

BIS | Department for Business
Innovation & Skills

**ENHANCING CONSUMER
CONFIDENCE THROUGH
EFFECTIVE ENFORCEMENT**

Consultation on consolidating
and modernising consumer law
enforcement powers

MARCH 2012

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Foreword

**By Norman Lamb MP, Minister for Employment Relations,
Consumer and Postal Affairs**



Markets work best when consumers have trust in the businesses with which they contract. High levels of consumer confidence encourage experimentation, which helps market entry, boosts competition and drives innovation.

Consumer law in the UK comes from a variety of Acts and regulations, making it complex and confusing. This undermines consumer confidence as people don't know their rights and the cost of compliance for business is higher than necessary. The Government is therefore planning a consumer Bill to clarify and simplify UK consumer law.

Consumer confidence is also rapidly eroded by rogue traders. So a major part of our institutional landscape agenda¹ aims to strengthen the ability of local authority Trading Standards Services to tackle rogue traders. Government also needs to tear down the bureaucratic barriers that prevent enforcers from operating efficiently across local authority boundaries, so that Trading Standards can be organised regionally and nationally as well as locally. Effective and efficient enforcement of consumer law is essential for a consumer law regime that works well for both businesses and consumers.

At the same time the Government is determined to reduce the regulatory burden on business. Enforcers' investigatory powers are currently set out in many different and overlapping pieces of legislation and businesses are uncertain as to which powers apply in which cases. Setting out generic powers in one place will ensure that they are simple and transparent so that both businesses and enforcers know the extent of officers' powers. Additional safeguards before such powers can be exercised will reduce the regulatory burden on businesses and also protect civil liberties.

Radical simplification and clarification of the powers of enforcers of consumer law is an issue that plays to all of these agendas. The Government aims to simplify the law, facilitate efficient organisation of enforcement resources and reduce burdens on honest businesses and enforcers, where possible. This consultation seeks your views on a series of proposals designed to achieve these aims. Please let us know your thoughts.

A handwritten signature in black ink, appearing to read 'Norman Lamb'.

Norman Lamb MP

¹ We consulted on these institutional reforms in 17 June 2011, Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

Executive Summary

1. Competitive markets need not only confident consumers who have trust in the businesses they contract with, but also an underpinning framework of competition and consumer law so that choices for consumers are offered fairly. It is also essential that this law is effectively and efficiently enforced when things go wrong.
2. Consumer confidence can be eroded by rogue traders who cause harm to consumers. Data indicates that the cost of consumer detriment at regional and national level where offences occur across local authority boundaries is in excess of £4.8 billion.² Enforcers need to be able to respond appropriately to breaches of legislation; through helping businesses into compliance or seeking penalties as a deterrent to rogue traders who mislead or rip off consumers.
3. The powers of enforcement bodies are set out in around 60 pieces of legislation which makes it confusing for both enforcers and businesses to know what officers' powers are in any given circumstance. In addition the legislation can create barriers to enforcers operating efficiently, such as preventing working across local authority boundaries or using more proportionate civil enforcement routes.
4. An effective enforcement regime requires several elements: law which is clearly understood by businesses and consumers; resources to promote compliance and appropriate enforcement tools to investigate and tackle non-compliance wherever it occurs; and organisation of such resources around the country so that rogue traders have nowhere to hide. In 2011 the Government therefore proposed reforms to the consumer landscape³ aimed at enhancing national leadership so that threats can be tackled in an integrated way and each local authority can focus efforts on where it can make the most difference regionally and nationally as well as locally.
5. The Government supports flexible, non-regulatory approaches to ensuring consumers are empowered and protected and law-abiding businesses are not hindered by excessive regulation. But a framework of law also needs to be in place and enforcement of that law needs to be simple and transparent and also more efficient.
6. We are now proposing a number of reforms to the consumer law enforcement regime, which have been guided by the following objectives:
 - **Reducing the regulatory burdens on businesses** – by simplifying and consolidating enforcers' investigatory powers so that they are clear and transparent for businesses and enforcers alike.

² Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087SesSlon 2010–2012, page 8, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

³ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

- **Rolling back state intrusion and protecting civil liberties** – by applying stronger safeguards to the more intrusive investigatory powers before they can be exercised.
- **Improving the effectiveness and efficiency of enforcement** – by removing bureaucratic legislative restrictions which prevent Trading Standards Services from operating in an efficient, cost effective way.

7. This consultation seeks views on proposals in the following five areas.

1. Consolidating and simplifying consumer law powers into a generic set

8. There are a number of public bodies which enforce consumer law. These include Trading Standards Services and the Department of Enterprise, Trade and Investment Northern Ireland (DETI), as well as those known as the Consumer Protection Cooperation (CPC) enforcers, such as the Office of Fair Trading (OFT).⁴
9. The investigatory powers exercised by consumer law enforcers are scattered in around 60 pieces of consumer legislation. This legislation covers many different business sectors from estate agencies, package holiday companies and other retailers to providers of consumer credit. Much of it applies across all consumer-facing sectors.
10. We propose consolidating all these powers into a single generic set to make them more transparent for businesses and enforcers alike. In devising the proposed generic set we have looked to strike a balance between enabling effective and proportionate investigation of potential breaches of legislation whilst protecting civil liberties and not unnecessarily hindering law-abiding businesses. Therefore the powers will be subject to increased safeguards to reduce the impact on businesses.
11. In Chapter 2 we set out which consumer law enforcement bodies will have the generic set of powers available to them, which legislation they have the duty to enforce and the business sectors which are regulated by this legislation. We then set out each power which will be available to the enforcement body listed. The proposals cover powers ranging from the power to make test purchases, and request information to the power of entry. We also make proposals in relation to the offence of obstruction of officers.
12. We propose to introduce some new safeguards in relation to the generic investigatory powers, such as a requirement for officers to give businesses reasonable notice of routine inspections, subject to a number of exemptions. We will also maintain a number of existing safeguards, for example, the prohibition on officers requiring a person to

⁴ Consumer Protection Cooperation (CPC) enforcers under section 213 of the Enterprise Act 2002 which implements EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation). CPC enforcers exercise powers under the Enterprise Act 2002 (see sections 225-227F) In January this year, the Government announced that the FSA will cease to exist in its current form. A proactive new conduct of business regulator, the Financial Conduct Authority (FCA), will be created, which will supervise all firms to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants. The Government is also taking powers in the Financial Services Bill to enable the transfer of consumer credit regulation from OFT to the new FCA, once a proportionate model for credit regulation has been designed

produce or seizing from any person any document that they would be entitled to refuse to hand over on the grounds of legal professional privilege.

2. Improving cross boundary cooperation and authorisation

13. The current law enabling Trading Standards Services to work across local authority boundaries is open to different interpretations. The result is uncertainty and administrative costs for enforcers.⁵ This reduces the effectiveness and efficiency of enforcement to tackle rogue traders so the proposals in Chapter 3 aim to ensure that cross boundary-working is as simple and efficient as possible for Trading Standards Services.

3. Encouraging proportionate enforcement by removing barriers to the use of civil enforcement

14. Enforcement action needs to be able to respond to breaches of consumer law in a way which is proportionate to the nature of any breach. This means using a variety of enforcement tools and enforcers not being over-reliant on criminal prosecutions. Whilst Trading Standards professionals in England and Wales can present criminal cases in Magistrates' Courts,⁶ they are unable to present civil cases in County Courts. This means that the cost of civil enforcement is often higher than it needs to be and this cost contributes to the relatively low number of civil enforcement actions by Trading Standards Services compared to the number of criminal prosecutions. In Chapter 4 we propose using an existing Approved Regulator,⁷ to accredit individual Trading Standards professionals to enable them to present cases in County Courts⁸ and thereby encourage the use of civil enforcement. Due to differences in their laws this proposal will not apply in Scotland or Northern Ireland.

4. More flexible qualification and competency requirements

15. Currently the only statutory qualification requirement for Trading Standards professionals relates to weights and measures enforcement.⁹ There is no equivalent statutory qualification requirement in relation to other consumer law that they enforce. This contrasts with the Health and Safety at Work etc Act 1974 which leaves it to enforcement bodies to determine what qualifications are suitable for their officers.¹⁰
16. In Chapter 6, we propose introducing a more general competency requirement for Trading Standards professionals to ensure the ongoing competency of officers across the range of consumer law they enforce. This will provide assurance to businesses that officers can support them in complying with their legal obligations. The proposal is to

⁵ Section 222 Local Government Act 1972

⁶ By virtue of section 223 of the Local Government Act 1972. In Scotland, Trading Standards refer matters to the Procurator Fiscal to institute legal proceedings

⁷ Approved Regulators are designated under the Legal Services Act 2007 and governed by the Legal Services Board (LSB)

⁸ under Part 3 of Schedule 4 to Legal Service Act 2007

⁹ Section 73(1) Weights and Measures Act 1985

¹⁰ See section 19(1) of the Health and Safety at Work etc Act 1974

back up the general competency requirement with a voluntary Code of Practice which would set out the qualifications and competencies officers should possess and how they can be assessed and maintained. It will also offer local authorities more flexibility in resourcing and structuring their Trading Standards Services, perhaps specialising in certain areas, and cooperating with neighbouring services, especially at a time of increased budgetary pressures.

5. Enabling competition in the calibration of measurement standards market

17. Under current rules in the Weights and Measures Act 1985, Trading Standards Services are required to periodically submit their reference measurement standards (known as local standards) to the National Measurement Office (NMO) to test them for accuracy. These statutory controls ensure that the standards used by Trading Standards Services to check the accuracy of instruments in use for trade are themselves accurate. Since the 1985 Act, a new route has emerged for calibration of measurement standards in the private sector through laboratories accredited by the United Kingdom Accreditation Service (UKAS) and this route could save local authorities money, if they were allowed to use it. In Chapter 6 we therefore propose to open up the market to allow competition for calibration of standards. There will be no cost to business but will be an opportunity for business to enter the market if they choose.

