

CONSUMER RIGHTS DIRECTIVE

House of Lords debate
October 2009

BRIEFING

which


The European Commission adopted the proposal for a Directive on Consumer Rights on 8 October 2008. **Which?, is concerned that the Directive will lead to a potential loss of key rights for UK consumers.**

Which? is particularly worried about a number of 'step backs' for the UK consumer, including:

- > **Loss of the primary right to reject faulty goods; and**
- > **Six year limitation period for claiming for faulty goods would be cut to two years.**

Whilst some rights may be worth sacrificing for the potential benefits of full harmonisation, we believe that these rights, and a number of other existing rights, are too important to risk.

We welcome the House of Lords EU Committee report on the Consumer Rights Directive and we are calling on Members to ensure that current UK consumer rights are not undermined and that the consumer is put at the heart of these proposals.

Background to the Commission's proposals

The draft Directive is the result of several years of work on the Consumer Acquis. It is a maximum harmonisation proposal - so any more stringent national rules would need to be repealed - and it consolidates four key EU consumer protection directives, namely those on Distance Selling, Sale of Goods, Doorstep Selling and Unfair Contract Terms.

The Commission's aim is to modernise and simplify the existing rules; reduce burden for businesses operating cross border to stimulate cross border trade; and deliver consumer benefits by (i) improving existing rights; and (ii) opening up the internal market (especially online).



for all consumers

Right to reject

Under current UK law, a consumer buying, say, a washing machine would be able to reject it for being faulty as follows:

- > **if it was bought on its own from a retailer** within a reasonable time of delivery (being long enough for the consumer to check whether or not the washing machine is faulty);
- > **if it was bought under a ‘supply and fit’ contract** within a reasonable time of the fault developing (you lose the right to reject it if once you know about the fault your conduct suggests you are nevertheless happy to keep the faulty washing machine). Note that this can be sometime after the date of purchase where goods are expected to last a number of years.

If, rather than a full refund, the consumer would rather have the good repaired or replaced, then under the current UK rules, they are entitled to request their preferred remedy. Under the draft EU proposals, a consumer purchasing a faulty good would initially only be entitled to have that good repaired or replaced. A refund would only be available if the seller can't or won't repair or replace, or the fault reoccurs several times. The right to reject is an important remedy because:

- > It prevents consumers from becoming stuck in a cycle of failed repairs.
- > It improves the bargaining position of consumers.
- > It improves standards.
- > It provides a remedy where consumers have lost faith in the goods and/or seller.
- > Sometimes a repair or replacement may not be an adequate remedy.

For example, a consumer buys a brand new car and finds that

(i) it has scratches in the paintwork. If the car is resprayed, the scratches will be removed but the car will be worth considerably less because it has a “respray history” (inadequate remedy);

(ii) its brakes are faulty. While they can be repaired, the consumer may have lost faith in the car/model/manufacture because of such a severe fault such that only a refund is a satisfactory remedy.



Reduction of the six year liability period

Which?'s key concern with the proposed reduction from a six year period to a two year period from the date of purchase is that many goods, especially electrical and/or household goods, have an expected life expectancy of more than two years. If something should last ten years, but only lasts three, then it is likely to not be of satisfactory quality. Under the proposals, the consumer would not be able to mount a claim.

This is a particular issue with goods supplied under a supply and fit contract, such as conservatories or double glazing. Faults may take some time to surface and, under current UK rules, consumers have a short period after the fault has come to light to seek a remedy. This can be many years post purchase (subject to the six year cap) and this proposal represents a significant erosion of consumer rights in such cases.

We have a number of examples of this rule being useful to consumers. For example, a Which? member was recently able to enforce his rights against a car retailer after four and a half years, where an engine component failed far sooner than it was reasonable to expect. The service manual said the component should not need changing until the car had done far more miles than it actually had.

Which? campaigns actively for all consumers. Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, online services and books.

For more information please contact Paula Pohja, Senior Public Affairs Officer. Tel: 020 7770 7576 or email: paula.pohja@which.co.uk