

REFORM OF CONSUMER LAW – 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.

Contents

FOREWORD	4
EXECUTIVE SUMMARY AND OVERVIEW	6
Consumer Protection From Unfair Trading (Amendment) Regulations	9
Summary	9
What's the problem?	9
Consultation	10
Detail of measures	10
Measure 1: Introduce a private right of redress for consumers who have been victims of a misleading or an aggressive practice	10
Measure 2: Introduce standard remedies	11
Measure 3: Entitlement to seek damages	12
Consumer Contracts (Information, Cancellation and Additional Payments) Regulations	13
Summary	13
What is the problem?	13
Consultation	14
Detail	15

FOREWORD



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

We have engaged extensively with consumers, businesses and enforcers to bring forward draft legislative proposals to make consumer rights clearer and thereby help promote confident consumers. The Government published those proposals in the form of a draft Consumer Rights Bill, last month, and it is now the subject of pre-legislative scrutiny to test how the proposals will work.

As part of the overall package of legislative reform, the Government is also proposing two further reforms, to be taken forward in secondary legislation. I am publishing those proposals in further detail today.

Despite the high standards exhibited by the vast majority of businesses, there are traders who seek to exploit consumers. Consumer Focus estimated that in 2009 misleading or aggressive commercial practices cost consumers around £3.3bn. Often it is the most vulnerable in our society who are targeted: stories of elderly or disabled people exploited by traders calling at their door are too common. Further rights of redress are necessary. The first proposal for reform therefore sets out how Government will make it simpler and easier for consumers to get their money back when they have been victims of a misleading or aggressive commercial practice.

The second proposal for reform will implement the EU Consumer Rights Directive in UK law. In the current economic climate it is more important than ever that UK business and consumers reap the benefits of the Single Market. The Consumer Rights Directive will ensure that information given upfront to consumers is clear and that they will not be surprised by hidden costs. Measures in the Directive are aimed at increasing consumer confidence. They also aim to reduce costs for businesses selling across different EU countries and who currently have to comply with different consumer regulations. UK retailers have a real opportunity to expand - the UK is the second favoured destination for cross-border online shopping in the EU.

Taken together with the Consumer Rights Bill I believe this legislative reform represents a great and important opportunity to benefit consumers,

businesses and provide the right framework for a stronger economy. I welcome your comments on these proposed changes.

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 AND OVERVIEW

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 changes which are part of a fundamental reform of consumer legislation, which will:

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

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 to be more confident, experimenting with new products or services and switching suppliers. This should drive innovation and greater competitiveness, and help to build a stronger economy.

An overview of the full package of reforms was published in June 2013.¹ This document contains the Government Response and further detail on two specific elements of the overall reform which are being taken forward in secondary legislation: the draft *Consumer Protection from Unfair Trading (Amendment) Regulations*, which reform the law on misleading and aggressive practices, and the draft *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations*, which implement the European Consumer Rights Directive (CRD).² This is in response to reports and consultations undertaken by the Law Commissions, and consultations undertaken by BIS. The Government is grateful to all those

¹ <https://www.gov.uk/government/publications/draft-consumer-rights-bill>

² Directive 2011/83/EU on consumer rights – 25 October 2011

who have taken the time to contribute to these consultations and discussions.

The draft *Consumer Protection from Unfair Trading (Amendment) Regulations* will enhance the opportunities for redress for victims of misleading and aggressive practices. The law providing redress for victims of misleading commercial actions is too complex while the law on aggressive practices leaves gaps in consumer protection. This causes consumer detriment (particularly amongst the most vulnerable consumers) and undermines the operation of the legitimate market. The Government aims to provide consumers with clearer and simpler routes to redress for misleading and aggressive commercial practices and will introduce:

- a. A private right of redress for consumers who have been victims of misleading or aggressive practices
- b. Standard remedies for those victims.
- c. Entitlement to seek damages

The draft *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations* implement the European Consumer Rights Directive and cover three main areas of consumer rights:

- a. Information which traders should provide to consumers
- b. Cancellation rights and responsibilities for distance and off-premises sales
- c. Measures to prevent hidden costs

The new Regulations aim to ensure that consumers and traders are clear about the bargain they are making, with clear, upfront information and no hidden costs. In implementing the Consumer Rights Directive, the measures also aim to encourage growth and consumer confidence so that consumers and businesses face only one set of rules in these areas, wherever they sell and buy in the EU.

