

**Department of Trade and Industry  
Consumer and Competition Policy Directorate**

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**EC DIRECTIVE 1999/44/EC ON CERTAIN ASPECTS OF THE SALE OF  
CONSUMER GOODS AND ASSOCIATED GUARANTEES**

**FIRST CONSULTATION OF 2001**

4 January 2001

1. Comments are invited on the Government's plans to implement Directive 1999/44/EC "on certain aspects of the sale of consumer goods and associated guarantees" which was adopted in May 1999 with an implementation date of 1 January 2002. A copy of this is contained below.
2. You will find attached a paper seeking views on how we should implement the Directive. Some of the questions have been asked to help inform the Regulatory Impact Assessment (see below).
3. You will also find attached a request to help draft a Regulatory Impact Assessment. This refers back to an earlier Regulatory Appraisal - of which there is a copy - which has much overlap.
4. We are setting a deadline of Monday 2 April for the return of all comments which, with tight time pressures on the implementation front, we do not expect to be able to extend.
5. After thorough analysis of all comments we will produce draft regulations and a draft Regulatory Impact Assessment. This will then be put out for agreement among all relevant Government Departments. Following this, we intend to launch a consultation exercise on the resulting draft regulations and draft Regulatory Impact Assessment for final comments. Unless requested otherwise, we will include you in this.
6. You can find a copy of this on our website at <http://www.dti.gov.uk/ccp/archive/consultations.htm> Please feel free to put it on your own website, or hyperlink to it, to help generate a wider response.

**CONTENTS**

<b>Part 1</b>	<b>Introduction</b>
<b>Part 2</b>	<b>Summary of the Main Provisions of the Directive</b>
<b>Part 3</b>	<b>Summary Grid</b>
<b>Part 4</b>	<b>Questions</b>
<b>Part 5</b>	<b>Copy Of The Directive</b>
<b>Part 6</b>	<b>Obligatory Consultation Criteria</b>

# **EC DIRECTIVE 1999/44/EC ON CERTAIN ASPECTS OF THE SALE OF CONSUMER GOODS AND ASSOCIATED GUARANTEES**

## **PART 1: INTRODUCTION**

### ***Background***

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees was adopted by the European Parliament and the Council on 25 May 1999 and published in the Official Journal on 7 July 1999 (L 171, 07/07/1999 p. 0012-0016).

The DTI previously consulted on the proposed Directive in September 1996 and July 1997. These consultations included cost/benefit analyses. The House of Lords Select Committee on the European Communities also carried out a detailed enquiry, a report on which was published in March 1997 (Session 1996-97, 10th Report).

The Directive will introduce important measures into UK legislation on the sale of goods, such as the so called reversed burden of proof (for the first six months); a hierarchy of specific remedies, which have not been defined before, and guarantees given to consumers will become legally binding in many cases. This will impact on both consumers and business. Implementation of the Directive raises many questions. These include how to handle the differing definitions of key terms in associated legislation; how the new remedies should relate to the UK's existing ones and whether options should be pursued such as limiting the period within which consumers have to report faults and making second hand goods subject to a shorter period of liability.

We are now anxious to receive views from a wide range of interests, and especially from consumers' groups, business interests, trade associations, academics, lawyers and the enforcement community to help us in the drafting of the legislation to implement the Directive. Consumer protection legislation is (with certain exceptions which are not relevant here) a devolved matter with regard to Northern Ireland. The Department will discuss with the Northern Ireland Assembly how best to implement the Directive there. Regulation of the sale and supply of goods and services to consumers is a reserved matter under section C7, Schedule 5 of the Scotland Act 1998. The National Assembly for Wales has no power to legislate in this area.

We intend to carry out a further consultation, later in 2001, after we have worked up initial draft legislation in the light of the feedback from this current exercise.

We note that this Directive should be seen as being part of the bigger picture regarding consumer protection and the progress that is underway in many areas both in the UK and elsewhere in the EU. This includes the Consumer Support Network; TrustUK; EEJ-Net; the E-commerce Directive; the Brussels Regulation; the Distance Selling Regulations and the Injunctions Directive. Further details on these and other consumer issues, along with enquiry points for further information, can be found on the DTI's website ([www.dti.gov.uk/cacp/ca](http://www.dti.gov.uk/cacp/ca)).

### ***Implementation***

Member States are required to implement the Directive no later than 1 January 2002. This is now a very tight deadline if adequate time is to be allowed for

consultation and prior notice given to industry, and others, of the required changes. By way of illustration the following would seem the minimum that needs to take place

- : i) Twelve weeks for this exercise, ending 2 April 2001.
- ii) Analysis of feedback.
- iii) Production of draft Regulations and draft Regulatory Impact Assessment.
- iv) Three months for Consultation on draft Regulations and draft Regulatory Impact Assessment.
- v) Analysis of feedback.
- vi) Final amendments to Regulations and Regulatory Impact Assessment.
- vii) Laying before Parliament.
- viii) Three months period before implementation for industry and consumer interests etc to become accustomed.

The proposed legislative vehicle for implementation is Section 2(2) of the European Communities Act.

### ***Timetable for responses to this exercise***

In line with Cabinet Office guidance, we are allowing twelve weeks for this consultation. **We therefore request your response by 2 April 2001.** However, with time tight we do not envisage being able to allow deadline extensions.

The Department will prepare a Regulatory Impact Assessment (RIA) using the information provided in reply to previous consultations and in this latest exercise. Please provide updates, wherever possible, on the attached Regulatory Appraisal (the earlier form of RIAs) which was written after the previous consultations conducted during the Directive's negotiations. The Regulatory Impact Assessment will ultimately be submitted to Parliament and will be made publicly available. If you wish to supply information on the understanding that it will not be identifiable to your organisation or business sector please make this clear.

Responses should be sent to:

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Any comments, or complaints, about the conduct of the consultation may be sent to

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# **EC DIRECTIVE 1999/44/EC ON CERTAIN ASPECTS OF THE SALE OF CONSUMER GOODS AND ASSOCIATED GUARANTEES**

## **PART 2: SUMMARY OF THE MAIN PROVISIONS OF THE DIRECTIVE**

### **Purpose**

The Directive aims to encourage consumers to take full advantage of the Single Market setting out common minimum standards of consumer rights throughout the European Union. In addition to the provisions on consumers' rights in relation to defective products, the directive also contains provisions on guarantees given to consumers without extra charge.

### **Conformity**

The Directive contains a general requirement that the seller must deliver goods to the consumer which conform with the contract of sale. The Directive applies to sales by a person in the course of their trade, business or profession but not to sales by private individuals.

"Consumer goods" are defined as any tangible movable item, with the exception of goods sold by way of execution or otherwise by authority of law; water and gas where they are not put up for sale in a limited volume, or set quantity, and electricity. Second hand goods are covered.

The consumer is defined as "any natural person acting for purposes which are not related to their trade, business or profession".

There is a presumption that consumer goods are in conformity with the contract if they comply with the description given by the seller, are fit for their purpose and their quality and performance are satisfactory, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling. If installation forms part of the contract of sale, incorrect installation of the goods by, or on behalf of, the seller is deemed to be equivalent to lack of conformity of the goods. This also applies if the product is incorrectly installed by the consumer due to a shortcoming in the installation instructions, providing the product is intended to be installed by consumers.

The seller is liable to the consumer for any lack of conformity which exists at the time of delivery and which becomes apparent within two years (against the UK's existing limitation period of six years; five years in Scotland), unless the consumer was aware, or could not reasonably be unaware, of it at the time of sale. The seller is not liable for goods not conforming to the manufacturer's statements if he can show that he was not aware of the statement, had corrected it, or can show that the consumer's decision to buy was not influenced by the statement.

### **Reversed burden of proof - first six months**

Any lack of conformity which becomes apparent within six months of delivery is presumed to have existed at the time of delivery, unless proved otherwise or unless this presumption is incompatible with the nature of the goods or the lack of conformity.

## **A hierarchy of remedies**

In the event of any lack of conformity the consumer is entitled to free repair or replacement of the goods, whichever is the most economical and practical, within a reasonable time and without any significant inconvenience. If a repair or replacement is not possible/practical, or the seller has not completed a remedy within a reasonable time or has caused significant inconvenience, then the consumer is entitled to a price reduction or to cancellation of the contract. The consumer is not entitled to have the contract cancelled if the lack of conformity is minor.

## **Right of recourse**

Article 4 says that where a final seller is liable to the consumer because of a lack of conformity resulting from an act or omission of the producer, a previous seller or other intermediary then the final seller can pursue remedies against the person liable in the contractual chain. It also says that the person, or persons, against whom the seller may pursue remedies shall be determined by national law. This provision does not affect consumer rights.

## **Guarantees offered**

The Directive does not require manufacturers/retailers to offer guarantees but any guarantee given without extra charge to a consumer will be legally binding on the person offering it. A guarantee will have to clearly state that it does not affect a consumer's statutory rights. Its terms will have to be set out in plain intelligible language and include the essential particulars for making a claim. The guarantee must be available to the consumer in writing on request (or in another durable medium available and accessible to him).

## **Key Discretionary Provisions ·**

- Article 5(2) allows Member States to legislate that consumers must inform sellers of the lack of conformity within two months from the date of detection. ·
- Article 7(1) allows Member States to allow, in the case of second hand goods, a shorter liability period than the two years set down in article 5(1), providing this is not less than one year. ·
- Article 8(2) allows Member States to adopt or maintain more stringent provisions to ensure a higher level of consumer protection.

## **Impact on UK law**

The Directive will require substantial amendments to the Sale of Goods Act 1979 and other related legislation. There are important differences in scope (the 1979 Act applies to a very wide range of sale of goods transactions, whereas the Directive applies only to sales of consumer goods, as defined, by business sellers to natural persons) and the Directive introduces completely new consumer remedies. Other legislation requiring amendment includes the Supply of Goods and Services Act 1982, the Unfair Contract Terms Act 1977 and the Misrepresentation Act 1967.

The remedies that the Directive will introduce may give more or less redress than is currently available in the UK e.g. a legal right to repair/replacement might be less useful to consumers, notably in the absence of the short term right to reject goods. The Government has indicated its intention not to reduce current provisions for consumer protection where the Directive falls below existing levels.

