

**THE SUPPLY OF GOODS: THE  
DEDUCTION FROM REFUND FOR  
USE AT RESCISSION OF  
CONTRACT**

Impact assessment

JULY 2012

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<b>Title:</b>  <b>The Supply of Goods: The deduction from refund for use at rescission of contract</b>  <b>IA No:</b>  <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 30/01/2012		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Adam Gray, Consumer & Competition Policy, BIS, 3 <sup>rd</sup> Floor, 1 Victoria Street, London. SW1H 0ET. T: 0207 215 1940; adam.gray@bis.gsi.gov.uk			
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> AMBER	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No
			In/Out/zero net cost

**What is the problem under consideration? Why is government intervention necessary?**  
 Under the current law the consumer may seek to exit a contract due to goods being faulty. In these cases the retailer has the right to reduce the amount reimbursed, in line with the amount of use that the consumer has had of the good prior to the fault occurring. However, there is no guidance on how the reduction may be calculated and so there is a risk of inconsistency and the potential for costly disputes. The business, rather than the consumer, is also in total control of calculating this deduction, leaving the possibility of disproportionately large deductions for use.

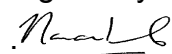
**What are the policy objectives and the intended effects?**  
 The objective is to increase consumer and business confidence and the consistency of consumer protection by clarifying consumer rights to reimbursement when exercising their right to exit a contract. The intention is for consumers to receive a refund that fairly reflects the level of inconvenience that they have experienced as a result of the fault without unduly burdening business but in order to maximise clarity, some fairly rough and ready but clear indications are better than the current flexibility. Setting a minimum refund in line with use will improve transparency in how the final refund is calculated and should reduce the number of disputes, saving time, and therefore money, for both consumers and businesses.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 0: No change to the current legislation - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.  
 Option 1: Remove the right for retailers to make a deduction for use.  
 Option 2: Allow no deduction for use in the first six months, followed by regular increases to the maximum deduction on a six-monthly basis, up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £150.  
 Option 3: Allow no deduction for use in the first three months, followed by increases to the maximum deduction at 2, 4 and 6 years after the point of purchase. No deduction for products priced at under £100.  
 Option 4: Set deduction profile as in Option 3, but allowing exceptions to the specified deduction, where either the business or consumer can provide robust, objective third party evidence that the product value is different to the set refund.

<b>Will the policy be reviewed?</b> It will/will not be reviewed. <b>If applicable, set review date:</b> Month/Year					
Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister



Date: 12/07/2012

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Remove the right for retailers to make deductions to refunds in line with use

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Y	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

None of the costs identified have been monetised. This is true throughout the IA and is mainly because of the nature of the problem being addressed. Retailers are currently free to make deductions for use on an ad-hoc basis, as they see fit, and so establishing any kind of average or standard practice, against which the impact of change could be properly compared and monetised, would be very difficult. Further detail on current practices, as far as is possible, will be collected through consultation for the final stage IA.

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

Removing the right to deduct for use will have a direct cost impact on business in the short term. Retailers will be required to offer a refund equal to the original purchase price of the good. The additional cost imposed by this measure is the difference between what business would have deducted for use, under the current law, compared to no deduction scenario. In the medium to longer term, business might pass on all the cost of no deduction for use through increased prices for consumers.

BENEFITS (£m)	Total Transition (Constant Price) Y	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None of the costs identified have been monetised.

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

The clarity of the rule is likely to lead to fewer costly negotiations and litigation for business and consumers alike, and lower on-going staff training for business. Consumers seeking to return inherently faulty goods will benefit by receiving a full refund where they may have previously received less. They may also be more likely to pursue rescission, rather than feeling pressured to live with the fault or remain trapped in a cycle of failed repairs or replacements.

### Key assumptions/sensitivities/risks

There is a risk that this proposal could increase fraudulent behaviour among consumers leading to a disproportionate cost to business. However, in order to reach the point of refund, the fault must demonstrably have been present at the time of sale and the consumer must have proceeded through the first tier remedies of repair or replacement. Having discussed it with business groups as part of our informal consultation, the Government believes that this risk is lower than it might appear at first sight, but it is real.

## BUSINESS ASSESSMENT (Option 1)

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

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Apply a scheme allowing no deduction for use in the first six months, followed by regularly increasing deductions up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £150.

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
None of the costs identified have been monetised					
<b>Other key non-monetised costs by 'main affected groups'</b>					
This could impose additional costs on businesses if they would normally have made a deduction for use over and above the profile specified, or any deduction for use for products under £150, but the cost would be less than under Option 1. Informal consultations suggest that similar schemes are used by some businesses already which would make additional costs minimal, at least for them. In the medium to longer term, business might pass on any additional cost through higher prices, but much less than for Option 1.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
None of the benefits identified have been monetised					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
The key benefit here would be that by setting a maximum deduction that could be made at any given point, excessive deductions would be prevented. This would also reduce the incidence of costly disputes because the deduction calculation would be more transparent and demonstrably fair to both consumers and business. This should reduce the cost of disputes for both sides and improve consumer satisfaction and confidence. Business staff training cost might be reduced but less than under Option 1. This option would only set maximum deductions, so any refund schemes which are more generous would be able to continue.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a theoretical risk that this proposal could increase fraudulent behaviour among consumers leading to a disproportionate cost to business. However, in order to reach the point of refund, the fault must demonstrably have been present at the time of sale and the consumer must have proceeded through the first tier remedies of repair or replacement. Having discussed it with business groups as part of our informal consultation, the Government believes that this risk is low					

## BUSINESS ASSESSMENT (Option 2)

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

## Summary: Analysis & Evidence

## Policy Option 3

Description: Apply a scheme allowing no deduction for use in the first three months, followed by an increase in the maximum possible deduction, at 2, 4 and 6 years after the point of purchase. Apply no deduction for use to products priced at under £100.

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
None of the costs identified have been monetised.					
<b>Other key non-monetised costs by 'main affected groups'</b>					
This option would impose somewhat lower costs on business than Option 2, though the distribution of costs and benefits are likely to be slightly different over time. So businesses are likely to benefit more at the start of each two year period, when the deduction suddenly increases, compared to a more steady deduction increase, but consumers will benefit more at the end of a two year period, when a steady increase would have allowed a larger deduction. The allowance of deduction for use at 3 months will reduce costs for suppliers of items that go wrong early and depreciate in value quickly. Allowing deduction for use for products priced between £100 and £150 will benefit businesses selling items in this price range.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
None of the benefits identified have been monetised					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Generally, the benefits would be similar to Option 2 overall, but the distribution of the benefits over the 6 years would be different and the lower threshold of £100 would favour businesses more than consumers.. Both consumers and businesses would still benefit from the added clarity of this system, which should make the law easier to understand and apply for both parties.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a risk even here that businesses would still suffer costs in the case of high-value goods that devalue very quickly, but this risk would be less than for Option 2, because 25% would be deductible much sooner. There is a risk that consumers will be dissatisfied with only partial reimbursement after a period as short as 3 months and therefore that the consumer empowerment gains of the measure will be reduced.					

### BUSINESS ASSESSMENT (Option 3)

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

## Summary: Analysis & Evidence

## Policy Option 4

**Description:** Apply a scheme, allowing no deduction for use in the first three or six months, followed by regularly increasing deductions up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £100 or £150. Also allow for exceptions to the specified deduction where either the business or consumer can prove through robust, objective third-party evidence that the product value is different to the set refund.

### FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
None of the costs identified have been monetised					
<b>Other key non-monetised costs by 'main affected groups'</b>					
By allowing exceptions to the specified deduction profile, this option mitigates the risk of imposing excessive costs to business. Businesses dealing with high-value goods which devalue quickly and where sufficiently reliable independent evidence of value exists (such as cars) may particularly benefit from this option. Otherwise, this option will impose the same costs (and benefits) as Option 2 or Option 3.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Optional		Optional		<b>Optional</b>
High	Optional		Optional		<b>Optional</b>
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
None of the benefits identified have been monetised					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Benefits might be less than in Option 2 or 3, as there might be costs associated with the time taken by either party to establish a certain product value and if an exemption is sought then potentially costly disputes could arise over what constituted impartial evidence of that value. For cars there are third-party reference prices available for use, so disputes might be less likely. Business staff training costs might be reduced but less so than under options 1, 2 or 3.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
This option could lead to lengthy and costly disputes over the value of a wide range of products and over what constituted robust, objective third-party evidence of that value..					

