



Department
for Business
Innovation & Skills

CONSUMER RIGHTS BILL

Table of responses to
consultations

JUNE 2013

This document summarises the responses received to the public consultations that the Government has held to inform its proposals to reform consumer legislation.

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Consumer Rights Bill – table of responses to consultations

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content* ran from 3 July 2012 to 5 October 2012, and 46 responses were received. The original consultation can be found: <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>. The following tables summarise the responses received to this consultation.

Consumer Rights Bill – Consultation Relating to Goods, Services and Digital Content			
Question	Views of business and business representatives	Views of consumer representatives	Other
<p>Question 1. Do you agree that all businesses should be subject to the same framework of consumer protection for the sale and supply of goods, services and digital content, or Do you consider that micro-businesses should be exempt from any or all of the new proposals and remain subject to the current framework?</p>	<p>The vast majority of respondents agreed.</p> <p>While some commented that it might unduly disadvantage micro-businesses, most agreed an exemption could result in consumer mistrust in buying from these businesses.</p>	<p>All respondents agreed.</p> <p>Most thought that applying different standards would confuse consumers and undermine their confidence.</p> <p>There was also concern that different standards could negatively affect business practice, either by allowing businesses to falsely claim the lower standard or depriving businesses on the lower standard from trade.</p>	<p>All public bodies agreed. They frequently commented that both consumers and businesses would be burdened by different standards.</p>

<p>Question 2. Do you agree with the Government's proposal to introduce a single definition of 'consumer' and a single definition of 'trader'? ¹</p> <p>Do you have any concerns with any aspects of the proposed definitions?</p>	<p>The vast majority of respondents agreed, often on the basis of simplicity and alignment with EU definitions.</p>	<p>All respondents agreed. Some had reservations about how the definition would affect the rights of consumers in online auctions.</p>	<p>Almost all public bodies agreed. Those with concerns thought that sole traders and micro businesses should fall within the consumer definition.</p>
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¹ See the consultation for detail of the proposed definitions - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31350/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf

1 Goods

Summary of Responses

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content* ran from 3 July 2012 to 5 October 2012, and 47 responses on goods-related questions were received for the written consultation, with an additional 178 responses to the shorter online version. The original consultation can be found: <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

Clearer rights			
Question	Views of business and business representatives	Views of consumer representatives	Other (Trading Standards, Academics, Law Societies, individuals, etc.)
Question 3. Do you agree that it would be beneficial for a single definition of 'goods' to be used for the protections explored in this chapter and provisions of EU law? Do you consider that the use of the following EU definition would be appropriate (please give reasons) ² ?	There was universal support for the adoption of a single definition for goods across the legislative package. Some respondents felt that explanation would be needed regarding the meaning of sale in a limited volume or set quantity for electricity, gas and water.	All respondents supported the adoption of a single definition for goods across the legislative package.	All respondents supported a single definition for goods across the legislative package. Two respondents highlighted that the phrase "items sold by way of execution or otherwise by authority of law" would benefit from clarification.

² The definition is as follows: "Goods" means any tangible movable items, with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity shall be considered as goods where they are put up for sale in a limited volume or a set quantity.

<p>Question 4. Do you believe that this³ is a sensible change or can you foresee problems arising from a move away from the implied terms model?</p>	<p>Generally, businesses were in favour of the proposal with one respondent commenting that the new model should not refer to the terms as “guarantees” as this may lead to confusion with other types of guarantees (e.g. manufacturers’ guarantees).</p>	<p>Respondents were generally in favour, though one had concerns about the watering down of consumer rights as they felt the consultation was unclear whether information on minor characteristics, information from trader employees, not sanctioned by their employer, or information from the manufacturer be incorporated into the contract as is currently the case?</p>	<p>Responses were mixed. While some were in favour there was concern from a number of respondents that the new model should not refer to the terms as “guarantees” as this may lead to confusion with other types of guarantees (e.g. manufacturers’ guarantees).</p>
<p>Question 5. What benefits can you see from moving away from the implied terms model?</p>	<p>Respondents in favour highlighted the potential benefits in terms of greater clarity and simplicity. Those opposed questioned whether the benefits would be as significant as suggested in the consultation.</p>	<p>Most respondents felt that there would be benefits from greater clarity and simplicity. However, others saw no real benefit from these changes. Some respondents thought there would be limited impact from the changes, and some appeared to believe that the intention was to make more extensive changes that is the case, with the risk that consumer rights would be watered down..</p>	<p>Respondents highlighted the benefits of clarity and simplicity from moving away from the implied terms model.</p>
<p>The short-term right to reject faulty goods</p>			

³ The proposal outlined was a move away from the current system of implied terms to the adoption of a system of statutory guarantees which clearly state the quality standards that goods must meet and the remedies available to the consumer if these guarantees are breached.

<p>Question 6. Is 30 days a reasonable period to set for the short term right to reject substandard goods?</p>	<p>The majority of the business respondents felt that 30 days is a reasonable period. However some commented that 28 days may be preferable.</p>	<p>All respondents thought that 30 days was a reasonable period, though one added that there must be a clear route to remedies including a full refund beyond the 30 day period.</p>	<p>A significant majority were in favour of 30 days. The remaining minority felt that 30 days could be too short and one respondent felt that any fixed period would be too prescriptive to work for all circumstances.</p>
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<p>Question 7. Do you agree that an exemption is required for goods where there may be a delay before use, or does this represent an unwarranted complication?</p> <p>Question 8. What evidence should a consumer have to produce to benefit from this exemption and do you think this can and should be provided for in statute?</p> <p>Question 9. If an exemption is provided, do you agree that in order to make use of the provision, the likely delay must be raised by the consumer at the time of sale and the exemption be agreed by both parties at that time?</p>	<p>Most respondents were not in favour of an extension. Some thought that it would undermine the certainty of the simple 30 day rule, and that record keeping would be difficult and costly. There were mixed views on what evidence would be sufficient with some highlighting the need for clear, objective criteria would be needed, while others felt that evidence of non-use would be sufficient. There were also mixed views on whether or not the consumer must raise the possibility of the delay before use at the time of sale. Some respondents felt that the consumer should be required to raise the issue at the point of sale, whereas others acknowledged that this would be difficult to operate in practice.</p>	<p>All consumer representatives were in favour of an extension. There was a wide range of opinions on what evidence should be required with most saying that the consumer should be expected to make it clear at the point of sale. Some respondents stated that written agreement would be necessary.</p>	<p>The majority of respondents were in favour of an extension.</p>
<p>Question 10. Do you agree that the consumer should be allowed 7 days to examine the goods after any repair has been carried out, before losing the right to reject?</p>	<p>The majority agreed that the 30 days period should be paused for the duration of any repair or replacement and that the consumer should have the remainder of the period or 7 days (whichever is longer) to</p>	<p>The majority agreed with the proposal, though there was some concern that 7 days might not be sufficient.</p>	<p>The majority agreed with the proposal that the consumer should be allowed 7 days to examine the goods after any repair before losing the right to reject. However, some felt that the 30 day period should be restarted</p>

	inspect the goods before the rejection period ends.		following a repair or replacement.
Question 11. Do you consider that there is a need for the remedies for sale by description and for misleading practices to be aligned? If yes, do you think that they should both have a period of 30 days or 90 days?	Responses on whether or not alignment was needed were split. Those against alignment argued that the two situations are recognisably different and there is little reason to align. Those in favour thought that alignment would benefit simplicity, and the general preference among these respondents was for 30 days for both provisions.	Responses were split. Those in favour argued that alignment would provide greater simplicity and consumer protection. These tended to prefer a 90 day period for both provisions. Those against thought that there is little need to align the two as they are sufficiently different.	The majority of respondents were in favour of alignment. Responses on the 30 or 90 day period were split.
Repair or replacement of faulty goods			
Question 12. Which of the proposed models do you believe would be the best approach? ⁴	Among businesses Option 4 was the most popular approach though one respondent argued that no single approach would sufficiently address every possible scenario.	Option 2 was the preferred option amongst respondents though one felt that a hybrid approach of options 1 and 4 - a limit of 2 repairs/1 replacement but with a cumulative time restriction of 14 days.	Respondents were split between preference for Option 1 or 2. Some respondents preferred a hybrid approach of options 1 and 4 with a limit of 2 repairs/1 replacement but with a cumulative time restriction of 30 days.
Question 13. In Option 4, do you agree that a cumulative total of 14 days for repairs or	Almost all respondents felt that 14 days was unsuitable due to the length of time needed for	All those who responded agreed that the 14 day proposal was reasonable.	All those who responded were strongly against a 14 day period, arguing that it was too

⁴ Option 1 was 2 repairs or 1 replacement; Option 2 was 1 repair or 1 replacement; Option 3 relaxed the limit on the number of repairs if each cost less than 5% of the original price of the goods; Option 4 was to limit the overall time of the repairs. See the consultation document (paragraphs 5.106 to 5.127) for further information on the options - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31864/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf

replacements is a reasonable limit? If not, how many days do you believe would be preferable?	complex repairs and transport to and from the manufacturer. However some respondents thought that there should not be a fixed period.		prescriptive.
Question 14. Do you agree that, if a temporary replacement of equal or higher quality is provided for the duration of any repair/replacement process, that the limit under Option 4 should be set higher, for example at 28 days or 30 days, or waived altogether?	Respondents were strongly in favour of the time limit being waived entirely if a replacement was provided. Responses also noted that the cost of providing the replacement was potentially excessive and there were real concerns from the Motor Industry over the proposal that the replacement to be of equal or higher quality.	There were few responses to this question but those that did were in favour of an extension to the 14 day period and were against the limit being waived altogether.	Responses were mixed. A number of those who opposed the proposal thought that any extension would be unwarranted and could undermine any certainty provided by a fixed time limit.
Question 15. Do you believe that where a product can be proved to be dangerous, the consumer should have a right to move directly to a second tier remedy?	There was a split in the responses with half agreeing that consumers should be able to move directly to the second tier remedies while the rest were against the proposal as in many cases dangerous faults can be quickly and cheaply corrected and that second tier remedies may be disproportionately costly to business.	All respondents were in favour of the proposal that consumers should be able to move directly to a second tier remedy if the product is proved to be dangerous product	Most respondents were in favour of the proposal. However, a number thought that there was the potential for this to be disproportionately costly to business for the same reasons as those highlighted by business respondents.
Question 16. Do you agree that defining "dangerous" as a breach of the General Product	Most respondents were supportive of the adoption of this definition, though some	All those who responded were strongly in favour of the adoption of this definition.	Most respondents were in favour of this proposal. However, one respondent argued that

