the Consumer Rights Directive) £63.8 million per year

³⁹ The individual Impact Assessments can be found at:
<https://www.gov.uk/government/publications/draft-consumer-rights-bill>

- Costs of initial familiarisation (including initial training costs) to ensure that firms are aware of the changes and understand their obligations to customers £32.1 million (once-off)
- An initial increase in legal costs to help firms apply the reforms £16 million (once-off)
- Cost of updating terms and conditions to reflect the changes £11.3 million initially (once-off)
- Increase in the annual cost of redress of £8.9 million per year

Main quantified benefits for consumers

- Reduced costs of searching for goods/services, to prevent the risk of purchasing a faulty good/service £64.6 million per year
- Benefits from greater deterrence to anti-competitive practices of £39.4 million per year
- Reduced costs from problems with faulty goods including financial, lost personal time £29.9 million per year
- Increased redress valued at £11 million per year
- Savings in the Consumer Rights Directive from the provision of basic rate customer phone lines and extending the period for cancelling contracts valued at £6.1 million per year

Main quantified benefits to public sector

- Savings from fewer court cases £1.2 million per year
- Simpler complaint handling because the law is easier to understand and apply, valued at £0.6 million per year

Main quantified costs to public sector

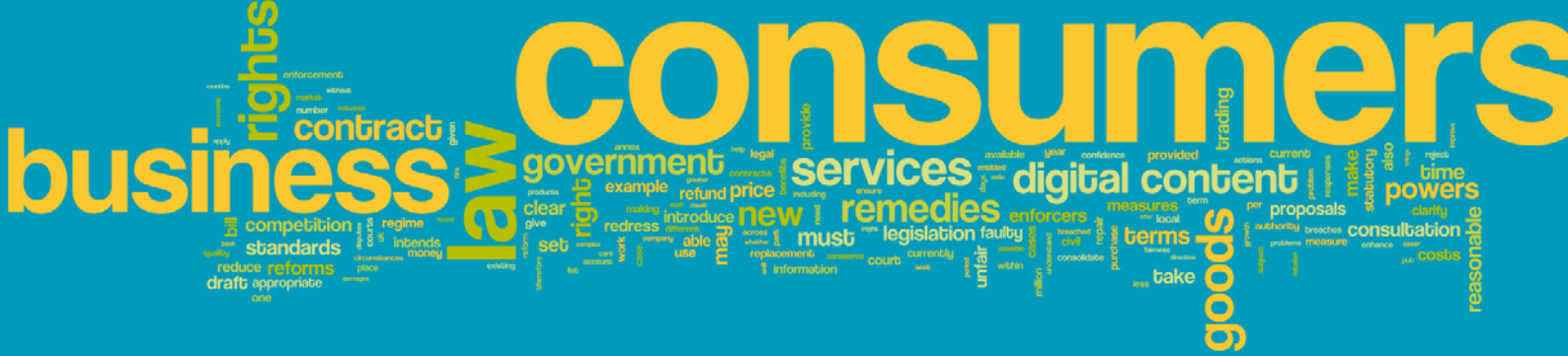
- Increase in costs of enforcing compliance with law £0.5 million per year
- Lost revenue from fewer court cases and fee remissions £0.2 million per year.

The Government is committed to reducing the cost and volume of regulation in the economy, and new regulations must be justified on a 'One In, One Out' basis. Any new legislation that imposes a direct net cost on business or civil society is considered to be an "IN", and must be balanced by the removal of existing regulations with an equivalent value (an "OUT").

The measures in the Consumer Rights Bill suite of reforms have been assessed and validated on this basis, and are considered as an "OUT" of £2.5 million per year.

Summary of Impact Assessments

Consumer Rights Bill		
Measures by Area of Bill	Total Net Present Value (over 10 years) (£million)	Direct Net Annual Impact on Businesses - under 'One In One Out Methodology' (£million)
Goods	238.3	'IN'* 2.8
Services	290.9	'IN'* 0.8
Digital Content	219.6	'IN'* 0.4
Private Actions	828.0	N/A
Unfair Contract Terms	15.0	'IN'* 0.02
Enhanced Consumer Measures	81.0	N/A
Consumer Law Enforcement Powers	48.0	'OUT'*** 5.3
Improving Trading Standards Service cross-border cooperation & authorisation	0.6	N/A
Associated Measures in Secondary Legislation		
Misleading & Aggressive Practices	109.3	OUT'*** 2.8
Consumer Rights Directive	2,620.0	'IN'* 1.3
Payment Surcharges (part of the CRD, but already implemented)	- 0.3	'IN'* 0.3
Totals		
Total for Consumer Rights Bill	1,721.4	'NET OUT' 1.3
Total for All Legislative Reform	4,450.4	'NET OUT' 2.5
*IN = net cost to business		
**OUT = net benefit to business		



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