

Summary: Intervention & Options

Department:
Business Enterprise and
Regulatory Reform (BERR)

Title: EU Consumer Rights Directive – Distance and off-premises selling

Stage: Consultation

Version: 1.0

Date: 10 November 2008

Related Publications: BERR Consultation on EU Proposals for a Consumer Rights Directive; text of proposal and EU Commission Impact Assessment for the EU Consumer Rights Directive.

Available to view or download at:

<http://www.berr.gov.uk/whatwedo/consumers/policy/eu/review/index.html>

http://ec.europa.eu/consumers/rights/cons_acquis_en.htm

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What is the problem under consideration? Why is government intervention necessary?

The European Commission have cited the legal fragmentation of business-to-consumer rules as a barrier to the Internal Market and consumer confidence in cross-border shopping. Member States have different rules on distance and off-premises selling and these variations create unnecessary costs and disincentives for business when trading cross-border. In order to achieve a single set of European contract rules on consumer remedies, EU action is necessary to harmonise the legislative and regulatory framework across the 27 Member States.

What are the policy objectives and the intended effects?

The Commission proposal is to repeal the existing Doorstep Selling (85/577/EEC) and Distance Selling Directives (97/7/EC) and create a new Consumer Rights Directive. It is proposed that the provisions on distance and off-premises selling will be amended to harmonise rules across the EU to reduce legal uncertainty and compliance costs in cross-border trading. The proposals aim to clarify the obligations of both the trader and the consumer to simplify the withdrawal process and provide increased certainty.

What policy options have been considered? Please justify any preferred option.

We have considered the Commission's proposals against the status quo of maintaining the current UK rules on distance and off-premises selling. The Commission proposes i). Extend and harmonise the withdrawal period for both distance and off-premises contracts to 14 calendar days; ii). Remove the financial threshold at which the off-premises selling provisions become applicable; iii). Require consumers who exercise the right of withdrawal to bear the direct costs of returning goods to the trader; and iv). Introducing a requirement for traders to provide a standard withdrawal form which consumers may use to withdraw from a contract.

We have not at this stage identified a preferred option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy options will be refined as the European Directive is negotiated and a consensus is reached between the Commission, Member States and European Parliament.

Ministerial Sign-off For consultation stage Impact Assessments:

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:

Summary: Analysis & Evidence

Policy Option:

Description: i) Extend cooling off period from 7-14 days; ii) Removal of financial threshold at which off-premises selling provisions become applicable iii) Consumers to bear direct costs of exercising right to withdraw; iv) Traders to provide standard withdrawal form

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off (Transition)	Yrs	
£ 233m	1	<p>The costs set out below are purely estimated administrative costs associated with compliance with the proposed Consumer Rights Directive (CRD) by online distance sellers only. This is due to a lack of immediately identifiable data relating to UK telemarketing, postal and doorstep sales.</p> <p>The EU Commission estimates a burden of €2153 falling upon each individual business engaged in distance selling in the EU. This is approximately equivalent to £1723 at current exchange rates.</p> <p>The OFT estimates that in 2005 the proportion of UK non-financial sector businesses selling online to other businesses or households to be 14% while only 6% were selling to households alone (while many businesses have websites the majority are for information or promotion of services)¹. This translates to a range of 6%-20% of businesses selling to consumers online. Taking the midpoint of this estimate (13%) this translates to 135000 businesses.</p> <p>Therefore the cost to UK business is estimated at £1732 x 135000 = £233m (See Annex 1)</p>
Average Annual Cost (excluding one-off)		
£		
		Total Cost (PV)
		£ 233m
COSTS	Other key non-monetised costs by 'main affected groups'	
	<p>i) Costs to business associated with a small increase in the number of returns made by consumers as a result of an extension of the withdrawal period (see body text of the IA).</p>	
	<p>ii) All businesses selling off premises (doorstep sellers) would have familiarisation costs. Costs to traders of having to comply with information requirements for all off-premises contracts of less than £35 would be high. Costs to business of complying with the withdrawal requirements and dealing with the return of goods.</p>	
	<p>iii) Increased costs to consumers as a result of consumers bearing the direct costs of exercising right to withdraw. On the face of it this is merely a transfer of costs from business to consumers. However, where the right to withdraw is being exercised as a result of market failure related to information asymmetry this cost constitutes pure consumer detriment. The overall costs of withdrawal (delivery costs) may increase if businesses incur lower delivery costs than consumers due to businesses having favourable contractual arrangements with delivery companies.</p>	

¹ OFT Internet Market Study Report (2.11) http://www.offt.gov.uk/shared_offt/reports/consumer_protection/offt921.pdf

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The reduced burden of the revised payment framework i.e. reduction in the number of payment notices that need to be issued by the payer.	
	One-off	Yrs		
	£ 508m		Benefits accrue in the form of reduced administrative burdens to UK online retailers of expanding operations into non-domestic EU Member States. Not all UK online retailers wish to retail online beyond domestic borders. It is estimated that 89100 UK online businesses could benefit from the change in regulations The benefit accruing to UK online retailers can be equated to the net savings resulting from the reduced administrative burdens associated with operating in a new EU Member State. (See Annex) Benefit of extending doorstep cooling off period to 14 days estimated to be £2.5m per annum. Applies only to non Direct Selling Association members. Detriment equal to 30% of 1% second week returns on turnover of £820m.	
	Average Annual Benefit (excluding one-off)			
	£ 2.5m		Total Benefit (PV)	£528.8m

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

i) Benefit to consumers equivalent to reduced consumer detriment resulting from the extension of the withdrawal period ('cooling off' period)

i), iii) and iv) Within the context of continued growth in distance selling, benefits associated with harmonisation and increased consumer confidence such as increased cross-border retailing, increased competition, subsequent lower prices and evening out of regional price distortions. Benefits may accrue disproportionately to UK business as there is evidence to suggest that UK businesses are more likely to see the fragmentation of EU consumer law as an important obstacle to cross border trade than EU businesses generally².

