FOREWORD

Do Scottish consumers enjoy the same legal protection that is now available to consumers in England? The Scottish Consumer Council maintains that they do not. The considerable divergencies between English and Scots law in regard to consumer protection are not widely appreciated. Most of these are to the disadvantage of Scottish consumers. Yet the basic concept of Scots common law - priceworthiness - is more closely in line with modern consumer ideals than the guiding principle of English common law - caveat emptor. Why have we fallen behind?

This discussion paper attempts, in the context of a summary survey of the present law, to analyse where the divergencies between English and Scots law have led to unequal rights both in the law itself and in the legal system by which those rights must be enforced. At the end of the discussion paper we summarise the issues arising. The Scottish Consumer Council is preparing now to make further detailed enquiries about all these issues with a view to recommending action.

At this point the Council would warmly welcome comments, criticism and further evidence from any organisations and individuals concerned for the rights of Scottish consumers. It is for this purpose we are circulating the discussion paper as widely as possible.

But discussion is not enough. An important point must be made. One important reason why Scottish consumers have fewer rights than their English counterparts is that they have never asked for them. In contrast to the forceful pressure of English based organisations there has been up to now in Scotland very little organised consumer pressure. We have been content to let English consumers set the pace and have not protested either as Scots Law has been uncomfortably adjusted to the English pattern or as enactment of comparable Scottish legislation has been abandoned and the interests of Scottish consumers have been neglected by default.

There will never be a better time for remedying this situation. Interest in consumer problems is at a high level. The devolution debate has led to a clearer understanding, even in England, of the separate and special character of Scots Law. The Scottish Consumer Council has been appointed to represent the interests of Scottish consumers to Government. Our first representations must and will include recommendations on the points made in the "Summary of Issues". But without steady and strong support from consumers throughout Scotland such pressure will not convey the conviction which we feel. For this reason the SCC needs fullest possible information about and from consumer interests throughout the country. The Research Seminar in Glasgow on 7th February, 1976 is the first step towards expressing united Scottish consumer concern.

Our ultimate objective must be not only to match the progress already made in England, but looking further afield to arrive at a clear, reasonable and balanced expression of Scottish consumer rights which will bear comparison with any in the European Economic Community.

JOAN MACINTOSH,
Chairman
SCOTTISH CONSUMER COUNCIL

CONSUMER LAW IN SCOTLAND

A  INTRODUCTION

1. Consumer Law - What is it?

Any survey of consumer law has to point out at the outset that the expression 'consumer law' is not a term of art - there is no distinct branch of the law applicable solely to consumer rights. 'Consumer Law' is merely a tag employed to describe the various strands of law which have particular relevance to the consumer in his transactions. It is true to say however that in recent times, particularly in the last decade, there has been a very conspicuous drive by governments of whatever political hue, to produce individual pieces of legislation which have as their object the protection of the consumer. The various rules of law which have relevance to the consumer take several forms. Some are principles of the common law - that is, broadly speaking, the law as developed by the Courts through the ages; some are found in Acts of Parliament - statutes - and in the regulations and orders made thereunder by governments - statutory instruments.

2. Scots and English Law

Scotland has of course maintained its own legal system separate and distinct from the English system. Its common law has origins and traditions very different from those of the English. Although since the Act of Union of 1707 the influence of English law on the development of Scots law has increased to a considerable extent, in many fundamental respects the two systems remain very different. While different rules and principles of common law apply in the two jurisdictions, the same is also true, though to a lesser extent, in the field of statute law. The majority of acts of parliament and statutory instruments apply throughout Great Britain, but some of them are passed for England and Wales only or for Scotland only. Very often this is because a piece of legislation, while fitting perfectly comfortably into one system of law, would not do so in the other either because of a potential conflict between it and the prior and existing state of the law in that system or perhaps because a remedy already exists in that system.

These remarks are true of all branches of the law, but more true of some than of others. For example, the differences between the two systems are particularly marked in criminal law, partly because the House of Lords, consisting of a majority of English-trained judges, and the final Court of Appeal in Scottish civil cases, has no jurisdiction in the criminal law of Scotland; and partly because the systems of criminal prosecution and procedure in Scotland are fundamentally different from those in England.

3. Civil and Criminal Law

The distinction between criminal law and civil law is a crucial one. It has been described in the following terms:

"In criminal law the emphasis is less upon the wrong done to the individual, but rather upon the wrong against the community as a whole, its peace, order and well-being. Civil
law deals more with the rights and obligations of individuals between themselves, and with the functions of the state and of public authorities."

Both criminal law and civil law have rules which are of relevance to the consumer. Civil law in various ways places duties upon traders in relation to their customers. As their counter-part rights are provided for the customer which, if the trader fails to observe his duties, the customer can enforce, primarily by taking the trader to Court in order to obtain compensation. The emphasis in civil law, as has been indicated, is on the individual and his rights and the initiative lies with him to enforce these. But society, as well as providing the individual consumer with rights in the civil law, has itself taken on a more public and generalised role by stigmatising as crimes certain conduct carried on by traders against their customers. Traders committing such offences are, generally speaking, prosecuted not by individuals who have suffered from them but by the state. The emphasis then, in criminal law is, as already noted, on society's interest in punishing those responsible for conduct which is harmful to the public well being.

4. Public Prosecution

While this is true in some measure both of the English and Scots systems it is particularly true of the Scots system. The Scots system of public prosecution is very centralised being under the overall control of the Lord Advocate and the Crown Office in Edinburgh. Under the Lord Advocate is a team of public prosecutors - the Solicitor General and the Advocates-Depute who prosecute in the High Court and the procurators fiscal who prosecute in the Sheriff courts. This team exercises a discretion whether or not to prosecute once the details of an alleged offence have been reported to them, normally by the police. Private prosecutions by individuals, though technically competent in special and limited circumstances, are exceedingly rare and are not encouraged. The police do not prosecute in Scotland. Private prosecutions and prosecutions by the police are common in England.

5. The fundamental distinction between civil and criminal law has in modern times become more and more marked though historically the distinction was not always as clear cut. This has meant that until recently, generally speaking, conduct prosecuted and found to be criminal did not result in the individual who had suffered loss or injury thereby, being automatically entitled to redress. It resulted - and in Scotland still results - only in the person guilty of the criminal conduct being punished. In 1973 however an act known as the Powers of the Criminal Courts Act was passed for England and Wales which by section 35 enables a criminal court to give redress to the victim of an offence. Once an offender has been convicted he can be ordered to pay compensation to the victim of his conduct. There is evidence that this power is being increasingly used in England and Wales in respect of convictions under statutes which have as their object the protection of the consumer, examples of which will be considered later in this paper. No equivalent powers are available as yet in the Scottish courts but a Scottish Home and Health Department Committee, chaired by Lord Dunpark, is at present considering the general question of providing rights of reparation to the victims of criminal acts in Scotland.