### BUSINESS ASSESSMENT (Option 4)

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

# Evidence Base (for summary sheets)

## Background Documents

1. This document forms part of a suite of IAs relating to the supply of goods. An overarching IA, covering all of these related IAs at a high level is provided at **ANNEX A**.
2. More widely, The proposals set out in this Impact Assessment form a part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. The proposals in this Impact Assessment would require primary legislation to be implemented, which we propose to do via a Consumer Bill of Rights.
3. Following changes to the law it would be our intention that a communications campaign will be initiated in order to inform consumers and those who deal with consumers and also businesses of the changes to the law. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We will discuss awareness raising for businesses with a range of business representative bodies
4. There is further information about the Consumer Law Reform programme in **ANNEX B**.

## Problem under consideration

5. Under the current law a consumer may seek to exit a contract if the first tier remedies for sale of a faulty good (repair or replacement of the item) would lead to significant inconvenience to the consumer or could not be performed in a reasonable time. In those cases the consumer may return the good and claim a refund. The retailer may reduce the amount reimbursed, in line with the amount of use that the consumer had of the good prior to the fault occurring. However, there is no guidance on how the reduction may be calculated and so there is a risk of inconsistency, the potential for costly disputes and the possibility of disproportionate deductions being made, causing undue consumer detriment.
6. In their 2009 report, the Law Commissions highlighted some key problems with it:
  - 'In meetings, stakeholders told [them] that the deduction for use is seldom used, and uncertain.'
  - It adds complications to the law. The Council of Her Majesty's Circuit Judges in their response to the consultation stated that 'the calculation of the appropriate reduction is fraught with difficulties'
  - It causes disputes as consumers sometimes retaliate with damages claims;
7. However, the British Retail Consortium argues that, rather than being rarely used, the right to deduct for use is used by many retailers as a matter of course and that to remove the right would be severely detrimental. They have suggested in informal consultations that one technique used for calculating the deduction is to remove a portion of the original price in a set proportion to the length of time the consumer has had the good, so that the deduction made increases at a steady rate over the course of 6 years, which is the length of time during which a claim can be made (except in Scotland where it is five years). Another method in use is to apply no deduction for the first year and then spread the deduction over the remaining 5 years of the contract (or 4 years in Scotland).
8. In terms of the scale of the problem, the OFT consumer detriment survey in 2008 found that there was a combined total of around 1.2m problems with failures to observe cancellation rights, difficulties sorting out problems with a retailer (including problems getting refunds), and offers of inadequate redress causing an estimated consumer detriment of around £105m.<sup>1</sup> Whilst we cannot attribute specific proportions of these complaints to problems with deduction for use calculations because the data collected was not broken down to this level of detail, it seems clear that significant benefits could stem from reforms intended to clarify and simplify the process for achieving appropriate consumer redress.

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<sup>1</sup> OFT, Consumer Detriment Survey (2008) – the full problem type categories were 'failure to observe cancellation rights', 'difficulty sorting out any problems you may have had with a retailer or supplier, or problems getting refunds' and 'offers of inadequate redress, including credit notes instead of refunds'



## Rationale for intervention

9. The current framework places the decision on whether to make a deduction, and the scale of that deduction, entirely in the hands of the retailer. While we believe that in the majority of cases the retailer acts fairly in assessing these, there is the potential for abuse of the provision, to the obvious detriment of the consumer.
10. The Law Commissions, following a public consultation, concluded in 2009 that the current situation lacks clarity and is a source of costly disputes and recommended a change in the law. The Government, having reflected on the arguments put forward by the Law Commission, and the responses to the consultation and having discussed the matter with a range of stakeholders, believes a clarification of the law would potentially benefit all parties involved.

## Policy objective

11. The objective is to increase consumer and business confidence and the consistency of consumer protection by clarifying consumer rights to reimbursement when exiting a supply of goods contract using the legal mechanism of rescission. The intention is for consumers to receive a refund that fairly reflects the level of inconvenience that they have experienced as a result of the fault without unduly burdening business. Establishing a minimum refund will improve transparency in how the final refund is calculated and should reduce the number of disputes, leading to increased efficiency for both consumers and businesses. But it may also impose costs on either business or consumers if set at the wrong level.

## Description of options considered

12. We have considered the following options:
13. **Option 0:** *No change to the current legislation* - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo
14. As an alternative to changing the legislation, we have also considered simply producing guidance or a voluntary code of best practice. This guidance would probably be the same as the scheme considered in Option 2 or Option 3, but it has not been recommended because we believe that the resulting benefits would be greatly reduced.
15. This legislation as a whole, including this change to the deduction for use calculations, is designed to boost consumer confidence and therefore competition, ultimately with a view to driving economic growth. In this case, if the scheme was just produced as voluntary guidance, there would be no guarantee of receiving the same consumer rights in all shops, and so consumers would lose the confidence to shop at the full range of available retailers, and would be much more likely to stick with retailers they already know and trust, to the obvious detriment of new market entrants who could help to boost competition. Furthermore, these consumer rights need to be applied evenly across the retail sector in order to level the playing field at the bottom, so that unscrupulous rivals cannot undercut those retailers offering good consumer protection. For these reasons we do not believe that the desired outcomes on the ground can be achieved without a change to the legislation.
16. **Option 1:** *Remove the right for retailers to make a deduction for use*
17. During the limitation period within which consumers can pursue claims for breach of a contract (six years in England and Wales, five in Scotland), the business would have to provide a full refund to the consumer, irrespective of how long the consumer had owned the good prior to the fault manifesting.
18. This is the recommendation made by the Law Commission and the Scottish Law Commission in their 2009 report, 'Consumer Remedies for Faulty Goods' following a public consultation. This option brings the greatest benefits to consumers in the short term but also carries the highest direct costs for business. Business would only be able to offset this cost by reselling the good at a reduced price (in line with the natural devaluation of the goods and/or any residual fault(s)) and if that was not possible, would also

have to bear the cost of disposing of the good. In the long term this may even cause consumer detriment by leading retailers to increase up-front prices.

19. Furthermore, this is likely to be disproportionately more problematic in some sectors than in others. For example, in the automotive sector the initial value of vehicles is comparatively high (compared to many other goods), there is a particularly rapid depreciation in value, and vehicles are expected to last several years. If, for example, a fault appears in a vehicle after 4 years (and it can be proven that the fault was present when the vehicle was bought), rescission in that case would mean the consumer obtained the full original value of the vehicle and the cost to business would be significant.
20. **Option 2:** *Apply a clearer scheme, allowing no deduction for use in the first six months, followed by regularly increasing deductions up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £150.*
21. We would endeavour to make the calculation of the minimum refund as simple as possible to administer and would therefore include a table such as the one below in the schedules to the Bill.

