

Law change to better protect consumers in event of insolvencies

- Proposed changes will provide clarity for consumers about when they will own goods they have pre-paid for, particularly if a retailer becomes insolvent
- guidelines will set out ways of identifying the consumer as legal owner, including if goods have been labelled or altered for the buyer – such as an engraved ring
- the current rules on “transfer of ownership” date back to 1893 and are not fit for modern-day shopping practices

Consumers who have pre-paid for goods would be better protected if a retailer goes insolvent, under Law Commission proposals announced today (27 July 2020).

Under the existing rules, if a company becomes insolvent, goods paid for in advance that are still in its possession may be considered as assets belonging to the business.

These goods can then be held by the company’s administrators and used to pay off the firm’s debts, potentially leaving consumers out of pocket.

Consumer Affairs Minister Paul Scully has asked the Law Commission to consult on draft legislation to update the law that establishes when consumers legally own goods for which they have pre-paid.

This is known as the transfer of ownership, and the law in this area has remained largely unchanged since 1893.

Consumer Affairs Minister, Paul Scully, said:

With more and more people prepaying for goods online, it is so important our laws are up to date to reduce the risk of customers losing out if a business unfortunately becomes insolvent.

This consultation will look at how the law can be brought into the 21st century, providing clarity for those managing insolvencies and better protection for consumers.

The law change would apply to scenarios where, for example, a person may have pre-paid for a pair of blinds tailored to fit their windows. If the company they have ordered from goes out of business before they have received the blinds, insolvency practitioners may label them as assets of the business, and use the proceeds to pay back creditors in the insolvency.

The proposals would also support those shopping online where goods are not immediately handed over at the point of sale, unlike when shopping in store.

In 2020, around 20% of all retail sales take place online and require prepayment. The last few months have seen internet sales jump from 19.9% of all retail sales in January 2020 to 32.8% in May 2020.

The Law Commission recommends that, in that situation, legislation should include a list of events and circumstances which would be sufficient to transfer ownership to the consumer. For example, goods having been manufactured to the consumer's own specifications, such as a sofa, or goods having been labelled with the consumer's name.

Law Commissioner, Professor Sarah Green, said:

The current transfer of ownership rules are shrouded in complex language which consumers can find difficult to understand.

We believe it is time for the rules to be modernised so that consumers have clarity on their rights of ownership, especially in an insolvency situation.

The changes would build on the recent Corporate Insolvency and Governance Bill, which made permanent additions to the UK insolvency regime, as well as containing a series of measures to amend insolvency and company law to support business to address the challenges resulting from the impact of coronavirus. The Bill received Royal Assent on 25 June 2020.

Notes to Editors:

- The rules governing transfer of ownership were developed for commercial contracts and codified in statute in 1893. Since then, they have been restated in the Sale of Goods Act 1979 but not changed in their substance. Additional provisions were introduced in 1995 for goods forming part of a bulk. Although these apply to all sales contracts, including with consumers, they were developed with commodity trading in mind.
- The Law Commission has agreed to produce and consult on draft legislation to amend the Consumer Rights Act 2015, in order to create a non-exhaustive list of events that will be sufficient to identify goods as being linked to a contract and result in a transfer of ownership from the business to the consumer.
- This work will implement recommendations from the Law Commission's July 2016 report, Consumer Prepayments on Retailer Insolvency, which was commissioned by the government.
- The Law Commission recommends that legislation should include the following non-exhaustive list of events and circumstances which would be sufficient to identify ownership by the consumer:
 1. the goods have been labelled with the consumer's name in a way that is intended to be permanent;

2. the goods have been set aside for the consumer in a way that is intended to be permanent;
 3. the goods have been altered to a specification agreed between the consumer and the retailer;
 4. the consumer is told that goods bearing a unique identifier will be used to fulfil the contract;
 5. manufacture of the goods is completed, if the goods are to be manufactured to a specification agreed between the consumer and the trader;
 6. the consumer examines the goods and agrees they are to be used to fulfil the contract;
 7. the goods are delivered to a courier for delivery to the consumer;
 8. the goods are delivered to the consumer; or
 9. the goods are identified in some other way by the retailer, and the retailer intends the identification to be permanent.
- The changes will not benefit a consumer if the item they have purchased has not yet been made.

Case studies:

Citizens Advice has provided the Law Commission with evidence that consumers sometimes think their goods are ready for collection, only to be turned away when they go to collect them. In this example, the consumer bought furniture for around £2,400:

Because our flat was in a state [the trader] told us that they would store our furniture until we were ready for delivery... Our flat is now nearly there, so I tried to call [the trader] last week, to arrange a date to have our furniture delivered, only to discover that they had gone into receivership. I am horrified. I paid my money in good faith trusting that I would get what I had paid for.

Alternatively, goods may be left for alteration:

We ordered some curtains, paid for them and had them shortened by

the shop... We called in today to collect them and were told that the shop had gone into receivership as of 12 noon yesterday and that we couldn't have the curtains as they were assets of the company and the assets were frozen. Surely if we have paid for them, they are no longer the company's assets but they are our assets and we should have been able to pick them up?