Although this is a response to consultations that have already taken place, the Government is keen to ensure its proposals are as clear and effective as possible. Therefore, we welcome any further comments on the draft legislation, particularly on the question of whether to extend to the travel and timeshare sectors the measures in the draft Consumer Contracts Regulations which prevent hidden costs.

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

Consumer Rights Directive:

<https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>

Misleading and Aggressive Practices:

<https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/misleading-and-aggressive-selling>

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 11 October 2013.

Devolution

Regulation of the sale and supply of goods and services to consumers is not devolved to Scotland and Wales, but is transferred to Northern Ireland. 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 Government's aim is to ensure consistency of consumer rights across the UK whilst respecting the devolution settlements.

Consumer Protection From Unfair Trading (Amendment) Regulations

Summary

This section sets out the Government response to the report by the Law Commission and the Scottish Law Commission (“the Commissions”) on proposals for consumer redress for misleading and aggressive practices (“the Report”).³ The Commissions concluded in the Report that it is currently difficult for consumers to obtain redress where they have experienced misleading or aggressive practices in their dealings with traders.

The Government has accepted all the key recommendations of the Law Commissions’ Report and intends to implement these in secondary legislation, published alongside this document in draft,⁴ with the aim of:

- providing consumers with more avenues for redress against non-compliant traders
- reducing administrative costs on businesses through clearer, simpler law
- combating misleading and aggressive practices which undermine competitive markets.

The impact assessment, published alongside this Government Response, estimates that these measures would reduce and deter these practices, save legitimate businesses resources from less costly complaint handling and increase compensation to consumers of between £2 – 5 million each year.⁵

What’s the problem?

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) changed public regulation in this area. Under the Regulations, traders are prohibited from engaging in misleading and aggressive practices in their dealings with consumers. They are enforced by the Office of Fair Trading and Trading Standards Services which can bring criminal and civil proceedings. However, the CPRs do not give consumers a private right of redress to pursue their own actions.

Despite the high standards exhibited by the vast majority of businesses, there are traders who seek to exploit consumers. In 2009 Consumer Focus commissioned research into consumers’ experience of unfair commercial

³ For a copy of the report please visit: <http://lawcommission.justice.gov.uk/publications/Consumer-redress.htm>

⁴ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/misleading-and-aggressive-selling>

⁵ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/misleading-and-aggressive-selling>

practices and estimated that the total detriment suffered by consumers was around £3.3 billion.

The Commissions' Report concluded that it is currently difficult for consumers to obtain redress where they have experienced misleading or aggressive practices in their dealing with traders. They considered the existing law of misrepresentation (which covers misleading practices) to be fragmented, complex and unclear. This deters consumers from seeking redress and creates additional costs for businesses. Meanwhile, the law on aggressive practices provides consumers with only patchy and inadequate protection. The Commissions said that this was an area of particular concern given that aggressive practices are often targeted against vulnerable elderly consumers.

Consultation

In 2010 BIS asked the Commissions to consider the reform of private law in this area. Between April and July 2011, the Commissions undertook a public consultation including extensive stakeholder contact and discussions.⁶ The Commissions published their findings in March 2012 which included 52 recommendations for law reform in this area.⁷ The Commissions proposed a new scheme of remedies, aiming for clarity and simplicity. There was overwhelming support from consumer organisations, business and business representatives that reform was needed. The Government's response to the recommendations made by the Commissions is published alongside this document.⁸

Detail of measures

The Government will introduce:

1. A private right of redress for consumers who have been victims of misleading and aggressive practices
2. Standard remedies for victims of misleading or aggressive practices
3. Entitlement to seek damages for additional economic losses, and distress and inconvenience caused by misleading or aggressive practices.

Measure 1: Introduce a private right of redress for consumers who have been victims of a misleading or an aggressive practice

The Government agrees that simplification of the law on consumer redress for misleading and aggressive practices will improve outcomes for consumers.

⁶ For a copy of the consultation paper please visit: <http://lawcommission.justice.gov.uk/areas/misrepresentation-and-unfair-commercial-practices.htm>

⁷ http://lawcommission.justice.gov.uk/docs/lc332_consumer_redress.pdf

⁸ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/misleading-and-aggressive-selling>

The Government proposes to amend the CPRs to introduce a new right of redress for victims of such practices.