Devolution

18. Consumer protection policy is not devolved to Scotland and Wales and is transferred to Northern Ireland. The Minister for the Department of Enterprise, Trade and Investment in Northern Ireland has given consent to extend this consultation to include Northern Ireland so that responses may inform any decision the Assembly may take to amend any legislation affecting Northern Ireland in this field.
19. Some of the proposals do not apply to Scotland or Northern Ireland because of the differences in their laws. For example, Trading Standards in Scotland and Northern Ireland do not bring their own proceedings so the proposals on rights of audience for Trading Standards professionals in civil courts would not be relevant. Also, some of the legislation which we are proposing to amend does not extend to Scotland or Northern Ireland, for example, the Sunday Trading Act 1994.
20. It is indicated in the text which proposed measures or existing law that we are proposing to amend do not apply to Scotland or Northern Ireland. The Government's aim is to ensure effectiveness and efficiency of consumer enforcement across the UK whilst respecting the devolution settlements, in each case as appropriate.

How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

A copy of the Consultation Response form is enclosed, or available electronically at [response form](#). Responses to this consultation must be received **by 20 June 2012** and can be submitted via letter, fax or preferably by email to:

Email: TSPowers@bis.gsi.gov.uk

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Tel: 020 7215 0439
Fax: 020 7215 0357

A list of those organisations and individuals consulted is in Annex 2. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

This consultation can be found at: <http://www.bis.gov.uk/consultations> and is also available from:

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In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Help with queries

Questions about the policy issues raised in the document can be addressed to Suzanne Redding (contact details as above).

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Sameera de Silva
BIS Consultation Coordinator
1 Victoria Street
London

Telephone: 020 7215 2888
or email to: sameera.de.silva@bis.gsi.gov.uk

A copy of the Government's Code of Practice on Consultation is in Annex 4.

What happens next?

Following the close of the consultation period, the Government will publish all of the responses received, unless specifically notified otherwise (see data protection section above for full details).

The Government will, within 3 months of the close of the consultation, publish the consultation response. This response will take the form of decisions made in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken. This document will be published on the BIS website with paper copies available on request.

Consultation questions

Question 1: Is there any consumer legislation that you think we should repeal and replace which is missing from our list? If so, please specify.	20
Question 2: Are you content with our proposal to extend the power to make test purchases to businesses, such as estate agents, and clarify that it covers digital content?	21
Question 3: Do you agree that a power to request information should be included in the generic set? If not, please explain why.	22
Question 4: Do you agree that the impact of this change will be small? If not, please provide evidence of what the impacts might be.	23
Question 5: Are the powers of entry and proposed safeguards adequate? If not, please use examples to justify your comments.	24
Question 6: Do you foresee any issues with requiring officers to provide evidence of their identity and authority, even if not requested?	25
Question 7: Do the powers in relation to inspection of goods strike the right balance? If not, please explain why.	25
Question 8: Do you agree that the definition of 'document' is wide enough to cover digital content? If not, please provide evidence.	26
Question 9: Do you agree that the definition of 'trader' is wide enough to cover all businesses from which an officer may require information? If not, please explain why.	27
Question 10: Do you agree that the prescriptive requirements regarding the inspection of banking documents contained in estate agents and consumer credit laws should be revoked? If not, please explain why.	27
Question 11: Do you agree that powers are sufficient to cover business-specific information held in Cloud computers? If not, please provide evidence.	28
Question 12: Do the powers to require production of documents strike the right balance? If not, please use examples to explain.	28
Question 13: Do you have any evidence of where this change might have an impact on business? Do you support the proposal to enable the enhanced powers of seizure to be used across consumer law? If not, please give reasons.	29
Question 14: Do you foresee any problems with extending the power clarifying that officers can investigate and prosecute outside their own local authority area across consumer law? If so, please explain why.	30
Question 15: Do you support removing the duty on small bakers to keep records of checks for average weight purposes? In particular, can you identify any undesirable consequences of the revocation of the duty?	31
Question 16: Should the penalties for the offence of obstruction of consumer law enforcement officers be	

aligned to level 3 or level 5 or perhaps level 4?.....	32
Question 17: Do you support the revocation of these powers particularly those in section 225-227F of the Enterprise Act 2002, subject to the need to maintain the requirement for officers to have reasonable suspicion before exercising powers?.....	33
Question 18: Is the balance between the powers and safeguards in the proposed generic set about right? Are there any gaps? Please provide as much evidence as possible to justify your suggestions. ...	34
Question 19: Do you agree with our assessment of costs and benefits, particularly to businesses? Please provide any comments or evidence that could help refine our assessment.	34
Question 20: Do you agree that we should make these changes in order to help make it easier for Trading Standards Services to work across local authority boundaries?	39
Question 21: Is our proposal to extend regulation 10(2) of the General Product Safety Regulations to all consumer law sufficient or do you think that amendment of section 222 of the Local Government Act is required as well? Please give reasons.	39
Question 22: Do you agree with our assessment of costs and benefits for the options for improving cross boundary authorisation set out in the Impact Assessment? Please provide any comments or evidence that could help to refine our assessment.	39
Question 23: Do you agree that seeking accreditation of Trading Standards professionals from an existing Approved Regulator is the most appropriate way to enable Trading Standards to present civil cases in County Courts? If not, please give reasons.....	43
Question 24: Are you content with our assessment that enabling Trading Standards professionals to present simple cases in County Courts will result in a net resource saving for those who wish to take up this option? Please provide any comments or evidence that could help refine our assessment.	43
Question 25: Do you agree that the prescriptive statutory qualification requirement for Trading Standards professionals should be replaced by a more generic competency requirement, backed up by a voluntary code of practice?	46
Question 26: Do you agree with our assessment that officers' competency standards can be maintained with a more flexible general qualification and competency requirement at the same or lower cost? Please provide any evidence that could help refine the assessment of costs and benefits.	46
Question 27: Do you agree that the Weights and Measures Act should be amended to enable competition in the calibration of local authorities' standards? We welcome comments on any potential impacts on the accuracy of standards or business confidence in the measurement system.	48
Question 28: What further changes are desirable to manage the calibration of standards in future?	48
Question 29: Can you identify and estimate any savings or costs arising from the proposal to enable competition in the calibration of measurement standards?	48

Chapter 1 – Introduction

Enforcing consumer law

- 1.1. Competitive markets work well when consumers are confident and have trust in the businesses they contract with, and the underpinning framework of competition and consumer law is clearly understood. The law also needs to be effectively and efficiently enforced when things go wrong, to ensure fair competition.
- 1.2. Consumer law has built up piecemeal over the years and now covers such diverse business sectors as distance and doorstep sellers, timeshare and package travel companies, estate agents, and providers of consumer credit. Rules governing intellectual property rights, product safety and rules to counter unfair trading affect a wide variety of businesses. This range of consumer law, the overlaps between many of the measures and the complexity of some of the individual laws makes it difficult for businesses and consumers to understand. This lack of clarity not only undermines consumer confidence as people don't know their rights but also increases the cost of compliance for business.
- 1.3. Enforcement is generally the responsibility of local weights and measures authorities, now more frequently referred to as Trading Standards Services. The role of Trading Standards Services has widened enormously in response to new and emerging trading environments, such as the internet, to ensure continued fair competition and consumer protection in these new markets. Their role includes helping mainstream businesses into compliance but also tackling rogue traders who are determined to flout the law and harm consumers with shoddy goods or scams. In 2008, the Office of Fair Trading (OFT) found that around one-third of consumers reported at least one problem in the last 12 months with goods or services purchased, leading to a total value of consumer detriment of £6.6 billion across the economy.¹¹ Rogue traders also present unfair competition to bona fide businesses.
- 1.4. The large body of consumer law adds to the complexity of the enforcement regime as the investigatory powers enforcement bodies have available to them are different in the various pieces of legislation.

Reducing burdens on businesses

- 1.5. The Government is determined to reduce the regulatory burden on business by identifying those regulations which are burdensome or unnecessarily complex. In July 2011 through the Government's Retail Red Tape Challenge¹² the investigatory powers of consumer law enforcers were identified as being an area where the law could be radically simplified.

¹¹ Consumer Detriment, Assessing the frequency and impact of consumer, problems with goods and services, page 23 Office of Fair Trading, April 2008, http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf

¹² Details of the Red Tape Challenge are available at: <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

- 1.6. The Government is also committed to protecting civil liberties and to rolling back state intrusion.¹³ The Protection of Freedoms Bill¹⁴ provides for a code of practice to cover enforcement officers' powers of entry, with the exercise of these powers being subject to review and repeal. As part of the Protection of Freedoms Bill the Government aims to reduce the use of covert investigative techniques under the Regulation of Investigatory Powers Act 2000 ('RIPA') by councils, unless they are signed off by a magistrate and required for stopping serious crime. Nothing in this consultation overrides the need for enforcers to consider whether Regulation of Investigatory Powers Act 2000 (RIPA)¹⁵ applies to the use of their powers and to respect the limitations on use of RIPA set out in the Protection of Freedoms Bill.
- 1.7. The Government's consultation in June 2011¹⁶ on institutional changes to the consumer landscape proposed to transfer some consumer enforcement responsibilities from the OFT to Trading Standards Services whilst enhancing coordination of enforcement within Trading Standards. This consultation outlines further changes that we would like to make to meet the needs of Trading Standards Services in the new environment.
- 1.8. With the Government's commitment to prevent a proliferation of unnecessary new criminal offences,¹⁷ it is important that alternative civil enforcement routes are cost-efficient for enforcers to pursue. In this consultation we aim to encourage Trading Standards Services to use the civil enforcement route to tackle non-compliance where it is appropriate and proportionate so that criminal enforcement is reserved for use as a last resort.
- 1.9. The proposals set out in this consultation seek to reflect all these policy imperatives and aim to improve the effectiveness and efficiency of the enforcement regime, whilst reducing burdens on business.