** The Legal System of Scotland HMSO pamphlet 1975 at page 11.
6. For the two different branches of the law, civil and criminal, there are two distinct sets of courts.

**Civil Courts**

For the enforcement of rights under the civil law, the civil courts in Scotland are:
(a) the Court of Session which sits only in Edinburgh and from which there is a right of appeal to the House of Lords;
(b) the Sheriff court, the principal local court from which there is a right of appeal to the Court of Session.

7. The **Sheriff court** deals with the main bulk of civil litigation in Scotland and is the court most appropriate for the handling of consumer complaints, not least because of its local nature. In addition the value of the subject matter which the court can deal with has, with very few exceptions, no upper limit. At present, however, the nature of procedure in the Sheriff court varies according to the value of the dispute. The Sheriff court has exclusive jurisdiction in all civil claims whose value is below £250.

8. Claims worth £50 or less are dealt with at present by the Sheriff's **Small Debt court**. This court was originally intended as a court for the "small man", but although it could have been used by consumers with small claims it has never really received, to any great extent, this type of business. Indeed, through time it has become largely a court used by trading and commercial organisations to recover debts. One reason may be that the legal complexity of the summons form used in the court (in contrast to the simplicity of the procedure) has discouraged private litigants from bringing actions.

The procedure in the Sheriff's Small Debt court is designed to be simple and cheap. The individual can commence proceedings by going to the Sheriff Court offices where he fills in the form called a summons in which he sets out brief details of his complaint. On payment of a small fee the Sheriff Clerk provides a date for a hearing of the complaint, which is written on the summons. The Summons is then given to the person initiating the proceedings, together with a copy which has to be completed and then served on the person against whom the proceedings are to be raised. Service can be effected by recorded delivery or by Sheriff Officer. If the person against whom the action is raised fails to appear at the date set for the hearing a decree can be granted against him immediately.

9. Where the action relates to subject matter the value of which is between £50 and £250 the matter is dealt with in the Sheriff Court as a **summary cause** which was originally intended to be a less formal procedure than that followed in actions where the value was over £250. Over the years, however, the summary cause procedure has become almost as formalised as the form of procedure for claims over £250. This procedure, known as an **ordinary action**, is largely modelled on the system of procedure followed in the Court of Session.

10. By the Sheriff Court (Scotland) Act 1971 the Small Debt court will be, at a date yet to be fixed, abolished. Instead of the three forms of procedure, as just described, the system will be streamlined with only two systems of procedure - ordinary procedure and a new form of summary procedure for all actions under £250 in value. It is intended that the new summary procedure should be informal and speedy and that a party to such an action will be able in some circumstances to be represented by someone who is not legally qualified.
Regulations to achieve these ends are it is understood in the process of being made. The extent to which these laudable objectives will be achieved depends largely on the simplicity of the forms and procedures adopted and the spirit in which they are interpreted.

Later in this paper it will be considered whether present facilities and those proposed for the consumer to raise his complaints in the civil courts are sufficient or whether they require to be even further improved or perhaps even supplemented by some other form of tribunal.

11. Criminal Courts

Persons charged with breach of the criminal law are prosecuted in a criminal court. The two main criminal courts in Scotland are the Sheriff Court and the High Court of Justiciary. Generally speaking consumer law offences are brought to the Sheriff court which, on the whole, deals with less serious crimes than the High Court. The Sheriff court has two types of procedure, solemn procedure and summary procedure. In solemn procedure the Sheriff sits with a jury of fifteen, the offence is set out in a document called an indictment. In summary procedure the Sheriff sits alone and the offence is set out in a document called a complaint and the maximum sentence is 3-6 months. The High Court is both a trial court for serious crime and an appeal court, hearing appeals from the Sheriff court both in summary and solemn cases.

A third set of criminal courts, called District courts have recently been introduced on the occasion of the reorganisation of local government. These replace the burgh and JP courts. Manned by lay justices, they deal with minor offences and have limited powers of penalty.

C THE RELEVANT LAW

So much then for the general description of consumer law and of where and how it can be enforced. It next has to be considered where this law is to be found.

12. The branch of the common law which governed the rights and duties of consumers and traders was, and still is, to a considerable extent, the law of contract. Consumers are persons who contract for goods and services, not as traders with a view to making profits or to using these goods and services in the course of a business, but with a view to using them for their own private needs and enjoyment. The general law of contract contains rules and principles applicable to all forms of transaction but as the different types of transaction such as sale, hire, insurance, etc. became standardised over the centuries specific rules of law were developed to deal with these different types of contracts. In the absence of a special rule applicable to a specific kind of contract, however, the general law of contract still prevails.

13. The Scots law of contract was traditionally, and still to some extent remains, very different from the English law both in theory and practice. In its origins it was based on a mixture of Roman Law, Canon Law and native customary sources while the English law of contract was very much the creature of the English courts themselves, responding often to the influence of the mercantile or business community.

14. The most common contract that consumers enter into is the contract of sale. The English courts in the seventeenth to nineteenth centuries developed in a series of cases a law of sale which had as one of its guiding and fundamental principles the notion of caveat emptor - let the buyer look after his own interests - a doctrine appropriate perhaps to the Middle Ages when the consumer transacted in the open market-place where he would no doubt know the traders and have the opportunity to inspect and examine the goods. It was however a doctrine which became less and less appropriate as industrialisation grew, trading became more and more impersonal
and goods more sophisticated. Scots law, drawing largely on Roman Law for its law of sale, never adopted the doctrine of caveat emptor in its most extreme form. In Scots law there was a doctrine of priceworthiness which meant that the article sold had not only to be of a quality commensurate with the price but also fit for the purpose for which goods of that kind were normally bought.


