

## Summary: Intervention & Options

Department /Agency:  
**Law Commission**

Title:  
**Impact Assessment of Consumer Remedies for Faulty Goods**

Stage: Report

Version: final

Date: 4 November 2009

**Related Publications:** Consumer Remedies for Faulty Goods - Consultation Paper (LCCP 188 / SLCDP 139); Consumer Remedies for Faulty Goods - Report (Law Com No 317 / Scot Law Com No 216)

### Available to view or download at:

<http://www.lawcom.gov.uk> and <http://www.scotlawcom.gov.uk>

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

The current law on the remedies available to consumers when they purchase faulty goods is too complicated, for example, consumers do not know how long they have to return faulty goods for a refund. This makes it difficult for consumers and retailers to understand the law, which results in unnecessary disputes and litigation. There is an information failure: clear information is not available to consumers, consumer advisers and retailers due to the complexities in the law. Government intervention is necessary to clarify the law and to remedy the information failure.

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

The aim is to simplify the law relating to consumer remedies for faulty goods and to bring it in line with accepted good practice. The intended effects are that the law will be easier for consumers and retailers to understand. It will enable consumers to know what their rights are, exercise them effectively and participate with confidence in the market place. Burdens on businesses will be reduced due to a decrease in the number of unnecessary disputes, and reduced staff training costs. Consumer advisers will find it easier to give clear advice.

### What policy options have been considered? Please justify any preferred option.

1. Do nothing. This would leave the law as it is, with all its existing complexities.
2. Abolish the right to reject.
3. Extend the right to reject.
4. Retain the right to reject with appropriate clarification. This is the preferred option. The right to reject is highly valued by consumers and generally supported by businesses. It drives up standards and encourages consumer confidence. The main reported problem with the right to reject is lack of clarity as to how long it lasts. We recommend clarification of that issue.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

**Policy Option:**  
Abolish right to reject

**Description:** UK law would no longer recognise a right to reject

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Likely to increase the number of disputes, both in and out of court. This will increase costs to businesses and consumers. Decline in small business transactions (as they are less well-known). Possible decline in employment through loss in small business transactions.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups' A reduction in consumers' confidence in buying from smaller retailers and non-branded goods, which will adversely affect competition. Decline in quality of goods. Decline in range/choice of products.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' The European remedies of repair, replacement and price reduction will be the main remedies, which may lead to a reduction of costs to retailers in that respect as they will save on refunds.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups' Potentially injects greater certainty of the business net position through not having to account for possible future refunds.			

**Key Assumptions/Sensitivities/Risks** That large businesses have spare capacity to absorb increased consumer spending at larger shops.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?		UK	
On what date will the policy be implemented?		N/A	
Which organisation(s) will enforce the policy?		N/A	
What is the total annual cost of enforcement for these organisations?		£ N/A	
Does enforcement comply with Hampton principles?		Yes/No	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium      Large
Are any of these organisations exempt?	No	No	N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	<b>Net Impact</b>	£

Key: Annual costs and benefits: (Net) Present

## Summary: Analysis & Evidence

**Policy Option:**  
Extend right to reject

**Description:** Consumers would be able to return goods and receive a refund even for latent defects

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Increased costs to businesses, especially small businesses, because of returns. Increased potential for fraud. Increased costs to manufacturers as part of quality assurance.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups' Increased risk of abuse by consumers. Possibility of smaller product range – fewer lower cost, lower quality products.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Reduced court time/dispute resolution faced by business and consumers.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups' Increased consumer confidence. Improved standard of goods.			

**Key Assumptions/Sensitivities/Risks** 15% of consumers who do not currently exercise the right to reject may now do so – see para 43.