Months Owned	Minimum Refund (% of amount paid)
0 - 6	100
6 - 12	90
12 - 18	82
18 - 24	74
24 - 30	66
30 - 36	58

Months Owned	Minimum Refund (% of amount paid)
36 - 42	50
42 - 48	42
48 - 54	34
54 - 60	26
60 - 66	18
66 - 72	10

22. This option represents a compromise. It will increase consumer confidence by clearly setting out the minimum refund which can be expected at any given time after the point of sale, providing it can be proved that the fault was present at the time of sale. It should also represent an increase in consumer protection overall, because it will only impact on businesses that are currently offering smaller refunds than this scheme specifies, whilst businesses currently offering more generous refunds will be unaffected.
23. Businesses have advised us that they rarely, if ever, seek to apply a deduction for use for low value items. The lower the value of the goods, the more likely it is that the retailer will respond by replacing the item or issuing a full refund to the customer, rather than trying to repair the item and eventually refunding only after deduction for use.
24. A threshold below which no deduction for use is allowed would thus appear to offer greater consumer confidence and clarity of expectation at little or no cost to the majority of retailers, but it is important to set the threshold at the right level. Government is open-minded at this stage on the level at which the threshold should be set.
25. The £150 threshold in this option stems from the Consumer Rights Directive (Article 7, point 4) which reduces the pre-contractual information requirements for contracts below €200. In order to minimise the number of different thresholds in operation in the new legislation, we have elected to use a plausible medium-term £ sterling equivalent of this value. The £100 threshold presented in Option 3 is an alternative that is more favourable to business – the actual threshold that would be applied if either Option 2 or 3 is implemented will be dependent on the outcome of the consultation, which will contain a specific question on what the threshold should be.
26. This option will impose much smaller costs on business compared to option one, and indeed for many businesses should impose no costs at all given that the model is based on models described to us as being commonly employed by retail businesses during informal consultations with the British Retail Consortium.

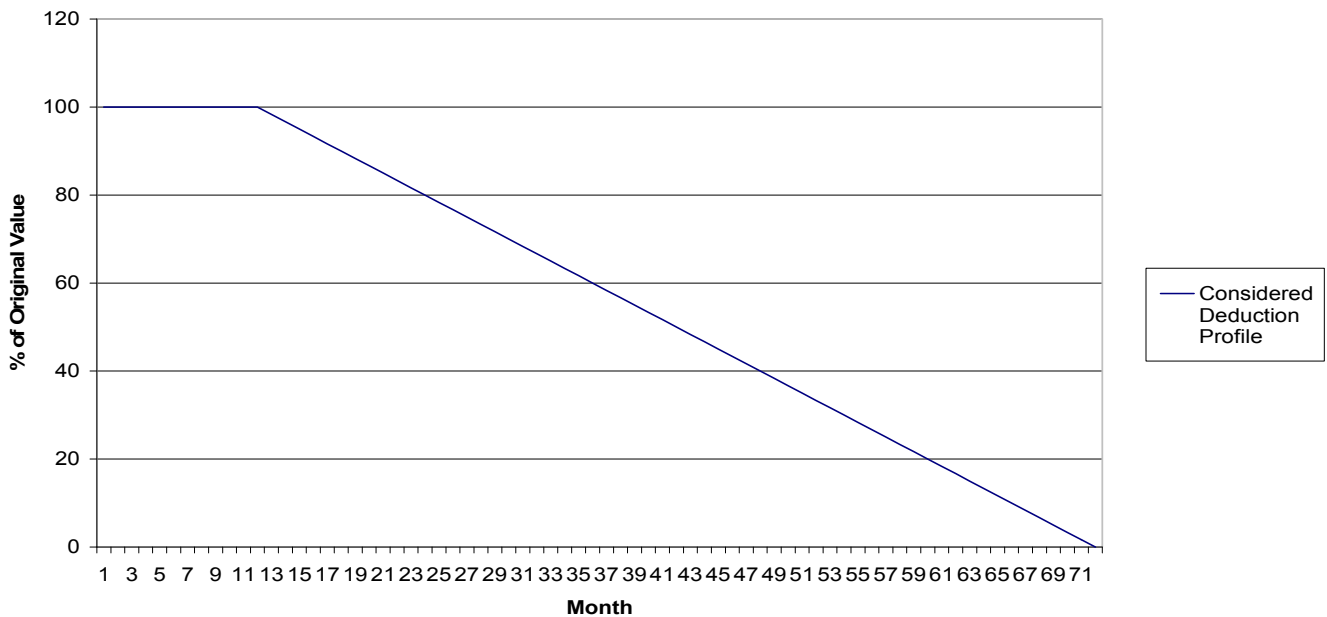
27. We also believe that in the majority of cases this will offer a similar level of consumer protection as abolishing the deduction for use, because the BRC estimate that around 80-90% of returned faulty goods are returned within the first year, and OFT research into consumer detriment in 2008 found that most individual cases that cause consumer detriment are low in value which suggests that the majority of cases would fall below the £150 threshold anyway. Specific data on the breakdown of total retail sales by value of goods is not readily available.
28. The 2008 OFT Consumer Detriment survey found that *"While the distribution of problems is heavily skewed towards lower values, the total amount of detriment is heavily skewed towards higher value problems. This is an important finding. In terms of activity directed at reducing detriment, there appears to be greater potential for reductions in detriment to be achieved by addressing these higher value problems than in the elimination of small value problems."* On the basis of this, the Government believes that applying this exemption for items priced less than £150 means that the policy is targeted to provide the greatest benefits in terms of the number of cases addressed, while avoiding overburdening business.
29. **Option 3:** Apply a clearer scheme allowing no deduction for use in the first three months, followed by an increase in the maximum possible deduction, at 2, 4 and 6 years after the point of purchase. Apply no deduction for use to products priced at under £100.
30. This scheme would essentially equate to a system of 5 bands of maximum possible deductions, starting at a 0% deduction for the first 3 months, increasing to a maximum of 25% between 6 months and 2 years, then 50% from 2 to 4 years, 75% from 4 to 6 years, and then a 100% deduction would be possible after 6 years. In terms of minimum refunds, the system would then look like this:

Months Owned	Minimum Refund (% of amount paid)
0 - 3	100
3 - 24	75
24 - 48	50
48 - 72	25
73 -	0

31. Although the first 3 months looks like an anomaly in this system, breaking up the otherwise uniform two-year bands, the Law Commissions found in consultation that deduction for use was an 'inflammatory topic'<sup>2</sup> with consumers, so we feel that an initial period of at least 6 months where no deduction applies represents an important compromise between preventing what could be seen as undue consumer detriment, whilst still allowing for some deductions in the first year, which is seen as an important safeguard for businesses which deal with goods that devalue rapidly after sale.
32. As stated above, the £100 threshold presented here is an alternative that favours business in comparison to the £150 threshold in Option 2, but the Government is open-minded on the exact figure to be taken forward in either case. The consultation will contain a specific question on what level the threshold should be set at.
33. Throughout the policy development process we have considered a wide range of possible deduction profiles, but in each case concluded that the options listed above were the clearest and fairest system. For example, an alternative would be to have a continuous deduction over time, rather than a different deduction band every 2 years.

<sup>2</sup> Law Commission, 'Consumer Remedies for Faulty Goods' (Nov, 2009), p.65