<p>Safety Regulations (GPSRs) 2005 would provide adequate clarity and protection to consumers?</p>	<p>had concerns about potential unintended consequences.</p>		<p>consumers should not have to prove that elements of a criminal provision are made out (even on balance of probabilities) while another highlighted that the GPSRs do not cover all products and traders might argue that a prosecution under the GPSRs is needed to 'prove' they have been breached.</p>
<p>Deduction for use</p>			
<p>Question 17. Which of the proposed models (or which mix of the models) for the calculation of a deduction for use do you believe would be the best approach?⁵</p>	<p>A majority of respondents were in favour of option 4, especially those from the motor industry. In terms of the prescribed scheme (where this exception does not apply), the preference was for Option 2 with a 6 month period without a deduction for use.</p>	<p>The majority of respondents preferred Option 2 with a minority in favour of Option 1.</p>	<p>Responses were mixed but overall there was a preference for Option 2. Some respondents were particularly concerned about proposal 4 – these concerns are covered under Question 19, below.</p>
<p>Question 18. Do you agree with the establishment of a cost threshold, below which no deduction for use is applicable? If yes, at what level do you feel the threshold</p>	<p>The majority of respondents were against the adoption of a threshold as low value goods are unlikely to last the full length of the contract (6 years in England, Wales and</p>	<p>Respondents were split on whether or not a threshold should be set.</p>	<p>Most respondents argued against the inclusion of such a threshold.</p>

⁵ Please see the consultation document (paragraphs 5.136 to 5.155 for a full list of the proposed models – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31864/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf)

<p>should be set: £150, £100 or other?</p>	<p>Northern Ireland, 5 years in Scotland) and the provision will either serve little purpose or cause detriment to business. Additionally, such a threshold may incentivise retailers to raise costs above the threshold in order to avoid the exemption.</p>		
<p>Question 19. Do you agree that it makes sense to allow exceptions to the stated minimum refund where robust, impartial third-party evidence exists for the current value of the goods in question?</p>	<p>Respondents were generally in favour of this exception. Some argued that such an exception should only apply to motor vehicles, while others noted that the provision fits well with the motor industry at present but may lead to other industries developing similar matrices.</p>	<p>Few respondents answered this question but those that did were against the proposal With one stating that it would be acceptable only if damages could also be claimed on top of the second hand value offered as a refund.</p>	<p>Respondents were generally against the proposal on the basis that it would hamper clarity and simplicity and therefore undermine consumer confidence. Some argued that it is unfair for consumers to only be given the second hand value for the goods, and others argued that it would lead to further disputes over what constitutes “robust, impartial third-party evidence”</p>
<p>Question 20. Do you agree that, if such exceptions are allowed, the appointment of an adjudicator would be necessary to rule on the reliability of evidence? If yes, do you have suggestions for what sort of organisation might be best placed to act in this capacity?</p>	<p>Respondents felt that the creation of a new adjudicator or adjudicators would be useful, though most felt that sector-specific bodies would be preferable.</p>	<p>Only a small minority of consumer group respondents answered this question, but of those that did, there was strong recognition of the need for such a body with one respondent suggesting the creation of a Consumer Ombudsman.</p>	<p>There was general support for this proposal. Suggestions for who might be best placed to act in such a capacity included creating an Ombudsman. Those that were against the creation of such a body argued that it would be costly and would potentially impose delays into the process. One respondent argued that they did not believe that any single</p>

			body would be suitably placed to make judgements across the full range of goods sectors.
Alignment of remedies for different contract types			
<p>Question 21. Do you believe that this is a sensible change or can you foresee problems arising from applying broadly the same remedial scheme to all transaction types?</p> <p>Question 22. What benefits can you see from aligning the rules for different transaction types in this way?</p>	<p>Almost all respondents believed that this would be a sensible change with most of those who responded arguing that it would provide clarity and certainty to both consumers and business.</p>	<p>There was almost universal support for this proposal with the majority believing it would bring clarity and simplicity. However, one raised concerns about the loss of the long-term right to reject, particularly with regard to work & materials contracts where they felt that the requirement for a repair or replacement might detriment consumers.</p>	<p>There was almost universal support among this category of respondents. A minority of respondents stated that they could foresee problems with adopting a single scheme of remedies. One respondent argued that the change could limit consumer rights and that it would not be possible to apply a single scheme as each contract type is different.</p>
<p>Question 23. Do you agree that the approach outlined above for hire contracts is sensible?⁶</p>	<p>Respondents thought that the proposed model appeared sensible.</p>	<p>Respondents were strongly in favour of the proposed model, though there were concerns about the loss of the long-term right to reject.</p>	<p>Almost all respondents agreed that the proposed model for hire contracts appeared sensible. However, some respondents did not agree with the proposal to remove the long-term right to reject for hire contracts.</p>

⁶ See the consultation (paragraph 5.174) for an explanation of the proposed approach – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31864/12-937-enhancing-consumer-consultation-supply-of-goods-services-digital.pdf

			Additionally, some respondents were concerned that it could be prejudicial to prevent consumers from being able to claim back money they had already paid particularly as some consumers may have paid large upfront administration fees, first payments, or deposits
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2 Services

Summary of Responses

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content* ran from 3 July 2012 to 5 October 2012, and 56 responses on services-related questions were received. The original consultation can be found: <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
<p>Question 24. Are these helpful distinctions? What problems, if any, do you envisage in dividing up services in this way? (6.11)</p>	<p>The vast majority of respondents thought these distinctions were helpful.</p>	<p>Most respondents agreed that these distinctions were helpful.</p> <p>Those who had concerns thought that the distinctions between the categories could cause disputes.</p>	<p>Public bodies were mostly unsure about the distinctions. While many were supportive of the concept, others had reservations about the complexity the proposals added to the law.</p>
<p>Question 25. Do you agree that these are the implied terms which may currently be introduced into consumer contracts for the supply of services? (6.16-31)</p>	<p>Almost all respondents agreed with the implied terms outlined and none objected outright.</p>	<p>There was universal agreement from respondents on the implied terms.</p>	<p>Almost all public bodies supported the implied terms as outlined, while a small minority were unsure.</p>
<p>Question 26. Do you think the proposals should apply in Scotland with the same effect as they would have in the rest of the UK? (Box 20)</p>	<p>All respondents agreed that the proposals should apply throughout the UK. Those who gave reasons suggested that consistency between the jurisdictions was easiest for</p>	<p>A majority of respondents agreed with a UK-wide approach. One respondent disagreed on the basis that it may mean a reduction of the current protections available to</p>	<p>None of the respondents objected to implementation throughout the UK. Most commented that this made the law easier for consumers to understand and have confidence</p>

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
	business to understand.	consumers in Scotland.	in.
<p>Question 27. Do you agree that the remedies for breach of implied terms in consumer contracts are difficult for consumers to predict? (6.32-36)</p>	<p>Almost all respondents agreed.</p> <p>A small minority disagreed on the basis that there were clear rules in some sectors, or that it was unimportant for consumers to anticipate the redress available.</p>	<p>Almost all consumer groups agreed.</p>	<p>Responses agreed that this was a concern.</p>
<p>Question 28. The Government is not proposing a solution to this problem as it cannot identify a deficiency in the law or any obvious clarification that would help. Do you have any suggestions? (6.51-54)</p>	<p>Most respondents did not offer suggestions.</p> <p>Suggestions made included that the good/service should have to be put right by default, that the service standard should apply before the goods standard, or that there should be focussed consumer education on this issue.</p>	<p>Respondents most commonly suggested an aligned ‘outcome-based’ liability standard for both goods and services, eliminating potentially different standards should be applicable in mixed contracts.</p>	<p>Public bodies most commonly suggested that traders should be obliged to provide detailed pre-contractual information on the intended result of the mixed goods/service contract.</p>
<p>Question 29. In your view, what problems are created for consumers by the current law? Can you estimate the impacts? What effects on the market do these problems cause? (6.55-68)</p>	<p>Respondents overwhelmingly thought that differing interpretations by consumers and traders of consumers’ rights resulted in higher levels of complaints.</p>	<p>Respondents frequently said that (1) consumers were not confident in identifying the redress available to them (2) it was not clear what amounted to a breach of reasonable care and skill, and (3) that it was too difficult to determine whether the law on goods or services applied in mixed contracts.</p>	<p>Respondents consistently remarked that the law was unclear, especially in relation to the meaning of ‘reasonable care and skill’. Most thought this resulted in an undue reliance on trading standards and other organisations.</p>

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
<p>Question 30. How does your business respond to the complexity of consumer law? What, in particular, is the cost of compliance? (6.69-71)</p>	<p>Respondents cited significant resources allocated to customer service teams, including dedicated teams on consumer legal issues.</p> <p>Trade bodies said they were compelled to circulate professional standards and other written advice.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>No responses were received to this question from this category of respondent.</p>
<p>Question 31. Does your business consciously seek to go beyond consumer law in terms of what it offers consumers of services? (6.69-71)</p>	<p>All respondents said they went beyond the current requirements, sometimes because of sector-specific regulation but often out of choice to provide good customer service. Some respondents said this included similar redress to the Government proposal.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>Those who responded remarked on sector-specific requirements obliging some traders to go beyond the current law.</p>
<p>Question 32. Do you apply a “goods” standard of liability and “goods” remedies for some of the services you offer if they go wrong? If so what are these services? (6.69-71)</p>	<p>Some businesses told us they offered re-performance or reduction in price, whilst others said that they did not offer such remedies.</p>	<p>One consumer group commented that in their experience businesses offered redress beyond the standard required for services.</p>	<p>No responses were received to this question from this category of respondent.</p>
<p>Question 33. Do you agree that moving to a statutory guarantee will be easier for consumers and traders to understand? Do you foresee any problems with this</p>	<p>The majority of respondents agreed. Most commented that it would reduce burdens on business.</p>	<p>Most respondents agreed, although a significant minority thought that the change would have a minimal effect on consumers</p>	<p>The vast majority thought the introduction of a statutory guarantee would have a positive effect.</p>

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
approach? (6.78)	Those who were unsure were concerned that a statutory guarantee would overlap and cause confusion with sector-specific regulations.		Many of the respondents emphasised the importance of education on these guarantees.
Question 34. Do you agree that there should be a statutory guarantee that a service will meet the description given pre-contractually including the information as to price and time for performance? (6.80-84)	There was a mixed response. Many agreed with the proposal, particularly on the basis that it would help align business and consumer expectations on a service.	All respondents agreed. Some thought the information must be given in writing, others that current legislation already protected consumers in this case.	All respondents agreed. Many remarked that it would be important that pre-contractual information was provided in a durable medium to provide evidence of a breach.
Question 35. Do you agree that there should be a “default” period of 30 days in which a service must be carried out? (6.87)	<p>Responses were mixed. Some respondents were content with the default period as it added clarity to arrangements but these were open to change according to the contract.</p> <p>On the other hand, almost as many other respondents brought up possible exceptions where a 30 day default would not be appropriate.</p>	The majority of respondents agreed. Some suggested that while they agreed with a default period, 30 days was too long.	<p>A slight majority of respondents agreed. They cited increased certainty for traders and consumers.</p> <p>Those who were unsure felt this was not always appropriate and sometimes impossible.</p>
Question 36. Do you agree that the statutory remedies for “faulty” or substandard services should be as similar as possible to those for goods? (6.89-96)	The majority of respondents agreed, although there was some concern that the two were not directly comparable, at least not in all sectors.	There was a large majority in favour of similar goods and services regimes.	Most trading standards and public sector respondents agreed, although there was some concern that some remedies would not be appropriate if the consumer had