Price Base Year	Time Period Years	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			N/A		
Which organisation(s) will enforce the policy?			N/A		
What is the total annual cost of enforcement for these organisations?			£ N/A		
Does enforcement comply with Hampton principles?			Yes/No		
Will implementation go beyond minimum EU requirements?			Yes		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)
Increase of £	Decrease of £	<b>Net Impact</b>	£

Key: Annual costs and benefits: (Net) Present

## Summary: Analysis & Evidence

**Policy Option:**  
**Retention & clarification**

**Description:** The right to reject would be retained as a short-term remedy, but with clarification of how long it lasts

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The increase in demand for Consumer Direct as a result of highlighting their availability to provide advice would need to be costed by BIS. Some retraining of shop-staff (approximately 1.5m staff, £6/hour, 10 minutes training). Cost of providing notices with information about consumers' rights if required (297,850 stores, approximately two notices/store at 5p
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 1 – 2 million</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ to be costed</b>		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Fewer disputes and quicker resolutions will result in lower costs to consumers and retailers. Lower training costs for retailers as a result of simpler law. (Approximately 2.8 million retail staff, assume 1.5 million need training, £6 an hour average pay, 10 mins saved training per year equals £1.5 million). Plus £4-8 million saved on costs to consumers and businesses in resolving disputes (see para 35 below).
	<b>One-off</b>	<b>Yrs</b>	
	<b>£</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 5 – 9.5 million</b>		<b>Total Benefit (PV)</b> £ 5 – 9.5 million
Other <b>key non-monetised benefits</b> by 'main affected groups' The law will be easier to understand for consumers, businesses and consumer advisers. This will increase consumer confidence, especially when buying unfamiliar brands and at smaller shops.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			N/A		
Which organisation(s) will enforce the policy?			N/A		
What is the total annual cost of enforcement for these organisations?			£ N/A		
Does enforcement comply with Hampton principles?			Yes/No		
Will implementation go beyond minimum EU requirements?			Yes		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?		No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)		
Increase of	£	Decrease of	£	<b>Net Impact</b>	£

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

## **EVIDENCE BASE**

### **BACKGROUND**

1. Whilst there is general awareness that goods must, for example, be of satisfactory quality, and correspond with their description there is less understanding about the remedies available to consumers if goods do not meet these terms.
2. Historically, in England and Wales, the buyer of faulty goods had two options. If done quickly enough, the buyer could reject the goods, terminate the contract, and demand a refund. Alternatively, or if too much time had passed, the buyer could seek compensation for the seller's breach of contract. These two remedies came from English case law and were included in the Sale of Goods Act 1893. The 1893 Act also amended Scots law to provide similar remedies in Scotland. These remedies are still applicable today, with a few changes, through the Sale of Goods Act 1979.
3. For consumers, the historical "right to reject" and damages are now joined by remedies that have their own origin in EU legislation. Since 2003 the consumer buyer of faulty goods has been able to demand that the seller repair or replace the goods or, failing that, to rescind the contract or receive a reduction in the purchase price.

### **THE PROBLEM**

4. The current law states that goods must meet certain standards. For example, goods must be of satisfactory quality, fit for purpose and correspond with their description. These standards are reasonably clear and well understood. The problem lies in the remedies available to consumers when goods fail to meet the required standards. The law in this area is overly complex and uncertain. There are effectively two legal regimes which co-exist: the traditional UK remedies have been overlain by the scheme set out in the EU Consumer Sales Directive. This makes the law difficult for shop managers to understand and to communicate to sales staff. Similarly, consumer advisers often struggle with its intricacies, and feel uncertain about communicating it to consumers. This causes unnecessary disputes.
5. The central issue of the Law Commissions' project is the question of when consumers should be entitled to return faulty goods and receive a refund (the "right to reject"), rather than being required to accept a repair or replacement. Under current law, consumers have the right to reject goods provided that they exercise the right within "a reasonable time". The "reasonable time" is not defined in legislation, and case law in the area is inconsistent and highly dependent on the particular facts of the case in hand. This creates uncertainty in the law.
6. The scale of the issue is significant: the OFT Report on Consumer Detriment estimated that there were about 26.5 million consumer problems over a one year period which amounted to an estimated £6.6 billion in terms of financial consumer detriment. Of these, we estimate that there are around 10 million problems (of some kind) a year related to the purchase of faulty goods.

### **POLICY OBJECTIVE AND INTENDED EFFECTS**

7. The aim is to simplify the remedies available to consumers when they buy faulty goods. We wish to bring the law into line with accepted good practice and provide appropriate remedies which allow consumers to participate with confidence in the market place.
8. The intended benefits are a simpler legal system, leading to reduced training costs, fewer disputes and increased consumer confidence. The overall aim is to produce a more efficient market environment.