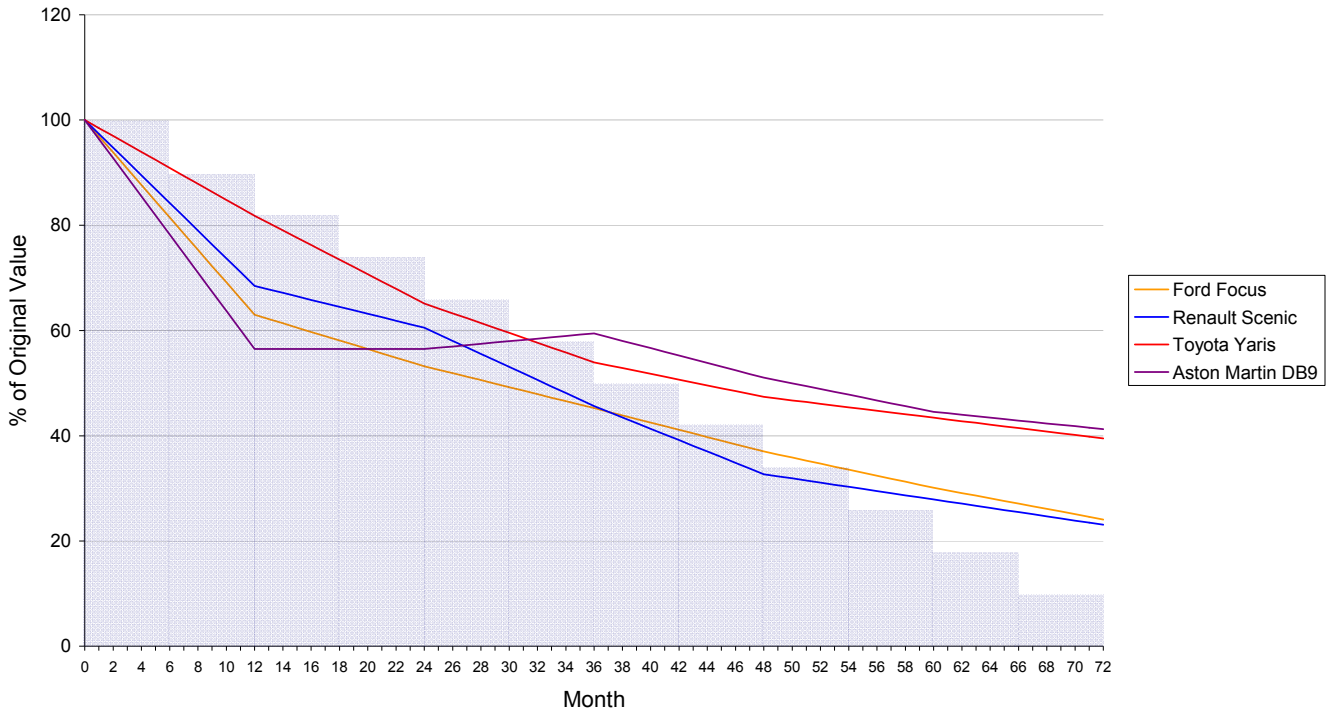
Chart of Possible Refund Values (6 yr base)



34. This would have the benefit of taking the exact amount of time passed into account but we judged that it would be far more difficult for consumers and businesses to use, because it would involve knowing the exact date of purchase, and then comparing that against a line graph, as opposed to just establishing which two year band it was in. In practical terms, using this model “on the shop floor” would be extremely difficult and the necessary calculations would be potentially time consuming and confusing to both the retailer and the consumer. Business groups have repeatedly stated that simplicity (and specifically, the fewer bands, the better) is one of the most important factors to consider in developing a scheme. Indeed, in informal consultation with business, feedback was that even Option 2, with twelve six-monthly blocks may be too complex. On this basis we have concluded that a continuous straight line model (as illustrated in the chart above) would not be a viable option.
35. Another option which might represent a compromise would be to have 24 bands, so that a different refund was available every 3 months. However, again, we thought that this number of divisions would make the system more complicated than necessary, and more difficult to use than the 12 band option.
36. A scheme in which the refund values dropped dramatically initially, and then more gradually, was also considered as a means of taking account of those products which devalue very quickly initially just by virtue of becoming second hand, and would therefore represent a considerable loss for the retailer if they had could only deduct a small percentage of its original value.
37. However, whilst in some situations this might help to remove a burden on business, in many more cases it would impose a relatively arbitrary burden on consumers who would only be entitled to a severely reduced refund, despite not having had the good for a very long time. This scheme was therefore not considered a viable option either.
38. In all of the schemes listed above we have only used the time passed since the point of sale as a means of calculating the refund that should still be available. Another factor that might seem relevant is the condition of the good at the point of return, because goods can get very different amounts of usage in the same amount of time. However, a key aim of all these changes is to provide as much simplicity and clarity as possible, in order to reduce the number of disputes and enable consumers and businesses alike to understand and apply consumer law cheaply, easily and effectively. It was therefore felt that any option which involved subjective factors like the condition of the goods was not acceptable.
39. **Option 4** Apply a clearer scheme, allowing no deduction for use in the first three or six months, followed by regularly increasing deductions up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £100 or £150. Also allow for exceptions to the specified deduction where there is robust, objective, third-party sourced reference pricing available for the second hand value of all models and makes of the product concerned.

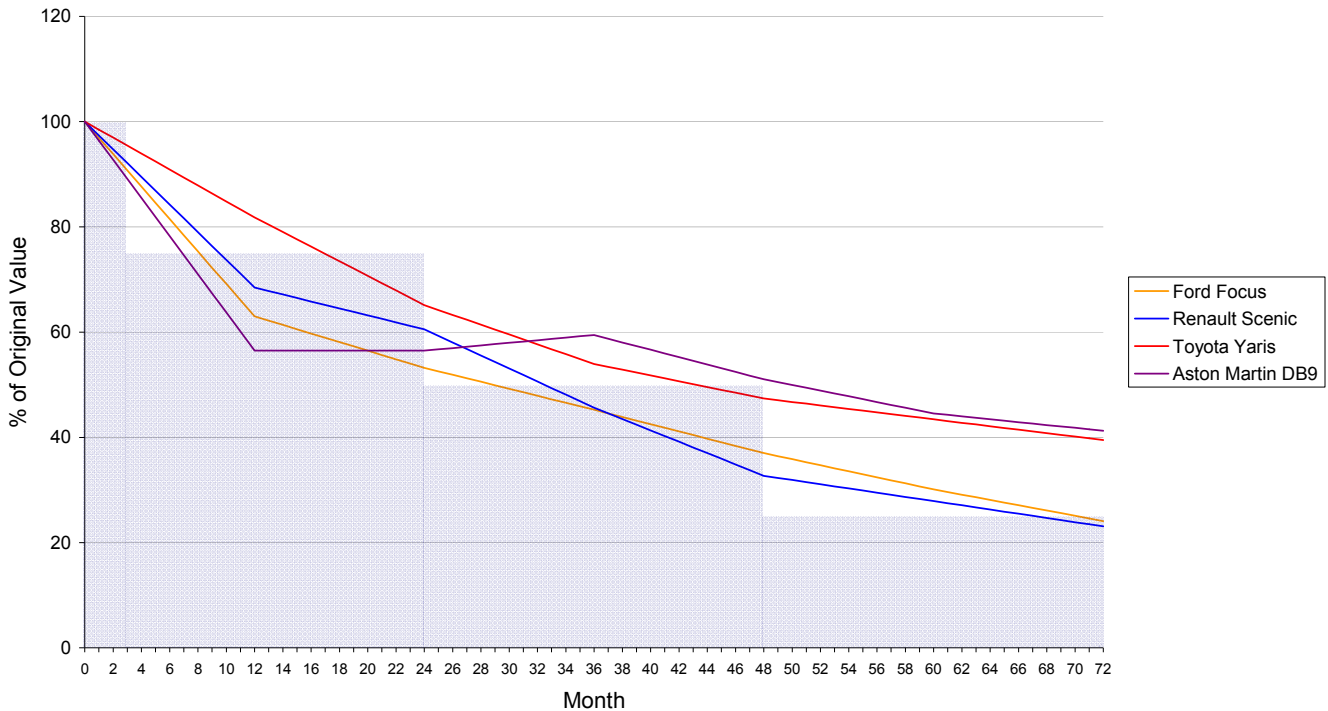
40. This option will allow more flexibility in determining refunds in cases where the specified refund obviously imposes an unfair cost on the business, or potentially the consumer. There will be costs and benefits for both consumers and businesses under this option, but it would be impossible to calculate who would benefit most given that this would be determined on a case by case basis.
41. This model would clearly be more advantageous to the car industry, where there is abundant data regarding second-hand prices, and also rapid depreciation of value of new cars in the first year after purchase. The graph below plots four car prices over time, compared with the proposed Option 2 and Option 3 straight line models for calculating refunds. It demonstrates that until at least 36 months after the sale, and potentially until around 54 months, the businesses would stand to make a substantial loss under Option 2 if required to offer a refund in line with a straight line deduction for use calculation because the value of the car would be significantly below the value of the refund given.