In several other respects the Scots law of sale was very different in spirit and detail from the equivalent English law. In 1893, however, the UK parliament passed the Sale of Goods Act which has been described as the first 'consumer charter'. This had as its object the accurate reproduction of the existing English law of sale as it had been developed by the courts in England over the years. This it did admirably, but the legislature went further and extended the application to Scotland. As a result the native Scots law was immediately replaced in some respects or at least distorted. A small number of sections in the Act recognise the difference between the two systems, but in large measure the Act applies what was the pre-1893 English law of sale to Scotland. The Act did however leave untouched the rules of the common law of both systems where they were not inconsistent with the express provisions of the Act. So the principles of the general law of contract and the previous common law of sale still fall to be applied when any problem not expressly dealt with by the Act arises.

16. This paper is not the place for a detailed review of the law of sale of goods. Nevertheless some brief remarks would seem appropriate on the provisions which are perhaps the most important for the consumer vis-à-vis those contained in ss 13-15 of the 1893 Act (as amended by the 1973 Supply of Goods (Implied Terms) Act 1973). These sections broadly speaking deal with the requirements that the goods sold should conform to their description and that provided they are sold in the course of a business, they should be of merchantable quality and 'fit for a particular purpose'; provided the purchaser has let the seller know the particular purpose for which he is purchasing the goods and provided he has relied on the seller's skill and judgement. These sections were in large measure in their origin seen as exceptions to the English rule of caveat emptor and as widely interpreted by the courts have eaten away considerably at that doctrine.

17. If the goods fail to comply with the requirements of the contract then in English law the buyer is only entitled to reject the goods and recover the price if the seller has breached the contract terms in an important respect, known as "breach of a condition". Otherwise he is entitled only to damages for breach of what is known as 'a warranty' which is a less important term of a contract than "a condition".

18. Scots law never knew this strict dichotomy of English law between important terms (conditions) and less important terms (warranties) and the 1893 Act recognised this. The result is that the Scottish consumer has a wider right of rejection than his English counterpart because in some circumstances that in England would entitle the consumer to damages would in Scotland entitle the consumer to reject the goods. Speaking very broadly it may be said that failure by the seller in Scotland to perform any of his obligations unless it relates to a very trifling matter, may allow the purchaser to reject the goods and claim damages for any loss suffered. The purchaser may however wish to retain the goods or may be obliged to do so because he has already used them to some extent. If so he is nonetheless entitled to claim compensation equal to the cost of putting the goods in the condition which they ought to have been in when they were bought plus any other loss suffered as a direct result of the defect.
19. Until 1973 and the passing of the Supply of Goods (Implied Terms) Act it was possible both in Scotland and in England for sellers to contract out of the obligations imposed on them and this they often did by means of small-print exemption clauses. Following a joint report by the two Law Commissions the 1973 Act was passed which now renders void (unenforceable) any clause excluding the implied terms of the Act or restricting the buyer's remedies on breach of such a term where the sale is a consumer sale as defined by the Act.

A consumer sale is defined by s.4(7) of the 1973 Act as follows:

...a sale of goods (other than a sale by auction or by competitive tender) by a seller in the course of a business where the goods -

(a) are of a type ordinarily bought for private use or consumption; and
(b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.

20. This Act and its provisions, which apply both to Scotland and England, are a major advance in the strengthening of the armoury of the consumer. The position now in respect of the contract of sale of goods is that with regard to these important terms the law on both sides of the border is identical, with the proviso that the Scots buyer may have a wider right of rejection of defective goods than his English counterpart has. That latter point is one vestige of the pre-1893 Scots law which in several respects had more potential for protecting the consumer than the English law at that time. The English law as incorporated in the 1893 Act is what has in large measure survived however. Interpreted liberally by the courts and now supplemented by the 1973 Act, it does provide considerable protection for consumers, Scots and English alike.

21. In respects other than the implied terms just discussed, the Scots law of sale has remained somewhat different but these are of less general importance to the consumer and a discussion of them would be inappropriate for a paper of this sort.

22. Hire Purchase and Consumer Credit

After the passing of the 1893 Sale of Goods Act there was little activity by our legislators designed to protect the consumer and his rights until the upsurge of interest in, and pressure by, the consumer which commenced after the Second World War. There is an important exception. In 1932 was passed the Hire Purchase and Small Debt (Scotland) Act to protect the individual consumer who entered the increasingly popular and common contract of hire purchase. The protection given by this early Scottish legislation against abuses which had arisen in the conduct of this sort of transaction was limited. The Act was confined to transactions involving relatively inexpensive goods (originally goods not exceeding £20 in price).

23. The two main features of the legislation were:

(a) the contract had to be in writing, signed by the person taking the goods on hire purchase and a copy of the signed agreement had to be supplied to him, and

(b) the person taking the goods was to be entitled to terminate the contract at any time before the final instalment was paid, by returning the article and paying any instalments due and unpaid at that date. If at the date of returning the goods he had paid less than one third of the total sum payable under the contract he had to pay the difference between what he had already paid and one third of the total sum payable.

.../
24. By the early nineteen sixties the state of the law on hire purchase had fallen into a confused state and the Molony Committee on consumer protection which itself was a landmark in the drive for the amelioration of the consumer's position, recommended its reform and an extension of its protection to transactions of greater value. The government listened to the Committee's recommendations and acted by passing the Hire Purchase Act 1964. The 1964 Act followed the unfortunate precedent of the Sale of Goods Act 1893 by being presented as a United Kingdom measure. The result was complexity and more confusion. It was soon appreciated that this Act intended as a United Kingdom measure, had failed to acknowledge essentially different Scottish legal principles.

25. Two new bills were hastily presented in 1965 to Parliament, one for Scotland and one for the rest of the United Kingdom. These became the Hire Purchase (Scotland) Act 1965 and the Hire Purchase Act 1965 which replaced all earlier legislation with the exception of part of the 1964 Act. The new legislation included among its important features, the ending of the invidious practice of 'snatch-back' by the owner of the goods when the hirer had already paid a considerable proportion of the total sum due. Now once a hirer has paid one third of the price of the goods, the owner can recover the goods only by raising a court action. It should be noted that the practice of "snatch-back" was legal only in England. In Scotland goods could not be taken back by the owner of them without a court decree unless the hirer consented.

26. Additional protection was given to the consumer entering such transactions, protection designed primarily to bring clearly to the consumer's attention the implications of the agreement he is entering and safeguarding him against being pressurised into such a contract. The consumer must be clearly informed what the cash price of the goods is as well as what the hire purchase price is. The agreement and its terms have to be in writing and signed. The consumer must be given a copy of the agreement when he signs it (which ensures that no blanks are left to be filled in later by the dealer) and there are provisions regarding the size and colour of print to be used in the written contract.