Changes in UK law will also be needed in order to make any guarantees offered to consumers with goods legally binding on the offeror, and to introduce other specific requirements in respect of such guarantees.  
A one page summary is attached on existing rights and the Directive's rights.

### **PART 3: Consumer Rights**

<b>Current Rights</b>	<b>Rights (some optional) Under Directive</b>
Goods must be of a satisfactory quality in the view of a reasonable person taking account of description, price and all relevant factors.	Goods must show the quality and performance normal in goods of the same type and which can reasonably be expected, taking account of their nature and the seller/producer's public statements.
Goods must be fit for the purpose for which goods of that type are commonly supplied.	Goods must be fit for the purposes for which that type of goods are normally used.
Goods must be reasonably fit for the consumer's purpose if the seller knows what the purpose is.	Goods must be fit for any purpose made known to the seller, which they accept.
	Goods must be installed correctly by the seller, or those under his responsibility, if part of the sale contract. Any installation instructions, intended for consumers, must be without shortcomings.
Goods must be as described by the seller or on any packaging or labels.	Goods must comply with descriptions given by the seller or possess any sample/model's qualities.
If goods do not meet these tests they can be rejected within a "reasonable" time and the money paid returned. A customer does not have to bring the goods back; the onus is on the seller to organise this.	If goods fail these tests consumers may require repair or replacement unless disproportionate, taking into account the value of the goods without a fault; the significance of the fault and the remedy's level of inconvenience to the consumer.
Consumers need not accept a repair or replacement during this reasonable time.	
The consumer must prove that the goods do not conform.	The consumer enjoys a reversed burden of proof entitlement in the first six months (but not after).
If, after a reasonable time, the goods reveal a fault, that was latently there at the time of sale, damages can be claimed; typically a repair or replacement.	A price reduction or rescission may be required if the seller cannot complete the other remedies in a reasonable time or they would involve significant inconvenience for the consumer.
Second hand goods are covered as well.	The liability period can be reduced for second hand goods to not less than one year.
	Contracts where a consumer commissions the manufacture of consumer goods shall be included.
Goods cannot be rejected, or damages	Goods do not lack conformity if the

claimed, if the fault was drawn to a consumer's attention; if they were examined in a way which should have revealed the fault and where a sample was similarly examined. Also, if the intended use was advised against.	consumer was aware, or could not reasonably have been unaware, of the lack of conformity at the time the contract was concluded or if the consumer supplied faulty materials for their manufacture.
A claim can be lodged for up to six years from the date of the breach of contract (five years from discovery in Scotland).	There is a liability period of at least two years but consumers might have to report faults within two months of detection.
Retailer/manufacturers' guarantees cannot reduce consumers' statutory rights but are not necessarily legally binding.	Retailer/manufacturers' guarantees as defined are to be available on request and legally binding.

**EC DIRECTIVE 1999/44/EC ON CERTAIN ASPECTS OF THE SALE OF CONSUMER GOODS AND ASSOCIATED GUARANTEES  
PART 4: QUESTIONS**

**Article 1**

The Directive uses definitions for consumer, consumer goods and other terms which are different from those used in other UK and Community legislation.

***Definitions***

The Directive uses a different definition of "consumer" to that contained in other EC Directives, including the earlier Directive 93/13/EEC which is implemented in the UK by the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR). For the purposes of Directive 1999/44/EC a "consumer" is "any natural person who ... is acting for purposes which are *not related* to his trade, business or profession".

Under the UTCCR a "consumer" means "any natural person who ... is acting for purposes which are *outside* his trade business or profession". Although both definitions exclude legal persons, the UTCCR definition of "consumer" is somewhat wider than that in the Directive because there may be cases when a self-employed person is acting for purposes which, although related to, are incidental to his business activity. For example, a self-employed plumber who buys a computer program to use on his home computer to compile his tax return may well not be a consumer under the Directive because his purpose cannot be said to be 'not related' to his business, but he may be a consumer within Directive 93/13/EEC, and the UTCCR, because his purpose could be regarded as being 'outside his business'.

But there is significant overlap in the sphere of operation of the Directive and the UTCCR. This is because the seller's implied obligations, as set out in the Directive, take effect as implied terms in a contract between a seller (or supplier) and a consumer where the said term has not been individually negotiated, and are thus within the meaning of the UTCCR. The UTCCR says that such terms may be unfair, and not binding on the consumer, if they cause a significant imbalance in the parties' rights to the detriment of the consumer. Because of the significance of this overlap the Government does not believe it would be sensible to have different definitions of "consumer" in the regulations implementing this Directive and the UTCCR.

It is not possible to amend the definition of "consumer" in the UTCCR to bring it in line with Directive 1999/44/EC as that would be contrary to the requirements of Directive 93/13/EEC. The alternative approach, favoured by the Government, is to implement the Sale of Consumer Goods Directive with the broader definition of consumer contained in the UTCCR which would extend the protection of the directive to a slightly broader category of sales.

**Q1 Do you agree that we should align the definition of consumer with that in the UTCCR? What benefits would this bring? What would be the cost implications? Please quantify.**

The Directive provides (in Article 7) that any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from the Directive shall, as provided for by national law, not be binding on the consumer. Thought needs to be given to the interrelationship between the Directive and the Unfair Contract Terms Act 1977 (UCTA) since the former deals with when terms are included in a contract and the latter deals with the circumstances in which the liability imposed by those terms may lawfully be excluded.

It is the government's objective to achieve, in so far as possible, consistency in the definitions ("consumer", "consumer goods", "dealing as a consumer" etc.) used in the various legislation on sale of goods and unfair terms. In this context, a particularly problematic area is s.12 of UCTA which defines the circumstances when a party to a contract "deals as a consumer", for the purposes of deciding whether liability may be excluded or restricted by reference to a contract term.

The UCTA provides that in the case of sales and hiring to a person dealing as a consumer, a trader cannot opt out of his obligations to sell or hire goods which are of satisfactory quality, correspond with their description and are fit for their purpose. Section 12(1) of the Act provides that a person deals as a consumer if:

- a) he neither makes the contract *in the course* of a business nor holds himself out as doing so; and
- b) the other party does make the contract in the course of a business; and
- c) the goods which are the subject matter of the contract *are of a type ordinarily supplied for private use or consumption*.

Under the UCTA partnerships and companies may in certain circumstances be held to be "dealing as a consumer" as it does not turn on whether they are a natural person or not but rather, whether they were acting in the "course of business" or not, and whether the goods which are the subject matter of the contract were of a type ordinarily supplied for private use or consumption. The requirement that goods must be "of a type ordinarily supplied for private use or consumption" effectively places a check on the wide meaning of "consumer".

A similar but not identical check is contained in the Directive where the wide meaning of "consumer goods" as "any tangible movable item" is combined with the narrow definition of "consumer" which excludes legal persons.

The Government is obliged to implement the very wide definition of consumer goods contained in the Directive. However, it is the Government's view that it is not feasible simply to adopt, without doing anything more, the Directive's definition of "consumer goods" (any tangible item, with limited exceptions) in section 12 UCTA, as the result would be a huge increase in the class of persons who "deal as a consumer". For example, a one man company purchasing a JCB as a one off transaction may be covered. Currently, although s.12 may apply to both

natural and legal persons, a check is placed on the scope of the section by the nature of the goods which pass under the contract (see s.12(1)(c) - "goods ordinarily supplied for private use or consumption").

In order to counterbalance the effect of expanding the UCTA definition of consumer goods to mirror the Directive definition, one possible solution is to amend s.12 UCTA further, so as to limit its scope to *natural* persons only. This would bring section 12 completely into line with the Directive.

**Q2 Views are invited from consultees on the possibility of limiting s12 UCTA to natural persons acting outside their trade, business or profession. We would also welcome alternative suggestions as to how s.12 of UCTA might be aligned with the Directive.**

As part of a package of deregulatory measures, Mrs Hewitt, Minister of State, DTI announced in March the Government's intention to replace the UCTA and the UTCCR with a single coherent regime. A formal reference will shortly be made to the English and Scottish Law Commissions to take this work forward. This will also include examining the desirability of extending the current protection of the UTCCR to businesses, including small businesses.

***Auctions and second hand consumer goods***

Article 1(3) of the Directive allows for the exclusion of second hand goods sold at public auction. This would maintain the current legislative position, that was introduced following a review by the Law Commission, which under the UCTA deems that a person buying goods at an auction is not to be regarded as dealing as a consumer.

**Q3 We intend to make use of this exclusion. Do you agree?**

**Article 2**

***Conformity with contract***

Currently the Sale of Goods Act says that where sellers are told of the particular purpose for which the goods are being bought then they must be reasonably fit for that purpose except where the buyer did not rely, or it is unreasonable for him to rely, on the skill and judgement of the seller. The Act also says that goods should be fit "for all the purposes for which goods of the kind in question are commonly supplied".

The Directive says goods must be fit for any particular purpose made known to the seller that the latter accepts. It also says goods must be "fit for the purposes for which goods of the same type are normally used".

**Q4 In order to avoid any confusion resulting from the slight differences in these definitions we propose to incorporate both terms in the implementing legislation so that goods would be required to be both fit for the purposes for which they are "commonly supplied" and those for which they are "normally used". Would you agree that this is an appropriate way forward?**

The Directive makes no mention of price as having to be considered in judging conformity. The Sale of Goods Act does in Article 14(2A) ("...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 other relevant circumstances.").

It can be argued that to take account of price lessens consumers rights and so to retain consideration of it in the future would be contrary to EC law as this would

result in a lower level of consumer protection than that provided for by the Directive.

**Q5 Do you agree with this analysis? Are there associated costs and benefits?**

The Directive also states that in assessing conformity with contract "public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling" should be taken into account.

**Q6 This is potentially a significant extension of liability. We would welcome comments on possible approaches to this extension of liability and the likely benefits, costs and problems.**

**Article 3**

***Hierarchy of remedies***

The Directive introduces a hierarchy of remedies starting with repair or replacement, free of charge, whichever is the most economical and practical, within a reasonable time and without significant inconvenience, as the initial solutions for the consumer, provided these are not impossible or disproportionate. Currently UK law has the short term right to reject (rescission of the contract) as an initial remedy. Under the Directive, if a repair or replacement is not possible/practical, or the seller has not completed a remedy within a reasonable time or has caused significant inconvenience, then the consumer is entitled to a price reduction or to cancellation of the contract. In working out any reduction in price we would intend that, as currently happens when calculating damages, account is taken of the use made of the goods and their expected life span.