Improving the effectiveness of consumer law enforcement

- 1.10. Our vision for consumer law enforcement is for enforcers to have a simpler, more effective toolkit which enables enforcers to appropriately respond to non-compliance nationally and regionally as well as locally. Building on the potential consumer landscape changes,¹⁸ this consultation proposes a number of changes to improve the

¹³ The Coalition: our programme for government, page 11, HM Government, May 2010,

http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

¹⁴ The Bill is currently before Parliament, see <http://www.homeoffice.gov.uk/publications/about-us/legislation/protection-freedoms-bill/>

¹⁵ and also the Regulation of Investigatory Powers (Scotland) Act 2000,

<http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/fact-sheet-part2?view=Binary>

¹⁶ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

¹⁷ The Coalition: our programme for government, page 11, HM Government, May 2010,

http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

¹⁸ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

effectiveness and efficiency of enforcement. The proposed changes have been guided by the following objectives:

- a. **Reducing the regulatory burdens on businesses** – by simplifying and consolidating consumer law enforcers’ investigatory powers so that they are clear and transparent to businesses and enforcers alike. This should reduce the number of disputes about officers’ powers, saving both the enforcers and the businesses they regulate both time and money.
- b. **Rolling back state intrusion and protecting civil liberties** – by applying stronger safeguards to the more intrusive investigatory powers before they can be exercised.
- c. **Improving the effectiveness and efficiency of enforcement** – by removing bureaucratic legislative restrictions which prevent Trading Standards Services from organising themselves across local authority boundaries and operating in an efficient, cost effective way.

1. Consolidating and simplifying consumer law powers into a generic set

- 1.11. The Government aims to consolidate and simplify investigatory powers from around 60 pieces of legislation into a new generic set across consumer law. This will make the powers more transparent for businesses and enforcers. We discuss our proposals in Chapter 2.

2. Improving cross boundary cooperation and authorisation

- 1.12. Trading Standards Services need to be able to organise themselves to respond to local, regional and national threats, such as rogue traders which operate across local authority boundaries. With the increasing importance of internet sales and the likely consumer landscape changes,¹⁹ the need for Trading Standards Services to work effectively across local authority boundaries and abroad is likely to increase. The proposals in Chapter 3 aim to ensure that cross boundary-working is easier and more efficient for Trading Standards Services.

3. Encouraging proportionate enforcement by removing barriers to the use of civil enforcement

- 1.13. The Government wants to make it easier and more efficient for Trading Standards Services to use civil law enforcement routes to tackle non-compliance, by enabling them to present their own simple cases in County Courts,²⁰ and thereby reduce reliance on criminal prosecutions. Our proposals to achieve this are discussed in Chapter 4. This will not apply in Scotland or Northern Ireland due to differences in their laws.

¹⁹ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

²⁰ In Scotland, Trading Standards refer matters to the Procurator Fiscal to institute proceedings

4. More flexible qualification and competency requirements

- 1.14. The Government aims to ensure that Trading Standards professionals have the necessary knowledge and skills to enforce a wide range of consumer law to support businesses effectively and enable more flexible resourcing for local authorities. We aim to do this through our proposals for a general competency requirement which are discussed in Chapter 5.

5. Enabling competition in the calibration of measurement standards market

- 1.15. The Government aims to reduce the burden on Trading Standards Services by enabling them to use an alternative calibration route for legal measurement standards. This will allow competition in the calibration of measurement standards and should reduce the costs of calibrations for Trading Standards Services.
- 1.16. The proposals in this consultation form part of a package of measures which are a key response to the Retail Red Tape Challenge in July 2011. Our wider aim is not only to reduce burdens on business and improve enforcement efficiency, but also to enhance consumer confidence by consolidating and simplifying consumer rights so that they are clearer and easier for consumers to understand. This in turn is part of an agenda for empowering consumers, enabling them to exercise choice confidently by improving their access to the critical information which they need to secure high quality and competitively priced goods and services. We therefore intend to make the changes outlined in this consultation in a forthcoming proposed Consumer Bill of Rights.

Devolution

- 1.17. Consumer protection policy is reserved to Westminster for England, Scotland and Wales and transferred to Northern Ireland. The Minister for the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland has consented to the extension of this consultation to include Northern Ireland.
- 1.18. Some of the proposals do not apply to Scotland or Northern Ireland because of the differences in their laws. For example, Trading Standards Services in Scotland and Northern Ireland do not bring their own proceedings, so the proposals on civil rights of audience for Trading Standards professionals (Chapter 4) are not relevant here. Also, some of the legislation which we are proposing to amend does not extend to Scotland or Northern Ireland. Wherever a proposed measure or law that we are proposing to amend does not apply to Scotland or Northern Ireland, this is indicated in the text. We have engaged fully with the Devolved Governments regarding the proposals in this consultation and taken account of their views.

Chapter 2 – Consolidating and simplifying consumer law powers into a generic set

Key proposal

- To consolidate and simplify consumer law enforcement bodies' investigatory powers into a generic set using the powers in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) as a starting point to make the powers more transparent for businesses and enforcers.

Introduction

- 2.1. Enforcers generally operate through collating information and intelligence on specific businesses or sectors. If this suggests a potential non-compliance or consumer harm, local authority Trading Standards Services may test compliance in that business or sector. Investigatory powers under consumer law are key in enabling targeted, risk assessed compliance testing by enforcers.
- 2.2. The investigatory powers that consumer law enforcers²¹ have available to them are now scattered in around 60 different pieces of consumer legislation. This piecemeal approach has led to variations in investigatory powers across consumer law, which appear to have no clear rationale. The complexity imposes costs on businesses and enforcers alike. In 2009, the Confederation of British Industries said in its response to the Consumer Law Review:²²

“..... at the moment the powers of entry and investigation vary considerably according to the legislation under which they are exercised; there is significant variation between the powers to enter premises, to inspect and seize goods or documents with or without a warrant under the [Consumer Protection from Unfair Trading Regulations 2008] (CPRs) and under the Consumer Protection Co-operation Regulation (CPC). This is confusing for businesses and enforcers.”

- 2.3. There was wide agreement amongst respondents to the Consumer Law Review that investigatory powers should be clarified and made more consistent. In its response to the Review, the British Retail Consortium said:²³

²¹ Other enforcers include those in section 213 of the Enterprise Act 2002

²² Responses to the Consumer Law Review C-L, page 109, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file51998.pdf>

²³ Responses to the Consumer Law Review A-B, Page 232, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file51997.pdf>

“.....the enforcement powers of the TSS and OFT should be clarified along the lines of the CPRs and brought together in one Act.”

Generic set of powers

The main changes we are proposing

- 2.4. We agree with the British Retail Consortium’s recommendations. To ensure clarity and consistency for enforcers and business, officers’ investigatory powers will be aligned, as far as possible, across consumer law. Equivalent powers in the existing legislation will be repealed and replaced with the ones in the proposed new generic set.
- 2.5. In aligning investigatory powers a number of powers will be amended to ensure consistency and transparency across consumer legislation. Some changes involve minor changes to the terminology used and other changes are more substantial. For example, we are proposing that where businesses are operating from within someone’s home, a warrant will generally be required before an officer can enter it. The details of these changes are discussed below.
- 2.6. The investigatory powers contained in Part 4 of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) provide a good starting point for the new generic set of powers. However, they do not include a comprehensive set of provisions and therefore our proposals add to them. Consequently the investigatory powers we are suggesting whilst largely based on the powers in the CPRs are not a carbon copy of those powers and include, in particular, additional safeguards for businesses.
- 2.7. The provisions of sections 227A-227F of the Enterprise Act 2002 were introduced to implement the investigatory powers provisions of the European CPC Regulation.²⁴ This Regulation creates a network of enforcers which are responsible for taking action to stamp out cross border infringements of certain EU consumer protection legislation. A full list of UK CPC enforcers can be found in section 213 of the Enterprise Act 2002.²⁵ Sections 227A-227F set out the investigatory powers of CPC enforcers. They are a little different from powers contained in other UK consumer law. For example, the powers contain safeguards, such as requiring an enforcer to reasonably suspect there has been or is likely to be a relevant infringement before the enforcer can use any of the investigatory powers, but also include some stronger powers, such as power to search for goods or documents with a warrant. The requirement that CPC enforcers must have reasonable suspicion before exercising their investigatory powers will need to be maintained since it is a requirement of the CPC Regulation.²⁶

²⁴ EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation)

²⁵ Enforcers detailed in section 213 of the Enterprise Act 2002: the Office of Fair Trading (OFT); the Civil Aviation Authority (CAA); the Financial Services Authority (FSA); the Secretary of State for Health; the Department for Health Social Services and Public Safety in Northern Ireland; the Office of Communications (Ofcom); the Department of Enterprise, Trade and Investment in Northern Ireland; every local weights and measures authority in Great Britain; the Independent Committee for the Supervision of Standards of the Telephone information service (now PhonepayPlus); the Information Commissioner

²⁶ Article 4 of the CPC Regulation 2006/2004

- 2.8. In addition to these generic investigatory powers, some specific powers contained in product safety and weights and measures legislation will be re-enacted alongside the new generic set. But a number of other specific powers will be repealed altogether and not repeated in the generic set.²⁷ Lastly, a number of new safeguards will be introduced before enforcers can exercise their powers.
- 2.9. We are not reviewing the criminal offences or penalties which are present in some consumer legislation, except that we make proposals in relation to aligning the penalties across consumer law for the offence of obstruction of officers.²⁸

Business sectors affected by the new powers

- 2.10. Businesses which are subject to consumer law range from internet-based retailers to doorstep sellers, from travel companies to estate agents, retailers of cars and electronic items and providers of consumer credit. Product safety rules and rules to counter unfair trading affect a large number of different business sectors – in fact all sectors which sell directly to consumers. Where we think a proposal in this consultation is likely to have a particular impact on specific business sectors we have indicated this in the text.