27. As the result of a proposal by the Molony Committee a major in-road into the ordinary law of contract was provided whereby the consumer who has signed an agreement at a place other than the shop or finance company's office is entitled to a "cooling off period" i.e. to cancel the agreement within three days after he has received by post a second copy of the agreement. This was designed to protect the consumer from being persuaded into entering contracts rashly by the slick sales talk of door-to-door salesmen.

28. Consumer Credit Act 1974

In addition to the common and popular hire purchase contract there are of course various other ways in which goods can be obtained by the consumer by obtaining credit. This was recognised by the report of a committee on consumer credit under Lord Crowther which reported in 1971. The Report recommended that different forms of consumer credit transactions should be dealt with, broadly speaking, by the same rules. The legislature in large measure adopted the recommendations of the Committee and incorporated them in a major piece of consumer law reform, the Consumer Credit Act 1974.

29. This Act followed the Committee's view that all means of obtaining consumer credit should, where appropriate, be regulated by a single piece of legislation. So hire, hire purchase, credit sale, money lending, pawnbroking, check trading, credit cards will all be governed by the regulations provided under the new Act. In large measure, the provisions of the previous hire purchase legislation are re-adopted in the Act. The Consumer Credit Act provides for regulations to govern the advertising
of credit facilities with the aim of promoting 'truth in lending'. The consumer must be given enough accurate information about the true cost of credit to enable him to make an informed choice and decision. Full disclosure of the true rate of interest being charged must be made. Regulations regarding the acquisition of business will be made so that for example the mass-mailing of credit cards will be an offence. 'Cooling-off' periods on the model provided by the Hire Purchase legislation are to be available in other consumer credit transactions.

30. In consumer credit transactions where goods are supplied the consumer will be able to claim against both the supplier of the goods and the creditor, such as the finance company financing the transaction, for redress. Provisions are made to allow consumers to terminate their credit agreements early by paying off the sums due before the period agreed and in some cases they are to be entitled to a rebate of any interest they have contracted to pay. A debtor in default will have to be given seven days clear notice to put matters right before the creditor pursues other remedies.

The courts are to be given powers, on the application of a debtor, to re-open and alter the terms of agreements which are considered to be extortionate. (While other provisions of the Act generally apply only to transactions where the credit does not exceed £5000 these powers are applicable to all agreements for providing credit facilities regardless of the amount of credit granted.)

31. Behind all the protection provided by the Act lies a new system of licensing whereby all persons and organisations in the business of granting consumer credit or providing for consumer hire - including banks, finance houses, money lenders, etc. - must be licensed. Licenses will be granted only to persons and bodies who are considered to be 'fit and proper' for carrying out business of this kind.

32. This Act is a major advance forward in the drive for consumer protection. It is a United Kingdom measure applying to Scotland. Unfortunately it paid scant attention to the difference of principle, terminology and procedure of Scots law and in some ways therefore fits uneasily into the pre-existing fabric of Scots law. It remains to be seen what difficulties this will cause in practice.

33. The general principles of the law of contract, the 1893 Sale of Goods Act as amended by the 1973 Supply of Goods (Implied Terms) Act, the various Hire Purchase Acts and now the Consumer Credit Act 1974 provide then, the cornerstones of consumer protection.

34. Miscellaneous Provisions

These measures regulate the terms of the most common contracts consumers enter into. But the protection provided is for the individual consumer in his individual transactions. Governments have come to realise however that it is not enough to enable the individual dissatisfied consumer to enforce rights against the seller or supplier with whom he deals. The attack must be on a more general level, striking in a public manner against any climate of opinion which connives at misleading advertising, the provision of shabby goods and services, short weight etc.

35. From very early times there has been weights and measures legislation recognising that the public as a whole ought to be protected from deception and dishonesty by traders. It was not however until after the Second World War, with the great expansion of consumer trade which began at that time, that protection on a public and general level really began to be developed. With increasing affluence leading to a greater demand for goods and services, bodies began to spring up
representing what was now quite clearly an identifiable interest in the community, viz the consumer. Their activities did not go entirely unnoticed by the politicians who began to legislate in response to the pressures presented by such groups.

36. Food and Drugs

In 1956 the Food and Drugs (Scotland) Act was passed which though designed to consolidate previous legislation, made amendments of such considerable extent that it heralded almost a new attitude to the question of unfit food and food hygiene. The general object of the Act, which is still in force, is to ensure that food is pure and wholesome and fit for human consumption. The Act, inter alia makes it an offence to describe food falsely or to mislead the public about its nature, substance or quality, including its nutritional value. It also gives the Secretary of State powers to make regulations about the way food can be stored or sold with the aim of ensuring that premises are clean and hygienic. The Secretary of State is in addition empowered to make regulations concerning the composition of food intended for human consumption. Many regulations have been made under this legislation since it was passed.

37. Consumer Protection Act 1961

As previously mentioned, in the late nineteen fifties a Committee under the chairmanship of Molony, J. was set up to review the subject of consumer protection. An interim report issued by that committee in 1960 dealt with hazards to life and limb caused by consumer goods. In the past, hazardous goods could only be dealt with by regulation after they had shown themselves to be hazardous. The committee recommended the creation of statutory power to deal with dangerous goods in advance of demonstrable need. This resulted in the passing of the Consumer Protection Act 1961, as now amended by the Consumer Protection Act 1971. This legislation gives the Secretary of State a general power to make regulations about any goods in order to protect the public from the risk of death, injury or disease. It applies without modification to Scotland. Several regulations have been made under this legislation concerning for instance oil heaters, children's nightwear and electrical wiring.

38. The result of this legislation is to impose a ban on the sale of goods which do not comply with the requirements contained in such regulations. Any person in breach of the legislation's provisions is liable to criminal penalties but in addition and very importantly any breach of duties required by the Act may be actionable by the person affected. That provision was somewhat radical in that it meant that the Act combined both an attack on practices detrimental to the public at large and therefore criminal with the imposition of civil liability to an individual affected thereby.