We intend to retain the existing remedies under the Sale of Goods Act including the short term (within a reasonable period) right to reject. How we make these fit with the remedies under the Directive - including the latter's requirement that the right to reject (contract rescinded) is a final remedy - raises difficult questions about what remedies will be open to the consumer at any specific point or when remedies may no longer be available.

**Q7 Do you foresee problems in our intention to retain existing remedies along with the other remedies specified in the Directive? If so, please explain the circumstances in which you consider there would be difficulties and the nature of the problem.**

In general the hierarchy of remedies does offer scope for confusion in interpreting exactly what the consumer is entitled to and when. For example, if a second fault entitles the consumer to redress after an earlier one has been e.g. repaired, should the consumer be entitled to demand a reduction in price or rescission rather than allow the seller another attempt at repair or replacement?

**Q8 Your views/solutions on this specific example are welcome but equally your thoughts on other possible problematic scenarios and solutions.**

***Minor defects***

The Directive states that "the consumer is not entitled to have the contract rescinded if the lack of conformity is minor". However, the Sale of Goods Act states that goods should be free "from minor defects". The Government has indicated its intention not to reduce levels of consumer protection where the

Directive falls below existing levels and so we would intend to retain the Sale of Goods Act's requirements here.

**Q9 Do you agree with this approach bearing in mind that courts would currently look at whether a consumer was acting reasonably in cases of minor/ cosmetic defects?**

#### ***Bespoke products***

Article 1(4) of the Directive deems as contracts for sale "contracts for the supply of consumer goods to be manufactured or produced". This refers to specially commissioned goods such as bespoke suits or furniture. This will entail consideration being given to possible amendment of the Supply of Goods and Services Act 1982.

**Q10 How might the four remedies regime outlined in the Directive impact on such contracts? Do you foresee problems with what are possibly bespoke products of no value to anyone else or with contracts where the consumer had contributed designs or materials (linking in with Article 2(3))? If so, what do you think is the appropriate solution, including amendments to the Supply of Goods and Services Act, and what might the benefits and costs be?**

#### ***Installation***

The Directive introduces incorrect installation and also "shortcomings in the installation instructions" as a reason for lack of conformity (Article 2(5)).

**Q11 How might the four remedies regime outlined in the Directive impact? Do you foresee problems; if so, what do you think the solution should be and what might the benefits/costs be?**

#### **Article 4**

##### ***Right of recourse***

The Directive says that where a final seller is liable to the consumer because of a lack of conformity resulting from an act or omission of the producer, a previous seller or other intermediary then the final seller can pursue remedies against the person liable in the contractual chain. It also says that the person, or persons, against whom the seller may pursue remedies shall be determined by national law. This provision does not affect consumer rights. We propose that the policy should be to retain, as far as possible, existing law which allows liability to be excluded in business to business transactions subject to a reasonableness test under the Unfair Contract Terms Act 1977.

**Q12 Is this the best solution? Is it sufficient? Please specify any preferred alternatives.**

#### **Article 5**

##### ***Liability and limitation periods***

There has been much past confusion about the Directive providing a two year guarantee. It does not. It introduces a two year limitation period. That is to say the remedies under Article 3 are applicable where a lack of conformity becomes apparent in goods within two years but only when such a lack of conformity existed at the time of delivery, is not due to normal wear and tear and where the nature and expected life of the goods have been taken into account.

We currently have a six year liability period by virtue of the Limitation Act 1980 (five years from the time of discovery in Scotland). The Directive therefore offers protection for a lesser period than presently exists. The Government is minded to

maintain current liability periods. This seems to be the simplest way of proceeding without reducing consumer protection or introducing different liability periods for different remedies. It is not envisaged that this will create any greater burden on traders than already exists. It must be borne in mind that in all cases due regard has to be paid to the type of goods concerned and how long they can reasonably be expected to last. For example, a table should last far longer than a pair of mass produced shoes.

**Q13 Do you agree with the intention to retain the existing periods of limitation?**

The Law Commission is currently reviewing the law on limitation periods. A Consultation Paper (Consultation Paper No 151 on Limitation of Actions) was published in January 1998. They plan to publish the final report in 2001.

***"Reversed burden"***

The Directive requires that any lack of conformity that becomes apparent within the first six months be presumed to have existed at the time of delivery unless proved otherwise or unless inconsistent with the nature of the goods or the lack of conformity (sometimes known as the "reversed burden" period). However, to ally this reversed burden with the existing short term right to reject could be criticised as going further than the Directive demands (sometimes known as "gold plating"). It could be argued that if we retain the short term right to reject it should only be exercised without the benefit of a reversed burden of proof (as currently is the case).

**Q14 To what extent would the benefits/costs be affected if the reversed burden of proof applied to the existing short term right to reject?**

***Possible two months notification period***

The Directive allows Member States to require that consumers inform sellers of any lack of conformity within two months of detection. We do not intend to enforce this because of the practical difficulty of confirming any date of detection and because it would reduce the current level of consumer protection.

**Q15 What are your views on this?**

However, concern has been expressed that without the two months time limit for reporting faults consumers could dishonestly claim, some months or even years later, that they had detected a fault within the first six months but then waited before reporting it. They might then try to demand reversed burden rights. However, there would then (a) be considerable scope for the seller to prove on the balance of probabilities that the defect was *not* spotted within the first six months after delivery; and (b) the buyer would very likely be held to have failed to mitigate his loss, as all claimants are required to do by the general law of damages - i.e. he would not legitimately be able to say that all of his losses in the intervening period, between the time he spotted the defect and the time he issued proceedings, were due to the defect itself.

**Q16 Do you see a problem here? If so how should it be dealt with?**

**Article 6**

***Guarantees***

The Directive requires that where a business decides to offer a guarantee (*given without extra charge* - Article 1(2)(e)) to a consumer, it would become legally binding. It would also have to be set out in plain intelligible language with the necessary time, address, territorial scope and essential claim details.

**Q17 Would this pose problems beyond a one off need to possibly rewrite slightly the guarantee's narrative?**

The Directive requires that any guarantee offered be made available on request to consumers. This might require that retailers would hold stocks of the guarantees they offer and also would do so on behalf of manufacturers' guarantees.

**Q18 Does this pose problems? What are the costs and benefits? Please be specific.**

The Directive allows Member States to require that any guarantee offered be drafted in one of the official languages of the Community. In the UK this would be English. We are not aware that there is a problem with guarantees only being offered in foreign languages.

**Q19 What are your views?**

**Article 7**

***Second hand consumer goods***

The Directive allows Member States to provide a shorter term, of not less than one year, of liability for second hand consumer goods. Under the Sale of Goods Act the criteria for determining whether goods are satisfactory are the same as for new. As this allows the differences between new and second hand goods to be taken into account there is no need for a lesser limitation period for second hand items. The Government has indicated its intention not to reduce existing levels of consumer protection so it is not intended to apply a shorter term of protection for second hand goods. Furthermore, to exclude them in some way would add to confusion.

**Q20 What would your preferred outcome be? Please outline any cost and benefit implications.**

**Article 9**

***Informing consumers of their new rights***

The Directive says that Member States should take appropriate measures to inform consumers of their new rights under the Directive and that professional organisations should be involved. This could take the form of informing both business and consumers so that misunderstandings about the prevailing rights did not lead to costly arguments.

**Q21 What appropriate methods should be employed to achieve this in a cost effective and efficient way? Would your organisation be willing to take part in any campaign and, if so, what could you offer?**

***HP sales***

The Directive will cover cash sales; cash sales with a connected lender (where the seller introduces the buyer to a finance house with whom he has arrangements) and credit sales and conditional sales (where the seller is paid in instalments).

However, the Directive does not extend to hire-purchase, hire or barter. In the case of an HP agreement, whether or not the agreement is a "regulated

agreement" under the Consumer Credit Act 1974 (CCA), the implied obligations with regard to the goods are contained in ss. 8 to 11 of the Supply of Goods (Implied Terms) Act 1973, as amended by Sale and Supply of Goods Act 1994. The terms are virtually identical to those for the sale of goods. In practice, the supplier frequently sells the goods to the finance company, which then lets the goods out on hire purchase. If the HP agreement is a regulated agreement under the CCA, then section 56 applies and any representations made by the supplier are treated as having been made as agent for the finance company as well as in the supplier's personal capacity. Section 75 says that "if the debtor ... has ... any claim against the supplier in respect of misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable with the debtor".

There would, therefore be significant complications in bringing hire purchase within the scope of the implementation.

**Q22 We would welcome views on whether we should bring HP within the scope of the implementation and how straightforward, or otherwise, this may be.**

**Q23 It would be particularly useful to have views on how the remedies provided for by the directive should apply to HP agreements.**

**Q24 Views are also welcomed on whether we should attempt to cover contracts for the hire and barter of goods.**

**Important**

We welcome comments on any other areas not expressly referred to above.