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
			lost faith in the service provider.
<p>Question 37. Do you agree that we should specify that the reduction in price should cover the element which has not been performed with reasonable care and skill? Or should we use the same wording as used in relation to goods; i.e. “an appropriate amount”? (6.95)</p>	<p>The majority supported the ‘appropriate amount’ wording. However, some did not support either option.</p>	<p>There was a mixed response, with some respondents preferring a different solution entirely.</p>	<p>Most trading standards and public sector bodies supported the ‘appropriate amount’ option although some were keen this would include consequential losses. Some respondents were unhappy with both proposals.</p>
<p>Question 38. Do you think that the tier 2 remedy should always include a facility for the consumer to terminate the contract from that point forward? (6.104)</p>	<p>The vast majority disagreed with always including such a facility, across all sectors.</p>	<p>The vast majority agreed with a right to terminate once the consumer has lost confidence in the trader.</p>	<p>The majority agreed with this facility. However, some respondents from trading standards and other public bodies were concerned about the appropriateness to certain sectors.</p>
<p>Question 39. Alternatively, do you think that the right to terminate the contract should only be available in response to a failure to meet pre-contractual information requirements, or perhaps not at all? (6.105)</p>	<p>There were varied responses based on the response to the previous question. No majority agreed with this limitation.</p>	<p>The majority disagreed, as they supported a right to terminate in all cases.</p>	<p>Most trading standards and public bodies disagreed with the limitation to pre-contractual information failures.</p>
<p>Question 40. What would be the impact on your business of making such remedies available? (6.89-105)</p>	<p>Some respondents expected significant impacts on costs from additional procedures by the business. However, some thought businesses already provided similar remedies</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>There was a limited response. Some thought the remedies could helpfully fill the gaps in sectoral legislation.</p>

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
	voluntarily.		
Question 41. Do you agree that it would be disproportionate and also risky in terms of potential effects to try to codify current contractual remedies for damages in legislation? (6.106-107)	The vast majority of respondents agreed that this was disproportionate and/or risky.	There was some support for codification, but also recognition that codification would be difficult.	The majority of trading standards respondents agreed this would be disproportionate, although views of other public bodies were more mixed.
Question 42. Do you agree that there are few cases at present where a service provider would be able to limit its core contractual liability to a consumer in a way that a court would find reasonable? (6.109-111)	The vast majority of respondents either agreed there were few such cases at present or were unsure about the current situation.	There was a limited response, but most agreed there were few such cases at present or were unsure about the current situation.	The vast majority of trading standards and public body respondents agreed there were few such cases at present.
Question 43. What impact do you think it would have on traders and insurers if liability were to be restricted as proposed above in future? (6.109-111)	Most respondents foresaw no or limited impact, although some were concerned about unintended consequences and increased costs.	There was a limited response, with most unsure of the impact.	Most respondents foresaw no impact. However, some trading standards bodies thought it would encourage take-up of insurance. Other public bodies thought it would encourage businesses to solve consumer issues and resolve disputes quicker.
Question 44. Do you think any strict liability standard for services should be imposed instead of or in addition to liability under the current, fault-	The vast majority of respondents disagreed with a new liability standard, citing additional complexity especially for SMEs and the subjective nature of a	Most respondents were supportive of a new liability standard, at least for services to property. Some thought it would remove rather than add to	Responses from trading standards bodies were mainly supportive. However, there were also a significant number of uncertain respondents.

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
based regime? (6.114-124)	quality standard.	complexity.	
Question 45. Do you agree that an outcome based liability standard is likely to be more appropriate for services relating to property than for services to the person or pure services? (6.114-124)	The majority agreed, although they tended to refer to their responses to previous questions: that if we must introduce a liability standard, it should be limited to property services.	Most respondents agreed. Those supportive of a liability standard were keen that it should extend beyond services to property.	The majority of trading standards respondents agreed. However, there was some concern from other public bodies on how to phrase the distinction clearly.
Question 46. Do you think that consumers would benefit from an outcome based liability standard for services to their property or would any benefit be outweighed by higher prices, because of increased costs on business? (6.114-124)	The majority of respondents did not think the consumer would see a net benefit due to increased costs to businesses. A significant number of respondents were unsure, due to the significance of the change.	Most respondents thought consumers would see a benefit overall. They were unconvinced that costs to the consumer would increase.	The majority of respondents (trading standards and public bodies) thought that the benefits to consumers would outweigh the costs.
Question 47. Do you think introducing a “fit for purpose” standard across a limited number of service sectors would create greater confusion to the consumer and/or business? (6.114-124)	The vast majority of respondents thought the proposals would create greater confusion, for example to determine which sector a service was in.	There was a mixed response, reflecting concerns about whether the law could provide sufficient clarity.	The majority of trading standards respondents thought that the proposal would create confusion. However, others thought this would not be the case if the legislation was clear.
Question 48. How would a “satisfactory quality” or “outcome-based” liability standard for some services work in practice? (6.114-124)	The majority of respondents thought that the proposal was difficult to determine. One thought formal standards would be needed.	There was a limited response. Some thought that the new clarity would work well in practice, especially as it would reflect current best practice.	There was concern from some trading standards bodies that it would not work in practice, whilst others thought it would work for services as for goods.
Question 49. Do you agree that the quality standard in any strict	There were mixed views, with some thinking that the goods	The vast majority of respondents supported the same regime for	The majority of trading standards bodies and regulators were in

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
liability scenario for services should be as above – the same as for goods? (6.125-127)	regime would be inappropriate for services.	goods and services.	favour of similarity to the goods regime.
Question 50. To which services might the new liability standard apply? (6.125-127)	There was a limited response, but there was some support for the application of the standard to services to property and those where the standard could be easily defined.	Those who responded agreed with the inclusion of all services, possibly with exclusion clauses permitted.	The majority were in favour of application to services to property, with some public bodies supporting application to 'most' services.
Question 51. Do you agree that in practice a strict liability standard for installation services would make no difference to installation services which are carried out by the retailers of the goods? (6.130-142)	The vast majority agreed that a strict liability standard would make no difference in this case.	The vast majority agreed that a strict liability standard would make no difference in this case.	The majority of respondents (public bodies and trading standards) agreed that a strict liability standard would make no difference in this case.
Question 52. Where the provider of the installation service is not the retailer of the goods, what impact do you think this possible change might have? Can you quantify any costs you think it would impose on your business and on other businesses in your sector? (6.130-142)	There were a range of views from different sectors, citing costs such as insurance, the need to acquire expertise and also the possibility that the number of service providers offering installations would decrease.	All respondents thought impact would be low if the business was operating properly.	There was a mixture of views among trading standards. One public body suggested the quality of goods could increase.
Question 53. Do you think that the current rules on installation services encourage consumers to employ goods retailers to	Most respondents thought independent contractors would not benefit, as consumers were motivated by other factors.	Respondents had mixed views, revealing the many possible implications of this change.	Most trading standards respondents agreed that consumers were currently encouraged to use goods

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
perform such services? If so, would strict liability across the board for installation services offer some benefit to independent contractors? (6.130-142)			retailers. However, public bodies were more in agreement that independent contractors would benefit
Question 54. Do you agree that in most repair scenarios the Courts would already be likely to find a way to make the service provider responsible for guaranteeing a “satisfactory quality” outcome? (6.143-147)	The vast majority of respondents agreed.	There was a limited response. While one respondent agreed, another told us that they were unsure.	Most respondents were unsure.
Question 55. If such a strict liability standard were to be introduced, would this involve extra costs for your business and if so, can you quantify them? (6.143-147)	The majority of respondents thought that the standard would result in greater costs to them, particularly from insurance.	No responses were received to this question from this category of respondent.	No responses were received to this question from this category of respondent.
Question 56. Do you think that such a change would be likely to increase consumer confidence and assertiveness? (6.143-147)	Around half of respondents agreed. The other half thought there would be little change in the behaviour of consumers both because of a lack of attention paid to the law, and because consumers were perceived as already being assertive in this area.	A slight majority of respondents agreed, believing that a greater understanding of the standards required would allow consumers to assert their position better. One respondent said more significant barriers were access to courts and education.	Respondents overwhelming agreed. Some respondents said more significant barriers were access to courts and education.

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
Question 57. Do you agree that all services to consumers' property should be treated the same? Are there any particular problems with strict liability in respect of any of the other categories of services to property? (6.148)	There was a mixed response. While many businesses agreed with a single standard in relation to services to property, an equal number had reservations on how the standard could apply in the repair or maintenance of goods.	All respondents agreed.	Almost all respondents agreed. Most believed that it would create a simpler regime and the trader could make exceptions when providing pre-contractual information.
Question 58. What would be the impact of establishing a strict liability standard across these other services to property? (6.148)	Most respondents were concerned that the application of this standard across a wider number of services would result in greater costs from training staff and resolving complaints. A minority were positive about the proposal, saying that it would help reduce bad trading practices.	Respondents thought that extending the standard across other services to property would enhance consumer protection and meet consumer expectations.	Respondents were generally anxious about the extension of the standard to other services. Many respondents either felt that it would disproportionately increase consumer expectations or result in increased costs passed on to consumers.

Overall Questions on Goods, Services and Digital

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
<p>Question 59. How should business and consumers be informed of any changes at reasonable cost without adding additional burdens? (6.1-153)</p>	<p>Respondents most frequently told us they thought the best publicity would be a direct Government campaign. Many respondents also thought consumer groups and trade bodies should be the primary method of communicating changes.</p>	<p>The majority of respondents said that the best publicity would be a direct Government campaign, supplemented by public body involvement. There was also frequent suggestion that businesses should provide information at the point of sale, or on receipts.</p>	<p>Almost all respondents suggested a broad set of communications from enforcement and consumer bodies, trade bodies, the Government directly through media and the internet.</p>
<p>Question 60. Do you agree that a clearer law as outlined above, if communicated properly, would make a real difference to consumer understanding of their rights and thus to their assertiveness, making markets work better? (6.1-153)</p>	<p>The majority of respondents agreed that the changes would have a positive effect on consumer understanding and markets. Some respondents emphasised the importance of education, especially to avoid consumers over-estimating their rights.</p>	<p>Most respondents thought the changes would enhance consumer understanding.</p>	<p>The vast majority of respondents agreed. Some emphasised the access to redress/enforcement as a potential limiting factor on positive results from the change.</p>
<p>Question 61. What would be the costs to your business of managing any change in the law in this area (changing systems, one-off training costs, review of policies or codes, etc.)? (6.1-153)</p>	<p>Respondents described costs from re-training staff and amending documents and procedures.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>No responses were received to this question from this category of respondent.</p>
<p>Question 62. How much does your business/sector spend on</p>	<p>Respondents were doubtful that the proposals would mean</p>	<p>No responses were received to this question from this category</p>	<p>No responses were received to this question from this category</p>

Question	Views of business & trade bodies	Views of consumers & consumer groups	Public Bodies
<p>an ongoing basis training employees to handle consumer complaints relating to service provision? If the law were clarified as proposed in Part A, do you think this would permit a reduction in these costs and if so, by how much? (6.1-153)</p>	<p>reduced costs in staff training. In particular, they cited high staff turn-over meaning training had to be frequent anyway. On the other hand, most respondents recognised that the changes would make training more effective, because trainees would better be able to remember the law.</p>	<p>of respondent.</p>	<p>of respondent.</p>
<p>Question 63. How much does your business spend on settling consumer disputes and on complaint handling in relation to service provision? If the law were clarified as proposed above, do you think this would permit a reduction in these costs and if so, by how much? (6.1-153)</p>	<p>Responses were not able to quantify this activity, however several noted that they did invest in and focus on consumers already so did not foresee a large rise or fall in costs.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>Those public bodies that dealt directly with consumers noted they already invested in complaint handling.</p>
<p>Question 64. Would the introduction of a “satisfactory quality” standard as described in the proposals make you change the way you deal with your customers and any problems which may arise? (6.1-153)</p>	<p>Respondents told us that they already endeavoured to at least meet the standard set out in the proposals and usually exceeded it, so did not anticipate a change in how they dealt with problems.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>No responses were received to this question from this category of respondent.</p>

3 Digital Content

Summary of Responses

The consultation *Enhancing Consumer Confidence by Clarifying Consumer Law: Consultation on the Supply of Goods, Services and Digital Content* ran from 3 July 2012 to 5 October 2012, and 53 responses on digital content-related questions were received for the written consultation, with an additional 86 responses to the shorter online version. The original consultation can be found: <https://www.gov.uk/government/consultations/consultation-on-enhancing-consumer-confidence-by-clarifying-consumer-law>.