Enforcement bodies and legislation covered by the generic set of powers

- 2.11. The proposal is to repeal the provisions in a number of pieces of legislation. A list of the legislation we intend to amend in this way is set out in the Supplementary Legislative Document accompanying the consultation.²⁹ This will affect a number of enforcement bodies. The enforcement bodies to which the new investigatory powers will apply are also listed in the Supplementary Legislative Document. We will set out which consumer law enforcement bodies will have the generic set of powers available to them and which legislation they have the duty to enforce.

Question 1: Is there any consumer legislation that you think we should repeal and replace which is missing from our list? If so, please specify.

Elements making up the proposed generic set of investigatory powers

- 2.12. We discuss the powers and safeguards in more detail below and notably wherever we propose to change those powers currently found in the CPRs or where the powers are significantly changed as a result of adopting the powers under CPRs.

²⁷ for example, the power to take photographs contained in the Sunday and Christmas Day Trading laws

²⁸ We are also not reviewing remedies that may be taken following an investigation. For example, civil law enforcement orders (see section 217 Enterprise Act 2002) or undertakings (see section 219 Enterprise Act 2002), are also outside the scope of this consultation. See regulation 23 of the Consumer Protection from Unfair Regulations 2008 (CPRs)

²⁹ The Supplementary Legislative Document is a companion document to this consultation,

<http://www.bis.gov.uk/policies/consumer-issues/consumer-rights/consumer-law-enforcement-powers>

The duty to enforce

- 2.13. The intention is to make it clear which enforcement body is responsible in each case. In most cases we are not proposing to change current enforcement duties. However, the duties of the OFT to enforce consumer law are subject to change as a result of wider institutional reform decisions. Also, any changes following the outcome of this consultation will take account of ongoing work on the transfer of credit regulation to the Financial Conduct Authority,³⁰ and the role of Trading Standards Services in consumer credit enforcement, which is still to be determined.

Power to make test purchases

- 2.14. This power enables an enforcement body to authorise its officers to make a test purchase of a product and includes the power of officers to enter into agreements to secure the provision of products.³¹ It is not currently available in all consumer legislation. Applying it across consumer law would mean that officers would be able to use the power to gather evidence at businesses, such as estate agents, which are not currently subject to test purchases, but as officers are unlikely to carry out test purchases for the purposes of enforcing estate agency legislation; this is unlikely to have any impact on businesses.³²
- 2.15. The CPRs define ‘product’ as any goods or service and includes immovable property, rights and obligations. It makes no express reference to ‘digital content’.³³ For the avoidance of doubt, we will ensure that the definition used in the power to make test purchases covers digital content.

Question 2: Are you content with our proposal to extend the power to make test purchases to businesses, such as estate agents, and clarify that it covers digital content?

Power to request information

- 2.16. Sections 225-227 of the Enterprise Act 2002 provide that in certain circumstances enforcers can give notice to any person requiring that person to provide them with specified information as well as setting out the notice procedure and enforcement.³⁴ Enforcers find this is a useful power, and indeed it may be used to reduce the need for officers to exercise the power of entry, and potentially the power to seize documents. Currently, this power can be used to enable an officer to investigate breaches of a wide range of consumer law, but only in relation to the enforcers’ functions under Part 8 of

³⁰ This is following the Government’s announcement in January 2012 to make changes under the Financial Services and Markets Act 2000 (FSMA) which will bring the regulation of all retail financial services under one roof

³¹ This is based on the power that currently exists in the CPRs. This element is also not present in all other pieces of legislation comprising this power

³² E.g. Prices Act 1974, Estate Agents Act 1979, Sunday Trading Act 1994 do not contain a power for officers to carry out test purchases

³³ Article 2(11) of the recently adopted Consumer Rights Directive 2011/83/EU on Consumer Rights, 25 October 2011 defines ‘digital content’ as data which are produced and supplied in digital form. Recital (19) of the Consumer Rights Directive 2011/83/EU provides that digital content means data which are produced and supplied in digital form, such as computer programs, applications, games, music, videos or texts, irrespective of whether they are accessed through downloading or streaming, from a tangible medium or through any other means

³⁴ Section 225(2), Enterprise Act 2002

the Enterprise Act, which allows enforcers to seek injunctive relief where there is an infringement of consumer law. In future it should be possible to use this power even if ultimately the investigation may lead to a criminal prosecution. However, the power should be limited to meet any human rights concerns and protect enforcers against allegations of 'fishing expeditions.' So this power will be subject to safeguards, which already exist in the CPRs, including requiring officers to have reasonable cause to suspect a breach before using the power to require production of documents, and providing persons with a right not to incriminate themselves.

- 2.17. We propose that there is a power to request information through the provision of a notice, based on similar provisions in the Enterprise Act 2002. The Government believes that extending this power will not add any costs to business, and will, if anything, reduce the burden on business and enforcers.

Question 3: Do you agree that a power to request information should be included in the generic set? If not, please explain why.

Power of entry without a warrant

- 2.18. We propose a power of entry and inspection similar to that under the CPRs³⁵ which enables an officer, at all reasonable hours and for the purposes of ascertaining whether a breach has been committed, to inspect any goods and to enter premises (other than premises used only as a dwelling). The power of entry will apply across almost all consumer law in the scope of the consultation. This will mean that the power of entry will be applied to certain legislation where currently there is no specific power of entry, which could affect businesses offering timeshare and package holiday products.³⁶ However, we do not expect this to be a significant change in practice, as officers already have powers of entry under the CPRs to investigate these businesses.
- 2.19. Exceptionally, we will retain a different power of entry for enforcers investigating breaches of consumer law under the Enterprise Act 2002 (when investigating breaches of European consumer law under the Consumer Protection Cooperation (CPC) Regulation. The power of entry for enforcers of the CPC Regulation allows them to enter any premises to investigate whether there has been or is likely to be an infringement, but only where there is reasonable suspicion of an infringement. In accordance with European law obligations, the Government proposes to maintain this rule.
- 2.20. The power of entry under the Estate Agents Act 1979 also currently differs from the norm as set out in the CPRs. In this case, however, we are proposing that the power should be aligned. In July 2011, the Government agreed to review the power of entry under the Estate Agents Act 1979.³⁷ In their 2010 market study on home buying and

³⁵ See regulation 21(1)(a) Consumer Protection from Unfair Trading Regulations 2008

³⁶ Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010

³⁷ Government Response to Office of Fair Trading (OFT) Market Study on home buying and selling, page 4, Department for Business, Innovation and Skills (BIS), July 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g/11-504-government-response-to-study-home-buying-selling>

selling the Office of Fair Trading (OFT) reported that 24 per cent³⁸ of estate agents were not in full compliance with the law on the first enforcement visit³⁹ and that 82 per cent surveyed considered that possible visits by Trading Standards helped to ensure that other estate agents complied with the law. We are therefore proposing to remove the need for officers to have reasonable cause to suspect a breach before being able to exercise the power of entry to estate agency businesses.⁴⁰

- 2.21. The practical effect of this change for estate agents will be to allow Trading Standards powers of entry, subject to all the safeguards, in those cases where ‘reasonable cause’ test is not or might not be met, but where the enforcer believes there is a high risk of non-compliance and the business refuses access. Since the vast majority of estate agents always allow access to enforcers and in many other cases the ‘reasonable cause’ test is met, the number of cases where the new power of entry may be required to be used will be very small. In any case, an enforcer can also usually use their powers under the CPRs to gain access. So even in the small number of cases where the new power might theoretically have an impact, in practice it would probably not.

Question 4: Do you agree that the impact of this change will be small? If not, please provide evidence of what the impacts might be.

Safeguards to power of entry without a warrant

i. Powers of entry without a warrant exclude premises that are used wholly or mainly as private dwellings

- 2.22. Currently the power of entry without a warrant extends in some cases to premises used as a dwelling. However in line with the Government’s policy to protect civil liberties we propose that this power of entry should exclude premises which are wholly or mainly private dwellings. This is stricter than is currently the case and means that where businesses which are subject to the requirements of consumer law operate from people’s homes, officers will generally require a warrant before entry. However, it is common practice for Trading Standards professionals to seek a warrant to enter private dwelling premises. Therefore, it is likely that the number of extra warrants sought as a result of this change will be limited.

ii. Requirement to give reasonable notice before exercising powers of entry

- 2.23. Generally the current legislation does not require any notice before powers of entry can be used. However, in order to exercise a power of entry using powers contained in the Enterprise Act 2002, officers are required to give at least 2 days notice to the occupier.⁴¹ They are also required to set out why entry is necessary. The Government believes that this helps businesses to plan their activities around an inspection and does not prevent enforcers from seeking a judicial warrant (see below) in cases where

³⁸ Home buying and selling - A Market Study, paragraph 5.16, page 104, Office of Fair Trading, February 2010, http://www.of.gov.uk/shared_of/reports/property/OFT1186.pdf

³⁹ this does not imply that 24% of all estate agents are non-compliant as some visits may have been as a result of a complaint

⁴⁰ under the Estate Agents Act 1979

⁴¹ Section 227A(3) Enterprise Act 2002

they deem it is essential to conduct an unannounced visit.⁴² We are therefore intending to apply the provision of the Enterprise Act more widely, by including it in our generic set.⁴³

- 2.24. In order to ensure that enforcement can continue to be effective we propose that notice would not be required to be given in the following circumstances:
- a. where entry is in relation to a provision under EU law which requires inspection without notice, for example, to carry out market surveillance;
 - b. where the requirement has been waived by a trader;
 - c. where there is reasonable cause to suspect a breach of the relevant legislation;
 - d. where giving notice would reasonably be supposed to defeat the purpose of the entry, for example, evidence may be lost or destroyed; or
 - e. where there is reasonable cause to suspect that there is imminent risk to public health or safety.