Chart of proposed refund values (6 yr base) against estimated vehicle values



42. For Option 3 the profile of gains and losses is more varied:

Chart of proposed refund values (6 yr base) against estimated vehicle values



43. Precisely because of the lack of this kind of data for other goods, it is envisaged that this exemption would not be used very extensively outside of the automotive industry. The risk in allowing for this exemption is that it may lead to lengthy and costly disputes over the value of a wide range of products as both businesses and consumers try to limit their costs and third parties seek commercial gain by attempting to gather and present reference prices for second-hand goods in other sectors with disputes arising about whether the data is reliable enough. The lack of clear data in many sectors would make it likely that these disputes could be extensive, and judging what evidence of value was acceptable would be difficult without some kind of impartial third party involvement, which could be expensive. Government is exploring and will explore in the consultation whether an impartial adjudicator could be appointed to reduce the costs of any such disputes. For example, a business sector wishing to rely on such evidence might have to persuade a consumer organisation or the Trading Standards Institute, for example, that the reference prices were impartial, comprehensive and reliable.
44. This option would reduce the clarity and certainty of Option 2 or Option 3, because unlike under Options 2 and 3, consumers would not be able to see clearly the minimum refund they were guaranteed to get. Therefore the original problem of disproportionate deductions for use could still persist, because it would take some personal research to prove what was disproportionate in order to prevent such deductions.
45. On the other hand, Option 2 in particular might result in significant losses for businesses such as car retailers and this would ultimately be passed on to consumers in the form of higher prices. At least for the car industry, therefore, Option 4 looks much more attractive.

## Monetised and non-monetised costs and benefits of each option

46. The calculations below are necessarily rough estimates, as the current flexibility of approach means that no standard baseline can be established for current practice when it comes to calculating deduction. Also, no reliable data exists for the proportion of complaints that reach the point of rescission – BIS has been informed that retailers are unlikely to keep records that delineate between the different remedies exercised by consumers so it is unlikely that this data will become available.

## **Option 0: No change**

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

## **Option 1: Remove the right for retailers to make a deduction for use**

### Benefits

48. This will provide a direct benefit to consumers in the short term by increasing the amount of refund that they receive when seeking to rescind their contract due to goods being faulty. The estimated value of this benefit is the same as the costs to business estimated below - i.e. £16-38 million per year (see the costs section immediately below, for detail on how these illustrative figures were estimated), as this represents a simple transfer of cost/benefit.
49. There should also be lower transaction costs in the form of wasted resources and time (business and consumers) on negotiation and litigation and fewer training costs for staff.

### Costs

50. In informal consultations, some business members of the BRC suggested that their current practice was to make no deduction for use for a fixed period at the start of the contract, and then apply gradually increase the amount of deduction applied, so that the deduction increases in discrete blocks (for example, monthly, or 6 monthly blocks), but at a constant rate over time (similar to the scheme suggested as Option 2).
51. With this in mind we have calculated, for illustrative purposes only, that the additional cost to business caused by abolishing the ability to deduct for use could be in the region of between £16-38 million per year. This is based on the BRC estimate that around 6% of goods are returned as faulty, 80-90% of which are returned within the first year. The Office of National Statistics puts weekly retail sales for Q1 2011 at £5,774m. Therefore, assuming (for simplicity's sake) that faults are evenly distributed across the range of goods, the value of faulty goods would be £346m. Then even if we conservatively estimate that only 5% of these actually reach the stage of rescission (as most faults are resolved by repair or replacement), the total value comes to about £17m per week.
52. Therefore, given the data available to us, if we imagined for simplicity's sake that the deductions were only applied after one year, and assumed that the number of faults manifesting themselves each year after purchase decreases most rapidly in the first few years along a 'smooth curve graph' over time, we could calculate a lower estimated cost to business of £16m per year based on 90% being returned in the first year, and therefore deduction of use only applying to 10% of faulty goods. If only 80% were returned within the first year, deduction for use would be more important to business, and its abolition would consequently cost nearer to £37m.
53. These calculations are necessarily only indicative figures for illustrative purposes as the current flexibility of approach means that no standard baseline can be established for current practice and the profile of returns and rescissions may vary by sector. Also, no reliable data exists for the proportion of complaints that reach the point of rescission – BIS has been informed that retailers are unlikely to keep records that delineate between the different remedies exercised by consumers so it is unlikely that this data will become available.
54. Retailers may pass on increased costs further up the chain to providers, but economic theory also suggests that costs of increased consumer protection related to refunds might be passed on to consumers in the form of higher prices in the medium to longer term. This capacity to increase prices may vary from sector to sector depending on the degree of price competition and the elasticity of demand.

**Option 2: allowing no deduction for use in the first year, followed by increasing deductions in line with use on a monthly basis up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £150.**

### Benefits

55. This model set out above is based on the scheme used by one of the BRC members who were informally consulted. We used it as a baseline to calculate the cost of abolishing deduction for use in option one, but the nature of the law at the moment makes accurate data on current practice very difficult to obtain, because of the freedom businesses are afforded to make decisions on a case by case basis as explained. However, for many large businesses our limited feedback suggests that systems are in place, and we therefore believe that this proposal will be close to existing good practice, and therefore impose no significant benefits (or costs) in many cases.
56. The main intended benefits are to protect consumers from disproportionate deductions and to reduce the incidence of costly disputes. Again we do not have specific data on the prevalence of disproportionate deductions, but the Law Commissions, as mentioned, did find in consultation that the lack of clarity regarding deductions 'leads to disputes', which strongly suggests that there is consumer dissatisfaction with at least some current practices and that this gives rise to costs for businesses and consumers.
57. Furthermore, a clear scale of deductions for use may assist some businesses which currently err on the side of caution or grant significant flexibility to branch staff which, according to some business representatives, means that some consumers currently make windfall gains at their expense. Of course, businesses which wanted to offer lower deductions for use as a marketing edge, could continue to be more generous to promote a consumer-friendly image.
58. There should also be a gain from improved consumer confidence, making consumers more willing to experiment with unfamiliar sources of supply, thus making market entry easier and strengthening competition.

### Costs

59. The costs to business, if any, would be significantly lower than those for Option 1. But there would still be costs to business in those cases where the permitted refund, according to the schedule, was lower than the actual depreciation of the product. In those cases the retailer would have to offer more as a refund than it could get back from the resale of the item being rejected.

**Option 3: Apply a clearer scheme allowing no deduction for use in the first three months, followed by an increase in the maximum possible deduction, at 2, 4 and 6 years after the point of purchase. Apply no deduction for use to products priced at under £100.**

### Benefits

60. This option will provide the same basic benefits as Option 2 because it will protect consumers from disproportionate deductions and therefore excessive consumer detriment. However, it should be simpler to use than Option 2, because there are fewer percentages involved, and they are all relatively 'round' numbers like 25, 50 or 75, as opposed to the 12 bands in Option 2 which relate to percentages like 82 or 66.
61. By having fewer bands it is bound to have more 'rough-edges' where either the consumer or business will feel that the refund value is slightly too high or low. However, we feel that this is justified because in all the informal feedback we have received from business and consumer groups, simplicity has been emphasised as a top priority, and the fewer different deduction bands available, the easier this scheme will be to understand and use.

### Costs

62. Again, the costs should be broadly similar to those for Option 2 in most cases, but just distributed differently over the course of the limitation period. Immediately after the 2, 4 or 6 year mark, when the minimum possible refund decreases dramatically, the business will benefit slightly compared to a straight-line deduction, whereas just before those changes, they will suffer costs relative to a straight-line



deduction. The cost to some businesses would be reduced by the availability of deduction for use after 3 months, rather than 6 and the availability of deduction for use for products worth between £100 and £150..

**Option 4: Allow no deduction for use in the first 3 or 6 months, followed by increasing deductions up to a deduction of 100 per cent at the end of 6 years. Apply no deduction for use to products priced at under £100 or 150. Also allow for exceptions where either the business or consumer can provide objective evidence that the product value is different to the value derived from the standard deduction.**

#### Benefits

63. The benefits and costs of Option 4 will be the same as for Options 2 or 3, except in cases where the exemption applies.
64. There would be more flexibility for both businesses and consumers to achieve more appropriate refunds in certain cases where it was clear that the value of the product significantly diverged from the standard model.
65. In particular, businesses dealing with high value goods which depreciate quickly, such as cars, would suffer significantly lower costs than under Options 1, 2 or 3. They would be able to offer refunds which they could then largely recoup through re-sale of the goods, rather than having to offer refunds well above the market value. Data on second hand car values is also easily available, making this option relatively feasible in this case. However retailers would still incur some costs in this scenario, because the refund would be based on a working second-hand car, so the necessary repair costs before resale would be a loss.