Where consumers have been misled or bullied into making payments, for example in relation to wheel clamping charges or demands for unpaid parking charges, the existing law of unjust enrichment is overly complex and fails to provide a clear remedy. Many consumers are being pursued for debts that they do not even owe. The new proposals will therefore also enable consumers to obtain redress when they are subject to misleading or aggressive payment collection practices.

Example

- *A young mother is shopping with two small children. One of the children takes a drink from a shelf and opens it. The mother is subsequently detained by the shop's security guard, despite her offer to pay for the drink. The police are not called to attend, and she is allowed to leave.*
- *She later receives a letter from a recovery agent, demanding £100 for administration and security costs. The value of the goods allegedly stolen is listed as "nil". The letter adds that the company will accept £60 in settlement if she pays promptly. The letter also states that if she wishes to contest the case they would apply for court costs which could run into thousands of pounds and they will have the woman banned from the local shopping centre. Despite being unable to afford it, the woman pays the £60 because she feels threatened.*
- *Under the new legislation, the woman subsequently takes her own action against the recovery agent due to the misleading and aggressive nature of their demands for payment. The court orders the recovery agent to refund her £60 and awards her damages due to the inconvenience and stress caused*

Measure 2: Introduce standard remedies

The Government will introduce standards remedies for victims of misleading and aggressive practices, including:

- *Right to unwind:* If the goods or services have not been fully consumed, and the consumer rejects them within 90 days, the consumer will be entitled to "unwind" the contract or payment and receive a full refund of the price paid.
- *Right to a discount:* Alternatively, consumers may decide to keep the remaining goods or services and claim a discount on the price paid. The right to a discount will continue to be available even when the right to unwind has been lost. The level of the discount will be set according to statutory bands.

Example

- *A disabled man decides to buy a mobility scooter. He contacts a number of companies to obtain a quote but one company insists on visiting his home address to discuss his needs.*

- *A salesman arrives the next day and makes a number of false claims regarding the product, including that his firm is the only one authorised to provide mobility scooters for use in that area. Based on these false claims the man purchases the mobility scooter and signs a contract agreeing to pay £80 a month for 24 months. All the claims made by the salesman are subsequently found to be false.*
- *The man seeks advice from a consumer organisation who advise him that he can take his own action against the company.*
- *Using the new rights the man takes the company to court himself. The court orders that the company should provide a full refund and that the contract should be terminated.*

Measure 3: Entitlement to seek damages

In addition to the standard remedies above, consumers will be entitled to damages if they can prove the misleading and aggressive practices caused further economic losses, or distress or inconvenience.

Example

- *A saleswoman arrives at an elderly couple's house offering a will writing service. After letting her in, the elderly couple decide that they do not want the service being offered. Despite being asked to leave several times the saleswoman refuses to leave and informs the couple that they are now under an obligation to purchase her service.*
- *Out of desperation the elderly couple sign up to the will writing service thinking they are paying £30. Subsequently they are presented with a bill for £3000 which they are told they are contractually obliged to pay.*
- *Fearing the company, the couple pay up.*
- *The couple are embarrassed by what has happened and the offence only comes to light a few weeks later when the couple's daughter discovers a bill from the company.*
- *Using the new rights the couple's daughter helps them bring a claim against the company. The court orders that the couple are entitled to a full refund and damages for the stress and inconvenience caused to them by the saleswoman.*

Consumer Contracts (Information, Cancellation and Additional Payments) Regulations

Summary

The draft *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations* aim to implement the European Consumer Rights Directive and cover three main areas of consumer rights:

- Information which traders should provide to consumers
- Rules regarding cancellation rights for distance and off-premises sales
- Measures to prevent hidden costs

The draft Regulations aim to ensure that consumers and traders are clear about the bargain they are making, with clear, upfront information and no hidden costs, thereby increasing confidence and reducing costs for businesses and consumers of making transactions in the UK and across the EU. The Impact Assessment, published alongside this document, estimates a net benefit from these reforms of over £2 billion over 10 years to the UK economy.⁹

Most of the provisions in the European Consumer Rights Directive are subject to maximum harmonisation. This means that Member States must implement the provisions as set out in the CRD; no more and no less. This should help to create a level playing field and consistent level of consumer protection across the EU, reducing compliance costs for businesses, creating more confident consumers and helping the Single Market to work better.