Question 5: Are the powers of entry and proposed safeguards adequate? If not, please use examples to justify your comments.

Entry to premises with warrant

- 2.25. Our proposal here is again to replicate the power as set out in the CPRs. This power provides that a justice of the peace may give a warrant to enter premises if necessary by force, if certain requirements are met. The requirements to be met are that either there are goods or documents that the officer has a power to inspect without a warrant and that their inspection is likely to disclose a breach or that a breach is being or is about to be committed on the premises AND in either case that admission without a warrant is likely to be refused, or giving notice of entry would defeat the object of entry or that the premises are unoccupied. A warrant can only be given if a justice of the peace is satisfied of these requirements from written information on oath.
- 2.26. The power is currently similar but not exactly the same across other legislation. For example, section 227C of the Enterprise Act enables an officer to search for goods or documents where a person has failed to produce them, when requested. However, the Enterprise Act is used to investigate breaches that can only lead to civil enforcement. As the generic set of powers will be used to investigate breaches which can lead to both civil and criminal enforcement, we believe that the powers set out in the CPRs provide the most appropriate balance between enabling effective enforcement, without being unduly intrusive to law-abiding businesses.
- 2.27. For consistency we propose to extend power of entry with a warrant for all consumer law, if required, even where such powers do not presently exist, for example, Sunday Trading Act 1994. This should have no impact on businesses as warrants are only likely

⁴² This is in line with the Government's Response to the public consultation on the On-Site Inspection Power of the Consumer Protection Cooperation Regulation, Department of Trading and Industry (DTI), page 4, September 2006, <http://www.bis.gov.uk/files/file34034.pdf>

⁴³ We will repeal section 227A(3) of the Enterprise Act 2002 and a new provision will be added to the generic set which will apply to the Enterprise Act

to be sought under legislation such as the CPRs where there is a need to preserve evidence and in these cases the power already exists.

- 2.28. In addition we propose to add a new safeguard to this power, where the premises are unoccupied or the occupier is absent, requiring officers to leave a notice indicating that such an entry has occurred.

Production of evidence of officer's identity and authority

- 2.29. Again our proposal is to base the new provision on the current provision in the CPRs.⁴⁴ This provides that an officer seeking to use any of the powers of entry and investigation will be required to produce evidence of his identity and authority to the occupier of the premises. This is a stricter requirement than in other consumer legislation,⁴⁵ however, it is already considered best practice.⁴⁶ This means businesses will be clear as to the officers' authorisation. This requirement would not apply where announcing themselves would defeat the object of the officer's entry.

Question 6: Do you foresee any issues with requiring officers to provide evidence of their identity and authority, even if not requested?

Power to inspect goods

- 2.30. Similarly, our proposal is based on the current power under the CPRs which provides that an officer can at all reasonable hours inspect any goods.⁴⁷ In order to maintain current powers and ensure all types of goods inspected under consumer law are covered by the generic set, we propose that the definition of goods should include for example samples,⁴⁸ packages and containers⁴⁹ which are currently used or defined in existing consumer legislation. The new power will also include all the types of weighing and measuring equipment that officers currently have the power to inspect and test,⁵⁰ including where such equipment is used for making up and checking packages.⁵¹

Question 7: Do the powers in relation to inspection of goods strike the right balance? If not, please explain why.

Power to require production of documents

- 2.31. We propose to maintain the requirement currently under CPRs, in common with the majority of consumer law, for officers to have reasonable cause to suspect an offence

⁴⁴ Regulation 21(6)

⁴⁵ Most consumer legislation requires production of evidence of an officer's identity and authority, only if requested

⁴⁶ Implementation of the Unfair Commercial Practices Directive: Government Response to the consultation on draft Consumer Protection from Unfair Trading Regulations, Department for Business, Enterprise and Regulatory Reform (BERR), page 11, February 2008, <http://www.bis.gov.uk/files/file44300.pdf>

⁴⁷ Regulation 21(1) of the Consumer Protection from Unfair Trading Regulations 2008 – this power is similar across consumer law

⁴⁸ Regulation 22 General Product Safety Regulations 2005

⁴⁹ Used in 38(2) of the Weights and Measures Act 1985, also, apparatus, fixed installations used in, for example, Electromagnetic Compatibility Regulations 2006

⁵⁰ Section 38(2) Weights and Measures Act 1985

⁵¹ Section 79(1)(a) Weights and Measures Act 1985 and Paragraph 1(b) Schedule 7 Weights and Measures (Packaged Goods) Regulations 2006

has taken place before an officer can require production of documents or take copies of the document or any part of it.⁵² This will maintain protection for businesses from 'fishing expeditions.' We propose using the term 'document' which includes information recorded in any form and also include the requirement that where information is recorded other than in legible form, it must be produced in legible form. We believe the meaning of 'document' is wide enough to include records relating to the business and other information relating to the business⁵³ which are phrases used in other legislation, which we are proposing to repeal.⁵⁴

Powers in relation to digital content

2.32. Enforcers have raised the question as to whether existing powers cover data produced in digital form, for example, ensuring that a user has a legitimate software licence to use a computer program. It is important that Trading Standards professionals are able to investigate copyright offences in relation to data in digital form or where information which is recorded in digital form may be required for ascertaining whether a breach has been committed, for example, to ensure that a user has a legitimate software licence to use a computer program. Under the CPRs where there is reasonable cause to suspect commission of an offence, officers have the power to require a trader to produce 'documents.'⁵⁵ As stated above the definition of documents includes information recorded in any form. We think that the existing definition of 'document' is wide enough to include 'data in digital form' but given that there is some uncertainty we will ensure that the definition covers digital content.

Question 8: Do you agree that the definition of 'document' is wide enough to cover digital content? If not, please provide evidence.

Definition of trader

2.33. The CPRs give officers a power where there is reasonable cause to suspect a breach of the regulations, to require any trader to produce any document relating to his business. Some enforcement bodies are concerned that the use of the word 'trader' is more restrictive than terms used in other legislation, such as a 'person carrying on a trade or business.'⁵⁶ Other legislation refers to 'a person carrying on a commercial activity.'⁵⁷ We believe that the definition of 'trader' in the CPRs is wide enough to include any businesses which could provide information to an officer, including third party businesses and individuals carrying on a trade or business whether or not that person is registered for VAT or operating as a limited company. So we intend to use the wording in the CPRs in the new consolidated text.

⁵² Regulation 21(1)(b)

⁵³ For example, section 29(6)(b) Consumer Protection Act 1987, regulation 22(5) General Product Safety Regulations 2005 and section 162(1)(b) Consumer Credit Act 1974

⁵⁴ For example, we propose repealing the power in the Price Marking Order 2004 to request production of documentary evidence relating the size of the shop. We believe this is covered under the proposed general power, subject to the officer having reasonable cause to suspect a breach

⁵⁵ Regulation 21(1)(b)

⁵⁶ See for example, section 28 Trade Descriptions Act 1968

⁵⁷ For example, regulation 22(5)(a) General Product Safety Regulations 2005

Question 9: Do you agree that the definition of ‘trader’ is wide enough to cover all businesses from which an officer may require information? If not, please explain why.

Powers in relation to statutory documents

2.34. Some enforcers have argued that officers should have a power to inspect documents where there is no suspicion of a breach more generally. In its response to the consultation on the implementation of the Unfair Commercial Practices Directive in 2008, the Government did not agree, as this would effectively amount to a general power of search without cause.⁵⁸ However, some consumer legislation places a duty on businesses to hold certain documents, for example, weights and measures production records and certificates for weighing and measuring instruments used for trade,⁵⁹ EC declarations of conformity,⁶⁰ and technical documentation,⁶¹ to demonstrate compliance with product safety legislation. We propose to retain the power for officers to require production of these statutory documents without the need for the officers to have reasonable cause to suspect a breach, as is currently the case.

Powers in relation to bank documents for consumer credit and estate agency businesses

2.35. In our view the power of officers to request production of documents under the CPRs includes the power to request production of bank documents in relation to estate agency businesses and businesses that offer consumer credit.⁶² However, there are similar specific provisions contained in the Estate Agents (Entry and Inspection) Regulations 1981 and the Consumer Credit (Entry and Inspection) Regulations 1977 in relation to banking documents. To help reduce duplication in investigatory powers, we propose repealing these powers, and replacing them with a new power based on the provision in the CPRs which, whilst there is no specific reference to bank documents, we believe is wide enough to include bank documents. This proposal should have no impact on businesses.

Question 10: Do you agree that the prescriptive requirements regarding the inspection of banking documents contained in estate agents and consumer credit laws should be revoked? If not, please explain why.

Business’ Information held on Cloud computers

2.36. Information is increasingly held on computers and in the ‘Cloud’ where operating systems and data files are stored on servers provided by third parties. Trading Standards professionals have raised concerns about their powers to access electronically stored data specific to the business under investigation which is not on the premises they are inspecting, but held offsite. As discussed, above, we believe that the definition of document is wide enough to cover books, electronic documents and

⁵⁸ Implementation of the Unfair Commercial Practices Directive Government Response to the consultation on draft Consumer Protection from Unfair Trading Regulations, Department for Business, Enterprise and Regulatory Reform (BERR), page 11, February 2008, <http://www.bis.gov.uk/files/file44300.pdf>

⁵⁹ Paragraph 1(d) Schedule 7 Weights and Measures (Packaged Goods) Regulations 2006

⁶⁰ For example, regulation 45(a) Electromagnetic Compatibility Regulations 2006

⁶¹ For example, regulation 17(5) Toys Safety Regulations 2011

⁶² subject to the requirement for officers to have reasonable cause and the safeguards under the Data Protection Act 1998

electronically stored data specific to the business under investigation which is not on the premises they are inspecting, but held offsite on Cloud computers.