## **PART 5: COPY OF THE DIRECTIVE**

*Official Journal L 171 , 07/07/1999 p. 0012 - 0016*

### **DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty establishing the European Community, and in  
particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>1</sup> ,

<sup>1</sup>*Quoted by the CBI in its submission*

Having regard to the opinion of the Economic and Social Committee <sup>2</sup>,

<sup>2</sup>*Quoted by the CBI in its submission*

Acting in accordance with the procedure laid down in Article 251 of the Treaty in  
the light of the joint text approved by the Conciliation Committee on 18 March  
1999 <sup>3</sup>,

<sup>3</sup>*Quoted by the CBI in its submission*

(1)Whereas Article 153(1) and (3) of the Treaty provides that the Community  
should contribute to the achievement of a high level of consumer protection by  
the measures it adopts pursuant to Article 95 thereof;

(2)Whereas the internal market comprises an area without internal frontiers in  
which the free movement of goods, persons, services and capital is guaranteed;  
whereas free movement of goods concerns not only transactions by persons  
acting in the course of a business but also transactions by private individuals;  
whereas it implies that consumers resident in one Member State should be free to  
purchase goods in the territory of another Member State on the basis of a  
uniform minimum set of fair rules governing the sale of consumer goods;

(3)Whereas the laws of the Member States concerning the sale of consumer  
goods are somewhat disparate, with the result that national consumer goods  
markets differ from one another and that competition between sellers may be  
distorted;

(4)Whereas consumers who are keen to benefit from the large market by  
purchasing goods in Member States other than their State of residence play a  
fundamental role in the completion of the internal market; whereas the artificial  
reconstruction of frontiers and the compartmentalisation of markets should be  
prevented; whereas the opportunities available to consumers have been greatly  
broadened by new communication technologies which allow ready access to  
distribution systems in other Member States or in third countries; whereas, in the  
absence of minimum harmonisation of the rules governing the sale of consumer  
goods, the development of the sale of goods through the medium of new distance  
communication technologies risks being impeded;

(5)Whereas the creation of a common set of minimum rules of consumer law,  
valid no matter where goods are purchased within the Community, will  
strengthen consumer confidence and enable consumers to make the most of the  
internal market;

(6)Whereas the main difficulties encountered by consumers and the main source of disputes with sellers concern the non-conformity of goods with the contract; whereas it is therefore appropriate to approximate national legislation governing the sale of consumer goods in this respect, without however impinging on provisions and principles of national law relating to contractual and non-contractual liability;

(7)Whereas the goods must, above all, conform with the contractual specifications; whereas the principle of conformity with the contract may be considered as common to the different national legal traditions; whereas in certain national legal traditions it may not be possible to rely solely on this principle to ensure a minimum level of protection for the consumer; whereas under such legal traditions, in particular, additional national provisions may be useful to ensure that the consumer is protected in cases where the parties have agreed no specific contractual terms or where the parties have concluded contractual terms or agreements which directly or indirectly waive or restrict the rights of the consumer and which, to the extent that these rights result from this Directive, are not binding on the consumer;

(8)Whereas, in order to facilitate the application of the principle of conformity with the contract, it is useful to introduce a rebuttable presumption of conformity with the contract covering the most common situations; whereas that presumption does not restrict the principle of freedom of contract; whereas, furthermore, in the absence of specific contractual terms, as well as where the minimum protection clause is applied, the elements mentioned in this presumption may be used to determine the lack of conformity of the goods with the contract; whereas the quality and performance which consumers can reasonably expect will depend inter alia on whether the goods are new or second-hand; whereas the elements mentioned in the presumption are cumulative; whereas, if the circumstances of the case render any particular element manifestly inappropriate, the remaining elements of the presumption nevertheless still apply;

(9)Whereas the seller should be directly liable to the consumer for the conformity of the goods with the contract; whereas this is the traditional solution enshrined in the legal orders of the Member States; whereas nevertheless the seller should be free, as provided for by national law, to pursue remedies against the producer, a previous seller in the same chain of contracts or any other intermediary, unless he has renounced that entitlement; whereas this Directive does not affect the principle of freedom of contract between the seller, the producer, a previous seller or any other intermediary; whereas the rules governing against whom and how the seller may pursue such remedies are to be determined by national law;

(10)Whereas, in the case of non-conformity of the goods with the contract, consumers should be entitled to have the goods restored to conformity with the contract free of charge, choosing either repair or replacement, or, failing this, to have the price reduced or the contract rescinded;

(11)Whereas the consumer in the first place may require the seller to repair the goods or to replace them unless those remedies are impossible or disproportionate; whereas whether a remedy is disproportionate should be determined objectively; whereas a remedy would be disproportionate if it imposed, in comparison with the other remedy, unreasonable costs; whereas, in order to determine whether the costs are unreasonable, the costs of one remedy should be significantly higher than the costs of the other remedy;

(12)Whereas in cases of a lack of conformity, the seller may always offer the consumer, by way of settlement, any available remedy; whereas it is for the consumer to decide whether to accept or reject this proposal;

(13)Whereas, in order to enable consumers to take advantage of the internal market and to buy consumer goods in another Member State, it should be recommended that, in the interests of consumers, the producers of consumer goods that are marketed in several Member States attach to the product a list with at least one contact address in every Member State where the product is marketed;

(14)Whereas the references to the time of delivery do not imply that Member States have to change their rules on the passing of the risk;

(15)Whereas Member States may provide that any reimbursement to the consumer may be reduced to take account of the use the consumer has had of the goods since they were delivered to him; whereas the detailed arrangements whereby rescission of the contract is effected may be laid down in national law;

(16)Whereas the specific nature of second-hand goods makes it generally impossible to replace them; whereas therefore the consumer's right of replacement is generally not available for these goods; whereas for such goods, Member States may enable the parties to agree a shortened period of liability;

(17)Whereas it is appropriate to limit in time the period during which the seller is liable for any lack of conformity which exists at the time of delivery of the goods; whereas Member States may also provide for a limitation on the period during which consumers can exercise their rights, provided such a period does not expire within two years from the time of delivery; whereas where, under national legislation, the time when a limitation period starts is not the time of delivery of the goods, the total duration of the limitation period provided for by national law may not be shorter than two years from the time of delivery;

(18)Whereas Member States may provide for suspension or interruption of the period during which any lack of conformity must become apparent and of the limitation period, where applicable and in accordance with their national law, in the event of repair, replacement or negotiations between seller and consumer with a view to an amicable settlement;

(19)Whereas Member States should be allowed to set a period within which the consumer must inform the seller of any lack of conformity; whereas Member States may ensure a higher level of protection for the consumer by not introducing such an obligation; whereas in any case consumers throughout the Community should have at least two months in which to inform the seller that a lack of conformity exists;

(20)Whereas Member States should guard against such a period placing at a disadvantage consumers shopping across borders; whereas all Member States should inform the Commission of their use of this provision; whereas the Commission should monitor the effect of the varied application of this provision on consumers and on the internal market; whereas information on the use made of this provision by a Member State should be available to the other Member States and to consumers and consumer organisations throughout the Community; whereas a summary of the situation in all Member States should therefore be published in the Official Journal of the European Communities;

(21)Whereas, for certain categories of goods, it is current practice for sellers and producers to offer guarantees on goods against any defect which becomes apparent within a certain period; whereas this practice can stimulate competition; whereas, while such guarantees are legitimate marketing tools, they should not mislead the consumer; whereas, to ensure that consumers are not misled, guarantees should contain certain information, including a statement that the guarantee does not affect the consumer's legal rights;

(22)Whereas the parties may not, by common consent, restrict or waive the rights granted to consumers, since otherwise the legal protection afforded would be thwarted; whereas this principle should apply also to clauses which imply that the consumer was aware of any lack of conformity of the consumer goods existing at the time the contract was concluded; whereas the protection granted to consumers under this Directive should not be reduced on the grounds that the law of a non-member State has been chosen as being applicable to the contract;

(23)Whereas legislation and case-law in this area in the various Member States show that there is growing concern to ensure a high level of consumer protection; whereas, in the light of this trend and the experience acquired in implementing this Directive, it may be necessary to envisage more far-reaching harmonisation, notably by providing for the producer's direct liability for defects for which he is responsible;

(24)Whereas Member States should be allowed to adopt or maintain in force more stringent provisions in the field covered by this Directive to ensure an even higher level of consumer protection;

(25)Whereas, according to the Commission recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes\*, Member States can create bodies that ensure impartial and efficient handling of complaints in a national and cross-border context and which consumers can use as mediators;

*\*Quoted by the CBI in its submission*

(26)Whereas it is appropriate, in order to protect the collective interests of consumers, to add this Directive to the list of Directives contained in the Annex to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests\*,

*\*Quoted by the CBI in its submission*

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Scope and definitions**

1. The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.

2. For the purposes of this Directive:

(a) *consumer*: shall mean any natural person who, in the contracts covered by this Directive, is acting for purposes which are not related to his trade, business or profession;

(b) *consumer goods*: shall mean any tangible movable item, with the exception of: - goods sold by way of execution or otherwise by authority of law, - water and gas where they are not put up for sale in a limited volume or set quantity, - electricity;

- (c) *seller*: shall mean any natural or legal person who, under a contract, sells consumer goods in the course of his trade, business or profession;
- (d) *producer*: shall mean the manufacturer of consumer goods, the importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods;
- (e) *guarantee*: shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising;
- (f) *repair*: shall mean, in the event of lack of conformity, bringing consumer goods into conformity with the contract of sale.

3. Member States may provide that the expression "consumer goods" does not cover second-hand goods sold at public auction where consumers have the opportunity of attending the sale in person.

4. Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purpose of this Directive.

## *Article 2*

### **Conformity with the contract**

1. The seller must deliver goods to the consumer which are in conformity with the contract of sale.

2. Consumer goods are presumed to be in conformity with the contract if they:

- (a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;
- (b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;
- (c) are fit for the purposes for which goods of the same type are normally used;
- (d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.

3. There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

4. The seller shall not be bound by public statements, as referred to in paragraph 2(d) if he:

- shows that he was not, and could not reasonably have been, aware of the statement in question,
- shows that by the time of conclusion of the contract the statement had been corrected, or
- shows that the decision to buy the consumer goods could not have been influenced by the statement.

5. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility. This shall apply equally if the

product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

#### *Article 3*

##### **Rights of the consumer**

1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.
2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with paragraph 3, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with paragraphs 5 and 6.
3. In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate.  
A remedy shall be deemed to be disproportionate if it imposes costs on the seller which, in comparison with the alternative remedy, are unreasonable, taking into account:
  - the value the goods would have if there were no lack of conformity,
  - the significance of the lack of conformity, and
  - whether the alternative remedy could be completed without significant inconvenience to the consumer.Any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.
4. The terms "free of charge" in paragraphs 2 and 3 refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.
5. The consumer may require an appropriate reduction of the price or have the contract rescinded:
  - if the consumer is entitled to neither repair nor replacement, or
  - if the seller has not completed the remedy within a reasonable time, or
  - if the seller has not completed the remedy without significant inconvenience to the consumer.
6. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

#### *Article 4*

##### **Right of redress**

Where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. The person or persons liable against whom the final seller may pursue remedies, together with the relevant actions and conditions of exercise, shall be determined by national law.

