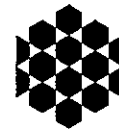


From the Office of the Minister



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Our Ref: DETI COR 590/2013

Patsy McGlone
ETI Committee Chair
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31 December 2013

Dear Patsy

PROPOSED UK WIDE CONSUMER RIGHTS BILL

I wish to update the Committee on developments on the progress of the Consumer Rights Bill that was published in draft in June 2013.

The BIS Minister for Employment Relations and Consumer Affairs, Jo Swinson MP has written to me on the subject of obtaining Assembly consent for the Bill's provisions extending to Northern Ireland. Subject to the availability of Parliamentary time, the UK Government expect that the Bill will be introduced to Parliament in the near future.

The need for a Legislative Consent Motion for some provisions of the Bill has been confirmed by the Departmental Solicitor's Office.

The existing UK consumer law is unnecessarily complex, fragmented and, in places, unclear, for example where the law has not kept up with technological changes. There are also overlaps and inconsistencies between changes made by virtue of implementing European Union legislation alongside existing UK legislation. The draft Bill and the associated subordinate legislation are intended to address these issues.

The Bill is in three Parts. Part one sets out clearly consumers' statutory rights to quality goods and services (the existing rights are currently contained within 8 separate pieces of legislation) and the new category of digital content (such as e-books or software). It also establishes what should happen to rectify matters if those rights are breached. The intention is to make it easier for consumers to understand and access their key rights. These are summarised as the right to:-

- clear and honest information before you buy;
- get what you pay for;
- receive goods and digital content fit for purpose and services performed with reasonable care and skill; and
- have faults rectified free of charge or a refund or replacement provided.

Part two clarifies which terms in consumer contracts (and notices) can or cannot be challenged in court for fairness.

Part three consolidates powers of consumer law enforcers (including Trading Standards Service of this Department) to investigate breaches of consumer law, which are currently contained in around 60 pieces of legislation. It will also enable consumer law enforcers to ask the civil courts to require traders to compensate consumers where they have breached consumer law. In addition, it will provide faster and lower cost redress for consumers and businesses where there have been breaches of competition law. Consumer law is of course a transferred matter, whereas competition law is reserved to the UK Parliament.

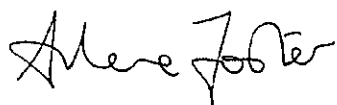
The provisions in the Bill on changes to the private actions in competition law regime take into account the different legal procedures in Northern Ireland.

Overall, the Bill is intended to reduce regulatory burdens for business, with the aim of making markets work better. The UK Government anticipates that businesses should have fewer and less costly disputes with customers, because rights are clearer. Disruption caused by unplanned enforcement officers' visits should be reduced by the requirement to give reasonable notice to businesses when carrying out routine inspections. It should be easier for businesses and consumers to hold to account those who have breached competition law. More detailed information on the Bill is in the attached document.

In order for the Bill to succeed as far as possible with the objective of simplifying consumer law, it is important that the Bill should extend to Northern Ireland. I also consider that Northern Ireland should share in the consumer protections and other benefits of the Bill. Consequently, I support in principle the application of the UK Consumer Rights Bill to Northern Ireland.

The Bill is concerned with amending or extending existing UK-wide consumer and competition legislation and therefore the Northern Ireland policy responsibility lies primarily with my Department. However the proposals would appear to be of interest to the Department of Justice as they may increase the workload of the courts and the Department of Finance and Personnel given its responsibility for civil law. I have therefore written to Ministers David Ford MLA and Simon Hamilton MLA.

Yours sincerely



ARLENE FOSTER MLA

Minister of Enterprise, Trade and Investment

SUMMARY OF DRAFT CONSUMER RIGHTS BILL

1. The draft UK wide Consumer Rights Bill was published for consultation on 12 June 2013. The UK Department of Business, Innovation and Skills (BIS) is in the lead, although, we understand other UK Departments have an input. The Bill is expected to be introduced into Parliament in the near future. The draft Bill and associated documents are available here:-