## **RATIONALE FOR GOVERNMENT INTERVENTION**

9. There is now considerable interest in reforming and simplifying consumer law within both the EU and the UK. The proposed EU directive is a maximum harmonisation measure, which would mean that member states would not be able to provide greater or lesser rights in any field falling within the scope of the directive. In the area of consumer remedies for faulty goods, this would result in reductions in consumer rights in the UK. For example the initial right would be lost, and rescission would not be allowed for defects deemed to be minor.
10. Our proposals should be seen as informing the debate or negotiation within the EU about how the Consumer Sales Directive (CSD) should be reformed. If the replacement of the CSD remains a minimum harmonisation directive, the UK could add remedies. The government is best placed to facilitate this process.

## **CONSULTATION**

11. Throughout the project we have consulted a wide range of stakeholders including academics, lawyers and business groups including the British Retail Consortium, British Shops and Stores Association Limited and the Confederation of British Industry. We also consulted consumer groups including Citizens Advice, Consumer Direct and Which?.
12. We received 53 written responses to our consultation.

## **POLICY OPTIONS**

13. We identified four possible approaches to the right to reject.

### **Option 1: Do nothing**

14. This option would leave the law as it is, with consumers entitled to exercise the right to reject within “a reasonable time”. As stated above, the length of the reasonable time is not clear and so the current complexities and uncertainties would remain.
15. A major problem with the “do nothing” option is that it would leave an administrative burden on retailers, including unnecessary disputes and legal costs.
16. The Davidson Review was set up in 2005 by the then Chancellor of the Exchequer, Gordon Brown, under the aegis of the Better Regulation Executive.<sup>1</sup> The Review looked at the way EU Directives were implemented and found that the law on consumer remedies was too complex. This causes, amongst other things, unnecessary burdens on business. The Davidson Review received evidence that some legal teams of large retail chains devoted a substantial proportion of their time to dealing with disputes over faulty goods.
17. Consumer groups also find it difficult to give clear advice and typically spend longer giving advice on faulty goods because of the ambiguity of the law.

### **Option 2: Abolishing the right to reject**

18. This option would remove the right to reject from consumer law. Consumers would no longer, as a remedy of first instance, be able to return faulty goods and get a refund. Instead, they would be left with the European remedies of repair or replacement and would only be entitled to a refund if the repair or replacement proved impossible or disproportionate, or took too long or caused significant inconvenience.
19. It could be argued that abolishing the right to reject would reduce costs to businesses. However, this is far from clear because it has also been argued that consumers would continue to expect the right to a refund for faulty goods, and this would result in an increase in disputes. In about 20% of faulty goods cases, consumers consider that a refund is the appropriate remedy.<sup>2</sup> The absence of the legal right to reject would lead to an increased number of consumers having to rely on European rights, which would also add to the number of disputes over, for example, what amounts to “significant inconvenience”.

20. The FDS consumer research suggests that abolishing the right to reject would undermine consumer confidence. In many cases, consumers are happy to accept repairs or replacements. However, they value the right to return goods if an early fault suggests that the goods suffer from design faults or generally poor workmanship. Consumers are particularly worried about becoming locked into a cycle of failed repairs. The FDS research suggested that abolition would reduce consumers' confidence in buying non-branded goods from unknown retailers because they could not be sure that they would get their money back in the event of problems arising.
21. Abolition might also increase costs to consumers. The Office of Fair Trading's Report on Consumer Detriment (April 2008) shows that, when goods are faulty, consumers often suffer detriment in the form of financial and non-financial losses. For example, consumers who do not obtain a satisfactory remedy may have to purchase replacement goods at their own expense. If consumers are denied a satisfactory remedy, this will increase the level of consumer detriment.

### **Option 3: Extending the right to reject to cover latent defects**

22. We considered whether consumers should be entitled to return goods and obtain a refund when something went wrong long (months, or possibly even years) after purchase. This might reduce costs to consumers and increase consumer confidence.
23. It would, however, increase direct costs to retailers. In some cases, goods would be returned where it was more economical to repair them. There would be less incentive for retailers to repair returned goods, as repaired goods are more difficult to re-sell. This might mean that goods with the potential to be repaired would be disposed of.
24. Furthermore, we thought that extension of the right to reject could increase the risk of abuse, with consumers deliberately breaking goods because they had no further use for them. This would lead to waste. A long right to reject might also make it more difficult for small retailers to pass faulty goods back to manufacturers.