Key Assumptions/Sensitivities/Risks

The extent of the benefits are contingent on the extent to which UK distance sellers expand operations in to other EU member states as a result of the proposed change in the regulatory framework

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 295.8
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What is the geographic coverage of the policy/option?	UK								
On what date will the policy be implemented?	Not yet decided								
Which organisation(s) will enforce the policy?	OFT, TSS, courts								
What is the total annual cost of enforcement for these organisations?	£								
Does enforcement comply with Hampton principles?	Yes								
Will implementation go beyond minimum EU requirements?	No								
What is the value of the proposed offsetting measure per year?	£ Not known								
What is the value of changes in greenhouse gas emissions?	£ Not known								
Will the proposal have a significant impact on competition?	Positive impact								
Annual cost (£-£) per organisation (excluding one-off)	<table border="1"> <tr> <td>Micro</td> <td>Small</td> <td>Medium</td> <td>Large</td> </tr> <tr> <td>0</td> <td>0</td> <td>0</td> <td>0</td> </tr> </table>	Micro	Small	Medium	Large	0	0	0	0
Micro	Small	Medium	Large						
0	0	0	0						

² 2006 EC Survey found that 78% of UK businesses (compared to 51% of EU25) considered that different national laws regulating consumer transactions were an important or very important obstacle to cross-border sales. See OFT Internet Market Study (11.17) http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft921.pdf

Are any of these organisations exempt?	No	No	No	No
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Impact on Admin Burdens Baseline (2005 Prices)		Increase
Increase of £	Decrease of £	Net Impact £

Key: **Annual costs and benefits: Constant** **(Net) Present Value**

Proposal to amend laws on distance and off-premises selling

The Directive revises the distance and off-premises selling provisions by extending the withdrawal period, amending the information requirements (including requiring the provision of a standard withdrawal form) and setting out requirements for the exercise of the right of withdrawal by placing obligations on both the trader and consumer. The provisions on off-premises selling will be extended to cover solicited visits (as is currently the case under UK law) but will remove the financial threshold at which the requirements of the Directive take effect.

The proposed changes which are likely to have the greatest impact in the UK are the proposals to:

1. Extend and harmonise the withdrawal period for both distance and off-premises contracts to 14 calendar days;
2. Remove the financial threshold at which the off-premises selling provisions become applicable;
3. Require consumers who exercise their right of withdrawal to bear the direct costs of returning goods to the trader; and
4. Introduction of a standard withdrawal form

A. Strategic overview

Directive 85/577/EEC on consumer contracts negotiated away from business premises provides cancellation rights to consumers who enter into an agreement with a trader to buy goods or services during an unsolicited visit away from the trader's business premises (e.g. in the consumer's home or place of work). The Directive provides for a cooling off period of 7 days, during which time the contract may be cancelled by the consumer, and places a requirement on traders to provide the consumer with a written notice of cancellation rights.

The Directive was implemented into UK law by the Cancellation of Contracts Concluded Away From Business Premises Regulations 1987. As the Directive was a minimum harmonisation measure Member States were able to provide additional protection for consumers. As a result of evidence of continued consumer detriment in the doorstep selling market the Government revoked the 1987 Regulations and introduced new Regulations, the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008, which came into force on 1 October 2008. These Regulations implement the requirements of the Directive, extend the right of withdrawal and information requirements to contracts made during a solicited visit by a trader, and require that notice of a right to cancel is prominently and clearly displayed in the same document where the contract is completed wholly or partly in writing. Under the UK Regulations, contracts with a value of less than £35 are exempt from the requirements of the Regulations. This is permitted under the existing Directive but will not be allowed under the new proposals.

The Distance Selling Directive (97/7/EC) gives protection to consumers who shop by phone, mail order, via the Internet or digital TV. The protection includes:

- The right to receive clear information about goods and services before deciding to buy;
- Confirmation of this information in writing;
- Time limits for delivery;
- A cooling off period of seven working days in which the consumer can withdraw from the contract; and
- Reimbursement of money paid where the customer withdraws from the contract.

B. The Issue

Scale of the problem

The 2008 Eurobarometer survey of e-commerce found that within the preceding year, 52% of UK consumers had purchased goods or services online from a seller based in the UK. This compares with only 12% who had purchased goods or services online from a seller in another Member State with only 26% of UK consumers stating that they felt equally confident in purchasing online from a seller in another Member State or in the UK. There are a number of reasons why consumers may be less inclined to shop cross-border including language difficulties and refusal by businesses to sell cross-border, however lack of knowledge of consumer rights when shopping cross-border is also likely to be a factor. The survey also found that while the share of EU consumers who had bought goods or services online had increased significantly, the amount of cross-border internet sales had remained stable at 6%-7%. 51% of EU retailers sell via the internet but only 17% of their e-commerce revenue stems from cross-border sales.

The Commission has found that the cross-border potential of direct selling is constrained by a number of factors including the stricter additional requirements imposed by some Member States, language and cultural differences and the nature of the selling method (the seller will in most cases visit the consumer). The Commission found that 8% of consumers purchased goods via direct selling domestically (up from 7% in 2005). However, the number of consumers purchasing through direct selling cross-border remained at 1%.

The Commission states that the evidence of complaints relating to withdrawal concern three main categories: the length of the withdrawal period; the rules for exercising the withdrawal and the rules on the effects of withdrawal such as refunds.

Based on complaints and information received from customers, the European Consumer Centre (ECC) considered that issues with withdrawal rights were the third most important problem of the Consumer Acquis. They highlighted lack of harmonisation of withdrawal periods, followed by lack of harmonisation of the modalities of the exercise of the right of withdrawal as the main problems. With regards to the modalities of withdrawal, the notification procedure and the lack of acceptance of the notification by traders often cause problems. Costs imposed on consumers who exercise their right of withdrawal are another frequently mentioned problem.

The ECC's third annual E-Commerce report found that despite the existence of distance selling legislation, not all websites contained information on the right of withdrawal and a significant number of those who did placed restrictions on the exercise of the right. Of the 262 internet operators that were tested in the ECC's study, 32% did not comply with the cooling-off period of the relevant national regulations. Furthermore, 24% required the consumer to give a reason for withdrawal with the question often asked in such a way that the consumer might believe that an acceptable reason was a condition for reimbursement. ECC research conducted in 2003 on the exercise of withdrawal found that when 57 products ordered on the internet were returned under the right to withdraw, almost one third were not refunded. Where refunds were given, only half of traders refunded the cost of delivery.

C. Objectives

The Commission aims to encourage cross-border shopping by harmonising the requirements for distance and off-premises selling across the EU, including harmonised withdrawal periods. This should increase business willingness to trade cross-border by reducing costs and increase consumer confidence in shopping cross-border through knowledge that the same rights will apply wherever they shop in the EU.

D. Options

1. Extension and harmonisation of the withdrawal period

The current withdrawal period during which consumers can cancel contracts for both distance and off-premises selling is seven days. This is clearly beneficial to consumers. Responses to the formal consultation on the new UK Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 suggested that stakeholder groups have different opinions on the appropriate length of the cooling off period. Consumer groups generally favoured an increase in the withdrawal period while the views of enforcers were mixed as to whether to retain the current limit or extend it. Some business stakeholders argued that a 14 day withdrawal period would be too long and would increase the risk of abuse by the consumer and increase the amount of time that the consumer needs to ensure that the product stays as new. It is likely that similar views will be held in relation to distance contracts.