#### Costs

66. Both businesses and consumers could see increased costs due to the longer disputes potentially created by this option. Consumers in particular could suffer costs caused by businesses making disproportionate deductions for use, which could either be accepted, at a cost, or challenged, at a cost in terms of time and effort put into the dispute.
67. A key challenge would be to stipulate sufficiently exacting criteria for any evidence to meet before it is deemed robust enough to use for this purpose. However, we believe that this may be possible and would significantly reduce the scope for disputes on this basis.

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

68. Feedback from informal consultations suggests that any of our preferred options should fit with some existing practice and therefore impose minimal costs. However, we lack robust evidence on standard practice across the board, and the ad-hoc nature of deduction calculations at the moment means that this information would be difficult to obtain.
69. Therefore, we believe a full quantification of the costs or benefits of this change would involve in-depth, widespread research on a scale which would be out of proportion with the cost impact of this change in most cases.
70. The Government has therefore focused on describing the costs and benefits of the different options at this stage, and the main affected groups, whilst inviting respondents to the Consultation to comment on the benefits they see arising out of these changes, in order to better inform the final Impact Assessment. Further case study research projects will be carried out alongside the consultation to ensure that better data is available for the final IA.

## Risks and assumptions

71. There is a risk that this proposal could increase fraudulent behaviour among consumers leading to a disproportionate cost to business. However, in order to reach the point of refund, the fault must

demonstrably have been present at the time of sale and the consumer must have proceeded through the first tier remedies of repair or replacement. We therefore believe that this risk is low.

## Direct costs and benefits to business calculations (following OIOO methodology)

72. As detailed above, our estimate, made for illustrative purposes only, suggests that the direct costs to business of abolishing the deduction for use altogether might be somewhere in the region of £16-38 million per year. The cost of setting out a schedule for deduction for use combined with an exemption where robust independent data on resale value exists would be lower.
73. In an ideal world with infinite resources, in order to quantify and monetise all the relevant costs and benefits accurately, data would be needed on:
  - (a) current business practices regarding deductions made and better data on the age of products at the time refunds are being claimed
  - (b) the current distribution of the value of goods returned over time
74. This data is likely to vary significantly between industries, and so any overall cost / benefit analysis would have to be a weighted average based on relative industry size.
75. The potential for ad-hoc deductions under the current scheme suggests that data on actual business practices would be very difficult to obtain.
  - (c) The value of simplification and clarification would also have to be taken into account. This would include the costs related to time spent on disputes, legal advice sought, court time and staff training.
76. (a) and (b) could be used to work out the total value of the deductions for use currently being made. This could then be assessed against our model, to estimate what the total value would be after the proposed change. The difference between these figures minus the benefit of reduced training and dispute resolution costs would be the OIOO figure.
77. There could be savings for businesses currently offering more generous refunds, but we are assuming that some, if not most of these more generous refund schemes are driven by market pressures to build consumer loyalty, and so will continue after our changes. There may be some costs for businesses currently offering smaller refunds, but the proposed exemption will keep these costs low and they should be offset by the benefits of greater transparency and fewer disputes.

## Wider impacts

### Competition assessment

78. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
79. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at an excessive price.
80. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

## Impact on small firms

81. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.<sup>3</sup>
82. Ethnic minority businesses are concentrated within this sector<sup>4</sup>. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian<sup>5</sup>.
83. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful<sup>6</sup>.
84. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.
85. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.
86. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

## Summary and preferred option with description of implementation plan

87. We have chosen not to recommend a particular policy option at this stage because, although we have used the best available statistics throughout, we currently lack the data that would be necessary to quantify and monetise the specific impact of each policy on different sectors of the economy. We are therefore presenting the most viable options for consideration, and will seek through various evidence gathering exercises and formal consultations to obtain more detailed data on the likely impact of each option.
88. The government's intention is to implement this proposal through the planned Consumer Bill of Rights with a tentative implementation date of 2014 (subject to the findings of consultations and the Parliamentary timetable). A post-implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

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<sup>3</sup> BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

<sup>4</sup> Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See [www.berr.gov.uk/files/file38247.pdf](http://www.berr.gov.uk/files/file38247.pdf).

<sup>5</sup> For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at [http://www.london.gov.uk/mayor/economic\\_unit/docs/asian\\_businesses.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf). Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

<sup>6</sup> J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100

## Supply of Goods Impact Assessments: Overarching Explanation

### Problem under consideration

1. At present many businesses and consumers are unaware, or unclear, about their rights and obligations, leading to disputes that are costly for business and consumers, and preventing consumers from effectively pursuing their rights.
2. Responses to the Consumer Law Review which took place in 2008 suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase, including digital downloads.<sup>7</sup>
3. Our proposals are based on research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law'<sup>8</sup> as well as the above-mentioned Consumer Law Review and the Law Commission and Scottish Law Commission's 2009 report on 'Consumer Remedies for Faulty Goods'<sup>9</sup>.

### Rationale for intervention

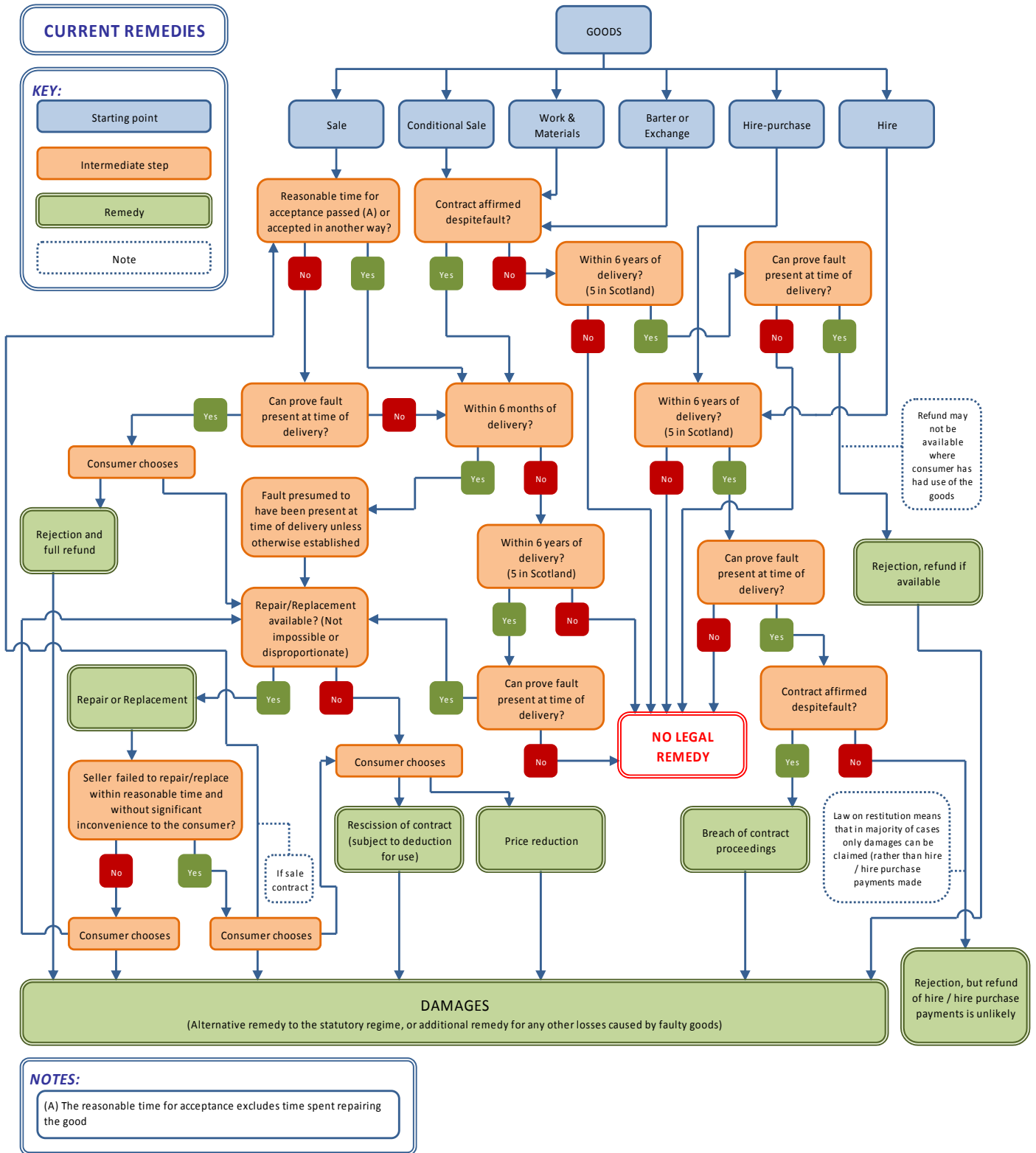
4. Responses to the Consumer Law Review (2008), the Law Commission and Scottish Law Commission's report on Consumer Remedies for Faulty Goods (2009) and research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law' (2010) all suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase. Such changes would make the law more accessible, increasing both business and consumer awareness of their rights and obligations.
5. Consumer sales in the UK were worth £5,774 million per week in the first quarter of 2011 (the latest data available) and there is evidence that the scale of consumer detriment in the UK is large. The latest available research conducted by the OFT estimated that the total consumer detriment related to problems with goods and services, amounted to around £6.6bn in 2008. Of this, around £481 million specifically related to problems with 'defective goods' and 'goods that were faulty, damaged or lacked durability', and the overall detriment caused by goods will be much higher given their additional involvement in other recorded sources of detriment, such as 'repair problems'. This equates to a minimum of 5.38 million problems with goods in the UK, suggesting that the scale of the problem to be addressed here is considerable.<sup>10</sup>
6. The Retail Red Tape Challenge concluded in July 2011 that there would be significant gains to be made by rationalising and clarifying consumer law. Reform of the law on sale of goods is a part of the Government's response.
7. To illustrate the complexity of the current law, the following flowchart shows the scheme of remedies for the supply of faulty goods.

