

# Law Commission and Scottish Law Commission

## REPORT ON CONSUMER REMEDIES FOR FAULTY GOODS: OUTLINE

1.1 Every year millions of consumers return faulty goods to the shop or supplier, but the law is complex. There are two legal regimes:

- (1) Under traditional UK law, consumers are entitled to reject the goods and receive a full refund (“the right to reject”), provided they act within “a reasonable time”. However, the court cases give little guidance on how long a reasonable time lasts.
- (2) This has been supplemented by the European 1999 Consumer Sales Directive, which states that consumers are entitled to a repair or replacement. If the retailer is unable to repair or replace the goods in a reasonable time or without significant inconvenience, the consumer may then ask for a refund (“rescission”) or a reduction in price.

There has been little attempt to integrate these two regimes. Consumers may use either, leading to confusion and complexity.

1.2 In October 2008, the European Commission published a proposal for a new directive on consumer rights which would (among other things) reform the law in this area. It is based on “full harmonisation”, which means that member states could not provide rights that differ from those the reformed directive requires.

1.3 Our Report makes recommendations on consumer remedies, in the light of the proposed directive. We put our recommendations forward as part of the current European debate about the proposed directive, with the intention of improving the remedies suggested in it. Our aim is law which is easily understood and fair to both consumers and retailers.

1.4 It may be possible to implement some of our recommended reforms in the UK only, provided that the proposed directive (or relevant parts) is adopted as a measure of “minimum harmonisation”. Member states may then maintain or adopt measures which give greater rights to consumers.

1.5 Here we provide a brief outline of our main recommendations.

### **RETAINING THE RIGHT TO REJECT**

1.6 If the European Commission’s proposal were agreed as published, the UK would need to repeal the right to reject. Instead, the retailer could start by offering a repair or replacement. We recommend that the right to reject should be kept as a short-term remedy of first instance. It is a simple remedy which inspires consumer confidence. Consumers know that they can get their money back if the product is not as promised, provided they act quickly. This makes them more prepared to try unknown brands and new retailers.

- 1.7 Our research shows that consumers value the right to reject very highly and, in general, retailers are not opposed to it. 94% of consumers said that the right to a refund for faulty goods was important to them, and 89% thought it should be retained even though other remedies (repair and replacement) are available.
- 1.8 If the consumer remedies regime is to be fully harmonised, we think it should include a right to reject. Alternatively, if the proposed directive were adopted as a measure of minimum harmonisation, the UK would be permitted to retain the right to reject. A third option is “targeted harmonisation”, which would mean that the right to reject could fall outside of the scope of maximum harmonisation.
- 1.9 The European Commission has said that it is not its intention to abolish the right to reject in the UK, and negotiations on the proposed directive are continuing. The future of the right to reject is one of the issues which will need further clarification.

#### **CLARIFYING THE RIGHT TO REJECT: A NORMAL PERIOD OF 30 DAYS**

- 1.10 The main problem with the right to reject is uncertainty over how long it lasts. We recommend that consumers should normally exercise the right to reject within 30 days. This would provide a reasonable time to test the goods. Our research provides support for a 30-day period. When consumers were asked to say how long the right should last, the most common reply was that it should last for about a month.
- 1.11 However, there would be flexibility for shorter or longer periods in defined circumstances. For example, a shorter period would be appropriate for perishable goods; a longer period would be appropriate where it is reasonably foreseeable that the consumer will not be able to test the goods within 30 days, such as a lawnmower purchased in November or a Christmas present bought in October.

#### **MOVING FROM A REPAIR OR REPLACEMENT TO A REFUND**

- 1.12 Under the Consumer Sales Directive, where a retailer is unable to repair or replace faulty goods within a reasonable time or without significant inconvenience, the consumer is entitled to ask for rescission or a reduction in price. It is often difficult to know what constitutes “a reasonable time” or “significant inconvenience”. Consumers may become trapped into a cycle of failed repairs.
- 1.13 We recommend that consumers should be entitled to ask for a refund or price reduction after one failed repair or one failed replacement; or where the goods have proved dangerous; or where the retailer has behaved so unreasonably as to undermine trust between the parties.

#### **A RIGHT TO REJECT FOR “MINOR” DEFECTS**

- 1.14 Under the European Commission’s proposals, consumers would not be entitled to a refund for “minor” defects, such as imperfections in appearance, finish or small malfunctions. If a repair or replacement is not practical or possible, the consumer will only have the remedy of price reduction.

- 1.15 Consumers often care a great deal about the appearance of new consumer goods. What is minor to the retailer may not be minor to the consumer. A risk is that traders might argue that any fault is minor, so that refunds will no longer be offered in practice. We are concerned that removing the right to a refund for minor defects would lead to unnecessary disputes.
- 1.16 The current UK law does not exclude “minor defects” but instead imposes a test requiring goods to be of “satisfactory quality”. We recommend that this test is maintained and that the legal protection for consumers who purchase goods with minor defects should not be reduced either within the right to reject or the proposed directive.

**RESCISSION AND THE “DEDUCTION FOR USE”**

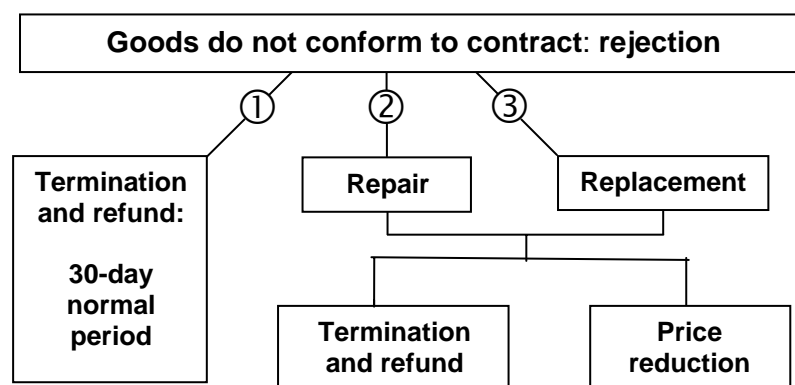
- 1.17 At present, a consumer who rescinds a contract is not necessarily entitled to a full refund. Instead, they may be required to give a deduction for the use they have had from the product.
- 1.18 The European Commission proposes abolishing this, and we agree. The deduction for use is seldom used, difficult to calculate and deeply unpopular with consumers.

**THE PROPOSED TWO-YEAR CUT-OFF PERIOD**

- 1.19 The European Commission proposes that consumers would not be entitled to a remedy where a fault only becomes apparent more than two years after delivery. We are concerned that a two-year cut-off may cause problems for goods which are intended to be long-lasting and where faults take time to come to light (for example, a boiler which breaks down after 26 months, or water pipes which burst during the first hard frost).
- 1.20 We recommend that the time limits for bringing claims should continue to be those applying to general contractual claims in England, Wales and Scotland.

**INTEGRATING EUROPEAN REMEDIES WITH A RIGHT TO REJECT**

- 1.21 We recommend that the right to reject and the European remedies should be better integrated, for a more harmonised regime. Our recommended scheme is illustrated in the following diagram:



Copies of the Report are available at <http://www.lawcom.gov.uk> and <http://www.scotlawcom.gov.uk>.