Improved Clarity			
Question	Views of business and Business Representatives	Views of consumer representatives	Local Government
Question 65 Do you agree that we should clarify consumer law for digital content transactions? (7.1-45)	Respondents agreed that ambiguity exists and that clarification is necessary. There was a general desire for a light touch approach since the industry is rapidly evolving and could be constrained by excessive regulation.	Respondents agreed that there is a lack of legal clarity in this growing market and that digital content law needed to be modernised.	There was widespread agreement on the need for clarification.
Consumer Detriment			
Question 66 Can you provide us with any further evidence of the impact / costs of the current unclear legal framework on business or consumers? (7.46-72)	There was little concrete evidence provided though one respondent felt that these proposals created an opportunity to improve consumer confidence in digital platforms.	Respondents provided anecdotal evidence of applications that stop working after an update, and shortened lifespan of software on certain physical products.	Respondents highlighted cases where digital content has been unsatisfactory and traders have refused to provide redress.
Proposals for Reform			

<p>Question 67 Do you think the Consumer Rights Directive is sufficient in itself to address the issues relating from lack of clarity of consumer rights in digital content? (7.74-79)</p>	<p>There was general agreement that the CRD does not go far enough, but some respondents felt that the lack of clarity is due to insufficient information, which the CRD sufficiently addresses. Others felt that the status quo was acceptable since most traders provide remedies when there is a fault.</p>	<p>Respondents felt that the CRD was insufficient and does not help when the digital content is faulty.</p>	<p>It was agreed that the CRD was insufficient, but some bodies expressed concern over applying a 'one size fits all' remedy scheme across goods, services, and digital content.</p>
<p>Question 68 Do you think that digital content supplied on a tangible medium such as a disk should be covered by the same set of digital content quality rights and remedies as intangible digital content, such as downloads? (7.74-79)</p>	<p>There was general agreement that having different rights depending on medium would be confusing for business.</p>	<p>Respondents were concerned that standardisation might remove existing consumer rights for digital content on a tangible medium, such as the right to reject for CDs.</p>	<p>It was felt that it would be easier for consumers and businesses to deal with digital content such as a computer game, music, films etc. supplied on a tangible medium as "goods" as opposed to "digital content".</p>
<p>Question 69 Do you think reasonable consumer expectations as to quality would differ between digital content that is transferred to a consumer's device and digital content that is held on a 3rd party server? (7.74-79)</p>	<p>The vast majority of respondents felt that consumers would expect the same quality rights. One respondent thought that the quality of the download will also be dependent on broadband speeds, which the provider cannot always control.</p>	<p>The vast majority of respondents felt that consumers would expect the same quality rights.</p>	<p>A majority of respondents felt that consumers would expect the same quality rights.</p>
<p>Question 70 Do you agree that we should align our proposals for digital content as far as possible with</p>	<p>Respondents agreed that it would be preferable to align our proposals as not doing so may increase costs to business and</p>	<p>All agreed that aligning the proposals with existing consumer rights is preferable.</p>	<p>Respondents agreed that aligning our proposals with existing consumer rights would be preferable.</p>

the existing consumer rights framework? (7.84-85)	cause confusion for consumers.		
Question 71 Do you agree that digital content should be treated as a separate and bespoke category within the Consumer Bill of Rights? (7.86)	There was almost universal agreement that digital content needs to be treated as a bespoke category. One respondent felt that separation raised complex practical challenges and, imposed a significant burden on suppliers.	The vast majority agreed that digital content should be treated as a bespoke category.	While recognising the necessity of the proposals respondents were concerned that consumers will not recognise that there is a difference or understand why there needs to be a separate classification.
Question 72 Do you agree with the principles we have based our digital content proposals on? In particular do you agree that 'related services' and 'enabling services' could be distinct from digital content and from each other? (7.87-93)	There was general agreement with both proposals though some were concerned that there was the potential for the digital content supplier to be deemed liable for problems caused elsewhere in the internet value chain.	Respondents agreed with both proposals. One highlighted that related services, such as downloading or streaming, are often provided by the same digital content provider so they are often intertwined.	There was agreement with both proposals.
Question 73 Do you agree that the provisions as to passing of limited title work for Digital Content? (7.98)	Most agreed with the proposal. However concerns were expressed by the music industry that the proposal did not align with copyright and current business practice as copyright in digital content does not pass to the consumer under any circumstances.	All those who responded agreed with the proposal.	Local authorities agreed with the proposal.
Question 74 Do you think that consumers should be asked to consent to any interference that could	Some respondents thought that it was important that consumers gave their consent to updates as, once purchased, the digital	One respondent felt that this represents current business practice. They suggest there should be informed consent i.e.	Local government is in general agreement with this proposal.

<p>affect their use of the digital content? What impact would such a requirement have on businesses supplying necessary updates or otherwise needing to manage the digital content post-purchase? (7.99-101)</p>	<p>content is theirs rather than the company attempting the update. Other respondents thought that it was very important that they were not prevented from making upgrades to products.</p>	<p>the business should inform what the update will do and provide user reviews of the update.</p>	
<p>Question 75 Should we remove the 'freedom from minor defects' aspect of quality (s.14(2B)(c) of SOGA) specifically and only for digital content? Should we do so for certain types of digital content, if so which? (7.111)</p>	<p>There was a mixed response to this question. Some thought that it was difficult to define what a minor defect was while others thought that it should be removed for certain types of digital content for example for software and games as consumer expectation is far greater in relation to music and films.</p>	<p>Respondents felt that while some digital content will have minor defects, other digital content should be flawless. As such a 'reasonable test' is best.</p>	<p>Respondents disagreed with the proposal. There was concern that removing this provision would create confusion and that consumers have a right to have their content free from minor defects.</p>
<p>Question 76 Should we clarify that the 'safety' aspect of quality (s.14(2B)(d) of SOGA) means the safety of a computer or other device used to access digital content as well as personal / physical safety? (7.112)</p>	<p>Most of those who responded agreed that clarification would be beneficial. It was highlighted that if digital content contained a virus that damaged a computer then the provider of that content should be held liable.</p>	<p>Respondents agreed with the proposal.</p>	<p>Respondents agreed that the 'safety' aspect of quality should be extended to computer or other digital devices and that the requirement for 'satisfactory quality' would include damage to a computer or other hardware.</p>
<p>Question 77 Do you agree that we do not need an express statement on durability in respect of new versions as the European</p>	<p>Most of those who responded agreed that an express statement on durability in respect of new versions would be helpful with one</p>	<p>It was highlighted that the test of durability relates to whether the good/digital content is of satisfactory quality as of the date of purchase, and therefore</p>	<p>Respondents were unsure whether an express statement on durability was required.</p>

Commission have proposed for CESL? (7.113)	commentating that it would provide additional safeguards and ensure that consumers would not have excessive expectations.	should be included for digital content.	
Question 78 Do you think that these rights to quality are broadly appropriate for digital content? (Box 32)	Most agreed that the rights were broadly appropriate. However, software developers pointed out that it was important that trial versions of products are not required to have full functionality and games developers highlighted the importance of being able to launch trial versions of games that would not be fully viable.	Respondents felt this was acceptable as long as the digital content matches its description.	Responses were largely in agreement that the rights to quality are appropriate. One commented that it was appropriate to extend quality rights so that digital content must match manufacturer's advertising.
What happens if things go wrong			
Question 79 Do you think these are suitable remedies for cases where sub-standard digital content has been supplied? (7.115)	There was a mixed response to the question. Some thought that the remedies were suitable but there was considerable concern that there should not be a right to return digital content unless the fault was immediately apparent. There was also concern that it would be impossible to guarantee that the consumer had not retained a copy of the product.	Respondents agreed with the proposal though it was highlighted that the short term right to reject for faulty digital content should be retained.	Respondents welcomed the consistency with other consumer protection law, but disagreed with the lack of a short term right to reject faulty goods.
Question 80 What impact would the	There were few responses to the question. One commented	No responses were received to this question from this category	Respondents suggested that bringing the law into line with

clarification of these remedies have on consumers or business? Can you provide any evidence that would help us asses the likely impacts of our proposals? (7.115)	that as long as the claim was legitimate then the cost of the repair or replacement would be virtually nil.	of respondent.	the proposals for goods will help to create constancy and uniformity.
Question 81 Would our proposals impact on the likelihood of your business providing updates to digital content? (7.119-122)	Most of those who responded thought that the proposals would impact on them providing digital updates. Some thought that it would be helpful to distinguish between a minor bug and a major problem that affected the core of the product.	No responses were received to this question from this category of respondent.	No responses were received to this question from this category of respondent.
Question 82 Should we align the approach to deducting for use when calculating refunds for digital content with the policy for goods? (7.127)	There was a mixed response to this question. Some thought that for consistency the approaches should be aligned but others thought that as the defect was likely to occur at first use, or very soon after, there was no need to align.	There was a limited response though one respondent suggested that rights and redress should mirror goods.	Responses were positive on including deduction for use' for digital content, but there were concerns about the implementation of this remedy since the majority of digital content is low value and the fault can be identified quickly.
Question 83 Would a limit on the number of repairs and/or replacements be useful for digital content consumers and practical for digital content traders? (7.128)	All those who responded thought that there should be a limit on the number of repairs and/or replacements. One response thought that the number should be higher than for goods as the repair/replacement would normally be instantaneous.	Some respondents thought that digital content providers should not be discouraged from offering general updates and bug fixes, while others believed that a limited number of repairs or replacements were essential for consumer convenience	Respondents thought that for simplicity and clarity, it was preferable to align the number of repairs and replacements with goods.
Question 84	There were few responses to	Respondents were concerned	Respondents felt that a lack of