The new Doorstep Regulations maintained the withdrawal period at 7 days as, although it was recognised that there was an argument for extending the withdrawal period for reasons of consumer protection and there was anecdotal evidence that a longer period would be beneficial, it was concluded that there was no overwhelming quantifiable evidence that a longer period was needed.

a). Maintain the status quo

As other options are measured against the status quo, by definition there are no costs and benefits to this option.

b). Extend the withdrawal period to 14 calendar days

An extended withdrawal period would have the benefit of providing the consumer with a longer period of time to cancel any contract they regret making, for example where the good did not meet their expectations. This may be particularly beneficial for vulnerable consumers. However, consumers would need to ensure that they only use or inspect the good in a way which will not damage the good if they intend to withdraw from the contract as under the new proposals the consumer would be liable for any diminished value resulting from inappropriate use during the withdrawal period. Harmonisation is likely to be beneficial but extending the period in which a customer may withdraw may create additional burdens for business.

According to the Commission's figures, current withdrawal rates are up to 10% overall, but most often between 2 and 5 %. Costs in relation to return management (including repackaging, reprocessing, damages) are relatively high, representing about 2-5% of the total operating costs of businesses. Although there may be some increased costs to business from extending the withdrawal period these may be mitigated by the savings gained through the harmonisation of the withdrawal period across all Member States and the provisions clarifying a number of issues relating to withdrawal including rules on the exercise of the right of withdrawal and the obligations of both traders and consumers during a withdrawal. In particular, permitting traders to reduce the amount of refund to reflect any diminished value as a result of improper use or handling of the good during the withdrawal period may help offset any increased costs to business. The Commission's research has found that across the EU 95% of large distance sellers already offer more than the legal requirements in each Member State and therefore any cost increases for them are unlikely to be substantial.

The evidence available suggests that the increase in returns as a result of a longer withdrawal period may not be substantial. There is evidence from the Commission's research and from the UK that suggests that withdrawal rates may not increase much as a result of an extended withdrawal period. In the UK, the Direct Selling Association (DSA) represents a number of companies with average order values of between £500 and £1500 - almost all these transactions result from solicited visits. The companies involved all offer a 14 day cancellation period in line with the DSA's code of practice. Data provided by these companies show that the majority of cancellations are within 7 days despite the

longer withdrawal period. It is estimated that 10-20% of withdrawals occur after 7 days (0.5 to 1% of an overall cancellation rate of 4.6%).

Costs:

- The costs to traders of managing the return of goods and from the risk that products may be damaged during the withdrawal period may increase as the rate of return may increase due to the longer withdrawal period (this cost may be reduced by the proposal that consumers would be liable for any diminished value of the good resulting from consumers using and damaging goods during the withdrawal period).
- Initial one-off costs for traders of familiarisation with new law and modifying return management systems
- Costs to consumers if traders deduct money for diminished value of the good on return. There is a risk that unscrupulous traders may exploit this provision to the detriment of consumers.

Benefits:

- Harmonising the withdrawal period at 14 calendar days across the EU for both distance and doorstep selling should benefit traders wishing to sell in more than one Member State and encourage more to do so. Over half of retailers (55%) cite the difference in national laws regulating consumer transactions as an obstacle to cross-border trade³. There is evidence to suggest that UK businesses are more likely to view this as an obstacle than EU businesses generally⁴. This suggests that the benefits to UK business of harmonisation could be proportionately higher. 4
- Improved consumer protection
- Increased legal certainty for businesses and consumers.
- Harmonising the withdrawal periods across the EU may increase consumer confidence in shopping cross-border. Eurobarometer data (Sept 2006) indicates that 65% of consumers believe there are greater difficulties asserting rights during the cooling off period when making cross-border purchases rather than domestically.
- Harmonisation of withdrawal periods may reduce the cost of returns management for companies engaging in both distance and doorstep selling or for those trading in more than one Member State.
- Clarifying that the withdrawal period should be measured in calendar days will provide certainty for consumers and traders.
- Increasing the length of the withdrawal period may increase consumer confidence in shopping by distance or off-premises.

2. Remove the financial threshold at which the off-premises selling provisions become applicable

a). Maintain current threshold (status quo)

The recently introduced UK Doorstep Selling Regulations maintained the threshold for unsolicited sales at £35 and extended this threshold to solicited sales. This was the favoured option as it avoided extending the legislation to areas where consumer detriment is likely to be low and the costs to business comparatively high. Applying the same threshold to solicited and unsolicited visits provides certainty and keeps the law simple for consumers, traders and enforcers.

As other options are measured against the status quo, by definition there are no costs and benefits to this option.

b). Remove the threshold

This would extend the information requirements and right to withdraw to low value purchases. Such purchases form a small proportion of total doorstep sales. The OFT estimated sales of goods with a

³ "Business Attitudes toward cross-border sales and consumer protection. Commission Eurobarometer February 2007

⁴ OFT Internet Market Study (11.17)

value of less than £500 to be £200m out of an estimated doorstep total of £2400m in the UK, although they note that some small sales are likely to be unreported. In addition, a high proportion of small items are likely to be repeat purchases where there is an incentive for the trader to act fairly so as to retain customers. The recent Impact Assessment for the new UK Doorstep Selling Regulations concluded that there is unlikely to be significant consumer detriment in purchases under £35. Business costs of compliance with the legislation are likely to be significant relative to the costs of the goods and any consumer detriment. These could be offset to some extent if the direct costs of withdrawal are borne by the consumer, although the trader would still incur costs in meeting the information requirements and the other costs resulting from the withdrawal.

Costs:

- Disproportionate costs to traders of having to comply with information requirements for all off-premises contracts
- Costs to business of complying with the withdrawal requirements and dealing with the return of low value goods
- Initial one-off costs for traders of familiarisation with new law
- Reduced choice for consumers where disproportionate costs impact on the willingness to supply beyond domestic borders

Benefits:

- Increase in protection for consumers entering into low value contracts

3. Require consumers who exercise their right of withdrawal to bear the direct costs of returning goods to the trader

The Directive requires the consumer to bear the direct cost (i.e. the cost of postage but not the administrative costs of the trader processing the return) of returning the goods where they have exercised their right of withdrawal, unless otherwise agreed with the trader.