#### *Article 5*

##### **Time limits**

1. The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.

2. Member States may provide that, in order to benefit from his rights, the consumer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

Member States shall inform the Commission of their use of this paragraph. The Commission shall monitor the effect of the existence of this option for the Member States on consumers and on the internal market.

Not later than 7 January 2003, the Commission shall prepare a report on the use made by Member States of this paragraph. This report shall be published in the *Official Journal of the European Communities*.

3. Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.

#### *Article 6*

#### **Guarantees**

1. A guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

2. The guarantee shall:

- state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee,

- set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

3. On request by the consumer, the guarantee shall be made available in writing or feature in another durable medium available and accessible to him.

4. Within its own territory, the Member State in which the consumer goods are marketed may, in accordance with the rules of the Treaty, provide that the guarantee be drafted in one or more languages which it shall determine from among the official languages of the Community.

5. Should a guarantee infringe the requirements of paragraphs 2, 3 or 4, the validity of this guarantee shall in no way be affected, and the consumer can still rely on the guarantee and require that it be honoured.

#### *Article 7*

#### **Binding nature**

1. Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller's attention which directly or indirectly waive or restrict the rights resulting from this Directive shall, as provided for by national law, not be binding on the consumer.

Member States may provide that, in the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter time period for the liability of the seller than that set down in Article 5(1). Such period may not be less than one year.

2. Member States shall take the necessary measures to ensure that consumers are not deprived of the protection afforded by this Directive as a result of opting for the law of a non-member State as the law applicable to the contract where the contract has a close connection with the territory of the Member States.

#### *Article 8*

##### **National law and minimum protection**

1. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under the national rules governing contractual or non-contractual liability.

2. Member States may adopt or maintain in force more stringent provisions, compatible with the Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.

#### *Article 9*

Member States shall take appropriate measures to inform the consumer of the national law transposing this Directive and shall encourage, where appropriate, professional organisations to inform consumers of their rights.

#### *Article 10*

The Annex to Directive 98/27/EC shall be completed as follows:

"10. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).".

#### *Article 11*

##### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 January 2002. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

#### *Article 12*

##### **Review**

The Commission shall, not later than 7 July 2006, review the application of this Directive and submit to the European Parliament and the Council a report. The report shall examine, inter alia, the case for introducing the producer's direct liability and, if appropriate, shall be accompanied by proposals.

#### *Article 13*

##### **Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### *Article 14*

This Directive is addressed to the Member States.

Done at Brussels, 25 May 1999.

*For the European Parliament*

*The President*

J. M. GIL-ROBLES

*For the Council  
The President*

H. EICHEL

(1) OJ C 307, 16.10.1996, p. 8 and OJ C 148, 14.5.1998, p. 12.

(2) OJ C 66, 3.3.1997, p. 5.

(3) Opinion of the European Parliament of 10 March 1998 (OJ C 104, 6.4.1998, p. 30), Council Common Position of 24 September 1998 (OJ C 333, 30.10.1998, p. 46) and Decision of the European Parliament of 17 December 1998. (OJ C 98, 9.4.1999, p. 226). Decision of the European Parliament of 5 May 1999. Council Decision of 17 May 1999.

(4) OJ L 115, 17.4.1998, p. 31.

(5) OJ L 166, 11.6.1998, p. 51.

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## **PART 6: OBLIGATORY CONSULTATION CRITERIA**

### *The new consultation criteria*

The consultation criteria, which have been followed in this document, must now be reproduced verbatim in all consultation documents and so have been below. They must be followed unless Ministerial approval has been explicitly secured for any departure. Any departure must be explained in the consultation document.

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.

5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation

6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.

The complete code is available on the Cabinet Office's web site, address [www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm).

**EU DIRECTIVE 1999/44/EC ON CERTAIN ASPECTS OF THE SALE OF  
CONSUMER GOODS AND ASSOCIATED GUARANTEES  
REGULATORY IMPACT ASSESSMENT  
Initial Views  
Issued by the Department of Trade and Industry  
4 January 2001**

***Contents***

<u>PART 1:</u>	Background
<u>PART 2:</u>	Regulatory Appraisal - Predecessor document from April 1998
<u>PART 3:</u>	Annexes to predecessor document from April 1998

**Part 1: Regulatory Impact Assessment - Background**

Attached is the Regulatory Appraisal presented to Parliament in April 1998. It was drawn up with input from the consultations undertaken in 1996 and 1997 but these were, of course, based on earlier draft versions of the directive. In drafting the Regulatory Appraisal account was, therefore, taken of the impact of any more recent changes up to that point, as explained in its text.

The Directive was then further changed between April 1998 and its adopted form in May 1999. It is not thought that these amendments change the costs and benefits outlined in the April 1998 Regulatory Appraisal. However, the major changes that occurred were:

Installation by the consumer

Article 2(5) states that there is a lack of conformity if .."the product, intended to be installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions".

"free of charge"

The definition was changed in Article 3(3) and (4) to state that a repair or replacement should be free of charge, whereby free of charge was to mean "the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials."

The four remedies: (i) contracts for the supply of consumer goods and (ii) installation

The directive was extended under Article 1(4) to include "Contracts for the supply of consumer goods to be manufactured or produced shall also be deemed contracts of sale for the purpose of this Directive". This will extend the four possible remedies under Article 3 into these contracts.

Similarly, the four remedies will also have to be considered when installation problems under Article 2(5) arise (either installation as part of the contract of sale or installation by the consumer using installation instructions).

The Department would greatly value updated views and figures on the costs and benefits of the final Directive for the Regulatory Impact Assessment which needs to be attached to the future draft regulations. It should be noted that Regulatory Impact Assessments have replaced Regulatory Appraisals but, naturally, there is overlap between them. For the purposes of this consultation we would be grateful if you could update any views and figures expressed in the previous Regulatory Appraisal but, in addition, please note that a Regulatory Impact Assessment places particular emphasis on: ·

- Enhancing the benefits section of the document. In the past this was a weak area of Regulatory Appraisals but this left the document too one sided. Steps need to be taken to estimate the actual benefits on an annual basis and, since this is an ongoing Directive, the benefits can be estimated then for whatever year periods are under consideration.
- Indirect benefits also need to be taken account of e.g. where people change their behaviour in a beneficial way over a period of years. ·
- When assessing the direct costs on businesses you should now distinguish between the "implementation" costs and the "policy" costs. In the case of this Directive an example could be the costs of setting up an IT system to cater for the Directive's administrative requirements and the associated ongoing costs (these are implementation costs) and any additional annual costs attributed to the newly specified remedies (these are policy costs). That is to say, in simple terms, a business might estimate it will spent £X p.a on the administrative costs of the Directive (the IT and staff costs) and £Y on additional "compensation" to customers (theoretically, of course, £Y could be a reduced figure on current "compensation" costs). Please also flag where certain costs occur as a one off in the first year of operation and where others will occur every year thereafter. ·
- Account also needs to be taken of any indirect costs such as any effect on reducing competition or introducing barriers to entry. Please provide any estimates you can here.

For further advice on Regulatory Impact Assessments you may wish to consult the Cabinet Office website at <http://www.cabinet-office.gov.uk/regulation/2000/riaguide/default.htm> for their publication "Good Policy Making: A Guide to Regulatory Impact Assessment".

David Hoggett, 020 7215 5736

4 January 2001

## **Part 2: REGULATORY APPRAISAL - April 1998**

### **PROPOSAL FOR A EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE ON THE SALE OF CONSUMER GOODS AND ASSOCIATED GUARANTEES** **Purpose and intended effect of the measure**

1 The objective of the Directive is to harmonise at minimum level European consumers' sale of goods rights in order to reduce consumers' uncertainty about their rights in other Member States and thereby to encourage consumers to take full advantage of the single market.

2 We have assessed the likely costs and benefits of the Directive on the basis of the most recently available working text (attached). This assessment will need to be modified in the light of the final terms of the Directive negotiated between Member States prior to agreement to a common position.

3 This regulatory appraisal assesses the likely costs and benefits to those affected in the UK from the changes to legislation which would be required as a result of the Directive. Overall, the UK sale of goods legislation (principally the Sale of Goods Act 1979 as amended) sets a relatively high level of consumer protection. In so far as UK legislation goes beyond the requirements of the Directive the Government has indicated its intention to preserve the current provisions for consumer protection. In some areas, the Directive would go further than existing law. In particular it would introduce:

- a reversal of the burden of proof for up to six months after delivery;

- a requirement that commercial guarantees should be available for scrutiny on request before purchase.

## **Options**

4 The options available include:

- proposing agreement on the basis of the present UK Presidency text at the Consumer Council on 23 April;
- seeking to continue negotiations with the aim of achieving further improvements to the text;

5 Much will depend on the attitudes of other Member States. The proposal is brought under Article 100A of the Treaty so qualified majority voting would apply. It is not at all clear that the UK would succeed in negotiating net improvements under the next Presidency. Most Member States including the UK have made clear their support for the principle of a Directive. UK opposition would be inconsistent with stated Government aims and would be unlikely to stop the Directive progressing.

## **Benefits**

6 The Directive might be expected to bring the following benefits:

- (i) the knowledge that they would always have certain minimum rights when shopping in the European Union should give consumers greater confidence to shop in other Member States and to take advantage of the single market; this could lead to increased sales by EU retailers;
  - (ii) the remedies in the Directive - repair, replacement, price reduction - are the ones that in practice consumers commonly receive, which may make it easier for UK consumers to understand their rights;
  - (iii) the clear remedies in the Directive, along with the reversal of the burden of proof in the consumer's favour and the clear statement that commercial guarantees are legally binding, may make it easier for consumers to obtain redress in some cases;\*
- \*Some firms have claimed that this is likely to lead to a greater level of conflict between retailers and consumers.
- (iv) UK consumers shopping in Member States whose levels of sale of goods protection are significantly lower than that in the Directive would benefit from improved protection in those countries;
  - (v) access to better information about manufacturers' guarantees prior to purchase.

7 It is not possible to quantify the value of the benefits of such changes. In qualitative terms the benefits of the Directive in the UK would be to give more easily understandable consumers' rights which carried improved chances for consumers, who did not have a good understanding of existing Sale of Goods rights, to obtain redress. Easier cross-border shopping is at present less directly relevant to many UK consumers than to those in other member states, primarily because of geographic factors. There is little evidence on the current level of cross border purchasing, but the level is likely to increase considerably as travelling becomes easier and distance selling grows.

