

Editorial News

Proposed Consumer Guarantees Directive

A consultation paper on the European Commission's proposals for a Directive on consumer guarantees was published on 21 July by Nigel Griffiths, Consumer Affairs Minister (see DTI Press Notice P/979/484). Outlining the key elements of the proposals Mr Griffiths said:

"Consumers should have the right to recompense for goods that are defective in some way when they are delivered. Any measures must be realistic and provide the necessary consumer protection at the minimum achievable cost.

I want to hear from all those with an interest. Wherever possible I would like figures on the costs or savings they think will flow from the Directive.

My officials are due to resume negotiations in Brussels in September and it will be extremely important to make sure that the decisions we reach are the right ones."

The draft Directive contains the following main provisions:

- a right to return goods and receive a replacement, refund, free repair or a price reduction if a defect which existed at the time of delivery becomes apparent in the first year after delivery;
- a presumption that defects appearing within six months existed at the time of delivery;
- an obligation on the consumer to notify the seller within a month of detecting the problem (or of when it should have been detected);
- a requirement that information about manufacturers' guarantees should be available for the consumer to study before purchase.

DTI first consulted on the draft Directive in September 1996. After further analysis, and in the light of its consultations and an enquiry carried out by the House of Lords Select Committee on the European Communities, DTI now has a clearer understanding of the legal implications of the Directive. It now appears that in the UK the Directive would have less impact than was originally thought on cases where defects appear in the second year after delivery.

UK law on the sale of goods requires goods sold by traders to be of "satisfactory quality". Aspects of quality include fitness for purpose, appearance and finish, freedom from minor defects, safety and durability. If goods are not of satisfactory quality the buyer is entitled, if he acts within a reasonable time, to reject the goods and seek a refund. After the buyer has accepted the goods and no longer has a right to a refund he would still be entitled to claim damages.

The closing date for written responses to the consultation document is 5 September 1997.

Britain Should Lead in the Development of Human Rights in Europe

The Lord Chancellor, Lord Irvine of Lairg, has said in a speech on 4 July that British citizens should be

able to secure decisions on their human rights from British judges and not only from the European Court of Human Rights in Strasbourg. He said that at present, Britain is virtually alone among the major nations of Western Europe in failing to give its citizens a direct means of asserting their Convention rights through their national courts. As more and more countries in Eastern Europe ratify the Convention we have become increasingly isolated.

He added that this government's position is that we should be leading in the development of human rights in Europe, not grudgingly driven to swallow the medicine prescribed for us by the court in Strasbourg, when we are found in breach of the Convention.

He told his audience that the government had embarked on the most extensive and ambitious programme of constitutional reform this century, and went on to say that he counted it one of the greatest challenges he has ever faced to have been invited by the Prime Minister to play a pivotal role in this programme, as chairman of the three Cabinet committees on constitutional change so far in being – on devolution, Convention incorporation and freedom of information – as well as being chairman of the committee which determines and oversees the future legislative programme.

The devolution referenda will be held in the autumn and there will be White Papers setting out detailed proposals before then. So devolution is on target.

The Lord Chancellor's Department is busy considering freedom of information too. A government ruling with the wholehearted consent of the people should have nothing to fear from freedom of information. For too long in this country, there has been secrecy for the sake of it, without principled consideration whether release of information will try to do damage. That he promised is set to change.

"One of the most misplaced criticisms we faced in the earliest days of the new government was that we had jettisoned freedom of information legislation. Not so. Not for us the soft option of putting the existing Code of Practice on a statutory basis, but an original root and branch review of all the key issues. Our commitment to freedom of information is a central plank in our programme for constitutional reform.

We shall shortly be published a White Paper which will spell out the details. Full and genuine consultation is vital. We are determined to get this right."

Turning to the main theme of his address, the incorporation of the European Convention on Human Rights, Lord Irvine said that the government was committed to reviewing the United Kingdom's position under a range of human rights instruments during the next twelve months.

He said that incorporation will enhance the judges' powers to protect the individual against the abuse of power by the State, and noted that, for the first time, judges will be given a framework by Parliament within which to interpret the law.

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Incorporation will make Convention rights accessible to our courts at every level. It will enable citizens to have access to those rights without having to go to Strasbourg with all the cost and delay that involves. It will be repatriating rights. It will make them UK rights and not just European rights. Incorporating basic human rights into UK domestic law will be a major new departure. It will offer new challenges. It must not disturb the supremacy of Parliament. It should not put the judges in a position where they are seen as at odds with Parliament.

Lord Irvine confirmed that the Government is looking at the legislative models of Canada, New Zealand, Hong Kong and elsewhere, and is taking account of the arguments in favour of each.

“Our task, however, is to find a distinctively British approach for our British Parliament and British courts. We must learn from the experience of others, but not be constrained by it.”