<p>What kind of proof could the consumer provide that the related service was not provided with reasonable care and skill? (7.129-131)</p>	<p>this question with those who did highlighting the difficulty the consumer would have identifying what the problem was and what had caused it.</p>	<p>that the majority of consumers would not have technical ability to provide proof. Some argued that the burden of proof should be placed on the trader.</p>	<p>reasonable care and skill could be established with a screen shot of the supplier website, list of telephone calls made to the trade, a log of problems the consumer has kept.</p> <p>There was general concern that it would be difficult for a consumer to prove that a related service was not provided with reasonable care and skill.</p>
<p>Question 85 What issues do you see with how option 1, treating the services surrounding digital content as services, would work in practice? (7.129-131)</p>	<p>Almost all those who responded thought that this would be confusing and that it would be difficult for the consumer to know if the problem was with the content or the related service.</p>	<p>Respondents were concerned that it would be unlikely that consumers will have the expertise to show whether reasonable care and skill had been used by the digital content provider. There was a risk that some traders might attempt to avoid liability by blaming related service providers.</p>	<p>Respondents were concerned that traders will attempt to avoid liability by blaming a failure with the related services for the fault.</p>
<p>Question 86 Do you think there should be the equivalent of a short term right to reject for digital content? (7.137-145)</p>	<p>The vast majority of respondents were opposed to giving a short term right to reject for digital content. Business and trade bodies were concerned at a potential rise in fraudulent and spurious claims and the difficulty in policing this right when content has been purchased from outside the EU.</p>	<p>All those who responded felt that the short term right to reject should apply to digital content.</p>	<p>While agreeing with the proposal, respondents were concerned that applying the short term right to reject to digital content might increase the risk of fraud.</p>

<p>Question 87 To a) avoid confusion around the fact that the digital content will not actually be returned but deleted and b) more clearly differentiate between the right to reject and the right to withdraw, would the right be better expressed as a right to an immediate refund for faulty digital content with an obligation to delete the digital content? (7.137-145)</p>	<p>The majority of respondents were opposed to giving immediate refunds for faulty goods and there was concern about the difficulty of policing the deletion of the faulty product. A minority of respondents thought that an immediate refund would be easier and clearer for consumers.</p>	<p>Those who responded thought that some consumers would find it difficult to delete digital content.</p>	<p>The vast majority of respondents agreed with the proposal. One respondent felt that it was naïve to expect consumers to voluntarily delete digital content when they are issued a refund.</p>
<p>Question 88 What impacts would a right to reject have on retailers of digital content or on rights-holders? (7.137-145)</p>	<p>Some respondents were concerned at the potential for additional charges where the underlying rights holders charge the business for extra ‘installs’ or ‘downloads’. Others thought that there was no evidence that any present uncertainty over rejection rights has led to a lack of confidence amongst consumers.</p>	<p>Those who responded accepted that many traders will be concerned about misuse by consumers who take a refund and keep the digital content.</p>	<p>There was a mixed response. Some felt that it would increase the standards of digital content, while others reiterated the risk of some consumers receiving a refund and retaining the digital content.</p>
<p>Question 89 Do you think the provider of a related service should have responsibility for ensuring that the digital content is of a satisfactory quality once the related service has been performed? Please explain why.</p>	<p>The majority of respondents agreed that the provider of a related service should have responsibility for ensuring the content is satisfactory.</p>	<p>Respondents felt that consumers will expect the business they paid to take responsibility for both the digital content and the related service and that this is the sensible option.</p>	<p>Responses were mixed. Some felt that related service providers were in a good position to assess the cause of a fault, while others felt that locating the origin of the fault would be difficult.</p>

(7.146-151)			
<p>Question 90 Could you describe the impact that applying digital content quality standards to related services would have? (7.152-154)</p>	<p>Almost all those who responded thought that the proposals had the potential for a real risk of confusion for business.</p>	<p>Respondents felt that this proposal would save the consumer from identifying which element of the supply is at fault. It would also prevent traders from avoiding responsibility for problems.</p>	<p>Some respondents suggested that it would help consumers resolve their complaints faster.</p>
<p>Question 91 Do you agree that internet service provision should remain completely outside whatever new consumer protection mechanism is set up for consumers of digital content and “related services”? (7.155-157)</p>	<p>Responses were evenly split. Some thought that it would be too difficult to make a distinction between the ISP and digital content while others thought that there was no reason for ISP to remain outside the proposals.</p>	<p>Respondents thought that it would be acceptable if ISPs were required to carryout their service with reasonable care and skill. One respondent felt that if a purchase was reliant on the other that there should be joint liability.</p>	<p>There was strong support for this measure. Some respondents were concerned that the effectiveness of strict liability would not work as well if the ISP was not included in the mechanism.</p>
<p>Question 92 Do you think the concepts of repairing, replacing, reducing the price or terminating the related service will work in practice? (7.158-159)</p>	<p>There was a mixed response to this question. Some thought that digital content should stand alone while others thought that related services are essential for the effective functionality of supplied digital content, and therefore to retain the concepts of repair, replace or reduce is reasonable.</p>	<p>Respondents felt that consumers will not have the evidence to enforce their rights for first or second tier remedies unless they have the right to claim joint liability.</p>	<p>Most respondents agreed with the proposals though some were unsure of how they would work in practice.</p>
<p>Question 93 What impact would these remedies have on businesses providing related services and can you substantiate your answer with any quantitative</p>	<p>Those who did respond thought that there would be costs to the industry as standards were raised.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>Those who responded suggested that it would take time, but consumers would benefit from more cooperation between digital content and related services providers.</p>

evidence on likely costs of these remedies? (7.158-159)			
Question 94 Which of these remedies do you think consumers would be most likely to find satisfactory? (7.158-159)	There was a mixed response to this question with some responding that consumers would prefer a full refund while others thought that as a consumer had taken a decision to purchase particular digital content, they would prefer a repair or replacement.	Respondents felt that a partial refund would be less acceptable. They believed that the replacement or refund would be the most likely to satisfy the consumer.	The most common remedies cited by respondents were refunds and replacement.
Consumer Responsibilities			
Question 95 What kind of evidence could a consumer provide to show that the digital content did not comply with quality standards and that the fault was inherent? What evidence would digital content traders consider as sufficient to show that they would need to provide a remedy? (7.160-162)	Respondents were concerned that it would be difficult for a consumer to prove that the digital content did not comply with quality standards. Some thought that there was a risk that consumers would need expert evidence. However, others thought that a screen shot of the problem might be sufficient.	Some respondents thought that consumers could run tests to demonstrate that the speed of their internet connection was adequate.	Respondents thought that this was a difficult area, especially for digital content not sold in a physical form. It was pointed out that there was a lack of method for getting expert/independent advice on the issue.
Question 96 Which option do you prefer? If you could mix and match the options, is there a preferable combination of proposals, especially those relating to the right to reject and the treatment of related services? (7.165 &	There was no preferred option amongst respondents. Some favoured implementation of the CRD alone while some thought that option 1 was preferable while other preferred option 2 as it included related services. Other respondents preferred a	All respondents favoured option 2.	Most respondents preferred option 2.

Table 9)	mix of the various options.		
Question 97 Do you agree with the above analysis of the costs and benefits of our proposals? Is there anything we've missed? (7.166-168)	Almost all those who responded agreed that the analysis of the costs and benefits was accurate. There were no suggestions of anything additional that should have been included.	Most respondents agree with the analysis though one pointed out that there would still remain an evidential problem for consumers who lacked the technical expertise to identify the source of a problem.	Almost all respondents agreed with the analysis.
Free Content			
Question 98 Do you think that consumers should have the right to digital content meeting a certain quality even if they do not pay money for it? (7.169-174)	Some respondents thought that consumers should have the right to expect even free content to be free from bugs, while others thought that this proposal would stifle the market and was unnecessary.	Some respondents thought that there were good arguments for the general remedies regime applying. Others thought that it would be relevant if the digital content or service had been provided for free.	There was a mixed response with some agreeing that consumers should have the right to a certain quality for free digital content as long as it was supplied with paid for goods.
Question 99 Do you think that consumers should only have remedies if digital content has been paid for with money? (7.169-174) a. Or should the rights apply but we expect consumer expectations to be lower because it was free? b. Or should we provide for limited remedies if the digital content was provided for free?	Most thought that remedies should only be available for content that had been paid for. There was concern at the proposal for limited remedies on free digital content. Most businesses thought that there would be a different expectation if something had been provided for free.	Those who responded felt that there should be limited remedies if digital content was provided for free, though there was concern that a liability for repair or replacement of free digital content could stop it being offered to consumers.	Respondents felt that free digital content should be included but that remedies should be limited.
Question 100 Should our proposals apply to	There was a mixed response to this question with some	Respondents thought that the need for rights and remedies in	Respondents were split on this question. Some thought that our

<p>Open Source software that is offered from a business to a consumer? (Box 35)</p>	<p>commenting that open source software by its very nature would contain bugs and other faults while others thought the proposals appeared sensible.</p>	<p>this area are minimal and/or affected by expectations that the software would be experimental and thus likely to have bugs.</p>	<p>proposals should apply to open source software, while others were against its inclusion.</p>
<p>Question 101 Do you agree that a consumer should be able to assert their rights against the trader? (7.175-176)</p>	<p>All those who responded, agreed that consumers should be able to assert their rights against the trader. It was felt that this would make it clearer and easier for consumers.</p>	<p>Some respondents thought that the proposal would enable faster redress as the consumer would not need to establish who is at fault and the trader would be easier to locate.</p>	<p>All respondents agreed that a consumer should be able to assert their rights against the trader.</p>

4 Consumer Law Enforcement Powers

Summary of Responses

The consultation on *Enhancing Consumer Confidence through effective enforcement: Consultation on consolidating and modernising consumer law enforcement powers* ran from 28 March 2012 to 20 June 2012, and 103 responses were received. The original consultation can be found: <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>.

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
<p>Question 1 Is there any consumer legislation that you think we should repeal and replace which is missing from our list? If so, please specify.</p>	<p>The majority of respondents supported the aim of simplifying the law, facilitating the efficient organisation of enforcement resources and reducing burdens on honest businesses and enforcers. There was some concern about a blanket generalisation of powers for legislation on the basis that powers may be appropriate in some circumstances and not others.</p>	<p>The majority of respondents supported the proposal arguing that the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) are a good starting point because they are designed to apply to all business to consumer transactions.</p>	<p>While supporting the proposal, the majority of respondents suggested that to ensure consistency the scope of legislation covered by the generic powers should be widened to cover all the legislation enforced by Trading Standards Services, including food safety, some environmental and animal health law and rules on under-age sales of certain items.</p>
<p>Question 2 Are you content with our proposal to extend the power to make test purchases to</p>	<p>Respondents supported the proposal with some calling for a code of practice for test purchasing similar to the one</p>	<p>Respondents supported the inclusion of this power and also supported clarification that it includes digital content.</p>	<p>The majority of respondents supported extending the test purchase power across consumer law, including that it should cover</p>

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
businesses such as estate agents, and clarify that it covers digital content?	introduced for under-age sales.		digital content. Respondents also sought clarification as to whether a power of entry is required to be exercised to make a test purchase.
Question 3 Do you agree that a power to request information should be included in the generic set? If not, please explain why.	Some respondents supported the inclusion of this power with the safeguard of reasonable suspicion. Some concern was expressed on the potential burdens on business of complying with requests for information while others thought the proposal was too vague. .	There was support for the inclusion of this power and that it should be available to all investigations. It was thought that information gathered in this way is likely to be less costly for enforcers, and less confrontational for business than using powers of entry and powers to seize documents.	The majority of responses supported the inclusion of this power as it is useful for investigating criminal as well as civil breaches. However, there was concern that adding the requirement for reasonable suspicion could be used by businesses to frustrate investigations.
Question 4 Do you agree that the impact of this change will be small? If not, please provide evidence of what the impacts might be.	The proposal was supported by respondents.	While supportive, it was considered that it should be applied to all types of estate agency work as well such as lettings as well as selling properties.	The majority of responses supported the alignment of powers of entry across consumer law to aide consistency and simplicity of the powers. It was highlighted that as the CPRs cover all businesses, this will not impact on businesses. Some respondents sought guidance on when a power of entry needs to be exercised.
Question 5 Are the powers of entry and proposed safeguards	Responses were mixed with some highlighting that stronger safeguards on the power of entry	There was concern that giving notice may hamper enforcers' ability to tackle rogue traders as	There was concern about the requirement to give reasonable notice before exercising a power