## **Cost implications**

Right to repair

8 Under the Directive, if the product does not conform to the contract, eg if a defect manifests itself, having existed at the time of delivery, the consumer would have a right to a repair or replacement of the goods unless the chosen remedy was not possible or would be disproportionate. The seller would be liable under this provision for up to two years after delivery. However, in the nature of things, defects tend to show themselves most frequently at the time the goods are unpacked or immediately after use starts.

9 UK law contains no specific right to repair. However, consumers have bigger protection in terms of the right to reject immediately after delivery. Also in practice the consumer often accepts repair in place of damages. Taking these factors into account we do not expect this aspect of the Directive to give rise to significant extra costs.

#### Right to replacement

10 UK law does not provide a right to replacement goods, but as indicated above the buyer has a right to reject goods which do not conform to the contract and to get their money back (or in practice, for example, to accept a refund or replacement). The right to reject is lost relatively quickly - normally in a matter of days or weeks, after which the buyer will have a right to damages. The Directive gives a right to replacement - provided it is not disproportionate - in respect of any lack of conformity present at the time of delivery which manifests itself within two years of delivery. The Directive says that a remedy would be disproportionate if it would be significantly more expensive than the alternative remedy, unless the alternative remedy would not be appropriate for the consumer.

11 Depending on the circumstances of the case the right to damages could give consumers more or less redress than the right to replacement. It could, for example, be more if a consumer had incurred cost in working up programmes on a computer which turned out to be defective. Given the requirement that the remedy should not be disproportionate, there would be few circumstances in which the Directive would be likely to give consumers more protection than UK law. However this may be so in practice since consumers frequently do not appreciate that their legal rights to damages for up to six years go beyond the rights set out in manufacturers' or retailers' commercial guarantees which are commonly limited to one year.

12 At present in the UK retailers often offer replacement if it is the most cost effective solution. Under the Directive the consumer who preferred a replacement might find it easier to make a case for one, for example where repair and replacement were evenly balanced in cost terms. However if repair was feasible, a retailer would not be obliged to give a replacement if it would be more expensive. The Department therefore believes there is unlikely to be anything more than a very limited increase in replacements given.

13 In view of concerns expressed by industry that an increase in replacements and a decline in repairs would adversely affect employment in repair services and would be harmful to the environment (because of the need to dispose of more returned goods), the Department submitted to the House of Lords scrutiny committee a note (attached at Annex A) on these issues. The Department's opinion remains that the effects on employment in repair services and on the environment would not be significant.

#### Extended right to rescind the contract

14 Under the Directive, if neither repair or replacement offers an appropriate remedy or the seller has not complied in a reasonable time, the consumer would be entitled to a price reduction or to have the contract rescinded. There would be no right to rescission if the lack of conformity was minor. In the UK once he has lost his right to reject the consumer retains a right to damages. However, we believe that in those cases which might be sufficiently serious under the Directive to merit rescission, the remedy which might be given under current UK law would be broadly equivalent - i.e. damages equal to or greater than the price paid. Also the two year period of liability is a broadly equivalent concept to the UK periods of prescription and limitation, which are currently five years in Scotland and six years in England, Wales and Northern Ireland. Therefore the Department does not believe the right to rescission in the Directive would have any significant impact on costs.

#### Reversal of the burden of proof

15 The Directive states that in the absence of proof to the contrary, any lack of conformity appearing in the first six months after delivery would be presumed to have existed at the time of delivery. The burden of proof would be moved from the consumer, on whom it currently rests, to the retailer. In practice courts generally decide on cases according to the weight of the evidence and the Department considers that this would continue. However in some cases, such as those involving technically complex products, the reversal of the burden of proof might make it easier for the consumer to sustain his complaint. This could lead to some increase in the number of claims resolved in consumers' favour. A proportion of these costs would represent just claims which would not have been resolved in favour of the consumer under the existing UK arrangements.

#### Commercial guarantees to be available for scrutiny on request before purchase

16 The Directive states that on request by the consumer, any commercial guarantee would have to be made available for the consumer to consult before purchase. Retailers may take a number of approaches to fulfilling this requirement. It may give rise to costs for some traders, though it is noted that the British Retail Consortium's guidance to its members on commercial guarantees already says that if they wish consumers should be able to study the guarantee before purchase.

#### Evaluation of costs

17 The above factors will give rise mainly to recurring costs. The costs are extremely difficult to evaluate because much depends on how consumer and trader behaviour might change after the implementation of the Directive, and because it is very hard to obtain data on, for instance, the current level and cost of repairs and replacements for the sectors most likely to be affected. This has not been possible on a consistent basis.\*

\*Although we received many helpful responses to our consultation document - see Annex C - few presented rigorous information about potential costs which could be used to derive accurate estimates of the likely costs of the proposed changes.

18 The Department has taken account of the findings of the economic impact study carried out for the Commission by Wilhelm Consulting, published in 1998. A summary of the report is at Annex B. The Wilhelm estimates are subject to the caveats noted above. They were also made on the basis of an earlier draft of the Directive. On this basis they suggested that costs in given sectors may increase as follows. Clothing and footwear: 0%; cars: 0.7-1.7%; furniture: 0.65%;

consumer electronics (brown goods): 0.5-1.4%; personal computers: 1.6-7%; household appliances (white goods): 0-6.1 %. In some cases Wilhelm considered different scenarios depending on how far the Directive might restrict choice of remedy. For computers, for example, assuming a greater proportion of repairs gave a range of 1.6- 2.7%. Wilhelm's figures apply to the EU as a whole. The report recognised that the Directive would require fewer changes to the law in the UK than in a number of other Member States where existing consumer protection is lower.

**The Department's tentative conclusion based on the evidence we have seen, is that the average additional recurring costs are likely to be up to 0.25% of consumer expenditure on durable and semi-durable goods and no change for non-durables.**

19 Most of these extra costs would be attributable to the greater ease consumers could have in understanding the alternative remedies to damages and to the right to replacement goods. A proportion would be attributable to the reversal of the burden of proof and to making commercial guarantees available for scrutiny before purchase.

20. In addition non-recurring costs, arising from the need to amend purchase/supply contracts, the need to set up arrangements for making commercial guarantees available for scrutiny before purchase and the need to train shop workers about the law, might amount to a further 1-2% of annual recurring costs.

21. The costs would be borne initially by manufacturers and retailers of durable and semi-durable goods. It could be unevenly spread depending on the extent to which traders have already adopted a practice of translating the consumer's right to damages (which some consumers may not know how to claim) into redress in terms of repair and replacement and their current practice on responding to consumers' requests for information. In addition, if consumers understand their legal rights better, their willingness to buy extended warranties may diminish. In 1996 total expenditure on the consumer goods concerned was around £72.4 billion (at 1996 prices).<sup>\*</sup> This represents 15.3% of total consumers' expenditure. Table 1 lists the principal sectors affected and consumers' expenditure<sup>1</sup> in these sectors.

<sup>\*</sup>Source: Monthly Digest of Statistics November 1997 table 1.6

<sup>1</sup>Source: UK National Accounts 1997, table 4.7. Computer hardware and software figure provided by Personal Computers Association (PCA).

Table 1

<b>Sector</b>	<b>Value (£ million)</b>
Electrical appliances	5,500
Domestic appliances	6,400
Computer hardware and software	1,300
Furniture and floor coverings	8,800
Clothes and footwear	27,400
Vehicles	23,000
Total	72,400

There are approximately 145,000 manufacturers, wholesalers and retailers in these sectors.

22 Who eventually bears the costs of the legislation would depend on retailers' and other suppliers' responses to increased costs. Firms have a range of alternatives including: bearing the costs themselves; altering product quality; and passing costs on in the form of higher prices. The stronger the competition in sectors of the consumer durables markets, the less likely it is that costs will be passed on to consumers.

#### Comparison with industry estimates

23 Industry believes the costs arising from the Directive would be much higher than we conclude in this Regulatory Appraisal. Annex C shows industry estimates which are typically in the region of 3-5% of turnover. As we note below, small firms estimate that their costs will rise by 5-10% of turnover. Several factors may help explain why industry's figures are higher:

- many are based on the original version of the Directive which gave the consumer a free choice of all four remedies, including replacement and rescission, in the first year after delivery;
- subsequent changes to the text under the Luxembourg Presidency last year (Including the hierarchy of remedies and the principle of proportionality) did not cause industry to alter its views greatly, mainly because the right to replacement, while limited, became available for up to two years after delivery. As we note above, the latest version of the Directive rules out a remedy if it would be "significantly more expensive than the alternative", so we do not think that the overall volume of replacement goods is likely to rise in any major way.
- industry has also expressed concern that the implementation of the Directive in the UK would increase the extent to which consumers exercise their rights beyond the first year after purchase. In other words, the two year liability period in the Directive would make it more likely that consumers would become aware of rights they already have (albeit in a different form) under existing law. We believe it is possible to exaggerate the likely impact of this factor. The argument depends on an assumption that consumers either are ignorant of their rights or are aware of them and behave unreasonably.

#### Other sectors: auctions

24 As originally drafted by the Commission the Directive could have had a significant impact on UK auctions because it does not make any special provision for the liability of sellers at auction. (Under UK law all buyers at auction may be treated as traders, which allows buyers' rights in relation to the description, quality and fitness for purpose of the goods to be excluded, provided any such exclusion is reasonable.) However, the UK has been seeking a derogation and the latest text (Article 1.3) provides a provision enabling Member States to adopt a definition of "consumer goods" which excludes used goods sold at public auction where consumers have the opportunity of attending the sale in person.

#### **Impact on Small Business**

25 A small business litmus test is at Annex D. It finds that small retailers interviewed have similar sorts of concern to the larger retailers and trade associations who have given the Department their views on the proposed Directive. However, with the exception of a furniture retailer and a car retailer

(which tended to be more optimistic than others in those sectors we have heard from) the smaller businesses we interviewed were more pessimistic. Their estimates of the extra costs the Directive would impose ranged from 5-10% of turnover. This more pessimistic outlook seems to stem partly from concern about the likely impact of the reversal of the burden of proof in the consumer's favour, and partly from a perceived worsening of the existing difficulties smaller retailers face in persuading manufacturers to take responsibility for faulty- goods they have supplied.