39. Weights and Measures

The drive towards more consumer protection continued during the nineteen sixties. A new Weights and Measures Act was passed in 1963 which makes it a criminal offence if the weight or some other indication of quantity is not marked on a packet, tin or bottle of goods which in the past would have been weighed for the consumer but which is now pre-packed. The Act also makes it an offence to give short weight or inadequate quantities or to mark goods with a wrong indication of their amount.
40. **Trade Descriptions**

In 1968, partly as a spin-off from the Molony Committee's Report, an important new weapon was provided for the battle on behalf of the consumer in the shape of the Trade Descriptions Act. This applies throughout Great Britain and provides that any person who in the course of trade, makes a false statement about the goods or services he supplies, shall be guilty of a criminal offence. The provisions of the Act can be conveniently thought of in three categories:

1. False statements about the nature of services, facilities or accommodation;
2. False descriptions about the nature of goods;
3. False statements about prices of goods.

41. The Act applies to oral as well as to written statements of many kinds e.g. where goods are made, who made them, false price reductions and so on. It is aimed at trade and business and so does not cover transactions made between private individuals or where a private individual sells to a businessman. Some sections of the Act have caused difficulties of definition for the courts and various gaps and let-outs in the legislation have been experienced which have been the subject of a recent report to be mentioned later in this paper. Nevertheless the Act has in a broad sense been a success.

42. An important point to note is that the Trade Descriptions Act imposes a positive duty on local authorities to enforce it through the agency of their Trading Standards Inspectors. In Scotland, because of the system of public prosecution discussed previously, proceedings cannot be initiated by the Inspectors themselves. Members of the public bring their complaints to the Inspectors who, having investigated them, must send a report to the Procurator Fiscal who then decides whether to initiate and conduct any subsequent prosecution.

Criticisms have been made that the number of Scottish prosecutions under the Act compares unfavourably with the number that have been initiated in England and Wales. It has been suggested that the public prosecutors in Scotland, perhaps too busy dealing with what they consider more important or 'proper' crimes, have not been finding the time to apply the Act with full vigour.

Prosecutions in England and Wales can be initiated and conducted by the Trading Standards Inspectors themselves and there the Act does seem to have been enforced with some effect. During the first six and half years of the Act's life there were some 8,500 prosecutions and approximately 7,500 convictions. Similar figures are not available for Scotland. It may be that a more significant reason for the lower number of prosecutions in Scotland is that a higher standard of proof is required in criminal matters in Scotland than in England. Material facts amounting to criminal conduct in Scotland must be spoken to by at least two witnesses, i.e. "corroborated".

43. Since this legislation is criminal rather than civil law the consumer who has been the victim of the conduct is not directly helped by it. To obtain compensation he must raise a separate action under civil law although he can use a copy of any conviction under the Act as evidence in a civil action against the trader. The consumer in England and Wales is however now in a more advantageous position in this regard. As has been previously noted by virtue of the Powers of Criminal Courts' Act 1973 an English court hearing a criminal prosecution, for example under the Trade Descriptions Act 1968, is now able to order compensation to be paid even if the victim does not make a special application. No such power is, as yet, available in the Criminal Courts in Scotland.
44. Misrepresentation

If a consumer wishes to raise a civil action about a false statement made to him at the time of entering into a transaction he will, generally speaking, be thrown back to the general law of contract and in particular to the law relating to misrepresentation. This is a branch of the law not without difficulties. Put very simply, a consumer induced to enter into a contract by a statement made by the other party to the contract which was untrue or misleading may be entitled to regard the contract as over - and in some circumstances may be entitled to recover damages. The statement must have been one of fact and not merely opinion. It must also have been 'material', which means that it must have related to matters which would affect the decision of a reasonable man whether to enter into the contract. The consumer making the complaint must also show that he did in fact rely on the representation.

45. If the misrepresentation led to error in the consumer's mind about a fundamental aspect of the contract, the court may consider that there was never a contract since there was never full and free agreement. So the innocent party can treat the transaction as non-existent. If the error is in respect of a less fundamental aspect the court may allow the innocent party to avoid the contract, provided all parties can be restored to the situation they were in before the contract was made. Thus if third parties have obtained rights as a result of the original contract the party misled will not be allowed to treat the contract as over.

46. In addition to this remedy of bringing the contract to an end damages can be recovered in some circumstances for loss suffered as a result of the misrepresentation. Originally, both in England and Scotland, damages were only available if the misrepresentation was fraudulent - which means that the person making the false statement either knew that it was false or made it recklessly not caring whether it was true or false.

In 1963 the law for the first time recognised in a decision of the House of Lords that a claim for damages for negligent misrepresentation may be available where a statement is made carelessly and in breach of a duty to take reasonable care that it is accurate. Such a duty to take care would arise where there is a professional contractual relationship such as solicitor and client.

47. The Misrepresentation Act 1967 extended the law even further in this regard but this Act does not apply to Scotland. This Act enables a person to claim damages for misrepresentation unless the other party to the contract proves that he has reasonable cause to believe and did believe the facts represented were true. In addition the Act provides that a court should have a discretion to uphold the contract and award damages in lieu of rescission (or cancellation of the contract). The court can award damages by these provisions even though the misrepresentation was entirely innocent.

The Act does not give the person to whom the innocent misrepresentation was made a right to damages; it only gives the court a discretion to make such an award. In addition, the victim of the innocent misrepresentation cannot rescind and claim damages while both these remedies may be available to the victim of a fraudulent or negligent misrepresentation.

Even with these limitations these provisions must be seen as a considerable extension to the law of misrepresentation in England and Wales providing, at least potentially, further important rights for the consumer who will often prefer to keep the goods or services supplied (subject matter of the contract) and obtain some monetary compensation (damages) for the loss suffered by reason of misrepresentation. This the Scots consumer still cannot do if the misrepresentation was neither fraudulent nor negligent.
The 1967 Act also provides that any clause attempting to exclude liability for misrepresentation shall be void — unenforceable, except to the extent that the court may allow reliance on it 'as being fair and reasonable in the circumstances of the case'. There is no Scots equivalent to this provision and the consumer must rely on the various and not wholly adequate devices that the courts have developed to restrict the application of exemption clauses generally.

48. While it is true that the Misrepresentation Act 1967 is not without its defects and difficulties and while it is also true that it has in some ways served to complicate the English law of misrepresentation, it nevertheless has to be said that in its general terms it has advanced the position of the consumer in England some distance beyond his Scottish counterpart.

49. Unsolicited Goods and Services

The early years of this present decade have seen no abatement of the fast growing stream of consumer protection measures visible in the nineteen sixties. The first sign that the process was to continue was the passing of the Unsolicited Goods and Services Act 1971. Much publicity had been given by the media to the fairly common practice of inertia selling, whereby goods were being sent, without request, through the post to private individuals who, unsure of their legal position, were often persuaded to pay for them.