Currently the Doorstep Selling Directive does not contain a standard procedure after the consumer has exercised the right to withdraw and the effects of withdrawal are determined by Member States resulting in significant differences. Under the Distance Selling Directive there is a deadline of 30 days for reimbursing the sum paid by the consumer. In the UK there is no requirement that the consumer must return the goods.

a). Maintain status quo

Currently in the UK, consumers who exercise the right of withdrawal in off-premises contracts after receiving the goods are only required to make the goods available for collection by the trader and are not required to send them back. Traders must cover the cost of the return and must refund monies paid by the consumer whether or not the good is returned. For distance sales there is no obligation on the consumer to pay the cost of return unless there is a contract term to that effect. The trader must inform the consumer whether they require goods to be returned and if so who will pay for the return. In many cases traders cover the cost of consumers returning goods by post.

As other options are measured against the status quo, by definition there are no costs and benefits to this option.

b). Require the consumer to return the goods to the trader at their own expense, unless the trader and consumer agree otherwise

This will clearly create an additional cost for the consumer when they exercise the right of withdrawal, particularly in relation to large or fragile items which may be expensive to return. This change would result in a reduction of costs for businesses that would no longer have to meet the cost of return or collection of goods where the customer withdraws from the contract. As distance sales are made progressively further from domestic borders, the possible cost which could be incurred by a business of covering the cost of return if a consumer decides to withdraw rises commensurately. This would impact

on the incentive to sell beyond domestic borders. However, we anticipate that businesses may choose to continue to meet the costs of return as a matter of competitive advantage or to reduce the risk of damage to goods. Traders would be permitted to delay refunding the consumer until the goods have been returned or proof of return has been provided.

Costs:

- Consumers wishing to exercise their right of withdrawal will incur costs which may deter them from withdrawing from the contract. Where the desire to withdraw is a result of a market failure due to asymmetric information, the consumer will bear the cost of overcoming this market failure
- May increase disputes between traders and consumers as to whether goods have been returned
- Initial one-off costs for traders of familiarisation with new law

Benefits:

- Will reduce costs for business
- Will prevent traders from incurring costs from reimbursing consumers who do not return goods
- Harmonisation of laws across Member States will provide certainty for traders wishing to sell cross-border.
- Benefits to business if the number of returns, particularly for low value goods, decreases if consumers have to bear costs of return.

4. Introduce a standard withdrawal form

The Directive proposes specific information requirements for distance and off-premises contracts. This would include a requirement to provide the consumer with a standard withdrawal form which they can use to withdraw from the contract. This would be a new requirement under UK law. Consumers may alternatively withdraw from the contract by informing the trader by 'durable medium'.

The way in which consumers can exercise their right of withdrawal is currently regulated differently across Member States. In some countries withdrawal is communicated in writing, in others a registered letter is required, while some countries apply no formal requirements and a phone call, email or simply returning the goods could be sufficient. Harmonising the requirements across Member States would increase certainty for consumers and traders.

a). Maintain the status quo

The existing Directives and UK legislation which implement them require traders to inform consumers about their right of withdraw but do not require traders to provide a standard form to be used for withdrawal.

As other options are measured against the status quo, by definition there are no costs and benefits to this option.

b). Introduce a requirement to provide a standard withdrawal form which the consumer may opt to use

Provision of a standard form will benefit consumers as it will provide certainty as to how to withdraw from a contract and provide a simple means of doing so (including completing and submitting the form online in the case of internet sales). Making the use of the form optional will not disadvantage consumers who may misplace the form or prefer to use another method of withdrawal. There will be increased costs to traders of producing a standard withdrawal form but the ongoing costs would be likely to be minimal as the form would be provided along with the other information required. Traders who sell by distance and off-premises will only have to produce one version of the form.

Costs:

- One-off administrative costs of producing the form and on-going costs of providing the form alongside other required information.

Benefits:

- Provides consumers with certainty as to what they need to do to withdraw from the contract which may increase consumer confidence in distance and off-premises selling. This may particularly benefit vulnerable consumers.
- Increases legal certainty and may reduce the number of disputes between traders and consumers as to whether the right to withdraw has been exercised.
- The standard form would be a tool to remind consumers that they have a right to withdraw.
- Would be clear to consumers that they do not to give a reason for exercising their right of withdrawal and can do so if they have simply changed their mind (in comparison with some existing forms which require a reason to be given).
- Business will not have to familiarise themselves with requirements of different Member States.

E. Risk of each option**1. Extend and harmonise the withdrawal period for both distance and off-premises contracts to 14 calendar days**

a). Maintain status quo – 7 day withdrawal period

The risk of opposing the Commission's proposal to increase and harmonise the withdrawal period for distance and off-premises sales is that the current legal fragmentation continues. Different rules across Member States for withdrawal periods would maintain an obstacle to the Internal Market. Requiring all Member States to adopt a 7 day withdrawal period would reduce consumer protection in many Member States and would be likely to be deeply unpopular and therefore strongly resisted.

b). Extend withdrawal period to 14 calendar days

The risk of this option is that businesses will face increased costs through an increase in returns and an increased likelihood of consumers damaging the goods during the withdrawal period. However, this risk may be mitigated to some extent by the benefits of harmonisation and the ability of traders to deduct an amount for diminished value from the refund where it has been caused by the consumer using the good beyond what is necessary to ascertain its nature and functioning during the withdrawal period.

2. Remove the financial threshold at which the off-premises selling provisions become applicable

a). Status quo – maintain threshold at £35

There will be a lack of harmonisation across Member States which could create a barrier to the Internal Market. There is also a risk that consumers who purchase low value goods or services will experience detriment as they do not have a right to withdraw, although evidence shows that detriment is likely to be minimal.

b). Remove threshold

There is a risk that business will face increased costs from having to comply with information and withdrawal costs in relation to low value goods. This may result in traders being less willing to sell these goods through distance or off-premises means, possibly reducing consumer choice.

3. Require consumers who exercise their right of withdrawal to bear the direct costs of returning goods to the trader

a). Maintain status quo – consumers do not bear the cost of returning goods

Risks associated with legal fragmentation. A lack of harmonisation may discourage cross border trade. Traders will continue to incur costs of having to refund consumers who have not returned goods. In

many Member States consumers already bear the cost of returning goods so any change is likely to be opposed by business stakeholders.

b). Consumers to bear costs of returning goods

Consumers may be deterred from exercising their right of withdrawal.

There is a risk that consumers will return goods and not receive refunds from rogue traders. Consumers will also face the risk that traders will unfairly deduct an amount for diminished value when making the refund.

4. Introduction of a standard withdrawal form

a). Status quo – not require the provision of a standard form

There is a risk that continued legal fragmentation could impact on the Internal Market as Member States currently have different requirements for exercising withdrawal rights. There will be less certainty for consumers and traders which may result in disputes as to whether the consumer has exercised the right of withdrawal.

b). Require traders to provide consumers with a standard withdrawal form

There is some risk that consumers will mistakenly believe that they can only withdraw using the standard form and may be deterred from withdrawing if they have misplaced the form or where another method of withdrawal would be more convenient form them.