<sup>7</sup> BIS, 'A Better Deal For Consumers: Delivering Real Change Now and Help for the Future' (July, 2009), p.80

<sup>8</sup> Prof. Twigg-Flesner & Prof. Geraint Howells (eds.), 'Consolidation and Simplification of UK Consumer Law' (Nov, 2010)

<sup>9</sup> Law Commissions, 'Consumer Remedies for Faulty Goods' (2009)

<sup>10</sup> OFT, 'Consumer Detriment Survey', (April 2008) - data broken down by Problem Type Category & then converted to 2011 prices based on inflation



8. On the basis of the expert advice received as part of the above listed reviews, and recognising both business support for this approach and the significant scale of potential consumer gain, the Government is persuaded that intervention is warranted at this time.

## Policy objective

9. The policy objective is to reduce business costs by clarifying the law, and thereby also to empower consumers and undermine rogue traders. By making the law clearer and more accessible the new law should make consumers more confident to assert their rights, thereby contributing to dynamic markets, adventurous purchasing, competition and growth.

## Policy Proposals

10. The government has identified 5 individual policy proposals, each with a number of options. The list below provides a summary of our preferred options, showing how each fits within three broad themes:
  - Clarity and understanding of the law – this theme covers issues stemming from the complexity of the language of the current legislation and from lack of consumer awareness of the law.
  - Lack of definition – this theme covers areas where the current framework does not provide clear-cut answers (either intentionally or unintentionally) to some common issues.
  - Lack of consistency – this theme includes issues caused by inconsistencies within the law.

### **Clarity and understanding the law**

11. Along with a general approach to drafting the Bill which will aim to use simple, modern language, we have a single proposal that falls within this category:
  - Establishing a statutory scheme of guarantees and clearly stated remedies for breach of these guarantees. This would replace the current “implied terms” model in which quality standards are applied to the underlying contract, necessitating an understanding of contract law to fully appreciate the specifics of the consumer’s rights.

### **Lack of definition**

12. Proposals detailed below that fall within this category are:
  - Establishing a period of 30 days, within which the good may be returned for a full refund if a fault is identified. At present there is an undefined period for inspection and return of a faulty good and this lack of definition has been highlighted by both business and consumer groups as a source of dispute and therefore cost.
  - This would clarify the current situation where a consumer may only access the second tier remedies if a repair/replacement is impossible or disproportionate, or has not been provided within a “reasonable time” and without “significant inconvenience” to the consumer. (If such circumstances arose before the fixed number of repairs/replacement or time limit had been met, then the consumer would still be able to access second-tier remedies at that point.) At present these terms are unclear, leading to many costly disputes.
  - Establish a minimum refund (as a proportion of the amount paid) that a consumer can expect to receive on exiting the contract through the second tier remedy of rescission. At present the retailer is entitled to make a deduction from the refund to account for the use that the consumer has had of the goods prior to the fault manifesting; however, no guidance is available on how this deduction should be calculated.

### **Lack of consistency**

13. There is a single proposal that falls into this category:
  - Align the remedies for all transaction types for the supply of goods. At present, different remedies apply, depending on the type of contract that has been entered into. In many cases it is not clear what type of agreement the contract forms, so it is difficult to establish what remedies are available to the consumer.

Our proposal is that the remedies currently available for sale of goods should be extended to other transaction types.

14. **N.B.** It should be noted that the current framework applies (and the new one will continue to apply) to goods of an enormous range of type and quality. At present, in the Sale of Goods Act 1979, for goods sold in the course of a business, “goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances” (s.14(2A)). This requirement will be retained, and therefore in order to access any of the consumer remedies this ‘reasonable person’ test will first have to be met.
15. For this reason, there has been no attempt to distinguish between the quality of different goods when stipulating the remedies to which consumers are entitled. If, for example, the good was so cheap that no reasonable person would expect it to still be working (or in the same condition) after 4 years, then clearly no consumer remedies would be available on the basis of its quality being unsatisfactory at that time. All of the remedies are only available for goods that ought to be functioning properly at the time the problem arises, but are not. The older a good becomes, the less plausible perfect functioning becomes and some parts are expected to wear out faster than others. If even an expensive car develops a faulty battery after 4 years, for example, the consumer would not expect a remedy based on the good being faulty at the time of sale. But if a quality car suffered an engine blow-out after 4 years of normal use, the consumer might have a claim as this would generally not be expected.

## Overall Costs and Benefits

### Benefits

16. Making consumer rights more accessible and straightforward to understand for both business and consumers should speed up the time taken to resolve disputes, reduce staff training costs and make litigation less likely. A more effective consumer regime would help provide a level playing field for law abiding business by undermining businesses which trade off the opaqueness and complexity of the law to exploit consumers. This will also increase consumer confidence, which should contribute towards increasing competition and innovation, which are key drivers of economic growth.

### Costs

17. There will be transition costs for businesses and consumer advisers in understanding the new rules and updating training courses, guidance materials and internal company documents which deal with consumer law. Improved consumer awareness and confidence may result in short term costs to some businesses related to dealing with consumers pursuing their rights, who may previously have “suffered in silence”. There will be some instances where consumers will have to wait longer to exit the contract as a result of our proposal to limit the short term right to reject and there may be some costs as well as benefits to business from the proposals to clarify the law by fixing a minimum value for refunds available at the rescission of contract. There may also be costs for some businesses arising out of proposals to limit the number of mandatory failed repairs to 2 (after which the consumer is entitled to rescind the contract). Some sellers of high-cost items may be able at present to insist on a longer cycle of repairs, if the repairs are relatively minor.