### **Results of consultations**

26 The Department published consultation documents in September 1996 and July 1997 and received a large number of responses from consumer bodies, regulatory authorities, businesses, trade associations, professional institutions, academics and others. Both consultation exercises were on the basis of the Commission's original draft of the Directive. The second concentrated on compliance costs and also invited views on a possible alternative to the remedies proposed by the Commission and on the impact of the Directive if commercial guarantees were only required to be made available for scrutiny at the consumer's request. The drafting has since been changed significantly in negotiation.

27 Annex E summarises the general evidence the Department received. Annex C summarises by industrial sector the cost information received.

### **Summary and recommendations**

28 The Directive could make it easier for consumers to understand their rights. In some cases they might be able to sustain a case for replacement or repair. Retailers would assume some concomitant liabilities which may increase average costs in some affected sectors by up to 0.25%. Overall this appears a reasonable result in terms of necessary consumer protection achieved at minimum cost.

29 In the Department's view the Directive provides a good overall balance between the interests of consumers and traders. Consumers would benefit from clearer remedies and might feel better able to take advantage of the single market. The Directive would have little effect on traders who adopt a good standard of response to consumer complaints and could encourage other traders to adopt a more positive approach. We recommend that the Directive should be accepted in its present form.

### **Enforcement, sanctions, monitoring and review**

30 The main articles of the Directive, relating to consumers' legal rights when they buy goods, would be introduced into UK civil law. Enforcement of rights and duties would, as now, be for the parties concerned. The number of cases coming before the courts is not expected to increase. Sanctions would need to be introduced for infringements of the legislation implementing Articles 5.2 and 5.3. Criminal sanctions already exist in the UK in the event of failure to include a statement in a commercial guarantee to the effect that the guarantee does not affect the consumer's statutory rights. Article 8 of the Directive is likely to be amended in negotiation to include a requirement on the Commission to review and report on the application of the Directive within (possibly) five years of its adoption.

EUROPEAN COMMUNITIES COMMITTEE  
(SUB-COMMITTEE E)

29 January 1997

**Further Evidence from the  
Department of Trade and Industry**

POSSIBLE EFFECTS OF THE DRAFT DIRECTIVE ON CONSUMER GUARANTEES ON  
DEMAND FOR REPAIR SERVICES AND ON THE ENVIRONMENT

INTRODUCTION

1. The impact statement accompanying the draft Directive says that the proposal will bring "greater product durability, with beneficial effects on the environment (by reducing over-exploitation of natural resources and waste) and unemployment (through the growth of repair and inspection services ...)" (1b. page 23).

2. Other commentators have suggested that the volume of rejected goods would increase, that the need to dispose of them would be harmful to the environment and that demand for repairs could fall if more goods were to be replaced rather than repaired during the first year after purchase.

3. This note addresses the likely effect of the draft Directive on durability, demand for repair services and the environment. It relates solely to the situation in the UK and takes account both of existing statutory rights as well as current general practice on commercial guarantees.

DURABILITY OF GOODS

4. The Department does not believe that the Directive would amount to a requirement for a general increase in the durability of goods. It seems clear that Article 3.1, which would impose a two year liability on the seller, would not mean that goods would need to be durable for two years. Durability is likely to continue to be determined by a range of factors including, for example, the nature of the product, consumer demand and the marketing strategies which firms choose to adopt.

5. As drafted, Article 3.4 could increase sellers' liabilities in the first year after purchase, so it is possible that a larger number of products would be returned to sellers for replacement or a refund. However, suppliers would not necessarily respond to any such increase by improving the durability of their products. They might, for example, instead seek to pass on any associated costs to others in the distribution chain.

6. It is also possible that under the second paragraph of Article 3.4, consumers would have more limited rights in relation to minor defects. We also now understand that there is an assumption in the first paragraph of Article 3.4 that rights would be expected to be exercised with good faith. Therefore, in practice any increase in the replacement of goods might be limited, taking into account also that while in law a buyer might at present be entitled to damages, many retailers in fact respond by offering free repair, a refund or replacement as appropriate.

DEMAND FOR REPAIR SERVICES

7. We have noted our doubts about the likelihood of durability improvements. We also doubt whether even if there were to be increases in durability, demand for repairs would rise. For example, more durable goods might need fewer repairs. The durability of goods, moreover, is only one factor in the determination of demand for repair and maintenance services. Factors such as price, quality and convenience of the services are also likely to be important influences.

8. The impact statement accompanying the draft Directive offers little evidence to support its assertions about durability and demand for repair services. We note that the Commission has now invited tenders for a study of the costs and benefits of the proposal, including its likely effect on product durability. We look forward to seeing the report of the study and any evidence which may be relevant to the issues under discussion.

#### EFFECT ON THE ENVIRONMENT

##### *(a) Use of resources*

9. The Department has no evidence that the Directive would affect durability in such a way as to reduce significantly the rate of production of goods or demands for raw materials.

##### *(b) Waste*

10. The Department has no evidence to suggest that the level of waste associated with the disposal of goods will be reduced as a result of any increased durability which might flow from the Directive. Conversely the Directive might, because replacements could increase, lead to a rise in the number of goods needing to be disposed of. Should this be the case, firms' responses to the problem would be likely to vary considerably according to the nature and value of the goods and, especially, the nature of the defect. Some commentators have suggested, for example, that a considerable proportion of goods which are at present returned to retailers have no discernible fault. This underlines the importance of ensuring that any assessment of the draft Directive should judge its likely effects against the present situation in practice.

Annex B

### **WILHELM REPORT ON THE IMPACT OF THE CONSUMER GUARANTEES DIRECTIVE**

#### **Introduction**

The report attempts to assess the economic impact of the Directive (as drafted by the Commission) throughout the EU. It analyses the expected charges and possible additional costs in six product sectors which tend to attract the greatest number of consumer complaints.

2. The consultants admit to being handicapped by a lack of data; they found no official statistics and had to rely on figures provided by individual business organisation. Although some figures were supplied by European wide organisations, generally figures for costs individual countries are not identifiable in the report. UK organisations did, however, contribute a significant amount of data.

#### **Product Sectors**

##### Clothing/Shoes/Leather

3. Numbers of complaints arising through non-conformity with contract are stated to be relatively low (below 1% of sales). The institutions and experts approached were unable to assess whether the Directive would cause claims to increase but none expected them to increase significantly. The report acknowledges that any complaints arise from a change of mind by the consumer but notes existing generous return policies of many retailers. [*Value of UK sales is about £27 billion a year*].

#### Cars

4. Although the report looks at the current practices and complaints in respect of used cars it concentrates on new cars when looking at possible additional costs resulting from the proposals. As the majority of new cars are sold with at least a one year guarantee no significant costs are expected in the first year after delivery. Ford Europe estimates increased costs of between 0.7% and 1.1% of total turnover and a group of Austrian retailers expects additional costs to be around 1.5% to 1.7% [*UK vehicle sales are around £23 billion*].

#### Furniture

5. The report does not expect the proposals to have any significant effect on the usual remedy of repair because a lot of furniture is made to order and has a long delivery time. Trade figures indicate possible increased costs of about 0.65% of total turnover. However, the report envisages an improvement in quality assurance which could reduce or eliminate these increases. [*UK sales are around £8.8 billion*].

#### Consumer Electronics (Brown Goods)

6. Detailed figures were provided by EACEM (European Association of Consumer Electronics Manufacturers) and are used as a basis for estimates of possible increased costs. The report looked at three scenarios: the first scenario calculations are based on the changes in remedy as envisaged by EACEM; the calculations in scenario two and three are based on greater numbers of complaints being settled by repair. The first scenario indicates increased costs of 1.4% of total turnover; scenarios two and three produce figures of 1% and 0.5% respectively. [*UK sales are around £5.5 billion*].

#### Personal Computers

7. Calculations of possible increased costs carried out using data supplied by the Dixons Group and the Personal Computer Association (PCA) indicate increased costs of 6.6% (Dixons) and 6%-7% (PCA) of total turnover. However, alternative calculations assume a reduction in rescissions and replacements due to restriction of the consumers' choice of remedies for minor faults and indicate that the increased costs would be reduced to 2.7% (Dixons) and 1.6%-2.7% (PCA). [*UK sales of hardware and software to consumers are around £1.3 billion*].

#### Household Appliances (White Goods)

8. Information was provided by the national association of producers of white goods in France (GIFAM) and by CECED, the European trade association of white goods producers. Calculations for small appliances (kettles, food mixers etc) based on GIFAM data result in a figure for increased costs of 0.5% of total turnover. Calculations for two alternative scenarios based on restriction of choice of remedy for minor faults produce figures for increased costs of 0.2% and 0%. For larger appliances (refrigerators, washing machines etc) calculations using

CECED data produce a figure of increased costs of 3.1% of total turnover. An alternative scenario taking into account restriction in choice of remedy for minor defects indicates a figure for increased costs of 1.5%. Using GIFAM data for larger appliances the study calculates that costs would increase by 6.1% of total turnover. But an alternative calculation based on GIFAM data assumes a certain level of restriction of remedy for minor defect cases and produces a figure for increased costs of 1.1%. *[UK sales are around £6.4 billion].*

## **Conclusions**

9. The report recognises that the impact of the proposed Directive will vary in different Member States depending on existing national legislation. The legal changes needed in the UK are shown to be fewer than in many other countries.

10. Because of the lack of figures the study to a large extent looks at the data from a qualitative point of view. It concludes that many of the calculations of trade and industry of increased costs resulting from the proposals were clear over estimates. It does not believe that their projections properly take into account the limitations on consumers' rights in the Directive, including the provision allowing national legislation to restrict the consumers' choice of remedy for minor defects. Wilhelm does not believe the reversal of the burden of proof during the first six months will prevent retailers from rejecting bogus claims in the same way as they do now.

11. Generally the report found that because of competition the provisions of the proposed Directive are to some extent anticipated by many producers and retailers through either commercial guarantees or consumer-friendly trading policies.