F. Enforcement

The new legislation will be enforced by Trading Standards Departments and the Office of Fair Trading.

G. Summary Table of Costs and Benefits for the identified options

1. Extend and harmonise the withdrawal period for both distance and off-premises contracts to 14 calendar days

Benefits	Costs
Option a) Maintain the status quo (7 days)	
<ul style="list-style-type: none"> • Zero, by definition 	<ul style="list-style-type: none"> • Zero, by definition
Option b) Extend the withdrawal period to 14 calendar days	
<ul style="list-style-type: none"> • Improved consumer protection • Harmonisation will increase legal certainty for both traders and consumers • Clarification that withdrawal period is calculated in calendar days will increase certainty 	<ul style="list-style-type: none"> • Increased costs to business of managing returns • Initial familiarisation costs for business • Costs for consumers if business deduct an amount for diminished value

2. Remove the financial threshold at which the off-premises selling provisions become applicable

Benefits	Costs
Option a) maintain the current threshold	
<ul style="list-style-type: none"> • Zero, by definition 	<ul style="list-style-type: none"> • Zero, by definition
Option b) Remove the threshold	
<ul style="list-style-type: none"> • Increased protection for consumers who purchase low value goods 	<ul style="list-style-type: none"> • Disproportionate costs to traders of complying with information and withdrawal requirements for low

<ul style="list-style-type: none"> • Harmonisation across the EU 	<ul style="list-style-type: none"> • value contracts • Familiarisation costs
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3. Require consumers who exercise their right of withdrawal to bear the direct costs of returning goods to the trader

Benefits	Costs
Option a) Maintain status quo	
<ul style="list-style-type: none"> • Zero, by definition 	<ul style="list-style-type: none"> • Zero, by definition
Option b) Require consumer to bear costs of return	
<ul style="list-style-type: none"> • Reduction in costs for businesses • Prevent traders incurring costs where money is refunded but goods are not returned • Benefits of harmonisation across EU 	<ul style="list-style-type: none"> • Costs to consumers who withdraw from contract • May increase disputes as to whether or not goods have been returned • One-off familiarisation costs for businesses

4. Introduction of a standard withdrawal form

Benefits	Costs
Option a) Status quo	
<ul style="list-style-type: none"> • Zero, by definition 	<ul style="list-style-type: none"> • Zero, by definition
Option b) Introduction of standard form	
<ul style="list-style-type: none"> • Increased certainty and clarity for consumers as to how to exercise their right of withdrawal • May reduce disputes between traders and consumers as to whether the right of withdrawal has been exercised 	<ul style="list-style-type: none"> • One-off administrative costs of producing the form • On-going cost of providing form to consumers

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	At this stage a full competition impact test has yet to be carried out. The thrust of this Directive is to harmonise regulation across Europe to make it easier for traders to trade cross-border and increase consumer confidence in shopping cross-border. We would welcome comments on the likely impact of these proposals on competition in the UK.	No
Small Firms Impact Test	At this stage a full small firms impact test is yet to be carried out. We would welcome comments on the likely impacts of these proposals on small businesses.	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	At this stage a full equalities impact test is yet to be carried out. We would welcome comments on the	No
Disability Equality		No
Gender Equality		No

	likely impact of these proposals on race, disability and gender.	
Human Rights	No	No
Rural Proofing	No	No

Annex 1 - Monetised Costs and Benefits of CCD: Distance Sellers

EU Commission Assessment of Administrative Burdens

The EU Commission Impact Assessment Report on the proposal for a Directive on consumer rights monetised the administrative burdens falling on EU online retailers of conforming to the existing regulatory framework using the standard cost model as given in Annex 10 of the Impact Assessment Guidelines⁵.

The administrative burden generated by the existing regulatory framework increases for distance sellers (comprising post, telesales and online) proportionately with the number of national markets operated in. This is because under Rome I businesses must adapt to each and every national transposition, in addition to the burden generated by Directives at the EU level.

The EU Commission estimates the following burdens falling upon each individual business (distance sellers) as a result of the existing regulatory framework:

Distance seller trading only domestically = €5526
Distance sellers selling in 1-2 Member States = €9276
Distance sellers selling in 3-5 Member States = €15526
Distance sellers selling in 27 Member States = €70526

The EU Commission estimates the following burdens falling upon each individual business as a result of the proposed Directive:

Distance seller trading in 1-27 Member States = €2153

The administrative burden is the same whether the distance seller is operating in the domestic market only or all 27 Member States as the proposed Directive eliminates the fragmented framework of 27 national transpositions by harmonising distance selling regulations across the EU.

Translating Administrative Burdens into UK Costs and Benefits

The following analysis has been conducted for online businesses only due to a lack of immediately identifiable data relating to UK telemarketing and postal sales. However, it is safe to assume that online cross-border trade comprises the majority of distance selling and is the fastest growing distance selling channel.

The OFT estimates that in 2005 the proportion of UK non-financial sector businesses selling online to other businesses or households to be 14% while only 6% were selling to households alone (while many businesses have websites the majority are for information or promotion of services)⁶. This translates to a range of 6%-20% of businesses selling to consumers online. Taking the midpoint of this estimate (13%) this translates to 135000 businesses. This is likely to be a conservative estimate given the growth of internet trade in value terms since 2005.

⁵ See Annex 7 http://ec.europa.eu/consumers/rights/docs/proposal_annex_en.pdf

⁶ OFT Internet Market Study Report (2.11) http://www.of.gov.uk/shared_of/reports/consumer_protection/of921.pdf

Costs

The cost of transition to UK business from the existing regulatory framework to the framework imposed by the proposed directive would be:

$$135000 \text{ businesses} \times \text{€}2153 \times 0.8^7 = \text{£}233\text{m}$$

Costs = £233m

Benefits

Benefits accrue in the form of reduced administrative burdens to UK online retailers of expanding operations into non-domestic EU Member States. However, not all UK online retailers wish to retail online beyond domestic borders.

A survey carried out by the OFT found that 37% of UK online retailers said that their website was aimed at selling to individuals outside the UK, while 26% were not selling outside the UK but were considering doing so. A small proportion, 3%, stated they were not considering selling abroad due to the regulatory burden, 9% stated trade is inappropriate for their products and 5% stated that delivery costs are prohibitive⁸.