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
adequate? If not, please use examples to justify your comments.	were required while others supported the provision of notice as there was the potential for better cooperation between enforcers and the businesses. Some respondents suggested changes to the proposed exemptions and others called for reasonable suspicion to be more clearly defined.	unannounced visits can act as a deterrent to unscrupulous traders.	of entry as it could encourage obstruction of officers or hinder an intelligence-led approach. It was also highlighted that on-the-spot checks may be required where there is intelligence about non-compliance. Other respondents were concerned about the difficulties of giving notice to mobile traders. Respondents supported the restriction on powers to wholly or mainly private dwellings, although some sought a definition.
Question 6 Do you foresee any issues with requiring officers to provide evidence of their identity and authority, even if not requested?	All those who responded to this question supported the proposal and saw no issues with requiring officers provide proof of identity. .		As this was already considered best practice, the majority of respondents supported this requirement. Some wanted clarification as to when the requirement should not apply. Others sought clarification on what constitutes officers' authorisation.
Question 7 Do the powers in relation to inspection of goods strike the right balance? If not, please explain why.	Most respondents supported the proposal.	While supportive, it was highlighted that 'goods' should include digital products, such as software suspected of being used to obtain information for the purposes of ID theft.	The majority of respondents supported the inclusion of this power. It was argued that the power should include inspection of products such as services, e.g. timeshare and package holidays.
Question 8 Do you	Responses were mixed. Some	Respondents supported	The majority of respondents

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
agree that the definition of 'document' is wide enough to cover digital content? If not, please provide evidence.	considered the definition sufficient, whereas others argued that the definition should cover software applications so that officers can investigate software applications and code on weighing and measuring equipment such as SMART meters.	clarification on whether digital content is covered by the power. It was argued that widening the definition is essential to ensure the legislation is future proofed.	sought clarification that the power to require production of documents applies to documents stored on a computer with some arguing that it should be explicit that this power includes access to digital content.
Question 9 Do you agree that the definition of 'trader' is wide enough to cover all businesses from which an officer may require information? If not, please explain why.	Respondents agreed that the definition was wide enough to cover all those trading, even if trading from home.	Respondents supported the clarification that the definition includes third parties.	Respondents highlighted problems experienced in accessing documents from third parties, in particular financial institutions. Clarification was therefore sought that powers applies to third parties.
Question 10 Do you agree that the prescriptive requirements regarding the inspection of banking documents contained in the estate agents and consumer credit laws should be revoked? ⁷ If not, please explain why.	Some respondents considered that bank documents should only be sought where it is clearly necessary for that information to be provided. Respondents were also keen that the OFT retained its oversight role. Other respondents did not consider that the Data Protection Act 1988 offered adequate	No responses were received to this question from this category of respondent.	The majority of respondents agreed that the specific regulations should be repealed. Some were concerned about the repeal of these powers due to the problems they have experienced in accessing documents from third parties.

⁷ Estate Agents (Entry and Inspection) Regulations 1981 and the Consumer Credit (Entry and Inspection) Regulations 1977

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
	safeguards.		
Question 11 Do you agree that powers are sufficient to cover business-specific information held in 'cloud' computers? If not, please provide evidence.	Responses were mixed with some agreeing that enforcers should have access to documents and digital information wherever it is held, in the process of conducting a business. Others considered that the power was sufficient	No responses were received to this question from this category of respondent.	The majority of respondents argued that clarification is required whether the power applies to business documents stored on an internet server, even if hosted by a third party (including in the cloud).
Question 12 Do the powers to require production of documents strike the right balance? If not, please use examples to explain.	Respondents supported retaining the distinction between documentation used to support declarations of compliance and other documentation though some argued that officers should have reasonable cause in order to question the content of documents.	Respondents commented that they supported retention of a power in relation to statutory documents to ensure that permissions that are not required to be on display, such as consumer credit licences, can be required.	The majority of respondents welcomed retention of the existing power so that officers can access statutory documents without the need for reasonable suspicion of a breach.
Question 13 Do you have any evidence of where this change might have an impact on business? Do you support the proposal to enable the enhanced powers of seizure to be used across consumer law? If not, please give reasons.	There was concern amongst some respondents on the seizure powers with some arguing that any conflict in the powers of seizure should be clarified. It was also thought that 3 months was a long time for seized items to be retained and it was suggested that if requested, enforcers should allow a business to take copies of seized documents.	Respondents supported this proposal as it would ensure that there is a more consistent approach to the seizure powers.	The majority of respondents supported widening the enhanced powers of seizure to all consumer law arguing it would have very little impact on businesses.
Question 14 Do you	While supporting the intention of	Respondents supported the	Respondents thought that it was

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
foresee any problems with extending the power clarifying that officers can investigate and prosecute outside their own local authority area across consumer law? If so, please explain why.	the proposal, there was concern that it should not undermine the Primary Authority arrangement. Others suggested that there should be a central body through which information about proceedings can be pooled so as to avoid a multiplicity of similar investigations and proceedings.	proposal.	necessary to include a specific power in the generic set to clarify that Trading Standards officers can act across local authority boundaries to help reduce the risk of enforcers being challenged as to their powers when bringing cases to court.
Question 15 Do you support removing the duty on small bakers to keep records of checks for average weight purposes? In particular, can you identify any undesirable consequences of the revocation of the duty?	There was support for this proposal, though it argued that it should be for businesses to decide what records of weight checks should be kept to demonstrate due diligence. Respondents sought clarification of the definition of small bakers and micro-businesses.	No responses were received to this question from this category of respondent.	There was support for this proposal, though the inconsistency in issuing of exemption notices for large in store bakeries was highlighted. Some respondents opposed an automatic exemption arguing that small bakers are often a source of short weight bread.
Question 16 Should the penalties for the offence of obstruction of consumer law enforcement officers be aligned to level 3 or level	Respondents considered that level 4 was an appropriate penalty.	Respondents suggested that the penalty should be set at level 5.	The majority of respondents considered that the penalty for obstruction should be aligned with that of the substantive offence, i.e. level 5, which would act as a sufficient deterrent.

⁸ See the consultation document for a full list of penalties.

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
5 or perhaps level 4? ⁸			
<p>Question 17 Do you support the revocation of these powers particularly those in section 225-227F of the Enterprise Act 2002, subject to the need to maintain the requirement for officers to have reasonable suspicion before exercising powers?</p>	<p>The deletion of specific powers in favour of a set of generic ones was opposed on the basis that there are circumstances in which some powers are appropriate and others are not.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>The majority of respondents supported repealing the specific powers. Some respondents considered it necessary to retain the power to observe the carrying on of a business and other powers not found in the CPRs on the basis that these were useful in investigating civil breaches.</p>
<p>Question 18 Is the balance between the powers and safeguards in the proposed generic set about right? Are there any gaps? Please provide as much evidence as possible to justify your suggestions.</p> <p>Question 19 Do you agree with our assessment of costs and benefits, particularly to businesses? Please provide any comments or evidence that could</p>	<p>There was concern that powers are being diluted with the addition of the new safeguards which undermines law-abiding and compliant businesses, giving an advantage to non-compliant businesses. Others felt that that it was difficult to assess whether the safeguards are adequate.</p>	<p>No responses were received to this question from this category of respondent.</p>	<p>The majority of respondents supported maintaining the existing safeguards. However, they strongly objected to the proposal regarding limiting the number of persons entering premises, e.g. when executing a judicial warrant arguing that there was a health and safety risk to ensure the welfare of officers and other persons. It was also highlighted that other officials for example the police and others such as financial investigators might also be required.</p>

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
help refine our assessment.			
Improving cross boundary authorisation and cooperation			
<p>Question 20 Do you agree that we should make these changes in order to help make it easier for Trading Standards Services to work across local authority boundaries?</p> <p>Question 21 Is our proposal to extend regulation 10(2) of the General Product Safety Regulations to all consumer law sufficient or do you think that amendment of section 222 of the Local Government Act (LGA) is required as well? Please give reasons.</p> <p>Question 22 Do you agree with our assessment of costs and</p>	<p>The majority of respondents supported the creation of local authority centres of excellence to enable joint working on national cases to pursue rogue traders. Some suggested that the NTSB should coordinate enforcement activities to ensure safeguards were in place to reduce any conflict between local and national approaches.</p>	<p>All respondents supported the proposal to tackle rogue traders who often trade across a wide geographical area.</p>	<p>The majority of respondents supported the proposed changes, to remove the apparent conflict between the two provisions and avoid potential future legal challenge. It was thought that these were necessary to improve the consumer protection 'system' as a whole and to support the work of national projects.</p>

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
<p>benefits for the options for improving cross boundary authorisation set out in the Impact Assessment? Please provide any comments or evidence that could help to refine our assessment.</p>			
<p>Question 23 Do you agree that seeking accreditation of Trading Standards professionals from an existing Approved Regulator is the most appropriate way to enable Trading Standards to present civil cases in County Courts? If not, please give reasons.</p> <p>Question 24 Are you content with our assessment that enabling Trading Standards professionals to present simple cases in County Courts will</p>	<p>There was support for the proposal providing there was an assessment of which procedure is the most appropriate to use in any particular case and that staff were given training to carry out this work. Some also suggested that the role of prosecutor should be transferred to the Crown Prosecution Service.</p>	<p>While supporting the use of an Approved Regulator it was highlighted that this does not address the gap between the enforcement regime and consumer redress and enforcement bodies should be empowered to obtain compensation for consumers.</p>	<p>The majority of respondents welcomed this proposal, acknowledging that standards needed to be sufficiently high and robust. It was suggested that any mechanism should be proportionate to the work undertaken and should be simple and cost effective.</p>

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
<p>result in a net resource saving for those who wish to take up this option? Please provide any comments or evidence that could help refine our assessment.</p>			
<p>Introducing a more generic statutory qualification requirement</p>			
<p>Question 25 Do you agree that the prescriptive statutory qualification requirement for Trading Standards professionals should be replaced by a more generic competency requirement, backed up by a voluntary code of practice?</p> <p>Question 26 Do you agree with our assessment that officers' competency standards can be maintained with a more flexible general qualification and competency requirement</p>	<p>Respondents welcomed broader competency and maintenance of competency through continuing professional development though some argued that the Code of Practice should be put on a statutory footing and be mandatory. Others considered that qualifications should be more prescriptive and set out clear qualifications and standards which must be met. Others were concerned about the loss of the weights and measures qualification as they believe is crucial for a technical and complex industry.</p>	<p>Respondents supported a broader qualification and were keen to see a more onerous statutory duty on local authorities to enforce consumer law.</p>	<p>The majority of respondents supported a more general competency framework, provided that the standard and professionalism of officers is maintained.</p> <p>Respondents were also concerned that competency standards may drop as a result of the Code not being statutory with some arguing that this might affect officers' ability to be considered as expert witness in court</p>