The common law position was quite clear in such cases, viz. that the recipient was not bound to pay for such goods unless he had agreed to buy them or had used them in some way. Parliament recognised however that the common law position was not well known and that it could be extended and more sharply defined.

50. The result of the Unsolicited Goods and Services Act, which applies to Scotland, is that any private person who receives unsolicited goods and does not agree to acquire them need take no action to return them though he must allow the sender to take them back during a period of six months from the date of receiving them. After the six months is over, the goods become the recipient's property and he can use them, sell them or give them away as if they were an unconditional gift to him. The recipient has also the right to cut short the six months period by giving written notice to the sender of the goods, stating his name and address and that the goods are unsolicited. After thirty days, if the sender has not collected the goods the goods become the recipient's property. This was an important piece of consumer protection legislation aimed at striking directly at an unfair and misleading practice which had become very common. (The 1971 Act has recently been amended by the Unsolicited Goods and Services (Amendment) Act 1975 which empowers the Secretary of State to make regulations with respect to the content and form of documents accompanying such goods or services).

51. Director General of Fair Trading

The legislation produced in the post-war era, which has just been examined, was all very valuable but the development of the law was rather piecemeal — as Acts of Parliament were produced to deal with particular abuses or new consumer trade practices.

In 1972 Sir Geoffrey Howe, Minister for Consumer Affairs (a new appointment created by the Government of the day) took the view that the time was past for the Government to be seen always acting after the event, as it were — when a malpractice had developed and consumers had suffered from it for some considerable time. No longer was it sufficient for the Government to act only in response to intermittent pressure from the consumer lobby. Government must be seen to take the initiative. In addition there was everything to be said for streamlining the whole approach to consumer protection.
52. These views resulted in the Fair Trading Act 1973 which created a new watchdog for the consumer, the Director General of Fair Trading, supported by his own staff and by a Consumer Protection Advisory Committee. The Director General has the task of keeping under review trade practices which may adversely affect the economic interests of consumers as well as commercial activities which involve monopoly and restrictive practices.

53. Unlike much other legislation such as the Trade Descriptions Act, the Fair Trading Act did not itself actually create any new offences. What it does do is provide the machinery whereby trade practices may be declared to be offences, by order of the Secretary of State. There are several stages in the process. First of all the Director General has to consider whether a trade practice has the effect, or is likely to have the effect:—

(a) of misleading or confusing consumers with regard to the nature, quality or quantity of goods or services or
(b) of misleading consumers as to their rights and obligations or
(c) of subjecting consumers to undue pressure, or
(d) of causing the terms of consumer transactions to be so adverse to consumers as to be inequitable.

54. If the Director General considers a practice does have one or other of these effects he may refer it to the Consumer Protection Advisory Committee. If he thinks fit he may include proposals for recommending an order forbidding or regulating the practice.

Any such reference to the Advisory Committee must be publicised so that an opportunity may be given for objections to be lodged. The Committee takes evidence from interested parties and is normally given three months to report. The next step is for the Secretary of State for Prices and Consumer Protection to consider the Committee's report and to decide, if the Committee so recommends, whether to make an order by statutory instrument subject to the approval of both Houses of Parliament.

55. The Committee at present consists of thirteen people with knowledge or experience in the supply of goods to consumers, in the enforcement of legislation such as the Trade Descriptions Act and consumer protection generally.

To date, the Director General has made three references to the Committee. The first dealt with practices whereby consumers could be misled by notices or other written statements as to the existence of the inalienable rights given to them by the Supply of Goods (Implied Terms) Act 1973. The second covered the practice of suppliers demanding prepayment for goods without undertaking to refund the payment if the goods are not supplied within a specified time and, in the case of mail order transactions, without identifying the seller or giving his business address. The third related to the practice of using classified advertisements to obtain customers without revealing that the goods were being sold in the course of a business. This, it was considered, may result in consumers being misled as to their rights.

The C.P.A. Committee has reported on all three of these references but as yet there has been no ministerial action on them.

One cannot fail to be impressed on reading the Director General's dossiers which accompany the references and the Committee's first report by the time and effort being spent on these matters. But clearly these are wheels which to date have been grinding slowly. It can be argued in favour of the new measures however that they should allow greater flexibility in dealing with new abuses as they arise, without the need for fresh legislation on each occasion.
56. As well as the procedure just described for attacking particular trade practices, Part III of the Act gives the Director General a general power to seek orders from the Restrictive Practices Court against persons who persistently maintain a course of conduct detrimental to the interests of consumers by breaking the criminal law or by breaking civil obligations (such as those imposed by the Supply of Goods (Implied Terms) Act 1973) and who refuse to give written assurances to the Director General that they will desist from such conduct.

By these provisions the ordinary criminal and civil law of the land will be reinforced for the benefit of the consumer. So, for example, a trader who persistently flaunts the provisions of the Trade Descriptions Act may be taken before the Restrictive Trade Practices Court which may issue an order against him directing him to refrain from continuing such conduct. Breach of the order would be contempt of court and the trader would be liable to imprisonment. There should be a reduced chance of traders getting away with misconduct because action will not depend solely on the initiative of an individual bringing a complaint. The Director General will be free to act when he receives information from the courts or in carrying out his other functions. Nevertheless the new legal machinery will only be used effectively if the consumer is aware that it exists so that he may be encouraged to bring his complaints to his local Consumer Protection Department who can then channel them to the Director General.

57. Finally, it should be noted that the Director General has been given further powers in relation to consumer credit transactions under the 1974 Consumer Credit Act. In particular the system of licensing of those providing credit facilities is under his control.

FOR THE FUTURE

58. That brings this survey of the state of 'consumer law' in Scotland up to date. There is however no sign of any slackening in the pace of the movement towards providing by law further and better consumer protection. The Director General of Fair Trading and his staff will ensure that the movement continues. Pressure groups, other agencies of law reform and the legislators themselves will no doubt continue to keep the interests of the consumer under review.

The appointment of the National Consumer Council has underlined the Government's readiness to encourage a strong and responsible consumer voice and to listen to consumer representations. The further appointment of the Scottish Consumer Council means that at last the different needs and priorities of Scottish consumers are recognised.