Therefore assuming that online retailers that are currently selling abroad, are considering selling abroad, or who state they are not selling abroad due to regulatory burden could in future expand their operations in to EU Member States in which they do not currently trade, the number of UK online retailers which could possibly benefit from the new directive would be:

$$135000 \times 0.66 = 89100$$

The benefit accruing to UK online retailers can be equated to the net savings resulting from the reduced administrative burdens associated with operating in a new EU Member State.

Net saving when expanding in to 1-2 Member States = €7123

Net saving when expanding in to 3-5 Member States = €13373

Net saving when expanding in to 27 Member States (i.e. a new entrant) = €68373

Under the assumption that all potential beneficiaries expand operations in to 1-2 Member States the possible benefit could equal **£508m** (89100 x €7123 x 0.8)

Under the assumption that all potential beneficiaries expand operations in to 3-5 Member States the possible benefit could equal **£953m** (89100 x €13373 x 0.8)

Under the assumption that all potential beneficiaries expand operations in to 27 Member States the possible benefit could equal **£4874m** (89100 x €68373 x 0.8)

For the purpose of this CBA the most conservative outcome is assumed where all UK online retailers which could benefit from the new directive expand in to 1-2 Member States.

Benefits = £508m

⁷ £/€ Exchange Rate as of 08/10/08

⁸ OFT Internet Market Study Report (11.15 & 11.16)

Summary: Intervention & Options

Department: Business Enterprise and Regulatory Reform (BERR)	Title: EU Consumer Rights Directive: consumer remedies	
Stage: Consultation	Version: 1.0	Date: 10 November 2008
Related Publications: BERR Consultation on EU Consumer Rights Directive, text of proposal and European Commission Impact Assessment		

Available to view or download at:

<http://www.berr.gov.uk/whatwedo/consumers/policy/eu/review/index.html>

http://ec.europa.eu/consumers/rights/cons_acquis_en.htm

Contact for enquiries: Guy Horsington

Telephone: 0207 215 6621

What is the problem under consideration? Why is government intervention necessary?

The European Commission have cited the legal fragmentation of business-to-consumer rules as a barrier to the Internal Market and consumer confidence in cross-border shopping.

Member States have different contract rules on consumer remedies (where a 'tangible moveable' good sold to a consumer is faulty) and these variations create unnecessary costs and disincentives for business. In order to achieve a single set of European contract rules on consumer remedies, EU action is necessary to harmonise the legislative and regulatory framework across the 27 Member States.

What are the policy objectives and the intended effects?

The Commission proposal is to repeal the existing Consumer Sales and Associated Guarantees Directive (44/1999EC) and to create a new Consumer Rights Directive.

It is proposed that the provisions on the sale of goods will be amended to allow the trader to choose between repair or replacement and where these are not suitable for certain reasons or are not provided by the trader, the consumer may then demand price reduction or, as long as the non-conformity is not minor, rescission of the contract (which is equivalent to rejecting the contract).

This is a change from the original provisions of Directive 44/1999EC which allowed the consumer to choose between repair and replacement in the first instance. The effect will be to give the trader the balance of power in the choice of remedies.

What policy options have been considered? Please justify any preferred option.

We have considered three options against the status quo of continuing to have provisions based on minimum harmonisation. The status quo allows the consumer to choose, under the EU remedies, between repair and replacement but also allows the UK to retain its rules on 'right to reject'. These contract rules allow the consumer to, within a reasonable time, reject goods that are not of satisfactory quality and receive a full refund. We consider three alternative options, under maximum harmonisation: a) of allowing a free choice between all four European remedies; b) the Commission's proposal that allows the trader to choose in the first instance; c) an option that seeks to combine the 'right to reject' with the European remedies. We have not at this stage identified a preferred option although we are concerned about the loss of the right to reject for consumers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy options will be refined as the European Directive is negotiated and a consensus is reached between the Commission, Member States and European Parliament.

Ministerial Sign-off For consultation stage Impact Assessments:

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:

Summary: Analysis & Evidence

Policy Option:

Description: Commission's Proposals

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' This is an estimated familiarisation costs based on all businesses spending one hour to familiarise themselves with the legislation.
	One-off (Transition)	Yrs	
	£ 12m.		Familiarisation cost based on 770,000 enterprises spending an average of 1 hour familiarising themselves with the contract law.
	Average Annual Cost (excluding one-off)		
£		Total Cost (PV)	£ 12m
<p>Other key non-monetised costs by 'main affected groups'</p> <p>Where businesses stick to the legal minimum there is likely to be a cost to consumers who would have less choice of remedy in the event of purchasing faulty goods. Especially so where consumers lose confidence in goods that were found to be faulty and would therefore prefer to have the option to buy another good. Business is likely to benefit.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The reduced burden of the revised payment framework i.e. reduction in the number of payment notices that need to be issued by the payer.
	One-off	Yrs	
	£		Different consumer laws across Member States act as a barrier to trade. They impose administrative burdens and discourage trade. Consumers cannot access the most efficient supplier for their wants or alternately there is a loss of productivity to the UK and other Member States.
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£
<p>Other key non-monetised benefits by 'main affected groups' UK consumers would benefit where they were able to access a wider range of goods at lower prices within the EU.</p>			

Key Assumptions/Sensitivities/Risks

A key assumption is that it is differences in consumer law that discourages consumers from shopping cross border. This is supported by research by the EU.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	Not yet decided
Which organisation(s) will enforce the policy?	OFT, TSS, Courts
What is the total annual cost of enforcement for these organisations?	£ Not known
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ To be measured.
What is the value of changes in greenhouse gas emissions?	£ To be measured.
Will the proposal have a significant impact on competition?	Positive impact.

Annual cost (£-£) per organisation <i>(excluding one-off)</i>	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)		Increase
Increase of £	Decrease of £	Net Impact £

Key:

Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

The Consumer Rights Directive proposes a new approach to consumer remedies when goods are not in conformity with the contract.

This Impact Assessment analyses the option proposed by the new Directive and three other options, including retention of the status quo.

A. Strategic Overview

Currently there are a number of remedies for UK consumers if they buy faulty goods. Domestic law provides that a consumer can, within a reasonable time, reject goods and receive a refund. This right to reject sits alongside four other potential remedies for consumers that were introduced into UK law by the EU Consumer Sales Directive. These four remedies are replacement, repair, price reduction and rescission of the contract. In certain circumstances a consumer can also sue for damages.

When the UK Government implemented the Consumer Sales Directive (1999/44/EC) in 2002, it decided to retain the domestic right to reject, alongside the remedies in the Directive. This has led to a confusing patchwork of rules for consumers and traders.

In December 2007, the Department for Business, Enterprise and Regulatory Reform asked the English and Scottish Law Commissions to look at simplifying the law on consumer remedies.