### **Option 4: Retention with clarification**

25. This option would retain the right to reject as a short-term remedy, but legislation would clarify how long it should last, together with related simplifications.
26. The majority of stakeholders told us that retaining a short-term right to reject with clarification of how long it lasts would provide an acceptable balance between maintaining consumer confidence, reducing disputes and preventing unnecessary waste.
27. Our proposals are aimed at retaining the broad outline of the existing law, but simplifying and clarifying the way in which the law operates. We propose a balanced package of measures which will maintain consumer protection at existing levels, reduce the administrative burden on businesses, and reduce unnecessary disputes.
28. Some of these measures clarify and simplify the law, but have only minor practical effects. For example, we are told that in practice courts presume durable goods which break within 30 days are faulty at purchase. In theory, the abolition of the deduction for use would disadvantage retailers, but our research suggested that it is rarely applied.
29. Some of our proposed measures may represent current law. For example, it is likely that the courts would hold that the six-month reverse burden of proof restarted after a redelivery.<sup>3</sup> Furthermore, under the current law, consumers could argue that they should receive a full refund where the retailer behaves unreasonably. However, consumers would have to use the complex arguments set out in the *Ritchie* case,<sup>4</sup> rather than the more straightforward ones which we propose.
30. It could be argued that some consumers may be disadvantaged by the change to the law on affirmation/waiver with regard to work and materials contracts, because in some cases the period for exercising the right to reject will be shorter. However, the current law is too complex. As a result, few consumers are aware of it and the law on affirmation is seldom

asserted. We think that the overall effect of our reforms will benefit consumers by providing them with greater clarity and certainty.

## **Conclusion**

31. Our conclusion is that abolishing the right to reject would lead to an unacceptable loss of consumer confidence and an increase in disputes. Extension, however, might add to waste and penalise small retailers who could not pass costs back to manufacturers.
32. We conclude that the balance of costs and benefits favours retaining the right to reject with clarification, in particular about how long it lasts.
33. In the next section we look in more detail at the evidence and the views of consultees with respect to the effect of the law of consumer remedies on different aspects of the economy and environment. We start by looking at four general issues: the effects on consumer confidence; the costs and benefits to consumers; the costs and benefits to businesses; and the administrative burden on businesses. We then consider the impact of the proposals on competition; on small firms; on the environment and on publicly funded advice services.

## **CONSUMER CONFIDENCE**

34. Consumer spending is a major part of the UK economy. It is likely that consumer spending represents approximately 60% of the UK's gross domestic product.<sup>5</sup> UK consumer spending has increased from approximately £600 billion in 2000 to just over £890 billion in 2008.<sup>6</sup> Of that, we estimate just under half is spent on goods.<sup>7</sup> That figure translates to around £420 billion per annum. In comparison to other EU member states, the UK's consumer expenditure is above average. Two reports from the European statistics source "Eurostat" show that UK consumers spend more than the average European.<sup>8</sup>

35. Consumer Focus recognised the potential effect on consumer confidence of removing the right to reject, as well as its likely effect on competition:

To abolish the right to reject would undoubtedly damage consumer confidence. It would send entirely the wrong signals to businesses and consumers. To business it suggests that high quality is not all that important and that less care need be taken of customers. Consumers would lose an important and easily understood remedy. They would also be more reluctant to try the products of less well known sellers whose remedial policies they were unfamiliar with.

36. Research shows that when consumers are confident of their rights, they are prepared to spend more. In Akerlof's seminal paper relating to the used car market, he demonstrates that the existence of "lemons" undermines consumer confidence to such an extent that the market for used cars may be almost destroyed.<sup>9</sup> Commercial guarantees can go some way to upholding confidence, but legal guarantees can go further. Minimum levels of quality, aligned with remedies, can ensure that consumers trust the marketplace.