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
at the same or lower cost? Please provide any evidence that could help refine the assessment of costs and benefits.			
Calibration of measurement standards⁹			
Question	Views of business and business representatives	Views of local authorities and representative bodies	
<p>Question 27 Do you agree that the Weights and Measures Act should be amended to enable competition in the calibration of local authorities' standards? We welcome comments on any potential impacts on the accuracy of standards or business confidence in the measurement system.</p> <p>Question 28 What further changes are desirable to</p>	<p>While supporting competition, some respondents wanted more broad consideration of weights and measures verification before making changes to traceability. Others wanted to ensure there continued to be full traceability to national standards under the new system.</p> <p>Other respondents were concerned that the changes would damage the viability of the NMO Calibration Laboratory with a negative impact on UK businesses which rely on their services. The potential impact on enforceability of UK legislation on Road Traffic and North Sea Oil was</p>	<p>The majority of respondents rejected this proposal due to the likely increase in costs for local authorities, including the need for local authorities to hold a competitive tendering process; to find alternative training facilities for their staff (as a result of the removal of the requirement to local authorities to hold local standards);¹⁰ also, under the UKAS system there would be reduced calibration intervals, therefore, more frequent calibration. A number of respondents estimated that local authorities' calibration costs had been overstated and the costs under-estimated.¹¹</p>	

⁹ There were no responses from consumers or consumer groups

¹⁰ These costs were given by many respondents as being in the region of £1,050 per local authority per year for tendering and £350 per year for training facilities for staff

¹¹ A more accurate estimate of cost is around £1,200 per local authority per year, rather than the estimated £6,000 per year, based on LACORS figures

Question	Views of business and business representatives	Views of consumer representatives	Views of local authorities, regulators and representative bodies
<p>manage the calibration of standards in future?</p> <p>Question 29 Can you identify and estimate any savings or costs arising from the proposal to enable competition in the calibration of measurement standards?</p>	<p>also highlighted.</p>	<p>A minority of respondents supported the proposal, with some identifying potential cost savings.¹² There was some concern that safeguards would be necessary to avoid a reduced level of certainty in traceability of the standards. Other respondents highlighted that having a single calibration system gives national confidence in the measurement system.</p>	

¹² This was estimated by one authority to be up to £2,500 over 5 years

5 Enhanced Consumer Measures

Summary of Responses

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. 63 responses were received to the consultation. The original consultation can be found: <https://www.gov.uk/government/consultations/civil-enforcement-remedies-consultation-on-extending-the-range-of-remedies-available-to-public-enforcers-of-consumer-law>.

Ensuring effective remedies drives consumer confidence and, ultimately, competition.			
Question	Views of business and business representatives	Views of consumer representatives	Views of Local Government
Question 1 - Do you consider the Government's proposed outcomes to be valid for remedies to address breaches of consumer law? Will these outcomes address consumer problems?	Most respondents thought the proposed outcomes were valid. While some supported the proposals as they would create a level playing field for traders, others thought that the proposed outcomes could be achieved through existing legislation.	Almost all agreed that the Government's proposed outcomes were valid for remedies to address breaches of consumer law. It was thought the proposals would lead to more confident and empowered consumers which are essential to healthy and competitive markets.	Respondents were on the whole supportive of the proposed outcomes though there were concerns that achieving the outcomes was dependant on enforcers having adequate resources.
Regulatory Enforcement and Sanctions Act (RES Act)			
Question 2 - What are your views on the suitability of the RES Act to achieve the proposed outcomes?	Responses were mixed. Some respondents felt that the Act was suitable as it provides sanctions such as stop notices while others thought that the Act was unsuitable as it did not provide for	All those that responded believed that the Act could have achieved the Government's proposed outcomes.	The majority of respondents felt that there were clear limitations with the Act, including that there was not a ready route for consumers to obtain compensation.

	redress measures.		
Extending Enforcement Orders and Undertakings			
Question 3 - Do you think that amending Part 8 of the Enterprise Act 2002, to extend Enforcement Orders and undertakings, would be an appropriate way to mandate one or more actions by businesses to address breaches of consumer law?	Respondents were generally opposed. Amongst the concerns was that it would be preferable to work within the existing framework before looking to introduce new legislation.	Respondents agreed that extending Enforcement Orders and undertakings would be an appropriate way to mandate actions by business to address breaches of consumer law.	Almost all the respondents were in favour of extending Enforcement Orders and Undertakings. One benefit highlighted was that the proposals would provide a better alternative to a class or group action.
Question 4. Do you agree with the Government's proposed enforcement mechanisms?	Respondents were split with some highlighting that any solution must be the subject of appropriate safeguards to ensure they are used proportionately, and only when other means of driving compliance (or achieving consumer redress) have been exhausted.	Some respondents thought that the proposed enforcement mechanisms would not in themselves be sufficient to ensure compliance and that enforcers would need a suitable deterrent mechanism in order to ensure swift settlement.	Most respondents agreed with the proposed enforcement mechanisms with some highlighting that they were innovative and consistent with the existing enforcement approach.
Question 5 - Do you agree that only Hampton-compliant enforcers should have access to these extended remedies?	Almost all those who responded agreed that only Hampton-compliant enforcers should have access to the extended remedies, to ensure enforcers maintain 'proportionate and meaningful remedies' and allow parties to attempt to reconcile disputes before enforcers intervene.	There was concern that some public enforcers would not have the time or money to demonstrate that they met a list of requirements in order to use the new sanctions and it was thought that compliance with the Regulators' Compliance Code should be sufficient.	There was widespread agreement that only Hampton compliant enforcers should have access to the extended remedies.

Burden of Proof			
Question 6 - Do you think the burden of proof should be at the criminal or civil level?	Responses were unanimous that the burden of proof should be at the criminal level and there was concern that where a wider range of remedies would be available an enforcer should have to prove their case beyond all reasonable doubt.	All respondents agreed that the burden of proof should be at the civil rather than the criminal level.	All respondents were unanimous that the burden of proof should be at the civil level. It was highlighted that as the remedies were to be dealt in the civil courts it would not be appropriate to have a criminal burden of proof.
Question 7 - Do you agree that the evidence requirements should be at the civil level and that an enforcer's report should be admissible in lieu of formal witness statements?	Most thought that an enforcer's report could be admissible in lieu of formal witness statements, though with certain safeguards including that where necessary, the report be delivered under oath, that all statements and documents underpinning the report be disclosed.	All respondents agreed that the evidential requirements should be at the civil rather than the criminal level	All respondents thought that the evidential requirements should be at the civil rather than criminal level. Points made included that an enforcer's report would be prepared as scrupulously for civil as it would be for criminal enforcement.
Micro Businesses			
Question8 - Do you consider that micro-businesses should be exempt from the new proposals?	Almost all the respondents thought that micro-businesses should be included in the proposals. There was a risk that they would be disadvantaged if they were not included as consumers might be dissuaded from using them if they were not confident of the same level of protection.	All agreed that there was no reason that micro businesses should be exempt from the proposals.	It was generally agreed that micro businesses should not be exempt from the proposals. It was highlighted that local authorities deal with small businesses every day on a sensible and proportionate basis.
The Proposed Remedies			

<p>Question 9 - Do you agree with the Government's proposed remedies to increase business compliance with the law? Do you have any additional remedies to be considered?</p>	<p>Many of the respondents thought that most businesses would already have many of the proposed remedies in place. They also felt that it would not be appropriate for an enforcer to consult a prescribed list to find an appropriate remedy.</p>	<p>On the whole respondents agreed with the proposed remedies to increase business compliance with the law. Among the points made were that there should be a clearly defined outcome included for each remedy in an undertaking or enforcement order.</p>	<p>On the whole respondents agreed that the proposed remedies would increase business compliance with the law and represented a significant advance for consumers. There was some concern that a list of remedies would quickly become out of date due to market innovations.</p>
<p>Question 10 - Do you agree with the Government's proposed mechanisms for enforcement via undertakings and Enforcement Orders?</p>	<p>There was concern that there was a risk that an enforcer might seek to impose a wide range of remedies that were disproportionate to the harm caused, using the threat of court action if they did not agree to them.</p>	<p>Respondents thought that introducing 'a robust customer complaints-handling scheme and signing up to an Alternative Dispute Resolution scheme' would be good tools for fostering a compliance culture.</p>	<p>The majority of responses from local government agreed with the proposed mechanisms for enforcement via undertakings and enforcement orders.</p>
<p>Improved Redress for Consumers affected by the Breach</p>			
<p>Question 11 - Do you agree that the Government's proposals will achieve the outcome of improved redress for consumers?</p>	<p>Most respondents thought that it likely that the proposals would lead to improved redress for consumers. However, there was concern regarding the possible unintended consequences of the proposals and the potential administrative burdens on business.</p>	<p>There was concern that the proposals would not achieve the outcome of improved redress for consumers. It was thought that the proposals were weighted too heavily in favour of business</p>	<p>Most respondents agreed that the proposals will achieve the outcome of improved redress for consumers and that the proposals will encourage greater dialogue between the enforcer and businesses to mutual benefit.</p>
<p>Question 12 - Where individual consumers cannot be identified, how</p>	<p>There was widespread concern at the possible remedies in the consultation and that they could</p>	<p>It was thought that it was not in the interest of consumers for businesses to propose a scheme;</p>	<p>Respondents highlighted that each case would be different and enforcers should have flexibility to</p>

do you think the schemes could operate?	be used to impose a punitive impact on the trader, which was not felt to be the purpose of the proposals outlined.	rather it should be for the enforcer to put an appropriate scheme in place	identify the most appropriate remedy for providing redress to consumers who had suffered detriment.
Question 13 - Should businesses be able to offer undertakings to enforcers agreeing to implement consumer redress schemes or should the agreements be 'rubber-stamped' by a court before coming into force?	Respondents thought that businesses should be able to offer undertakings to enforcers but that the courts should not have the power to impose requirements to provide redress.	Where undertakings were accepted by an enforcer, it was suggested that they include how the business will monitor the scheme so it will be easy for the enforcer to check if consumers are being compensated.	There was agreement that businesses should have the opportunity to offer undertakings to enforcers to implement consumer redress schemes before resorting to the courts.
Question14 - Should the court have a power to impose a requirement that a business set up a scheme aimed at providing compensation or restitution?	There was concern at the proposal that agreements should be rubber stamped by a court as this risked adding an additional layer to what was seen as a potentially expensive and bureaucratic process.	All respondents agreed that the courts should have the power to impose requirements on business to set up a scheme aimed at providing compensation.	There was agreement that the courts should have a power to impose a requirement on a business that they set up a scheme to provide compensation or restitution. It was thought that this would be essential to the effectiveness of the proposals.
More confident, empowered consumers able to exercise greater choice			
Question 15 - Do you agree that the Government's proposals would be workable and appropriate?	Respondents did not think that the possible remedies would be workable nor did they believe that they were appropriate.	Transparency and publicity were thought to be integral to the proposals being workable.	While ambitious, it was thought that the proposed approach would be workable and appropriate
Question16 - Are there any other measures you think could achieve this objective?	Large businesses re-iterated that in their view existing powers were sufficient to achieve the objective.	Among the suggestions were that enforcers should be able to publish data on the problems they have found when inspecting or	Amongst the measures suggested was better and more effective market surveillance, more resources for enforcement

		investigating a business.	and for better consumer education of their rights.
Choosing the Right Remedy			
Question 17 - Do you think legislation should list specific actions to be chosen from or simply set out the outcomes while leaving discretion to the parties and ultimately the court as to the best action to address the breach?	Responses to this question were mixed though the majority felt that legislation should set out the outcomes required and leave discretion to the parties to choose the best action to address the breach.	To allow flexibility it was thought that a non-exhaustive list of specific actions would be appropriate, but with the addition of 'and anything else the enforcer believes appropriate in the circumstances to achieve one of more of the outcomes'.	Most of those who responded to this question thought that enabling enforcers and the courts to have flexibility and discretion to choose the most appropriate action was the best way of proceeding.