12. Based on the data and expectations of trade and industry Wilhelm expects hardly any additional costs in the clothing/shoes/leather and furniture sectors and calculates in the other sectors the report examines, an increase in costs based on present total turnover of between 0.5% (small appliances) and 7% (personal computers). However, Wilhelm believes trade and industry expectations are unduly pessimistic and calculates that increased costs may be between 0% (small appliances) and 1.6% to 2.7% (personal computers). *[Total UK sales in the sectors reported upon are about £72.4 billion].*

## **Annex C**

### **Consultees' evidence on sectoral effects of the Directive**

I. This Annex summaries the cost information the Department received in response to its July 1997 consultation document. In preparing the summary we have focused on the sectors below. We have not been able to verify the accuracy of the figures presented to us. The sectors are:

- A. electrical appliances (brown goods, small electrical appliances)
- B. domestic electrical goods (white goods)
- C. computer hardware and software
- D. cars
- E. clothing and footwear
- F. furniture and floorings
- G. auctions

### **Electrical Appliances**

II. The most detailed information we received was from the electrical appliance sector. We were told that in the EU as a whole, around 4.4% of products sold are

returned within the 1 year guarantee period. In the UK, where around 23.4 million products are sold each year, this amounts to around 1 million products. Of these, it is estimated that 28% are exchanged (principally low value products) while the remainder are repaired. The total cost of exchange, refurbishment and repairs is estimated at around £55 million per annum.

III. We received the following estimates of the additional costs to the UK sector which would arise from changes to UK legislation:

EACEM: Annual cost increase of £67 million (of this £11 million is attributed to costs arising from an increase in litigation).

Dixons: Annual cost increase to the retailing sector of £840-£1,070 million. This covers the retailing of both white and brown goods i.e. both our "electrical appliances" and "domestic appliances" sectors).

SEAMA: Estimate the increase in recurring costs to be around 3%-5% of turnover (approximately £15-£25 million) for producers of small electrical appliances.

### **Domestic Appliances**

IV. We were told that in with the majority of major domestic appliances faults were dealt with by repairs carried out in the customer's home. Nevertheless, returned products cost the sector around £40 million per annum.

AMDEA: costs of providing replacements could double from around £40 million to £80 million pr annum. The cost of meeting claims for repairs in the second year after sale could rise by about £15 million per annum.

The European organisation CECED estimated that total costs for manufacturers in the EU would rise by around 4% based on an estimated increase in costs of replacements and servicing of around 330%.

### **Computer hardware and software**

V. We were told that only a small proportion (around 10%) of faulty goods are currently replaced. Most (around 80%) are repaired. Sellers of computers are concerned that the proposed changes to legislation would lead more buyers to seek replacement of goods which develop defects in the expectation that they will receive more up-to-date versions of the product.

VI. The Personal Computer Association consider that annual recurring costs will increase significantly --by at least 50%.

### **Cars**

VII. We were told that currently the vast majority of defects are addressed by repair rather than replacement, which meant that there was scope for a significant increase in costs as a result of the Directive.

CBI: Vehicle manufacturers estimate an increase of 8% to 10% in cost per car.

### **Clothing and footwear**

VIII. Faults in clothing and footwear tend, respondents said, to be detected soon after purchase. At present the usual remedies are refund or replacement rather than repair. We were told that in costs are likely to increase in this sector only if the proposed changes were to result in an increased number of returns as a result of the reversal of the burden of proof. We received no estimates of the cost to the clothing and footwear sector.

### **Furniture and floor coverings**

IX. We did not receive any information relating to the furniture and floor coverings sector as a whole. MFI, a furniture and appliance retailer, estimated

that its own costs could increase by £1-£2 million per annum. Most of this estimated increase appears to derive from faults in domestic appliances. The European Carpet Association estimated that the additional cost would be between 0.5% and 2% of the carpet manufacturing sector's current turnover\*.  
\*Quoted by the CBI in its submission

## **Annex D**

### **SMALL BUSINESS LITMUS TEST**

1. The firms interviewed were chosen from the durable and semi-durable goods sectors which tend to give rise to higher than average numbers of consumer complaints. With the help of the Radio, Electrical and Television Retailers' Association (RETRA), the British Shops and Stores Association, the Retail Motor Industry Federation and the Charities Advisory Trust we selected six firms and a charity with a small retail outlet.

#### Clothes retailer, London

2. The firm has two shops selling clothes and shoes, employs six people and has an annual turnover of around £0.6m. Its main concern was the proposed reversal of the burden of proof in the first six months after delivery. It believed customers often damaged garments deliberately in order to obtain refunds. In most cases the shop would be unable to prove that a fault had not been present at purchase, so felt it would be obliged under the Directive to accept nearly all refund claims. The value of returned goods currently amounted to around 1% of turnover; the firm believed that this could increase to 10% of turnover.

#### Electronic goods retailer, South Coast

3. The firm trades from four shops and employs 16 staff, some of whom are part time. It sells large and small domestic electrical and electronic appliances and has its own repair and service department. Annual turnover is about £0.75m. The firm estimates that about 1% of goods are returned as faulty in the first year. It told us that manufacturers were often reluctant to replace faulty goods and rarely covered the costs in full. The firm said it received few unjustified claims; the main problem concerned intermittent faults which were difficult to prove. The firm thought consumers were becoming more assertive and believed that the Directive might result in a doubling of the volume of returned goods.

#### Electronic goods retailer, East Anglia

4. The firm has a large shop in a shopping centre. It is a family business employing the equivalent of eight full time people. The shop sells large and small domestic electrical appliances including televisions and VCRs; it also carries out repairs and servicing. Annual turnover is £0.32m. The firm estimated that goods to the value of around 10% of turnover were returned in the first year after purchase. This included repairs carried out under the manufacturers' guarantee and as well as repairs done for "goodwill" purposes. Manufacturers paid a contribution to the cost of repairs. The overall cost to the company of dealing with returned goods was estimated at 2.5% - 3% of turnover. The firm believed the Directive would double this.

#### Furniture retailer, Wiltshire

5. The firm owns a large store selling furniture, carpets and furnishings. It employs 16 staff and has an annual turnover of £1.4m. The firm has occasional

complaints about the long term durability of goods, but it told us that most problems arose in the first week. The value of returned goods was currently about £10,000. The firm was able to pass about 90% of these back to its suppliers. It was not concerned about the reversal of the burden of proof. Generally, the firm was unsure whether the proposals would affect its costs, but tentatively suggested they might increase by 5%.

#### Camera and computer retailer, Hertfordshire

6. The shop sells photographic equipment and computers in a town centre. It has six staff and a turnover of £1m. Returned goods account for between 3% - 5% of turnover; its usual practice is to give a replacement during the first month and a repair thereafter. The firm told us it is frequently unable to return faulty goods to suppliers; this was particularly so with computers. The firm estimated that implementation of the proposals as they stood would double its costs where computers were concerned and that overall its costs would increase to 5-8% of turnover. The firm felt that the reversal of the burden of proof would account for half the increase.

#### Franchised garage, London

7. The firm sells new and used cars and spare parts and has a repair and service facility. It employs 16 staff and has an annual turnover of £5m. The firm told us that returned faulty cars were repaired under warranty; refund or replacement was rare. The firm said it could reclaim from the manufacturer all costs arising from faults in new cars. It thought the Directive might result in a very small number of customers wanting to reject cars or insisting on replacements. Costs would be recovered by raising the price of new cars, although competition would probably prevent this in the used sector. In general the firm seemed not very concerned about the draft directive.

#### Charity shop, London

8. The charity runs a small shop, the income from which represents a small part of its total income. The shop has a turnover of £46,000 and sells second hand goods which have been donated to it. It has expenses of around £14,500 (shop costs + volunteers' expenses), so produces a profit of £32,000. The charity told us that very few goods were returned and that it did not think the Directive would increase the shop's costs.

#### CONCLUSION

9. Small retailers seem to have similar sorts of concern to the larger retailers and trade associations who have given the Department their views on the proposed Directive. However, with the exception of the furniture retailer and the garage, which tended to be more optimistic than others in those sectors we have heard from, the smaller businesses we saw were more pessimistic. Their estimates of the extra costs the Directive would impose ranged from 5-10% of turnover. This more pessimistic burden of proof in the consumer's favour, and partly from the difficulties smaller firms already feel they face in persuading manufacturers to take responsibility for faulty goods they have supplied.

#### **Annex E**

#### **Proposed EU Directive on consumer guarantees: summary of responses to DTI consultations**

The Department issued consultation papers on 18 September 1996 and 21 July 1997. We received responses from a total of 120 consumer bodies, businesses, trade associations, regulatory authorities, professional institutions and academics.

2. Most respondents doubted whether establishing minimum EU sale of goods right would encourage cross-border shopping. Industry in particular believed purchasing decisions were influenced more by considerations such as price, convenience and language.

3. Manufacturers and retailers said that allowing consumers to insist on replacements when goods could easily be repaired would increase the volume of returns, which would be both costly and environmentally wasteful. They believed the choice of remedy should be the retailer's except where a defect was discovered shortly after purchase. Consumer bodies said consumers should have the option of any of the four remedies in the Directive. They suggested that industry's fears about consumer abuse of the right to reject might be addressed by inserting a test of good faith. Consumer bodies and academics expressed concern about the arbitrary nature of the one year time limit on replacement and rescission in the Commission's original text, which they thought would create problems for buyers of complex goods which developed latent defects.

4. Although the two year seller's liability is not a durability requirement, businesses were concerned that it would encourage consumers to believe their rights had been significantly enhanced, leading to increased numbers of unfounded claims. Consumer organisations and academic lawyers noted that a two year period would significantly weaken UK consumers' rights; they welcomed the Government's announcement that in implementing any Directive it would retain the existing UK limitation periods. There was also some concern that the Directive would fragment existing UK sale of goods legislation.

5. Businesses were opposed to the proposed reversal of the burden of proof in the first six months after delivery. They felt it would be difficult for a seller to establish that a defect had not been present at the time of delivery. Manufacturers feared retailers would submit too readily to dubious claims and then seek to pass the liability back to the manufacturer. Small retailers were worried that manufacturers would resist valid claims. Consumer bodies welcomed the proposal on burden of proof, saying that retailers often required consumers to obtain independent technical evidence that goods were defective at the time of purchase.

END