## Rationale and evidence that justify the level of analysis used in the IAs

18. The level of analysis possible for the individual proposals varies in accordance with the availability of data and so detailed rationale for the level of analysis is covered in the relevant sections below.
19. High-level figures demonstrating the scale of the problem in general terms are readily available, but in a number of areas more detailed evidence does not exist. For example, we recognise that in a number of the proposals it would be ideal to have evidence of the number of cases where a particular remedy is utilised by consumers but we are informed that retailers do not generally keep records to that level of detail.

20. Additional evidence will be sought during and through the consultation exercise and research will be commissioned to help develop the evidence base further. Our approach to this is set out in the relevant sections.

## Risks and assumptions

21. Risks and assumptions associated with the individual proposals are covered in detail in their respective sections, below. A risk that has been identified for two of the proposals is that they may lead to an increase in fraudulent behaviour among some consumers. We believe that in both of the relevant proposals, the benefits in terms of simplicity and reduction in disputes outweighs any increase in fraud that might reasonably be anticipated, but this will be tested in the consultation.

## Wider impacts

### Competition assessment

22. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
23. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at a higher price.
24. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

### Impact on small firms

25. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.<sup>11</sup>
26. Ethnic minority businesses are concentrated within this sector<sup>12</sup>. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian<sup>13</sup>.
27. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful<sup>14</sup>.
28. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.
29. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.

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<sup>11</sup> BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

<sup>12</sup> Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See [www.berr.gov.uk/files/file38247.pdf](http://www.berr.gov.uk/files/file38247.pdf).

<sup>13</sup> For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at [http://www.london.gov.uk/mayor/economic\\_unit/docs/asian\\_businesses.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf). Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

<sup>14</sup> J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100



30. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

## Implementation Plan

31. The government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of mid 2014 (subject to the findings of consultations and the Parliamentary timetable). A post implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

## The Consumer Law Reform Programme

1. In response to the Retail Red Tape Challenge the Secretary of State for Business announced a consumer law reform programme<sup>15</sup> to clarify and simplify consumer rights. The consumer law reform programme aims to streamline and modernise rights found currently in 12 pieces of legislation and the investigatory powers of Trading Standards officers found scattered in around 60 pieces of legislation.
2. Consumer protection regulations have developed piecemeal over many decades, with confusing overlay of European legislation onto domestic legislation in recent years. Businesses complain that the complexity of the law imposes costs and uncertainty on them and consumer groups complain that consumers cannot understand their rights and so cannot enforce them. Even academics and lawyers complain that the law is too complex. The consumer law reform programme will overhaul this regime setting out a simpler framework in plain English that provides certainty where there is lack of clarity, removes overlaps and unnecessary rules, and updates the law where it is required.
3. The proposals for reform of consumer law will take forward the recommendations and conclusions of numerous academic research reports and public consultations over the last few years. The Davidson report in 2006 concluded that UK law on Sale of Goods was unnecessarily complex and this was reviewed by the Law Commission who made recommendations in 2009<sup>16</sup>. In 2005 the Law Commission recommended simplification of Unfair Contract Terms law<sup>17</sup>. The University of East Anglia concluded in 2008 that the UK consumer protection regime had three key weaknesses – uneven enforcement, weak redress for consumers when things go wrong and excessively complex law<sup>18</sup>. A review of this regime in 2008 led by the Better Regulation Executive concluded that much consumer legislation could be simplified and modernised so that consumers and those dealing with consumers are clearer about the framework surrounding their transactions<sup>19</sup>. This review revealed strong support across the board for consolidating the legislation, making it much clearer and more accessible. Two further pieces of academic research have more recently made recommendations relating to consumer law for digital content and how the law could be simplified for goods and services<sup>20</sup>.
4. At the heart of the package of reform BIS will be bidding for a parliamentary slot for a Consumer Bill of Rights. The core of the Bill will overhaul core consumer rights in relation to faulty goods and poor services, and update the law to clarify rights for consumers when purchasing digital content. The Bill will also provide a generic set of Trading Standards investigatory powers in one place<sup>21</sup>, measures to empower consumers to challenge anti-competitive practices<sup>22</sup>, and possibly introduce civil court sanctions for breaches of consumer law and provide more effective powers for Local Authorities to regulate street trading.
5. The Bill will be accompanied by a package of secondary legislation that is intended to come into force at the same time using similar language. This will include implementation of the Consumer Rights Directive, updating and clarifying unfair contract terms legislation, and providing a clearer route for consumers to redress after misleading or aggressive practices.

<sup>15</sup> [www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape](http://www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape)

<sup>16</sup> Davidson Report 2006 [www.bis.gov.uk/files/file44583.pdf](http://www.bis.gov.uk/files/file44583.pdf);  
[http://lawcommission.justice.gov.uk/docs/lc317\\_Consumer\\_Remedies\\_In\\_Faulty\\_Goods.pdf](http://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf)

<sup>17</sup> [http://lawcommission.justice.gov.uk/docs/lc292\\_Unfair\\_Terms\\_In\\_Contracts.pdf](http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf)

<sup>18</sup> Benchmarking the performance of the UK framework supporting consumer empowerment. [www.bis.gov.uk/files/file50027.pdf](http://www.bis.gov.uk/files/file50027.pdf)

<sup>19</sup> [www.bis.gov.uk/files/file52071.pdf](http://www.bis.gov.uk/files/file52071.pdf)

<sup>20</sup> [www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products);  
[www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law](http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law)

<sup>21</sup> The RPC has recently reviewed Impact Assessments and a consultation is ongoing (May 2012).

<sup>22</sup> The RPC has recently reviewed an Impact Assessment and a consultation is ongoing (May 2012).

6. We believe that the proposed Consumer Law Reform programme will reduce business compliance costs, for example by business spending less time on staff training in consumer law and reduced time and legal expense spent settling disputes with consumers. Retailers tell us they spend time dealing with consumers who are misinformed about their rights, often thinking that they have more rights than is the case, and that they tend to err on the side of caution when settling disputes where the law is unclear.
7. We also believe that the new framework of consumer law will empower consumers to assert their rights. Empowered consumers should stimulate competition and innovation since well protected, well informed consumers are likely to be more open to new market entrants and innovative products. The proposed reforms will therefore contribute to growth as companies seek commercial success through innovation and targeting consumer needs, rather than by misleading them and/or fobbing them off with poor quality goods and services. A clear consumer protection framework helps create a level playing field; those businesses which fail to comply with the law can be tackled through enforcement (private and public), ensuring that honest businesses are competing on a level footing against each other and not against rogues.
8. Whilst we have a fairly robust body of evidence about failings in the existing law and about consumer experiences, behaviour and understanding of consumer law, we need to gather more evidence about business behaviour in order to make a more informed assessment of the impact of the consumer law reform programme as a whole. Government believes that the case for change is very strong, but that the impact of specific change options needs more work.
9. Alongside the formal consultation process, we are therefore planning to gather additional input from different sized retailers and service providers in several sectors in order to estimate better the current baseline and from there make meaningful estimates of likely impact of our proposals. From early discussions with business groups it will probably not be possible to collect all the evidence we would like in enough granularity, for example retailers tell us that they do not always record under which law or whether as a goodwill gesture they offer consumers a refund so they would find it difficult to relate their data back to the Sale of Goods Act. However we are planning a pragmatic approach consisting of sampling, surveys and focus groups to gather, in particular, evidence of costs of implementing any change in consumer law (such as training and communication costs), current practice in resolving disputes, and estimates of the cost of legal advice.
10. We will also explore consumer understanding of the terminology used in consumer law and in the proposed new framework, so that we can adopt a plain English approach where possible.
11. The impact of the changes in the law will rely on consumers and those who deal with consumers knowing about and understanding the new framework of consumer law, and also on its effective enforcement. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice and the enforcement of consumer law through Trading Standards. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We are also engaging with Trading Standards and other enforcers to ensure that they are aware of the proposed changes and actively engaging in the policy development process. We will discuss awareness raising for businesses with a range of business representative bodies.

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