6 Unfair Contract Terms

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, and can be found here: http://lawcommission.justice.gov.uk/consultations/unfair_consumer_contracts.htm.

Law Commissions Recommendation	The Government's response
<p>Recommendation 1 The exemption for main subject matter and price set out in Regulation 6(2) of the Unfair Terms in Consumer Contracts Regulations 1999 should be reformed</p>	<p><u>Agree in full</u> – The Law Commissions' consultation and the responses to it are good evidence that the law is difficult to apply in practice and therefore causes uncertainty for consumers, businesses, enforcement agencies and the courts.</p>
<p>Recommendation 2 The price exemption should be reformulated, to apply only to terms which are transparent and prominent.</p>	
<p>Recommendation 3 The main subject matter exemption should be reformulated to apply only to terms which are transparent and prominent.</p>	
<p>Recommendation 4 Provided that a price term is</p>	<p><u>Agree in part</u> – The Law Commission set out good reasons why 'adequacy' is not useful – notably that the courts have found it 'strange' to interpret.</p>

Law Commissions Recommendation	The Government's response
transparent and prominent, the court may not assess the amount of the price as against the services or goods supplied in exchange.	The Supreme Court referred instead to the 'appropriateness' of the price, so we propose to use that rather than 'amount'. This will make the clause clearer, as the Law Commissions intended, but reflect the Supreme Court's judgement.
<p>Recommendation 5 The exemption for main subject matter should apply to any term which specifies the main subject matter, and not simply to the way that the main subject matter has been defined.</p>	<p><u>Agree in full</u> – We agree that it is not helpful or necessary to restrict this to the “definition” of the subject matter.</p>
<p>Recommendation 6 To be “transparent” a term must be (1) in plain, intelligible language; (2) readily available to the consumer; (3) and, if in writing, it must be legible.</p>	<p><u>Agree in part</u> – This is a helpful clarification for consumers and businesses. The use of terminology such as ‘plain, intelligible’ will make it easier to interpret. However we propose to remove the reference to ‘readily available’, as its meaning has some ambiguity and the term would already need to be prominent.</p>
<p>Recommendation 7 To be “prominent” a term must be presented in such a way that the average consumer would be aware of the term.</p> <p>The more unusual or onerous</p>	<p><u>Agree in full</u> – This is a useful provision in codifying case law and solving the ‘small print’ problem</p>

Law Commissions Recommendation	The Government's response
the term, the more prominent it needs to be.	
Recommendation 8 Price should be defined as “money consideration”, in line with the definition currently found within section 2(1) of the Sale of Goods Act 1979.	<u>Agree in part</u> – we agree with the principle but will ensure that the definition of ‘consumer’ is consistent throughout the draft Bill
Recommendation 9 The reference to “remuneration” within article 4(2) of the Unfair Terms Directive should be omitted from the new legislation.	<u>Agree in full</u> – We agree that this reference is unnecessary
Recommendation 10 The Department for Business, Innovation and Skills should hold discussions with the Office of Fair Trading and other regulators about the mechanics of preparing guidance. Subject to these discussions, it should ensure that in deciding whether a term is transparent or prominent, the courts may have regard to guidance.	<u>Agree in full</u> – We will discuss guidance with the OFT and others on this, as we are working with them now to develop the provisions.
Recommendation 11 The legislation should specifically state that terms on the grey list are assessable for	<u>Agree in full</u> – This would be a helpful clarification to the current situation.

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fairness. The price/main subject matter exemption should be read subject to this provision.	
<p>Recommendation 12 The legislation should state that terms in paragraph 2 of the grey list are assessable for fairness, unless they are exempted by other provisions of the legislation.</p>	<p><u>Agree in full</u> – This would be a helpful clarification to the current situation.</p>
<p>Recommendation 13 The indicative list of terms that might be unfair should be copied out from the Unfair Terms Directive, subject to the specific changes and additions discussed below.</p>	<p><u>Agree in full</u> – We agree that the grey list should be based on a copy-out of the Directive annex and as such we should clarify its drafting, without changing the meaning, where this is necessary to be consistent with the rest of the Consumer Rights Bill.</p>
<p>Recommendation 14 The use of defined terms in the grey list should be consistent with other consumer legislation.</p>	<p><u>Agree in full</u>– We will ensure a consistent use of words such as “consumer” and “trader” throughout the Bill</p>
<p>Recommendation 15 Price escalation clauses are already covered by the grey list. There is no need for additions to the list to deal with this issue.</p>	<p><u>Agree in full</u>– We agree with the Law Commission that it is already covered.</p>
<p>Recommendation 16 Default charges are already covered by the grey list. There is</p>	<p><u>Agree in full</u>– We agree with the Law Commission that it is already covered</p>

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no need for additions to the list to deal with this issue.	
<p>Recommendation 17 A new paragraph should be added to the indicative list to cover terms which have the object or effect of permitting 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.</p>	<p><u>Agree in full</u> – We agree that this would be a helpful clarification following recent case law.</p>
<p>Recommendation 18 A new paragraph should be added to the indicative list, to cover terms which have the object or effect of giving the trader discretion to decide the amount of the price after the consumer has become bound by the contract. This should be subject to the exceptions currently listed in Schedule 2 paragraph 2 of the Unfair Terms in Consumer Contracts Regulations 1999.</p>	<p><u>Agree in full</u> – We agree that this would be a helpful addition .</p>
<p>Recommendation 19 A new paragraph should be</p>	<p><u>Agree in full</u> – We agree that this would be a helpful addition</p>

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<p>added to the indicative list, to cover terms which have the object or effect of giving the trader discretion to decide the subject matter of the contract after the consumer has become bound by it. This should be subject to the exceptions currently listed in Schedule 2 paragraph 2 of the Unfair Terms in Consumer Contracts Regulations 1999.</p>	
<p>Recommendation 20 A new paragraph should not be added to the indicative list to cover disproportionate and remote contingent charges.</p>	<p><u>Agree in full.</u> We agree with the Law Commission that this is not desirable.</p>
<p>Recommendation 21 The Unfair Terms Directive should be copied out into the law of the UK, subject to the specific recommendations we make.</p>	<p><u>Agree in full</u>– We agree that implementation of the Directive should be based on a copy-out approach, and as such we should clarify its drafting, without changing the meaning, where this is necessary.</p>
<p>Recommendation 22 The fairness test set out in articles 3(1) and 4(1) of the Unfair Terms Directive should be replicated in the new legislation. It should not be supplemented by a list of factors.</p>	<p><u>Agree in full</u> – We agree that a copy-out approach is appropriate in this case.</p>

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<p>Recommendation 23 Regulation 7(1) of the Unfair Terms in Consumer Contracts Regulations 1999 should be amended to state that written terms offered to the consumer must be transparent.</p>	<p><u>Agree in full</u> – We agree this would be a helpful clarification.</p>
<p>Recommendation 24 The new legislation should clarify that enforcement bodies may use their powers under Part 8 of the Enterprise Act 2002 against written terms which are not transparent.</p>	<p><u>Agree in full</u> – We agree this would be a helpful clarification. We will look for the most appropriate place to make this clarification in the Bill.</p>
<p>Recommendation 25 The new legislation should replicate the substance of the provisions in the Unfair Contract Terms Act 1977 concerning terms and notices which purport to exclude or restrict a trader's liability for causing death or personal injury resulting from negligence or breach of duty. Such terms should always be regarded as unfair.</p>	<p><u>Agree in full</u> – We agree that the current level of protection under the Unfair Contract Terms Act 1977 should not be reduced.</p>
<p>Recommendation 26 Notices which purport to exclude or restrict a trader's legal liability</p>	<p><u>Agree in full</u> – We agree that notices should be covered, so that a business may not unfairly exclude or restrict its non-contractual liability to a consumer for matters other than death or personal injury</p>

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<p>to a consumer should be brought within the scope of the legislation. This means that: (1) notices would be assessable for fairness (unless they fall within the provisions relating to liability for personal injury and death outlined above); and (2) enforcement bodies would have powers to bring action against notices.</p>	
<p>Recommendation 27 The exclusion in Regulation 4(2) should specifically include rules which, according to the law, shall apply between the contracting parties provided that no other arrangements have been established.</p>	<p><u>Agree in full</u> – We agree that this is a useful clarification reflecting the Directive's requirements.</p>
<p>Recommendation 28 Any term, with the exception of exempted terms, should be subject to the fairness assessment, whether negotiated or not.</p>	<p><u>Agree in full</u> – We agree that the current level of protection under the Unfair Contract Terms Act 1977 should not be reduced.</p>
<p>Recommendation 29 The new legislation should state</p>	<p><u>Agree in full</u> – We agree that this is a useful clarification reflecting the case law.</p>

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<p>that, in proceedings brought by individual consumers, the court is required to consider the fairness of a term, even if the consumer has not raised the issue, where it has available to it the legal and factual elements necessary for that task.</p>	
<p>Recommendation 30 The definition of consumer should follow that used in the forthcoming Consumer Bill of Rights. (Paragraph 7.108)</p>	<p><u>Agree in part</u> – We agree that consistency is important – we will use the same definition throughout the Bill, which follows the approach in the Consumer Rights Directive.</p>
<p>Recommendation 31 The Department for Business, Innovation and Skills should consider whether to clarify that the definition of a consumer encompasses situations where a natural person seeks to receive goods or services with a view to carrying on a business but not in the course of a current business.</p>	<p><u>Agree in full</u> – We agree that such persons are entering into transactions for business purposes and so should not be treated as consumers for the purposes of the Bill.</p>
<p>Recommendation 32 Following the new legislation, the Unfair Contract Terms Act 1977 should no longer regulate business to consumer contracts. Nor should it continue to provide</p>	<p><u>Agree in full</u> – We agree that all provisions regulating unfair terms in business to consumer contracts should be consolidated in a single regime in the Bill.</p>

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additional protection to a business that deals as a consumer.	
Recommendation 33 Employees should not be regarded as consumers under the new legislation.	<u>Agree in full</u> – We agree that it is appropriate for employment law to regulate the rights and obligations of employees.
Recommendation 34 The Department for Business, Innovation and Skills should consider whether an opportunity can be found to consolidate the law on private sale contracts.	<u>Agree in full</u> – We will consider this alongside other priorities

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This publication available from www.gov.uk/bis

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BIS/13/927