This followed the Davidson Review's report into the implementation of EU legislation which recommended that, in the area of sale of goods, the current situation was unnecessarily complicated. It recommended a joint report by the English and Scottish Law Commission's 'on the reform and simplification of remedies available to consumers relating to the sale and supply of goods'. In May 2008, BERR and the Better Regulation Executive also published a call for evidence requesting views on how best to simplify the existing legal framework.

Faulty goods constitute a significant source of detriment for UK consumers. The OFT's Consumer Detriment Survey (2008) identified £6.6 billion of consumer loss in the UK economy over the last 12 months. During this time it is estimated that 26.5 million problems have occurred with almost a third of consumers reporting one or more problems with goods or services. Of these problems almost a quarter (24%) are related to defective or faulty goods. In assessing the financial detriment of faulty goods, car repairs featured heavily and were found to be likely to cause significant consequential damage or inconvenience to the consumer.⁹

The options set out below do not differ markedly in reducing the overall loss created by the production of defective goods but do differ in some circumstances in terms of whether consumers or businesses bear the cost.

B. The issue

The Commission's proposal is intended to create a uniform set of rules across the EU on rules for faulty goods.

In the Flash Eurobarometer survey of December 2006, 46% of businesses surveyed said that differences between Member States in their legislation regarding goods not in conformity with the consumer contract were either a very or fairly important obstacle to selling cross-border¹⁰. It is anticipated that a single set of consumer remedies will reduce the barriers to traders selling cross-border.

⁹ http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf April 2008 Chart 3.8 pg 19

¹⁰ http://ec.europa.eu/consumers/topics/flash_eb_186_ann_report_en.pdf December 2006 pg 39

Business currently has to navigate through a complex web of consumer remedies. Many retailers offer remedies that go beyond the legal requirement such as the facility to reject goods that are not faulty. The effect of this is that any changes to the legal framework would only affect those retailers that mirror the minimum legal requirements. The scope of the current law is also considerable. Sales of goods law covers all sales to people who are not acting in the course of their business, of almost any type of good, and therefore applies to the majority of retail sales. The annual value of which was estimated in 2005 to be £248,372 million.¹¹

C. Objectives

The European Commission's objective in finding a uniform set of consumer remedies is to reduce legal fragmentation and increase cross-border trade. All Member States have implemented the original Consumer Sales Directive ensuring that consumers have an initial choice between repair and replacement, followed by price reduction or rescission. This approach has been taken by 19 Member States.

As the Directive is based on minimum harmonisation other Member States can go further. In both Ireland and the UK, the consumer has the option of either invoking the remedies transposed from the Directive or the remedies ('right to reject') under national sale of goods legislation. Several other Member States have allowed for a consumer to have a free choice amongst all remedies, effectively giving a 'right to reject' or have adopted a different approach but with the same basic effect (e.g. France).

These differences across Member States have led to a level of fragmentation that is considered to a barrier to the Internal Market. The Commission's proposed alternative is that all consumers have identical rights that are clearly understood and widely communicated. This would be a benefit to those UK consumers who currently purchase goods from other Member States or who are deterred from doing so by the differing degrees of consumer protection.

However, it could be argued that as most face-to-face sales are domestic, the benefit to UK consumers of harmonised rules would not be significant. For the UK, the development of the internal market seems to be a more important consideration for distance selling. Distance-selling currently allows for a withdrawal period during which consumers can return unwanted goods (although sale of goods remedies would still apply where a good was faulty and was discovered after the end of the withdrawal period). Extension of this period is the subject of a separate IA.

The Commission propose in the new Consumer Rights Directive that the original order of remedies is retained with repair or replacement as the consumer's primary remedy, with price reduction or rescission as second tier rights.

Rather than allow the consumer to choose between repair and replacement the draft Directive allows the trader to pick between the first two options. And if the trader decides that either option is disproportionate or impossible, the consumer must choose between price reduction and rescission.

Rescission is only available where the defect is not 'minor'.

D. Options

As the UK has continued to keep the right to reject under sale of goods legislation, the draft Directive would have an effect on the remedies available to UK consumers. We are concerned about the impact this will have on current consumer protections.

In order to assess the impact of this change on business, BERR have commissioned research on the effects of the right to reject on retailers and manufacturers to complement the work of the Law

¹¹ Davidson Report <http://www.berr.gov.uk/files/file44583.pdf> November 2006 p38

Commission on consumer expectation and preference. We expect this work to be finished by early 2009.

We have initially identified four options in relation to the draft Directive's proposals for faulty goods:

- a) **Status quo:** UK opposes the changes, retaining both the 'right to reject' and the original remedies outlined in the Consumer Sales Directive;
- b) **Free choice:** UK argues for a free choice between all EU remedies allowing for an effective 'right to reject' through rescission;
- c) **Trader chooses:** UK accepts the Commission's proposed changes allowing the trader to choose between repair and replacement;
- d) **Combined approach:** UK develops a new approach that allows for a defined period of time where consumers can reject faulty goods, after which the consumer can choose between repair and replacement.

E. Analysis of the options

- a) **Status quo:** UK opposes the changes, retaining both the 'right to reject' and the original remedies outlined in the Consumer Sales Directive;

The 'right to reject' is considered by many to be a fundamental part of the UK consumer regime. The Law Commissions considered this issue in 1987 and decided it was important to retain the right to reject. The Report noted that the right to reject is easy for the non-lawyer to understand and put the consumer in a strong bargaining position. In 2008 the Law Commissions conducted a series of focus groups with consumers and while most consumers said they would be happy to accept a replacement where low-value goods turned out to be faulty, 20% said that they would prefer to have refund or a different product. Consumer groups have also indicated that the right to reject is a valuable legal safeguard for consumers.¹²

- b) **Free choice:** UK argues for a free choice between all EU remedies - allowing for an effective 'right to reject';

A number of Member States have chosen to implement the original Consumer Sales Directive by allowing the consumer a free choice between the remedies. Greece, Slovenia and Portugal took this approach with Latvia allowing a free choice for a period of six months after which they reverted back to the order laid down in the Directive. In Slovenia, a consumer can choose between all four remedies, although rescission is limited in certain circumstances.¹³

This approach, if agreed at maximum harmonisation, would allow for a uniform set of remedies but would allow the consumer to retain the right to reject. It would not significantly limit the right to reject. This would not necessarily have costs for business in the UK as it would be similar to the current position. It would add a cost to business in other Member States but would increase the confidence of UK consumers shopping overseas.