Question 11: Do you agree that powers are sufficient to cover business-specific information held in Cloud computers? If not, please provide evidence.

Question 12: Do the powers to require production of documents strike the right balance? If not, please use examples to explain.

Power to seize and detain goods

2.37. Again, we are proposing to base the generic power to seize goods on the current powers in the CPRs.⁶³ This power will be similar to existing powers and will provide that where an officer has reasonable cause to believe that a breach has been committed, he may seize and detain goods for the purposes of ascertaining, by testing or otherwise whether the breach has been committed. In order to ensure that a record is kept of items that are seized, we propose introducing a statutory requirement for officers to issue a receipt for the seized items. It is already best practice for officers to provide a receipt so this should have no impact on enforcers, but it will ensure businesses are provided with information on what has been seized for their own records.

Power to seize and detain goods and documents for use as evidence

2.38. There will also be a power to seize and detain goods or documents where an officer has reason to believe they may be required as evidence in proceedings which is similar to that under the CPRs. We propose to add that officers are required to give a receipt for any items seized. In addition to this generic power, we will need to maintain the existing power under the Estate Agents Act 1979 for an officer to seize and detain documents where a person has failed to comply with a specific obligation under the Act or where a person has engaged in a practice specified in the Act.⁶⁴ This is because a breach of the requirement to produce books and documents is a 'trigger power' in the Act, allowing the OFT to consider an estate agent's fitness to operate.

2.39. We will extend the current safeguard under the CPRs to all consumer law that seized goods or documents may not be detained for more than 3 months, unless they are reasonably required in connection with enforcement, for example, as evidence in court proceedings.⁶⁵ This is stricter than other consumer legislation.

2.40. We will include a requirement similar to the current requirement under the CPRs, that officers must inform the person from whom the goods and documents are seized (see regulation 21(3) CPRs) rather than the more specific requirement that a written notice is required, as specified in regulation 23(1) of the General Product Safety Regulations 2005.

2.41. Some legislation, for example the Sunday Trading Act 1994, does not contain powers to seize and detain goods and documents, but for the sake of simplicity and consistency

⁶³ Regulation 21(1)(c)

⁶⁴ see section 11(1B) Estate Agents Act 1979

⁶⁵ Regulation 21(7)

we propose to apply the power to seize and detain across all consumer law within scope. Enforcers already have these powers under the CPRs, subject to safeguards which we are proposing to strengthen, and officers will only use them where it is proportionate to do so, so this is unlikely to have any impact on businesses.

Enhanced powers inserted by the Criminal Justice and Police Act 2001

- 2.42. As a result of section 50 of the Criminal Justice and Police Act 2001, under most consumer law officers currently have enhanced powers to seize goods in two situations: (1) where the officer suspects an item may be something that he could seize but he cannot determine whether it is or not or (2) where the item he has a right to seize is contained within something else that he would not have the power to seize but it is impossible to separate the two. The legislation to which the enhanced powers apply and the exceptions are listed in the Supplementary Legislative Document accompanying this consultation.
- 2.43. For consistency in future we intend to apply the section 50 powers to all consumer legislation covered by this consultation. There is no obvious rationale for the exceptions. Powers of seizure may only be used by officers where necessary and relevant, for example, where goods or documents are likely to be required for evidence. This power can only be used where there are reasonable grounds for believing that there may be items on the premises which an officer is authorised to seize, which is a high test.
- 2.44. We do not believe there will be any additional burden for enforcers in using these new powers, as they may be seizing goods anyway using other powers, and in those cases where they cannot, seizure is likely, if anything, to cut the length of investigations by offering easy access to evidence. However, this change may conceivably introduce some costs to businesses in a very small number of cases where these powers do not currently exist.

Question 13: Do you have any evidence of where this change might have an impact on business? Do you support the proposal to enable the enhanced powers of seizure to be used across consumer law? If not, please give reasons.

Power to break open a container or vending machine

- 2.45. The CPRs provide a power for an officer to require a person to break open a container or vending machine; or where that request has not been complied with, to do so him or herself. We intend to adopt the power and safeguards, currently found in the CPRs and which are similar across consumer law.⁶⁶ As there will be little change, this will have no impact on business or enforcers.

⁶⁶ The safeguards include where any goods or documents seized an officer must inform the person from whom they are seized and in relation to vending machines, an officer must inform the person whose name and address are stated on the machine as the proprietor, or where no such statement exists inform the occupier of the premises where the machine stands

Power to take other persons and equipment into premises

- 2.46. We intend to replicate the power under the CPRs⁶⁷ that enables an officer entering any premises to take with him other persons and equipment as may appear to him to be necessary. To protect enforcers from allegations of heavy-handedness and ensure that only those persons that need to accompany officers into premises do so, we propose that the number of persons will be restricted to a maximum of 4. This will limit the impact on businesses.

Additional powers not currently in the CPRs

- 2.47. With the exception of the power to request information, the powers we have discussed so far are present in some form in the CPRs. The following powers which we propose to include in the generic set of powers derive from other pieces of legislation.

Power to investigate and bring proceedings outside a local authority area

- 2.48. We believe that Trading Standards Services probably already have the power to investigate and bring proceedings outside their own local authority area (except in Scotland where cases are prosecuted by the Procurator Fiscal). However, this is not clear to all parties. We want officers to be able to use the generic investigatory powers when investigating and bringing proceedings outside their own authority so that they can easily tackle rogue traders who operate across local authority boundaries. Therefore, we propose to reproduce the power currently found in the General Product Safety Regulations 2005⁶⁸ clarifying that Trading Standards Services can investigate and bring proceedings outside their own local authority area and extend it across consumer law. In addition, we will enable Trading Standards Services to bring civil proceedings outside their own area as well. This will apply to Trading Standards Services in England and Wales, whereas in Scotland it will apply to investigations only.⁶⁹ This will provide necessary certainty for officers and help protect law-abiding businesses from unfair competition from rogue traders.
- 2.49. Further proposals to improve Trading Standards cross-boundary authorisation are discussed in Chapter 5.

Question 14: Do you foresee any problems with extending the power clarifying that officers can investigate and prosecute outside their own local authority area across consumer law? If so, please explain why.

Retention of powers with specific application

- 2.50. As far as possible, investigatory powers contained in consumer legislation will be consolidated into the new generic set. However, certain specific investigatory powers contained in weights and measures and product safety legislation are important to retain. In order to ensure accessibility and transparency we intend to reproduce those we intend to retain in the proposed generic set. As we are simply maintaining current powers, this will not have an impact on businesses. Details of the powers we intend to

⁶⁷ Regulation 21(8)

⁶⁸ Regulation 10(2) General Product Safety Regulations 2005

⁶⁹ in Scotland cases are prosecuted by the Procurator Fiscal

retain are set out in the Supplementary Legislative Document accompanying this consultation.

- 2.51. In relation to product safety, we believe it is important that officers can check the compliance of goods in relation to their safety where they are imported into the UK through ports of entry before they are distributed. It is important that these checks are carried out on a targeted, risk-assessed basis so that legitimate trade through our borders is not unduly hindered. So we intend to retain these powers.
- 2.52. We also intend to maintain the provisions in relation to a business's right to appeal against the detention of goods and records⁷⁰ and the ability for enforcers to recover expenses for enforcement.⁷¹ In addition, we intend to maintain provisions regarding the forfeiture of goods.⁷² Details of the specific product safety powers we intend to retain are set out in the Supplementary Legislative Document.
- 2.53. We also intend to maintain specific weights and measures powers, including the power to request assistance from a person to enable an officer to test weighing and measuring equipment or relevant goods. Details of the specific weights and measures powers we intend to retain are set out in the Supplementary Legislative Document.
- 2.54. We are keen to reduce the burdens on small businesses which make bread in accordance with the average weight system. Currently, small bakers can be exempt from the duty to keep records of the checks made of the weight of the loaves, by requesting an exemption from the Chief Inspector for that area.⁷³ This is aimed at reducing the record keeping burden on small bakers.
- 2.55. We propose to remove the duty on small bakers to keep 'average weight' records altogether. This would apply to any baker qualifying as a micro-business and/or any small baker which already holds an exemption from their local Chief Trading Standards Officer. This would mean such businesses would automatically be exempt from keeping of checks for average weight purposes and no longer need to request an exemption from their local Chief Trading Standards Officer. It would also mean that they would no longer benefit from the tolerances associated with the average system, but we think this is unlikely to be an issue in practice.

Question 15: Do you support removing the duty on small bakers to keep records of checks for average weight purposes? In particular, can you identify any undesirable consequences of the revocation of the duty?

Aligning penalties for obstruction of officers

- 2.56. We propose aligning the penalties for obstruction of officers to ensure consistency across consumer law. In the CPRs and under the on-site inspection power in Part 8 of

⁷⁰ For example, section 33 Consumer Protection Act 1987 and regulation 25(1) General Product Safety Regulations 2005

⁷¹ See section 35 Consumer Protection Act 1987 and regulation 27 General Product Safety Regulations 2005

⁷² Section 29(6)(b) Consumer Protection Act 1987

⁷³ Paragraph 9, Schedule 5 Weights and Measures (Packaged Goods) Regulations 2006

the Enterprise Act,⁷⁴ the penalty for obstruction offences⁷⁵ is up to a maximum of £5,000 (level 5) and/or imprisonment depending on the specific offence. In contrast the penalty for obstructing a police officer, immigration officer or an officer of HM Revenue and Customs is generally set at a maximum £1,000 (level 3).⁷⁶ Other consumer law also currently applies a lower level obstruction offence. For example, the Consumer Credit Act 1974 (where the penalty is currently £2,500 (level 4) and the Trade Descriptions Act 1968 (level 3) and the regulations made under these statutes, and the Sunday Trading Act 1994 (level 3), as well as two other consumer regulations.⁷⁷ The specific changes proposed are detailed in the Supplementary Legislative Document.