37. This concept has become government policy:

The Government is committed to ensuring consumers get a fair deal, value for money, safe and high quality products, and greater choice. This is not only good for consumers, it is also good for British business.

Business needs demanding, confident consumers who encourage higher standards and innovation.<sup>10</sup>

38. The Government has been committed to the goal of increasing consumer confidence for many years. The Government published a White Paper in July 1999 entitled "Modern Markets: Confident Consumers", which describes the circular relationship between well-informed, confident consumers, and strong competitive businesses. In 2005, the Government reiterated its view that empowering consumers drives competition and is central to its strategy for improving the UK's consumer regime.<sup>11</sup>



39. It was clear from the FDS research that retailers' returns policies affected consumers' decisions about where to shop.<sup>12</sup> Consumers said that they would deliberately choose a store which is known to have a particularly good returns policy. This made them more confident about spending money in the store. Finding out about a store's returns policy, however, had a transactional cost; there was a limit to the amount of time and effort consumers were prepared to put into finding out about the policies of individual retailers. The result was that consumers were far better informed about the returns policies of major high street retailers than about those of small or medium enterprises.
40. The FDS research indicates that the right to reject, in particular, gives consumers the confidence to purchase brands and goods which are unfamiliar to them, and from retailers whose policies they do not know. It allows consumers to be more adventurous, by selecting unknown (and cheaper) brands. This is because they know that if the goods do not work when they get them home, they can return them and get their money back. They do not have to take the risk of shoddy workmanship or design faults which will reappear in repaired or replacement products. Nor do they have to take the time and trouble to enquire into the shop's policy before parting with their money.
41. It would appear that valued and familiar consumer rights (including a right to reject) encourage innovative and competitive markets because consumers make purchases which they might not otherwise make.

## **COSTS AND BENEFITS TO CONSUMERS**

42. A recent OFT report found that the overall level of consumer detriment due to faulty goods and services amounts to £6.6 billion per year.<sup>13</sup> A disproportionate amount of this detriment was generated by problems with insurance, but the evidence also demonstrates that issues relevant to our project can cost consumers hundreds of pounds per problem.<sup>14</sup>
43. Many disputes are resolved in accordance with the law, but the research indicates that a large number of disputes are not resolved completely. In each of the cases where there is no resolution, the consumer is left to bear at least some of the burden. For example, 15% of people spend money putting things right at their own expense. Consumers were particularly likely to experience consumer detriment when they bought personal computers, glazing and large domestic appliances.
44. Consumers also suffer from detriment in ways which are not calculated in financial terms. A considerable amount of personal time can be spent resolving issues which can leave the consumer feeling frustrated and angry.<sup>15</sup> The most vulnerable consumers, in the lowest social grades, experience greater effects both in terms of stress and their ability to spend on other items.<sup>16</sup>
45. We estimate that, in total, there are around 10 million problems (of some kind) a year related to faulty goods. This is based on the figure of 26.5 million problems a year relating to goods and services in the OFT report on Consumer Detriment.<sup>17</sup> It is stated that over half the consumer problems involved shops, mail order companies, travel agents and holiday companies. Faulty goods therefore appear to make up a significant percentage of the total problems.
46. Although our proposals would not remove consumer detriment completely, they would make problems easier to resolve, thus requiring less time to be spent on the shop floor and on the phone dealing with them, shortening the length of disputes and making legal action less likely. If we conservatively presume that one million of the 10 million problems a year are serious and difficult to solve, even two or four pounds saved by each side on average per problem, would save between £4 million and £8 million. This benefit would be shared by both consumers and businesses.
47. As the British Retail Consortium noted:

Clarification of the blurred edges of the current regime would help reduce disputes while simplification would assist consumers and retailers in understanding their rights and obligations.