59. Already in prospect are studies and recommendations which point to further amendments of the law for the benefit of the consumer. The Law Commission in England and the Scottish Law Commission are permanent statutory bodies with a statutory duty for keeping the whole law under review with a view to its systematic development and reform. They pay careful attention to the interests of consumers in their proposals for law reform. Frequently before preparing their final reports they issue working papers or memoranda with the aim of stimulating public discussion on the topics for reform. These call for comments from interested parties which are taken into account before they make final recommendations.

60. An example of such a working paper of considerable importance to consumers in the joint memorandum of both Commissions recently published relating to liability for defective products. (The Scottish Law Commission Memorandum No.20) This relates to a task set by the Lord Chancellor and the Lord Advocate in 1971 to consider
whether the existing law governing compensation for personal injury, damage to property or any other loss caused by defective products is adequate and to recommend what improvements if any in the law are needed to ensure that additional remedies are provided and against whom such remedies should be available. At present rights are available to the consumer in respect of injury, loss or damage caused by defective products in both the law of delict and the law of contract. Generally speaking a remedy may lie in delict against the manufacturer and in contract against the supplier. The paper poses the question whether the present remedies available in delict should be reshaped in one of two main ways.

1. By placing the burden of proof on the manufacturer instead of the consumer but retaining failure to take reasonable care as the basis of liability and

2. by introducing strict liability for defective products, that is to say, liability for breach of statutory duty whether or not there has been a failure to take reasonable care.

The Commissions rehearse the arguments for and against these proposals which are not simple and they also discuss the implications of any such reforms.

Some of the problems covered by the Commissions in their paper are also at present being considered by a Royal Commission under Lord Pearson, which is involved in a wide ranging inquiry into the basis on which compensation for personal injury and death is recovered. In addition liability for defective products is the subject of studies by the Council of Europe and the Commission of the European Communities. Quite clearly then this is an important area of law which is bound to be changed one way or another in the near future.

61. Exemption Clauses

The Supply of Goods (Implied Terms) Act 1973 which rendered void the contracting out of the terms of the Sale of Goods Act 1893 followed a previous report by the two Law Commissions. That report concentrated on the problem of exemption clauses in sale of goods transactions. The issue of exemption clauses relating to contracts other than the sale of goods was the subject of a joint report by the two Law Commissions published in October 1975. That report recommended that contracting out of terms implied by the common law in contracts for supply of goods, such as hire, should be rendered void in consumer transactions thus bringing these contracts into line with the rules relating to sale and hire purchase.

The Commissions further recommended that provisions in contracts which exclude or restrict liability for negligence should be of no effect if they are not fair or reasonable. They more particularly recommend a complete ban on provisions excluding or restricting liability for death or personal injury due to negligence in certain special situations, such as contracts of employment, and carriage contracts in relation to car parking.

More generally suppliers of services frequently attempt to exclude liability for non-performance or defective performance of their contracts. The Law Commission suggest that such attempts should be subject to a test of reasonableness.

Legislation is expected fairly shortly on these proposals, but it is significant for this paper that although the two Law Commissions reached a wide measure of agreement on the main issues, they reported that on two matters of fundamental importance they "reached divergent conclusions partly because of inherent differences in the systems of law".
62. In 1971 the Government of the day decided that a review of the Trade Descriptions Act 1968 should be undertaken. An interdepartmental committee was set up under the direction of the Director General of Fair Trading and published a consultative document - 'Review of the Trade Descriptions Act 1968' August 1975. This document contained preliminary and provisional proposals for amendment of the legislation and called for further comments.

The Committee makes clear at the outset its general view that 'by and large the Act has done what it set out to do: encourage high standards of truthfulness in describing goods and services'. Nevertheless, it considers that some changes in the legislation may be required.

63. An important proposal made by the Committee is that inaccurate statements made in the course of a trade or business - by estate agents about property including land and buildings for sale or lease - should be made an offence. This proposal is required because it has been held that the term 'goods' in the original Act did not cover houses, land and other property attached to land ('heritable property' as it is known in Scots Law). Private sellers are not to be liable, which is in line with the present form of the Act which exempts all private persons from conviction.

64. Another important proposal is that liability for misdescription of services and liability for misdescription of goods should be placed as far as possible on the same basis. At present it is an offence to make false statements about services, accommodation or facilities only if the statements are made 'knowingly or recklessly' whereas other offences do not depend upon proof of any intent or knowledge or carelessness. The Committee concludes that liability for misdescription of services should be brought into line with offences in relation to goods.

65. The Committee also considered that the definition of misdescription of goods should be extended to cover features of goods which are not directly covered by the present legislation. These would include (a) indications of the identity of a supplier, (b) the standing, commercial importance or capabilities of a manufacturer, producer, supplier or distributor of goods, (c) the contents of books, films, recordings etc. including their authorship.

66. The Act as it stands deals in a limited manner with some practices in relation to price claims in respect of goods. It has been increasingly felt that its treatment of false comparative price claims is inadequate. Pressure for greater regulation of price comparisons has mounted in intensity and the Office of Fair Trading has issued another document 'Bargain Offer Claims - A Consultative Document' suggesting more precise and stricter limits on advertising phraseology. Finally the consultative document on the Trade Descriptions Act deals with the questions of enforcement of the legislation and the powers of penalty. They do not consider that the 1968 Act should be amended to provide for compensation to be awarded to aggrieved parties. The provisions of the Powers of the Criminal Courts Act 1973 which applies in England and Wales but not in Scotland have, it feels, been a useful reform but otherwise questions of compensation should be matters for the civil law. This view does not take into account the different situation in Scotland as described at para.43 above.

67. While the Committee is satisfied that there is no evidence of any significant failure in the present enforcement arrangements (and it is noticeable that it expresses no disquiet that the rate of Scottish prosecutions is rather low) it nevertheless considers that it might be useful to have an organisation in addition to the local Trading Standards/(Consumer Protection) Officers which can assume a national
enforcement role. The Committee recommend that the Director General of Fair Trading should assume this national role and should be given specific powers to enforce the legislation.

It acknowledges, however, that because of the centralised system of prosecution in Scotland this very important proposal would have to be modified as far as Scotland is concerned.

68. Enforcing Consumers Rights

As we have seen, the law provides a considerable body of rules and regulations designed to protect consumers' interest and there is evidence that these will be added to in the future. These rules and regulations will, however, be relatively ineffective if consumers are not aware of the rights they now possess, and do not have the legal resources to enforce their rights.