What is the problem?

UK businesses and consumers are not fully reaping the benefits of the Single Market. Fragmentation of national laws regulating consumer transactions across the EU has meant that business, in particular small and medium enterprises, key drivers of growth, have been more reluctant to explore export opportunities offered in trading across EU borders. This reluctance primarily stems from the additional costs of compliance when trading cross-border. There are also barriers for consumers wishing to take part in cross-border shopping, diminishing their access to wider choice and lower prices.

In a Flash Eurobarometer survey, conducted with retailers across the EU, one-third of retailers said that they would be interested in making cross-border sales if laws regulating transactions with consumers were the same across the EU, while 31% of retailers thought their cross-border sales would increase

⁹ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>

in a more harmonised regulatory environment. In the UK, the survey found that between 88% and 93% of retailers used “distance” sales channels.¹⁰

A study on cross border e-commerce found that UK retailers are the second favoured destination for cross-border online shopping in the European Union; 24% of online cross-border shoppers bought products in the UK.¹¹ There is, therefore, clearly a demand for goods from UK retailers, and opportunities for those UK retailers who do not yet offer goods and services cross-border. Encouraging such exports could benefit both the retailers and UK economic growth.

Current regulations on distance selling and off-premises sales give important protections, but also have areas where lack of clarity can lead to diminished consumer confidence.¹² Distance selling includes sales conducted over the internet or the telephone. Off-premises sales can take place in a consumer’s home, workplace, or anywhere other than the trader’s place of business.

The draft Regulations published alongside this document aim to address imbalances which have become apparent within the current regime, particularly on distance and off-premises sales. The current 7 day cancellation period may not always give the consumer sufficient time to consider a distance or off-premises purchase. For goods bought off-premises, the current rules mean that the consumer may not even get to see the goods within the cancellation period. Under distance selling rules, where the consumer changes their mind about something bought online, the trader must currently give a refund within 30 days even if goods have not been returned. Where goods are returned, because the consumer changes their mind, and there is evidence of use, traders are unable to recoup the diminished value without recourse to court processes. All these issues impact on confidence and growth.

In addition to lack of clarity in distance and off-premises sales, hidden costs in any sales also mean that it is difficult for consumers to identify the most competitive offers. This leads to detriment for both the consumer and for those traders who are genuinely competitive but whose offers are not recognised as such when compared to those traders who employ hidden cost practices.

Consultation

As well as ongoing consultation across business and consumer groups, two formal consultations have been conducted. The first, in November 2008, gathered views on the European Commission’s proposal for a Consumer

¹⁰ Flash Eurobarometer 300 (Retailers’ Attitudes towards cross-border trade and consumer protection – March 2011)

¹¹ Consumer Market Study on the functioning of e-commerce and Internet marketing and selling techniques in the retail of goods – Civic Consulting Sept 2011.

¹² The Consumer Contracts (Information, Cancellation and Additional Payments) Regulations would replace the current Distance Selling Regulations 2000 and the Cancellation of Contracts Made in a Consumer’s Home, Place of Work etc Regulations 2008. These will be repealed when the new Regulations come into force.

Rights Directive. This informed the UK Government's views throughout negotiations to ensure that the Directive agreed provided a fair and effective framework for business whilst maintaining high levels of consumer protection. In August 2012 BIS ran a further consultation seeking views on the scope of the Directive, and those provisions in the Directive where we had options with regard to implementation. Comments were also sought on whether there were aspects or drafting in the Directive where stakeholders would welcome further clarity. 66 responses were received. The Government has considered consultation responses carefully in preparing the draft Regulations and a summary of the responses received is published alongside this document¹³.

Detail

Clear information before a sale

Currently requirements regarding the information which a trader must provide are spread across a number of pieces of legislation, which are outdated and unclear.¹⁴ The draft regulations would increase clarity by setting out details of the information which a trader should provide to a consumer for most types of sales. This upfront information should ensure that both the consumer and the trader are clear about the bargain they are making. Subject to a few exceptions, the information must include, amongst other things, the name, geographical address and phone number of the trader, the total price for the goods and services (including taxes), and arrangements for payment, how the goods are to be delivered (if applicable), and the trader's complaints procedure.

