

Right to repair—towards a new area of consumer protection?

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Commercial analysis: Alison Newstead, partner at Shook, Hardy & Bacon International LLP, discusses the recent push for a fully functional ‘right to repair’ in Europe and beyond.

What is a ‘right to repair’ and what is the context of the development of this movement? Are the driving forces behind this predominantly environmental or financial in nature?

The right to repair movement has grown up in an era of environmental responsibility. Consumers are demanding that the environmental impact of products is minimised both in terms of energy consumption and electrical waste produced. Substantial inroads have been made into requiring products to be energy efficient, but consumers argue that the ‘throwaway’ culture cannot be adequately addressed unless products are manufactured in such a way that they last longer and are easier to repair. With many products sealed closed and repair manuals not universally available, consumers are effectively prevented from carrying out their own repairs and reducing the number of electrical products that are discarded.

What would a ‘right to repair’ would look like in practice and why is it beneficial? What are some potential drawbacks?

The right to repair is rather a misnomer. It is not illegal for a consumer to attempt to repair a product themselves but carrying out any such repairs could compromise the available legal remedies should the product subsequently fail or cause damage or injury.

Making it easier for consumers to access the internal workings of their products and giving guidance as to how to carry out repairs could mean that products are used longer. This could reduce the amount of electrical waste and decrease the environmental impact of producing new products. On the other hand, there is an argument that new products are designed to be more energy efficient and replacing products more frequently could be equally beneficial to the environment. A major concern of manufacturers is safety. If they lose control over the repair market, products could inadvertently be rendered unsafe, leading to an increased risk of damage and injury.

How would a right to repair impact on manufacturer warranties and consumers’ statutory rights relating to fitness for purpose, for example?

Notwithstanding any new right to repair, consumers would continue to benefit from the principles laid down in the [Consumer Rights Act 2015 \(CRA 2015\)](#) as to fitness for purpose, satisfactory quality and goods corresponding to their description. Indeed, it should be remembered that [CRA 2015](#) gives consumers the right to ask manufacturers to repair their products. Opting for this route rather than seeking a refund or replacement could have a beneficial environmental impact.

Many manufacturers state that their warranties will be invalidated if repairs are not carried out by an authorised repair centre. These are terms and conditions agreed between the parties and are in addition to statutory rights.

How would a right to repair impact on the manufacturer’s statutory obligations for product liability?

In accordance with product liability principles laid down in the [Consumer Protection Act 1987](#), a manufacturer will have a complete defence to any claim if a defect in the product did not exist at the time that the product

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was supplied. If a manufacturer supplies a safe product but subsequent repairs by a consumer render that product unsafe, then it is highly unlikely that the consumer will be able to bring a successful claim for any ensuing damage or injury.

What are the key differences between the EU and the US proposals?

The EU proposals are under the guise of the EU Ecodesign [Directive 2009/125/EC](#) and are very much focussed on requiring manufacturers make products that last longer and are easier to mend. Ensuring products are not sealed shut and making repair instructions and spare parts available to everyone—not just authorised repair centres—is seen as key. At this stage, the EU proposals are limited to lighting, televisions and large home appliances. If the initiative is successful, it is likely that the scope of the Ecodesign Directive will be widened to encompass other products.

In the US, the ‘right to repair’ movement is steadily growing on a state-by-state basis, with a much wider product scope than the EU proposals. California, for example, proposed the [Right to Repair Act](#) in 2018 that would require electronics manufacturers to make repair information and parts available to consumers and independent repair shops. Although 18 US states are considering right to repair proposals, the failure of such legislation in New York and the lobbying power of the US tech giants is seen as a major obstacle to seeing the proposals come to fruition.

Would a post-Brexit UK be part of the new regime?

The UK’s post-Brexit position remains uncertain. However, whatever the outcome of the Brexit negotiations, the UK will not want to render UK manufacturers in a less advantageous position than their European counterparts. If UK products are to be sold on the EU market, then the UK will have to fall into step with the new requirements.

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