- c) **Trader chooses:** UK accepts the Commission's proposed changes allowing the trader to choose between repair and replacement;

This option would allow traders to choose between repair and replacement, making a judgement about which remedy is proportionate. While consumers would lose the right to reject in the first instance, many businesses already offer 'no quibble, money back' guarantees and could be expected to continue to do so. Traders are in the best position to judge whether a faulty good can be repaired or replaced and the draft proposal ensures that consumers have safeguards against a failure to remedy the lack of conformity within a reasonable time, for example.

¹² Law Commission Consumer Remedies Report

¹³ EC Consumer Law Compendium Schulte-Nolke, Twigg-Flesner, Ebers (eds.) p427

Allowing the trader to choose, however, could place the consumer at a disadvantage. Consumers may lose confidence in a product that has failed to work and may consider that this is a design fault or a consequence of the low price of the good that they have bought. A repair or replacement is therefore not an adequate remedy and results in a loss of consumer welfare as the consumer's options are reduced. The ability of the consumer to terminate the contract and effectively start again would be lost.

Option c) would fit into the continental approach of 'keeping the contract alive' but would be counter to the approach hitherto taken in the UK which allows the consumer an 'easy exit'.

d) Combined approach: develop a new approach that allows for a defined period of time where consumers can reject faulty goods, after which the consumer can choose between repair and replacement.

An alternative approach is to recommend to the European Commission, European Parliament and other Member States a hybrid version of the current situation. This would allow consumers to have a discrete period of time during which they have a right to reject faulty goods. By setting this at say, 14 or 30 days, this would provide business and the courts with greater clarity. Currently, the use of the term 'reasonable time' can lead to a wide variety of different judgements.

Once this period had elapsed, consumers (or traders) could choose between repair and replacement – with traders free to offer more generous terms if they choose to do so. This approach would marry both legal traditions and would be both clearer for consumers and business to work with.

F: Costs and benefits of the options

a) Status quo: oppose the changes, retaining both the 'right to reject' and the original remedies outlined in the Consumer Sales Directive;

As other options are measured against the status quo, by definition there are no costs and benefits to this option.

b) Free choice: argue for a free choice between all EU remedies allowing for an effective 'right to reject';

A number of Member States allow for a free choice of remedies (with certain legal savings). The risk here is that given such a wide choice there is little legal certainty for retailers under maximum harmonisation. This risk is offset by the number of consumers who are likely to be happy with a swift repair or replacement. 80% of consumers interviewed by the Law Commission would be happy with a replacement for a low-value item. Other Member States that do not currently offer right to reject may be reluctant to introduce this free choice of remedies, although we are aware that a significant number of Member States continue to effectively promote a right to reject through consumer codes and best practice. Indeed, most Member States already had a right to reject in existence prior to the (minimum harmonisation) Consumer Sales Directive.

c) Trader chooses: accept the Commission's proposed changes allowing the trader to choose between repair and replacement;

The risk with option c) is that UK consumers lose a right that is seen by many as a fundamental consumer right that sits at the core of consumer protection law. There is evidence that consumers understand this right and even where they would be happy with a repair or replacement, they would be concerned if this safeguard was lost.

Where the trader has not, in the consumer's view, treated them fairly or they perceive the good to be intrinsically unsafe, the right to exit the contractual relationship is valued. While many businesses may continue to offer better protection there would be no guarantee and consumers would have lost an important bargaining tool. Clearly it is not in the interests of traders (both large and small) to antagonise

consumers and lose future sales so this risk is offset by the competitive markets in which all traders operate.

- d) Combined approach:** develop a new approach that allows for a defined period of time where consumers can reject faulty goods, after which the consumer can choose between repair and replacement.

This is a new approach and would need to be fully developed and justified in order to gain support from interested groups, as well as the European Commission, Member States and the European Parliament.

It offers a basis upon which to meet the desire of consumers to exit from a contract in which the goods have not met their reasonable expectations. It would not however leave the trader with an open-ended duty to refund the consumer where a repair or replacement is both cost-efficient and reasonable to the consumer.

G. Enforcement

Enforcement of these rules are left to the discretion of Member States and in the UK would be through the courts, the Office of Fair Trading, Trading Standards.

H. Summary Table of Costs and Benefits for the identified options

Benefits	Costs
Option a) status quo	
Zero, by definition.	Zero, by definition
Option b) free choice	
Business would benefit from the same rules across the EU and consumers would have greater choice in the remedies available to them, including the right to reject.	Business in other Member States may have to absorb more costs if consumers across the EU have an increased right to reject and traders are not able to limit the choice of remedies to repair or replacement in certain circumstances. There would be familiarisation costs for business and enforcement bodies.
Option c) Trader chooses between repair and replacement	
Traders would be able to select the most appropriate remedy for the fault while consumers would continue to have the right to alternative remedies where repair and replacement was not reasonable. They would also benefit from consistent rules across the EU.	UK consumers would lose the initial right to reject. They would only be able to rescind the contract where the fault was not 'minor'. There would be familiarisation costs for business and enforcement bodies.
Option d) Combined approach	

<p>Consumers would both retain and have a more clearly defined right to reject.</p> <p>There would be a balance between the consumer being able to end the contract and traders having the opportunity to provide a repair or replacement.</p> <p>Consistent rules across the EU would reduce legal fragmentation.</p>	<p>As with option b), business may have to absorb more costs if consumers across the EU have an increased right to reject and traders are not able to limit the choice of remedies to repair or replacement in certain circumstances.</p> <p>There would be familiarisation costs for business and enforcement bodies.</p>
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Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
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Small Firms Impact Test	At this stage a full small firms impact test is yet to be carried out. We would welcome comments on the likely impacts of these proposals on small businesses.	No
Legal Aid	No	No
Sustainable Development	No	No
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Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	At this stage a full equalities impact test is yet to be carried out. We would welcome	No
Disability Equality		No
Gender Equality		No

	comments on the likely impact of these proposals on race, disability and gender.	
Human Rights	No	No
Rural Proofing	No	No

Surveys show that consumers attribute their lack of confidence in cross border shopping to a variety of factors. Their primary belief is that it is harder to resolve problems related to making complaints, returns, price reductions, guarantees etc (71%). Around two in three consumers believe that: there is a greater risk of falling victim to a scam or fraud (68%); there is a greater chance of having delivery problems with goods or services (66%); there are more problems returning a product they bought at a distance within the "cooling-off" period (65%). At the same time (64%) of consumers think that it is harder to trust the safety of goods and services when buying cross border, while (56%) think that sellers in other countries are less likely to respect consumer protection laws. Only 57% of consumers have seen a cross border offer¹⁴.

Survey data: "Eurobarometer on Consumer Protection in the Internal Market. European Commission

¹⁴ Survey data: "Eurobarometer on Consumer Protection in the Internal Market. European Commission