- 2.57. In the Government's response in 2008 to the consultation on Implementation of the Unfair Commercial Practices Directive,⁷⁸ the Government agreed that there should be no incentive to obstruct investigators. But the Government has not yet decided at what level the penalties for obstruction should be set and is inviting views on this subject. On the one hand it sees merit in aligning penalties for obstruction across all areas of law enforcement, but it has concerns that consumer law enforcers may be more likely to be obstructed than, for example, police officers, because they lack powers of arrest and other indirect leverage to encourage compliance. The penalties for obstruction might, therefore need to be higher.
- 2.58. These offences of obstruction are rarely prosecuted on their own or even alongside other offences, but act as a deterrent to obstructing officers. We are not aware of any custodial sentences being handed out for obstruction offences prosecuted under the CPRs or other consumer legislation and the larger fines are reserved for the really egregious cases, which are extremely infrequent (less than one per annum). The increase in potential fines for some consumer legislation should offer a stronger deterrent effect on businesses which are tempted to obstruct enforcers going about their legitimate business, but is unlikely to result in any increase in actual fines, except perhaps in a very small number of extreme cases. In view of this, it may be questioned whether the higher level of fines would really make any difference to enforcers' ability to perform their duties.
- 2.59. The provision in regulation 23 of the CPRs also includes a provision ensuring the privilege against self-incrimination in relation to answering any question or giving any information, which is found in most consumer legislation, which we intend to maintain.

Question 16: Should the penalties for the offence of obstruction of consumer law enforcement officers be aligned to level 3 or level 5 or perhaps level 4?

⁷⁴ inserted by SI 2006/3363 which implemented the EC Consumer Protection Cooperation Regulations

⁷⁵ Regulation 23(1) of the CPRs. This excludes the offence of a person recklessly making a statement he knows to be false e.g. regulation 24(2)(b) of the General Product Safety Regulations 2005

⁷⁶ Police officers and Customs officers also have the power of arrest

⁷⁷ The regulations include Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (level 3), Alcoholmeters and Alcohol Hydrometers (EEC Requirements) Regulations 1977 (up to £2,000)

⁷⁸ Implementation of the Unfair Commercial Practices Directive: Government Response to the consultation on the draft Consumer Protection from Unfair Trading Regulations, Department for Business, Enterprise and Regulatory Reform (BERR), page 11, February 2008,

<http://webarchive.nationalarchives.gov.uk/+http://www.bis.gov.uk/files/file44300.pdf>

Revocation of certain specific powers

2.60. We aim to repeal the equivalent investigatory powers in the legislation within the scope of this consultation and replace them with the ones in the new proposed generic set. However, there are a number of pieces of legislation where what an officer can do is specifically set out, for example, officers' powers take measurements and photographs⁷⁹ and powers to observe the carrying on of a business; to require an explanation of goods or documents; to require a person to state to the best of his knowledge where goods are; and to ensure that any goods or documents produced are authenticated.⁸⁰ The CPRs do not contain these powers and we intend to repeal these but not reproduce them in the generic set as we believe that the proposed set of powers are sufficient. However, we consider that the powers in the new generic set will be sufficient to cover these powers, and it will help clarify for businesses what powers officers have in any given situation, so we propose removing these and not to include them in the new legislation.

Question 17: Do you support the revocation of these powers particularly those in section 225-227F of the Enterprise Act 2002, subject to the need to maintain the requirement for officers to have reasonable suspicion before exercising powers?

Safeguards applied to officers' powers

- 2.61. In addition to the safeguards to be applied to powers of entry and to request information, we propose to include in the new legislation a number of valuable safeguards for businesses against abuse of powers. These safeguards are currently included in the CPRs, and most other consumer legislation. They include:
- i. The requirement for officers to provide notice of tests and intended proceedings.⁸¹ This will include the existing provisions, for example, where a suspension notice is served;⁸² or forfeiture occurs;⁸³
 - ii. The provision for persons to claim compensation from an enforcement body for loss or damage for seizure or detention of goods, if there has been no breach;
 - iii. Legal professional privilege. It will be clear that nothing in the powers will allow an enforcer to require any person to produce or seize from any person any document that the person would be entitled to refuse on the grounds of legal professional privilege.

Enabling enforcers to use the injunctive relief regime for infringements which damage consumers overseas

2.62. Part 8 of the Enterprise Act 2002 sets out an injunctive relief regime for the protection of consumers. This does not provide any new rights for consumers, but allows

⁷⁹ See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

⁸⁰ Section 227B Enterprise Act 2002. The current requirement that CPC enforcers must have reasonable suspicion before exercising their investigatory powers under Part 8 of the Enterprise Act will remain

⁸¹ Regulation 24 of the Consumer Protection from Unfair Trading Regulations 2008

⁸² Section 28(2)(b)(ii) Consumer Protection Act 1987

⁸³ For example, regulation 38(2)(i) Electromagnetic Compatibility Regulations 2006

enforcers to seek injunctive relief⁸⁴ where there has been an infringement of certain UK laws which harms the collective interests of consumers in the UK.

- 2.63. We are proposing to amend the Enterprise Act 2002⁸⁵ so that enforcers can use the Part 8 injunctive relief regime where there has been a breach of the listed UK laws which harms the collective interests of consumers whether they are in the UK or elsewhere. It will not impact on enforcers as they will prioritise their cases according to their respective enforcement policies and the nature of the individual cases. It will, however, facilitate reciprocal cooperation and effective enforcement across international borders. This will not add any extra burden on law-abiding businesses, but will simply offer an alternative civil enforcement route for enforcers tackling rogue traders.

Question 18: Is the balance between the powers and safeguards in the proposed generic set about right? Are there any gaps? Please provide as much evidence as possible to justify your suggestions.

Question 19: Do you agree with our assessment of costs and benefits, particularly to businesses? Please provide any comments or evidence that could help refine our assessment.

⁸⁴ Interdict and/or specific implement in Scotland

⁸⁵ Section 211 of the Enterprise Act 2002, which implements the Injunctions Directive 98/27/EC

Chapter 3 – Improving cross boundary cooperation and authorisation

Key proposal

- To clarify the law so that Trading Standards Services are able to work across local authority boundaries as simply and efficiently as possible.

Introduction

3.1. Trading Standards Services need to be able to respond to regional and national as well as local threats. In June 2011, it was estimated that 70% of consumer detriment is likely to arise out of activities which cross local authority boundaries and that the cost of consumer detriment at regional and national level where offences occur across local authority boundaries is in excess of £4.8 billion. This includes large scams (£3.5million) and intellectual property crime (£1.3 billion) perpetrated by rogue traders.⁸⁶ An example where consumers across a number of local authorities were harmed is given below.

Case study – Cross boundary scam investigated by North Yorkshire Trading Standards

North Yorkshire Trading Standards Service investigated a gardening and roofing scam deliberately targeted vulnerable and elderly consumers. The gang would either press the consumers to pay up for work which was rarely ever done or make false claims about the need for work and how much it would cost. One 85 year old victim was pressurised into parting with £52,000. Numerous consumers were affected in Yorkshire and Humber region, Derbyshire, Staffordshire and Nottinghamshire. Where breaches occurred outside the North Yorkshire area, the Service sought permission to investigate from the relevant local Trading Standards Services. The gang were eventually prosecuted for conspiracy to defraud, multiple counts of money laundering and theft, and also one count of distraction burglary at the home of a 99 year old woman.

3.2. Consumer law imposes a duty on Trading Standards Services to enforce legislation within their local authority area.⁸⁷ Whilst Trading Standards Services are also probably

⁸⁶ Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087SesSlon 2010–2012, page 8, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

⁸⁷ For example, section 19(2) Consumer Protection from Unfair Trading Regulations 2008

able to investigate and bring proceedings⁸⁸ in respect of consumer detriment arising outside their local authority area in most cases, the current law is open to different interpretations and this can result in a lack of clarity and administrative burdens for Trading Standards Services.

How cross boundary authorisation is currently sought

- 3.3. Trading Standards Services' powers to prosecute criminal offences may arise in four ways:
- Through the duty to enforce the relevant legislation in its local authority area;
 - By delegation of the power to prosecute given by another Trading Standards service;
 - Where it is 'expedient for the promotion or protection of the interests of the inhabitants of their area' by virtue of section 222 of the Local Government Act 1972;
 - By placing officers at the disposal of another Trading Standards service, so that they can investigate and prosecute the cases.
- 3.4. In order to avoid the administrative costs involved in the second and fourth of these options, some Trading Standards Services have sought to rely on section 222 of the Local Government Act 1972, to carry out cross boundary prosecutions on the basis that it was expedient for the promotion of inhabitants in their local area.⁸⁹ But some court cases have determined that express authorisation or agreement with another local authority may be required.⁹⁰
- 3.5. The Government supports specialist Trading Standards Scambuster and Illegal Money Lending teams which operate on a regional or national level with local authorities and other enforcement bodies tackling a variety of threats to the fair trading system. The Scambuster teams are estimated to provide a return on investment of almost 8:1.⁹¹ However, the teams are often unable to carry out enforcement work within another local authority without specific authorisation to do so, unless accompanied by a Trading Standards professional from the local area and this prevents them from functioning optimally.⁹² The Scambuster teams typically work through one local authority Trading Standards Service in the region taking lead responsibility for the operation of the team.