## **COSTS AND BENEFITS TO BUSINESSES**

48. Consultees pointed out that if goods are faulty there will inevitably be costs because of the fact they are faulty – usually consumers will not continue to use faulty goods. If the faulty goods are not repaired, it is likely they will be disposed of, either by the consumer or by the retailer. Both repair and disposal will involve costs, whether or not the consumer is given a refund. In some cases, the cost will be borne by the consumer, in other cases it will be borne by the retailer and/or manufacturer.
49. The value of some goods drops sharply as soon as they are delivered. In these cases, if the retailer refunds the purchase price or replaces goods, they not only lose the profit from the sale but may also be left with goods worth less than their wholesale value. At worst, the retailer may have to bear the cost of disposing of a worthless product.
50. New cars are particularly prone to losing value on sale. The Retail Motor Industry Federation said that new cars generally lose 20% to 30% of their value as soon as they are driven off the forecourt. Reputable motor retailers carry out careful checks on new cars before they sell them to prevent problems occurring on delivery. They also provide quick and efficient repairs, to encourage consumers with a right to reject to agree to a repair. Having said that, retailers are generally opposed to any extension of the right to reject.
51. Large retailers will seek to pass these costs back to manufacturers whereas smaller businesses may lack bargaining power. We explore this issue in greater detail below when looking at the position of small businesses. It would also be of significant concern if our proposals were to add to waste by causing products which could be repaired to be sent for disposal. Again, we consider this cost below, when looking at the environmental impact.
52. Most businesses experience increased consumer protection as a cost. There is evidence, however, that effective dispute resolution increases sales. A survey by the OFT found that 70% of consumers who have had their complaint resolved satisfactorily will continue to trade with the same company.<sup>18</sup>
53. Extending the right to reject might increase the risk of abuse by some unscrupulous consumers. They might claim that products were faulty when they were not, simply to recoup the purchase price after they have had the use they wanted. If this were to happen, retailers say, the increased costs to businesses would ultimately be borne by all consumers in the form of increased prices.
54. We concluded that our preferred option of retention of the right to reject with clarification is a balanced package, maintaining consumer protection without excessively increasing costs to businesses.

## **THE ADMINISTRATIVE BURDEN ON BUSINESS**

55. Although consumer protection is a vital component of consumer confidence, it can impose a significant administrative burden on business. In all, the cost of government regulation has been estimated to be between £1.4 billion and £4.2 billion per year.<sup>19</sup> Administrative burdens created by consumer law alone have been estimated at around £1.25 billion a year, of which £770 million is taken up by external costs and overheads.<sup>20</sup> With such large figures, even comparably minor improvements can lead to significantly lower overheads for the business world. For example, simplified law will make it easier for businesses to train their staff. This is especially true in high street stores which tend to have a relatively high turnover of staff.
56. The Better Regulation Executive identified several important factors in relation to administrative burdens.<sup>21</sup> One of these is the volume and complexity of regulations. This means that where the number of regulations is high businesses have to turn to professional

advisors to explain the business's obligations. Another important factor is poor quality of government guidance, which means that where guidance is scant, or unhelpful, there is considerable uncertainty for businesses. As stakeholders informed us, in respect of the guidance which they had seen, it often fails to address the difficult issues.

57. It might be added that a proliferation of advice is unlikely to reduce administrative burdens. At best, it will require more time to read and compare. At worst, it could be contradictory and confuse matters further. The Better Regulation Executive report also stresses the need to consider guidance early on in the reform process, to ensure ease of use for businesses.
58. Businesses appear to agree with these criticisms of government advice as it stands. The stakeholders that we spoke to asked for more guidance, and 92% of those responding to the Hampton report in 2005 wanted more guidance from regulators.<sup>22</sup>
59. The City of London Law Society commented:

We believe that creating simple, consistent law should be a crucial approach to law reform in this area. Clear regulation also reduces the administrative costs of compliance for retailers.

60. Thus, the type and content of guidance needs careful consideration. The rewards, however, are high. Better guidance which enables businesses to ensure self-compliance could save the economy significant amounts of money.
61. Our preferred option of retention of the right to reject, together with clarification of how long it lasts will simplify the law and reduce administrative burdens on business. We also propose that guidance should be published in areas where stakeholders have said that guidance would be useful.

## **SPECIFIC IMPACT TESTS**

62. We have considered the specific impact of our proposals in four areas of particular relevance. These are the impact on competition; on small firms; on the environment; and on publicly funded advice and assistance.

### **Competition assessment**

63. As described above, our research indicates that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
64. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wanted at an excessive price.
65. It would appear that competition is best served by a balanced approach. The law should provide a floor of familiar and valued rights. We think that a clarified right to reject would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. They will then know that if the goods are not as promised, they can get their money back. However, additional rights (such as an extended right to reject) would be best left to the market.