<https://www.gov.uk/government/publications/draft-consumer-rights-bill>

2. Most of the provisions will amend or extend existing UK wide consumer and competition legislation. The Minister of Enterprise, Trade and Investment agreed to NI being included in the UK wide consultations on the provisions of the Bill. Some of the provisions are reserved (e.g. those relating to competition policy) but others are transferred to NI. A Legislative Consent Motion (LCM) will be required for some provisions of the Bill. Subject to this, it is expected that the Bill will apply to NI.
3. The proposals will be of interest to the Department of Finance and Personnel (because it is responsible for civil law) and the Department of Justice (because it may increase the workload of the courts).
4. The draft Bill has the following objectives:-

- **Simplification and enhancement of consumer rights to good quality goods and services.**

The intention is to clarify and put on a statutory basis rights and remedies for goods and services which are not fit for purpose or not provided with reasonable care and skill. These will be the core consumer protections against poor quality products. The draft Bill is intended to clarify and enhance consumer rights to good quality goods and services and put these rights as far as possible in one statute.

- **Clarification of consumer rights in digital content available to consumers from businesses** (e.g. on disk, downloaded or streamed from the internet).

These rights are not clearly covered under the current law leading to significant uncertainty and potential consumer detriment.

- **Implementation of a common simplified set of powers for Trading Standards and other consumer law enforcers to investigate potential breaches of consumer law.**

The intention is to have a set of powers which are transparent for businesses and enforcers alike. It is expected that enforcers (including NI Trading Standards Service) will be enabled to more easily tackle rogue traders whether they operate nationally, regionally or locally for the benefit of law-abiding businesses and consumers. BIS intend that these powers will apply to the Weights and Measures Act 1985 (the "1985 Act"). The Northern Ireland

equivalent of the 1985 Act is the Weights and Measures (NI) Order 1981 (the "1981 Order"). DETI would intend that the Bill will apply the common enforcement powers to the 1981 Order. It would be anomalous if the common enforcement powers applied to other consumer legislation but not weights and measures law in NI.

- **Empowering consumers and small businesses to challenge anti-competitive behaviour and secure redress.**

The Bill will make it easier for consumers and businesses to gain access to redress where there has been an infringement of antitrust provisions ("competition law"). The Bill is also intended to introduce a limited collective actions regime (with safeguards) to allow recovery of money lost as a result of anti-competitive behaviour. Cases would be able to be brought by representatives on behalf of individuals and/or businesses.

BIS also intend to enable greater emphasis on alternative dispute resolution in competition law. Competition policy is reserved but these proposals appear to be a valuable protection for both Small and Medium sized Enterprises and consumers.

- **Enabling better redress for consumers who have suffered detriment.**

These provisions will give public enforcers and the courts the flexibility to use more appropriate and proportionate remedies to deal with breaches of consumer law. The remedies are expected to include paying redress to consumers who have suffered detriment. Part 8 of the Enterprise Act 2002 will be amended to extend Enforcement Orders and undertakings, to mandate one or more actions by businesses to address breaches of consumer law. It is expected that there may be a reduction in criminal prosecutions for relatively minor offences as remedies would be attached to the civil rather than criminal regime. By attaching remedies to the existing civil enforcement process, the UK Government anticipates that the proposal would direct more enforcement down the civil route. This might lead to a reduction in enforcement action (including court costs incurred) by public enforcers. The UK Government expect that the new redress provisions will also contribute to positive economic growth.

- **Consolidation and clarification of unfair terms in consumer contracts legislation**

The intention is to remove overlapping provisions and inconsistencies between the Unfair Contract Terms Act 1977 (UCTA) (as it applies to consumer contracts) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). These provisions of the Bill are intended to clarify the law by bringing consumer aspects of the UCTA and all of the UTCCRs together into a single regime. It will also change the exemption for terms in the UTCCRs relating to the 'essential bargain' i.e. the main subject matter and price of the contract. Under the Bill such terms will be exempt from being assessed for fairness only if they are prominent and in plain and intelligible language.

- **Partial implementation of EU Consumer Rights Directive**

Some provisions of the Consumer Rights Directive (2011/83/EU) (CRD) are also to be implemented by the Bill. These relate to the enforcement of information requirements, default rules for the delivery of goods, and the passing of risk in goods. (BIS intend to make UK wide Regulations, the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations (CCRs) to implement the remaining provisions of the CRD.)