Clear information and cancellation rights in distance and off-premises sales

The draft Regulations will align information requirements for sales at a distance and away from a trader's premises. They require that consumers must be given a confirmation or copy of their contract in writing.

The draft Regulations also streamline different rights to cancel distance and off-premises sales, aligning the cancellation period to 14 days. If no information on the consumer's right to cancel the contract is provided, then the cancellation period is extended to 12 months. The draft Regulations set out how to cancel contracts made at a distance and off-premises. For example, they make clear that traders do not have to provide a refund until goods are returned, which is not currently the case. The Regulations also make clear that cancelling the main contract also means that any ancillary contracts (such as insurance) will also be terminated automatically.

Example:

- *A customer orders a dress from a catalogue. When it arrives, they ring the retailer and say it is not how it looked in the picture and ask for their*

¹³ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>

¹⁴ <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>

money back. They say they will post the goods back, but never get round to it.

- *Under the current law, the retailer has 30 days from this point to provide a refund, and must do so even if the dress is not returned.*
- *Under the new Regulations, the trader has 15 days to provide a refund, providing the dress is returned or the customer can provide proof of postage. If the dress is not returned, the trader can withhold the refund.*

Hidden cost provisions

The Regulations contain a number of provisions to stamp out hidden costs in consumer contracts, such as ambiguous free trials which eventually result in payment, or pre-ticked boxes on websites which a consumer may overlook. These hidden costs prevent consumers from understanding fully the cost of what they buy, and penalise fair dealing businesses whose offers do not appear competitive next to those involving hidden costs.

Example

- *A consumer buys a camera online. The website has an option to buy an extended guarantee.*
- *Under the current law, this option could be ticked automatically on the website. If the consumer did not want to buy the extended guarantee, they would actively have to untick the box.*
- *Under the new Regulations, the option must not be ticked automatically. If the consumer did not want the extended guarantee, they would not have to do anything.*
- *This means that consumers are less likely to make extra purchases without meaning to do so, and makes the process more transparent.*

The Directive also bans excessive charges for using certain payment methods such as credit cards. This has already been implemented in the UK through the Consumer Rights (Payment Surcharges) Regulations 2012.¹⁵

The draft Regulations also implement the Directive's requirement that consumers must not be charged more than the basic rate to telephone a customer helpline about something they have bought.

Scope of the Regulations

While most of the Directive is subject to maximum harmonisation, there are some areas where Member States have some flexibility, mainly relating to how the Directive is applied to a list of 13 exempted sectors. The Government intends not to extend the provisions to the exempted sectors in the majority of cases. That includes financial services and property sectors and those activities which are regulated by the Gambling Act 2005, on the basis that these sectors are subject to appropriate sector specific legislation.

There are two areas where the Government intends to apply the Directive provisions to exempted sectors:

¹⁵ SI 2012/3110.

- Social services and to healthcare services provided by professionals (except for products provided on prescription). These areas were exempted from the Directive to give flexibility for Member States to allow higher protections than the maximum harmonisation rules, if appropriate. These sectors are currently covered by distance selling and off-premises regulations, which have provided important protections for vulnerable consumers buying care at home. If the new Regulations did not apply to these sectors, these protections would be lost when the current rules on distance and off-premises sales are repealed.
- The application of the hidden costs provision to low value (below £42) off-premises contracts. This will align with the requirements for distance sales where no such exemption is offered and help prevent confusion for consumers and businesses on which provisions apply to which value and type of sales. It would also prevent traders from offering an artificially low price to avoid these protections and then add back in higher charges through additional payments.

However, the Government is also seeking further views on whether to apply *all* the hidden cost provisions to the travel and timeshare sectors. The Directive already extends some of the hidden cost provisions to parts of these sectors. Also under the European Commission's proposal for a new Package Travel Directive, published on 9 July 2013, all the hidden cost provisions of the Consumer Rights Directive would then apply across package travel arrangements within three to four years.¹⁶ Given the potential confusion for businesses and consumers about which type of travel contract is covered now or would be covered in three to four years time, the Government is seeking views on whether, for clarity, all the hidden cost provisions should be incorporated now, in the draft Regulations.

¹⁶ Proposal for a Directive of the European Parliament and of the Council on package travel and assisted travel arrangements amending Regulation (EC) No 2006/2004, Directive 2011/83/EU and repealing Council Directive 20/314/EEC – COM(2013)512 final

