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# CONSUMER SALES CONTRACTS: TRANSFER OF OWNERSHIP

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Summary of consultation paper

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## THIS CONSULTATION

<p><b>What is it about?</b></p> 	<p>“Transfer of ownership” – the rules which determine when ownership of goods is transferred from a trader to a consumer under a sales contract.</p>
<p><b>What are we doing?</b></p> 	<p>We are conducting a public consultation on a draft Bill to reform the rules on the transfer of ownership of goods as they apply to consumers. The draft Bill seeks to implement recommendations we made in our 2016 report, Consumer prepayments on retailer insolvency available on our website at <a href="https://www.lawcom.gov.uk/project/consumer-prepayments-on-retailer-insolvency/">https://www.lawcom.gov.uk/project/consumer-prepayments-on-retailer-insolvency/</a></p>
<p><b>Why are we consulting?</b></p> 	<p>We are seeking views on whether the draft Bill successfully implements the recommendations we made in our 2016 Report, and the impact of the draft Bill.</p>
<p><b>Where can I read the full Consultation Paper and draft Bill?</b></p> 	<p>The Consultation Paper and draft Bill are available on our website at <a href="https://www.lawcom.gov.uk/project/consumer-sales-contracts-transfer-of-ownership/">https://www.lawcom.gov.uk/project/consumer-sales-contracts-transfer-of-ownership/</a></p>
<p><b>Who do we want to hear from?</b></p> 	<p>We would like to receive comments from as many stakeholders as possible, including consumers and consumer groups, retailers, suppliers, insolvency practitioners and card issuers.</p>
<p><b>What is the deadline?</b></p> 	<p>The consultation was launched on 27 July 2020 and closes on 31 October 2020.</p>
<p><b>What happens next?</b></p> 	<p>After reviewing all responses, we will decide on the final text of the draft Bill, which we will publish in a report. It will be for the Department for Business, Energy and Industrial Strategy to decide whether to implement the draft Bill.</p>

## WHY CHANGE THE RULES ON TRANSFER OF OWNERSHIP?

Consumers often pay for goods in advance of receiving them. This happens whenever consumers buy goods online. It can also happen when consumers pay for goods in a physical store, but the goods have to be made to the consumer's order, are not available to be taken away there and then or are left with the retailer to be altered. If the retailer goes insolvent before the goods are delivered to the consumer, who owns the goods?

Currently, this is determined by the transfer of ownership rules in the Sale of Goods Act 1979. The rules have remained largely unchanged since the late nineteenth century, and they were not drafted with consumer sales transactions in mind, let alone internet shopping. As a result, some of the terminology is old-fashioned and unclear, and the rules have been criticised for being complex. The current rules also appear inconsistent with consumers' reasonable expectations of when they will become the owners of goods they have paid for.

We think that consumers deserve a clear, modern statement of the law about when they will own goods, including in an insolvency situation. They also deserve to have a set of rules which reflects the reality of how they buy goods in the 21st century so that they can make online purchases with confidence. Clearer rules will also benefit insolvency practitioners and shop staff who are required to apply the rules.

The proposed rules in the draft Bill seek to achieve these aims. The rules would apply to contracts for the sale of goods between a retailer and a consumer. They would not apply to conditional sales agreements, hire purchase agreement and contracts for the transfer of goods. If implemented, the rules in the draft Bill would be inserted into the Consumer Rights Act 2015.

This document does not summarise all aspects of the draft Bill and Consultation Paper. Instead, it provides the context, explains the key aspects of the draft Bill, and identifies the key questions we ask in the Consultation Paper. Before responding, you are encouraged to read our full draft Bill and Consultation Paper.



## THE DRAFT BILL

The Draft Bill sets out proposed rules for when ownership of goods transfers under a sales contract between a consumer and a trader. Different rules apply to different types of goods. The infographic below sets out the events and circumstances upon which ownership would transfer.

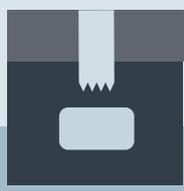
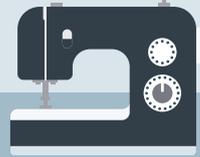
### Goods identified and agreed on at the time the sales contract is made

For example, items selected in a physical store, or where there is only one (like an antique bought online)

### Ownership transfers when...



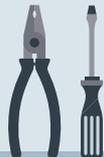
The contract is made, even where the goods are left with the retailer (for example, for alteration)

			
Goods are labelled with the consumer's name in a way that is intended by the trader to be permanent	Goods are set aside for the consumer in a way that is intended by the trader to be permanent	Alteration of the goods to a specification agreed between the trader and the consumer is completed	Consumer is told by the trader that goods bearing a unique identifier will be used to fulfil the contract

### Goods **not** identified and agreed on at the time the sales contract is made

For example, items bought online according to a generic description

### Ownership transfers when...



Manufacture is completed, if the goods are to be manufactured for the consumer to a specification agreed between the trader and the consumer

			
Goods that are to be used to fulfil the contract are identified by the trader in some other way, and the trader intends the identification to be permanent	Goods are delivered to the consumer	Goods are delivered to a carrier for delivery to the consumer	On examining the goods the consumer agrees that they are to be used to fulfil the contract

<b>Key questions for consultees</b>	<ul style="list-style-type: none"> <li>Are the rules drafted sufficiently clearly?</li> <li>Will the rules have any unexpected consequences in practice?</li> </ul>
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## CONTRACT FORMATION

Online retailers often state in their terms and conditions of sale that the sales contract does not form until the goods are 'dispatched' to the consumer. These terms and conditions may impact upon the timing of the transfer of ownership of goods, because ownership under the draft Bill cannot transfer until there is a contract in place. They may also affect

other consumer rights which depend on there being a contract in place, such as the consumer's right to delivery and their right to seek a refund from their card issuer in certain circumstances. We would like to hear from consumers, retailers and insolvency practitioners about their knowledge of or experience with these terms and conditions, and their impact.

### Key questions for consultees

- How common is it for retailers to use these terms and conditions?
- Are these terms and conditions only used by online retailers?
- Why do retailers use these terms and conditions?
- Are these terms and conditions causing detriment to consumers in practice?

## IMPACT

Our Consultation Paper seeks to identify the impacts which the draft Bill may have on consumers, businesses, retailers, suppliers, and insolvency practitioners.

We would like to hear consultees' views on these potential impacts, supported by qualitative and quantitative evidence where possible. This information will form the basis for an impact assessment to be published with the final draft Bill.

### Key questions for consultees

Do you agree with our assessment of the potential impact of the proposed rules?

## RESPONDING TO OUR CONSULTATION

The Consultation Paper is available on our website at <https://www.lawcom.gov.uk/project/consumer-sales-contracts-transfer-of-ownership/>.

Responses may be sent to us by 31 October 2020, by:

- completing the online response form, available at: <https://consult.justice.gov.uk/law-commission/consumer-sales-contracts-transfer-of-ownership>.

Alternatively, by:

- email to: [ownership@lawcommission.gov.uk](mailto:ownership@lawcommission.gov.uk)
- post to: **Transfer of ownership project, Commercial and Common Law Team, Law Commission, 1st Floor, Tower, 52 Queen Anne's Gate, London, SW1H 9AG.**