69. At the end of the day the consumer may be faced with the daunting prospect of having to go to law to secure his rights. The cost of this in a consumer dispute may appear to him prohibitive unless he qualifies for legal aid and the relatively low level of qualification for legal aid keeps the protection of the law beyond the grasp of most people of modest means. For that reason various new procedures for dealing with small claims have been suggested which would provide for cheap and quick settlement of consumer disputes. Some of these have been adopted or experimented with in England.

70. The Court traditionally used for dealing with small claims in England - the County Court - has, since 1972, had its procedure amended to simplify the handling of small claims and to make it easier for a consumer to bring a successful claim without being legally represented. No legal costs are now recoverable in claims under £75. After a summons has been issued and served, the Registrar of the Court conducts a preliminary hearing - known as a pre-trial review - to clarify the issues and the Registrar at that stage may assist an unrepresented litigant to present his case. It is possible for the matter to be settled at this pre-trial stage. If not the Registrar has to decide whether to send the case to trial in court or to arbitration. He may refer a small claim to arbitration with or without the parties' consent and he may act as an arbiter himself. Arbitration is informal and in private, whereas cases which go to trial follow normal court procedure and are heard before a judge. A survey of the working of the new system by the Consumers' Association in "WILLCH" (July 1975) concluded that it was working well and was a 'significant advance for consumers' providing a cheap way of getting legal redress. The great majority of the 94 cases analysed by the survey ended up with the consumer having his claim awarded or agreed in full. The survey did point out however that when it came to enforcing awards the system was less successful. Only half the consumers who were obliged to enforce their awards obtained payment in full. The report's general conclusion is nevertheless that the system works well for small claims and it urges readers to use it for their consumer complaints.

71. In addition to the new reformed county court system just described there are at the moment some even more informal and experimental systems available in England for dealing with small claims. The first such experiment was set up in Manchester four years ago and is known as the Manchester Arbitration scheme. The arbiters are practising solicitors chosen by the President of the Manchester Law Society and they are expected to adopt a simple procedure. The charge for bringing a case is £1 and no legal representation is allowed. Resort to arbitration is possible under this scheme only if both parties consent. In fact there has been a refusal to consent in about half the cases which the scheme has had referred to it and this has reduced its effectiveness. In October 1973 the Westminster Small Claims scheme was set up on an experimental basis with financial
hand Advocate will take up informally since not his responsibility.
Go to Sec. of State and the Rules Council. (The head President)

Promises 4, 3, 2.
1. Co-ordination between English and Scottish Consumer Law

In the past Scottish common law gave advantages to consumers that were not present in English common law. That difference has been eroded. Very few laymen in Scotland realise that unlike the caveat emptor concept of English common law, priceworthiness was always regarded as the consumers' entitlement under Scots common law. So we started ahead, but have slipped behind. The Sale of Goods Act (1893) may be regarded as a step forward in England but a partial step back in Scotland. Some subsequent legal advances have not been applied in Scotland because of the difficulties of harmonising the two different legal systems. Thus we often get the worst of both worlds.

How can we effectively press for and contribute to a more effective and fast moving legislative machinery for translating into Scottish terms the benefits of new legislation applicable in England and Wales?

Even more important – how can we contribute to the development of a genuine Scots law for consumers?

Obviously this question hinges in part, though by no means entirely, on the issue of devolution on which subject the Scottish Consumer Council has prepared a paper.

2. Compensation for Victims

A good example of Scotland lagging behind important new developments in English law is the Powers of the Criminal Courts Act 1973. This empowers English courts in criminal cases to award compensation to individual victims as well as imposing punishment on the wrongdoers. A Scottish Office committee is sitting in consideration of the introduction of similar powers in Scotland. But legislation is not to be expected for several years.

We must ask why consideration of such a development in Scotland did not take place at the same time as the English studies leading to the Powers of the Criminal Courts Act? How can we, if at all, press for swifter action?

3. Small Debt Court

This court has become virtually a debt enforcement agency used by large firms and agencies against individual consumers, but rarely by individuals against firms that have failed to fulfil their contracts. This statement of fact (which can seriously be called a miscarriage of justice) warns us of the absolute necessity of ensuring that the forthcoming Summary Cause procedure is easily available, cheap and simple for the "small man".

To what extent do the rules for the new Summary Cause procedure take into account the views, the needs and the lack of expert knowledge of laymen? Will they genuinely provide for a system which in simple cases enables the petitioner to conduct his own case or use a lay representative?

4. Arbitration Services

The absence of a pre-trial review or an arbitration procedure in Scottish courts puts Scottish consumers at a serious disadvantage. The success of these procedures in England is increasingly evident. It is of urgent importance to devise a corresponding scheme in Scotland. It is obvious that the same procedure as in England will not adapt to Scottish legal procedure. But this fact merely means that we must look for a different and Scottish solution. To do nothing merely illustrates our tendency to leave it to English consumers to make the running.
5. **Trade Descriptions Act**

(a) It is alleged but statistics are not readily available, that fewer prosecutions take place in Scotland under this Act than in England. Is this true and if so why? The SCC is hoping to get the necessary statistics.

(b) Consumer Protection Officers in Scotland are not able as in England to bring prosecutions because of the nature of the public prosecution procedure. The intrinsic merits of public prosecution are of overriding importance. But are there possible improvements within the system which would result in more effective action under the Trade Descriptions Act?

How can the expertise of Consumer Protection Officers be used more effectively by Procurators Fiscal?

(c) Proposals now under consideration for amending the Act exclude any amendment to provide for compensation to injured parties. This may be acceptable in England where the Powers of the Criminal Courts Act 1973 enables victims to get compensation through the Criminal courts. But the situation in Scotland calls out for some quick and simple method of linking civil to criminal claims with a view to compensation for victims in respect of Trade Descriptions Act offences.

Would a special clause relating to Scotland be appropriate?

(d) The proposal of the Office of Fair Trading for a national enforcement role for the Director General of Fair Trading may have some merit, but it has important bearing in Scotland upon the role of the Procurators Fiscal.

Would the interests of Scottish consumers best be served by pressing for more resources for overstretched Consumer Protection Officers and Procurators Fiscal?

6. **Misrepresentation Act 1967**

Because this Act does not apply in Scotland Scottish consumers lose important rights in obtaining compensation. This is an important gap in their protection. At the time of the passing of the Act in 1967 it was stated that a Scottish equivalent would be considered. Eight years later no action has been taken.

How can we inject some urgency into this situation?

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