### **Impact on small firms**

66. Small firms are an important part of the retail sector. In 2007 there were 317,450 businesses with fewer than 50 employees in the retail or repair business (dealing with products other than motor cars). They accounted for a quarter of all retail turnover.<sup>23</sup>
67. Ethnic minority businesses are concentrated within this sector.<sup>24</sup> Some studies suggest that as many as three-quarters of all independently-owned single retail outlets are Asian.<sup>25</sup>

68. Small firms are especially sensitive to the effects we have outlined above. First, they may find it difficult to cope with the present complexity in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings.<sup>26</sup>
69. Secondly, small firms would be the first to be affected by a change in consumer confidence. Without the right to reject, consumers would continue to buy from large firms with well-known reputations. They would, however, become more reluctant to shop at small stores whose returns policy was unknown. Any reduction in consumer rights is likely to be accompanied by considerable publicity. Major stores would be able to use their public relations departments to emphasise their own excellent policies on returns but this might be at the expense of smaller firms.
70. Thirdly, small firms would be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods on to manufacturers. Where a manufacturer sells faulty goods to a retailer, the law implies terms that goods should correspond with their description or sample, and should be of satisfactory quality or fit for the buyer's purpose.<sup>27</sup> These are similar (though not identical) to those for consumers. However, a manufacturer may use its bargaining position to exclude its liability for breach of these terms, in so far as it is reasonable to do so.<sup>28</sup> We were told that manufacturers frequently impose time limits, stating (for example) that they will not recompense retailers for the cost of faulty products unless they are notified of the problem within three months of delivery to the retailer. However, the retailer may not be aware of the problem until the goods are bought, used by the consumer and then returned. If consumer rights were to be extended significantly, small businesses might be squeezed between the consumers and the manufacturer.
71. Our conclusion is that the greatest benefit to small firms lies in retaining the right to reject but clarifying it.

### **Impact on the environment**

72. Any policy which encourages goods to be disposed of rather than repaired would have an impact on the environment. The cost of disposal can be significant. From April 2008, the landfill tax has risen by £8 a tonne, and will do so each year for the next three years. By 2010/11, landfill tax will be £48 a tonne.<sup>29</sup>
73. This is a particular concern with regard to electrical and electronic goods. In 2000, the European Commission drew attention to the high and increasing cost of waste electrical and electronic equipment.<sup>30</sup> It pointed out that over 90% was landfilled, incinerated or recovered without any pre-treatment, even though it may contain hazardous pollutants.
74. We therefore considered carefully whether the existence of the right to reject encourages the disposal of goods which would otherwise be repaired. The issue arises only in relation to high value goods where repair is an economic possibility. In the case of low value items (such as kettles), repair is not realistic due to the cost of specialist labour. The choice of remedy is effectively between a refund and a replacement. A replacement which did not meet the consumer's needs would be particularly wasteful. The environmental effect would (if anything) be less if the law encouraged a refund.
75. Only one respondent to our consultation commented that extending the right to reject would increase landfill. The remainder suggested that, if it were extended, traders would be more likely to supply higher quality goods. As the Local Authorities Coordinators of Regulatory Services said:

If the business receives a number of faulty items back from consumers, they will hopefully ensure that future versions of that item have the latent fault removed. This could decrease landfill in the long term, by providing higher quality goods that don't break as quickly.

76. We are concerned that extending the right to reject might increase the risk of abuse by some unscrupulous consumers. They might deliberately break products, or claim that they are faulty, after they have had the use they wanted from them. If this were to happen, it would have a negative environmental impact.

### **Impact on publicly funded advice and assistance**

77. Our proposals to simplify consumer remedies would have a positive impact on advice services. During our consultation, consumer organisations highlighted how difficult it was to provide clear and concise advice under the current law. Consumer advisers could be trained more easily, and be able to provide shorter, more confident advice. Consumers would also feel more confident with the information they had received, and feel less need to talk to an adviser.

78. In Part 7 of our Report, we recommend that notices or leaflets in shops should say how consumers can obtain further information about their rights. Consumer Direct would appear to be well suited for this task. However, the recommendation has resource implications. It would only be possible if Consumer Direct were provided with sufficient funds to deal with the increased demand on its services. We make our recommendation realising that the Department for Business, Innovation and Skills would need to cost the implications of such a proposal before proceeding further.

### **RESPONSES TO CONSULTATION**

79. The majority of respondents agreed that the best option for reform was to retain the right to reject with appropriate clarification. The vast majority also agreed that this option would decrease costs to business and that it avoids undermining consumer confidence.

### **CONCLUSION**

80. We therefore conclude that the option producing the best economic, environmental and social effects is the retention of the right to reject with the clarification we have proposed.

1. Davidson Review, *Final Report* (November 2006).
2. FDS Report, attached at Appendix A to the Consultation Paper on Consumer Remedies for Faulty Goods (Law Com CP 188, Scot Law Com DP 139).
3. See above, paras [6.47 to 6.55].
4. *J & H Ritchie Limited v Lloyd Limited* 2007 SC (HL) 89; [2007] 1 WLR 670; [2007] 2 All ER 353.
5. According to Eurostat, *Europe in figures: Eurostat yearbook 2008* (2008) p 232, consumer spending in the UK was 61.9% of GDP in 2000 and 60.6% of GDP in 2005. However, Eurostat, *Economic portrait of the European Union 2002* (2003) p 25, states that in 2001 household consumption amounted to 66.3% of GDP.
6. Office for National Statistics, *Consumer Trends: Quarter 1 2009*.
7. Above.
8. Eurostat, *Economic portrait of the European Union 2002* (2003) and Eurostat, *Europe in figures: Eurostat yearbook 2008* (2008).
9. G A Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism" (1970) 84 *The Quarterly Journal of Economics* 488.
10. Taken from the BIS website: <http://www.berr.gov.uk/consumers/policy/index.html>, last accessed 26 August 2009. This same belief has been noted in the European context: see the Sutherland Report (*The Internal Market after 1992: Meeting the Challenge* SEC (92) 2044 (1992)).
11. Department of Trade and Industry, "A Fair Deal For All. Extending Competitive Markets: Empowered Consumers, Successful Business" (2005).
12. Appendix A to the Consultation Paper on Consumer Remedies for Faulty Goods (Law Com CP 188, Scot Law Com DP 139). See also Part 9 of Consumer Remedies for Faulty Goods: A Summary of Responses to Consultation (13 May 2009).
13. Office of Fair Trading, *Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services* (April 2008) para 4.4.
14. Above, chart 4.5.
15. Above, chart 5.3.

16. Above, p 48.
17. Office of Fair Trading, *Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services* (April 2008).
18. OFT, *Competition Act and Consumer Rights* (May 2004).
19. Better Regulation Executive, *Regulation and Business Advice* (2007) p 8. The higher figure was calculated on the basis of the Government's administrative burdens exercise, while the lower figure comes from a private sector consultancy.
20. BERR, *Consumer Law Review: Call for Evidence* (May 2008) pp 8 and 9. These are based on the Better Regulation Executive's database of administrative burdens.
21. Better Regulation Executive, *Regulation and Business Advice* (2007) p 9.
22. P Hampton for HM Treasury, *Reducing administrative burdens: effective inspection and enforcement* (March 2005) p 5.
23. See [www.stats.berr.gov.uk/ed/sme/](http://www.stats.berr.gov.uk/ed/sme/), last accessed 26 August 2009.
24. Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See [www.berr.gov.uk/files/file38247.pdf](http://www.berr.gov.uk/files/file38247.pdf).
25. For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at [http://www.london.gov.uk/mayor/economic\\_unit/docs/asian\\_businesses.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf). Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.
26. J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100.
27. Sale of Goods Act 1979, ss 13 and 14.
28. Unfair Contract Terms Act 1977, ss 6(3) and 7(3) in England and Wales, and ss 20(2)(ii) and 21(1)(a)(ii) in Scotland.
29. <http://www.defra.gov.uk/ENVIRONMENT/waste/topics/index.htm>.
30. See Proposal for a Directive on Waste Electrical and Electronic Equipment, Brussels 13.6.2000, COM (2000) 347 final.