⁸⁸ Except in Scotland

⁸⁹ Section 222 of the 1972 Act which provides that "when a local authority consider it expedient for the promotion or the protection of the interests of the inhabitants of their area: a) They may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name"

⁹⁰ E.g. *Brighton & Hove City Council v Woolworths Plc* [2002] EWHC Admin 2565

⁹¹ Using the Office of Fair Trading methodology from - An evaluation of the impact of the fair trading work of local authority Trading Standards Services in the UK, Office of Fair Trading, June 2009, http://www.offt.gov.uk/shared_offt/about_offt/offt1085.pdf

⁹² Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087SesSIon 2010–2012, page 25, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

But the Scambuster team then needs to be 'tasked' by the individual Trading Standards Service, which may be nervous of committing its own resources to any eventual prosecution and may not see the case as a priority if all the victims are located elsewhere. The response by Surrey Trading Standards Service to the Consumer Law Review illustrates the problem:⁹³

"[Scambuster] officers devoted 12 months investigating a prolific offender trading across most of the south of England only to find that the authority who had agreed to take the action were then advised by their Legal Services that they could only deal with one local offence."

- 3.6. Under legislation implementing EU measuring instruments directives, the appointment of notified bodies for EC verification is not limited to the geographical area of a local authority (should they offer this optional service) and this model allows greater choice over which local authority verification service a business might choose. The ability of Trading Standards Services to carry out verification of weighing and measuring equipment prescribed by **national** weights and measures law, on the other hand, is limited to the geographical area of the local authority.⁹⁴ The restrictions in statute not only hamper effective and efficient enforcement of weights and measures legislation across local authority boundaries, but also limit businesses' choice of Trading Standards Service when requesting verification of weights and measures equipment regulated under domestic law.
- 3.7. Trading Standards professionals argue that there would be economies of scale in allowing centres of excellence, where investment in verification and measuring expertise and equipment had been made, to be more easily deployed across a wider geographical area. Income from wider regional or national verification activities could then help offset the cost of their enforcement activities and costs could be more easily shared or avoided in smaller authorities, which could rely instead on a service from a neighbouring authority.
- 3.8. Most respondents to the Consumer Law Review⁹⁵ acknowledged that authorisation processes that enable officers to work across boundaries were overly bureaucratic and costly, and that greater clarity was required. In their response to the Consumer Law Review, the British Retail Consortium said:⁹⁶

"Local authorities [also] need to co-operate across boundaries because business does not recognise such boundaries. Most relevant of all is that rogue traders do not recognise such boundaries and, left to their own devices, are more than capable of taking advantage of them."

⁹³ Consumer Law Review: Call for Evidence: Responses S-Z, page 9, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file52000.pdf>

⁹⁴ Sections 11(4) and 79(1) Weights and Measures Act 1985

⁹⁵ Consumer Law Review: Call for Evidence: Responses S-Z, page 116, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file52000.pdf>

⁹⁶ Responses to the Consumer Law Review A-B, page 226, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file51997.pdf>

Future consumer landscape changes

- 3.9. Under the Government's proposed reforms to the consumer landscape set out in its consultation in June 2011,⁹⁷ regional coordination and leadership of Trading Standards would be strengthened and would support enhanced national leadership. This offers opportunities for increased specialisation and substantial efficiency gains in individual Trading Standards Services as threats can be tackled in an integrated way and each local authority can focus efforts on where it can make the most difference locally, regionally and nationally. But in order for this to work optimally, barriers to cross-boundary operations need to be removed.

Proposed Solution: To enable Trading Standards Services to investigate and take legal proceedings outside their local authority area

- 3.10. In Chapter 2 we propose extending the power contained in the General Product Safety Regulations 2005⁹⁸ to all consumer law to make it clear that Trading Standards Services in England and Wales can investigate and bring proceedings outside their own local authority area. However, we also intend to amend section 222 of the Local Government Act 1972 for Trading Standards Services to remove the restriction whereby proceedings can only be taken where such action is for the promotion or protection of the interests of the inhabitants of their area.⁹⁹
- 3.11. The aim would be to eliminate any necessity for enforcers to seek authorisations from individual local authorities. Of course, it will still be necessary for Trading Standards Services to cooperate with each other to avoid duplication of effort and ensure a coordinated approach, but this happens anyway through regional coordination mechanisms and shared intelligence systems and under the Primary Authority and other arrangements. All of these should be strengthened following the Consumer Landscape reforms.
- 3.12. We also propose to remove the restrictions under the Weights and Measures Act 1985¹⁰⁰ to enable officers to carry out cross boundary weights and measures enforcement and verification of weighing and measuring equipment. This might lead not only to specialisation, but also enable competition between the specialised providers, which might lead to better quality and or lower prices, which, in turn, should benefit business.

⁹⁷ Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, June 2011, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

⁹⁸ Regulation 10(2) General Product Safety Regulations 2005

⁹⁹ We would restrict the amendment to Trading Standards Services only to guard against any unintended consequences. Alternatively we may need to make a reference to section 222 of the 1972 Act in the new GPSR power to ensure that section 222 does not conflict with the use of the GPSR type power. In any event, we will explore all legislative drafting options to achieve the policy objective, which will provide clarity in this area

¹⁰⁰ Sections 11(4) and 79(1) of the Weights and Measures Act 1985

Question 20: Do you agree that we should make these changes in order to help make it easier for Trading Standards Services to work across local authority boundaries?

Question 21: Is our proposal to extend regulation 10(2) of the General Product Safety Regulations to all consumer law sufficient or do you think that amendment of section 222 of the Local Government Act is required as well? Please give reasons.

Question 22: Do you agree with our assessment of costs and benefits for the options for improving cross boundary authorisation set out in the Impact Assessment? Please provide any comments or evidence that could help to refine our assessment.

Chapter 4 – Encouraging more proportionate enforcement by removing barriers to the use of civil enforcement

Key proposal

- To seek authorisation from an existing Approved Regulator to enable Trading Standards professionals to present cases in County Courts and thus make it easier for Trading Standards Services to use civil law enforcement route, where it is appropriate.

Introduction

- 4.1. Enforcement action needs to respond to breaches of consumer law in a way which is proportionate to the nature of the breach. Breaches of consumer law can be enforced through either civil injunctive action¹⁰¹ or by criminal prosecution which means enforcers have a variety of enforcement tools available to them.
- 4.2. Whilst Trading Standards Services in England and Wales can present and defend cases in Magistrates' Courts,¹⁰² they are unable to do so for civil cases¹⁰³ in County Courts as they do not have the appropriate authority. So Trading Standards Services often need to hire external lawyers to present civil cases, even simple ones, resulting in a higher cost for civil enforcement for Trading Standards. Based on evidence provided to BIS, if Trading Standards professionals were able to present civil cases, it is estimated that their costs of bringing a simple case could be reduced by as much as a third.¹⁰⁴
- 4.3. This lack of ability to present cases in civil courts is considered by Trading Standards professionals to be one of the causes of the relatively low number of Enterprise Act civil enforcement actions they have taken compared to the number of criminal prosecutions,¹⁰⁵ which may lead to an over-reliance on criminal prosecutions by enforcers so that businesses are more likely to face criminal prosecution than civil

¹⁰¹ Under the Enterprise Act 2002, but by Interdict and/or specific implement in Scotland

¹⁰² by virtue of section 223 of the Local Government Act 1972. In Northern Ireland Trading Standards do not bring their own proceedings, also in Scotland Trading Standards refer matters to the Procurator Fiscal

¹⁰³ brought under the Enterprise Act 2002

¹⁰⁴ Based on evidence received by BIS from a Trading Standards Service

¹⁰⁵ Consumer Law Review: Call for Evidence, page 42, Department for Business, Enterprise and Regulatory Reform (BERR), May 2008, <http://www.bis.gov.uk/files/file45196.pdf>

enforcement action for potential non-compliances. For the years ending March 2010 and 2011, the number of criminal and civil actions taken by Trading Standards Services are as follows:

Table 1: Formal enforcement actions by Trading Standards in England and Wales¹⁰⁶

Financial Year ending	Successful prosecutions notified to the OFT as required by the Enterprise Act	Civil investigations under the Enterprise Act recorded by the OFT
2010	1567	519
2011	1258	445

- 4.4. The business community supports the need for Trading Standards professionals to be able to present civil cases. The Confederation of British Industries' response to Consumer Law Review said:¹⁰⁷

"We recognise that rights of audience in county courts are critical in assisting [Trading Standards Services] to pursue civil cases more efficiently..."

- 4.5. Below is an example of the type of case that Trading Standards Services could potentially present in Court themselves.

Case study – Essex car-matching scam

Essex County Trading Standards Service received a large number of consumer complaints about a company which cold-called consumers who had advertised their cars for sale in a car magazine. The company told the consumers that they guaranteed to sell their car, claiming they had 2-3 buyers willing to buy it, or they would refund their £95 service fee. But the cars were not sold and consumers did not receive their refunds. Trading Standards obtained an Enforcement Order under the Enterprise Act 2002 against the Director of the company from the County Court for breach of a previous undertaking they had given.

- 4.6. Trading Standards professionals have indicated that they are interested in presenting cases in County Courts in England and Wales in relatively straight forward cases or uncontested cases. An informal survey of a range of Trading Standards Services carried out by the Department for Business, Innovation and Skills (BIS) in March 2011 indicated that 17 out of the 40 Trading Standards Services in England and Wales which responded presented their own cases in Magistrates' Courts at that time. But 30 out of the 40 Services¹⁰⁸ would be interested in their officers presenting cases in County Courts.

¹⁰⁶ Recorded on the OFT's Consumer Regulations Website (CRW)

¹⁰⁷ Consumer Law Review: Call for Evidence: Responses C-L, page 108, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file51998.pdf>

¹⁰⁸ 4 Scottish local authorities which responded were not in favour of seeking rights of audience for their officers

Proposal: To seek authority from an existing Approved Regulator for Trading Standards professionals to present civil cases

- 4.7. The Legal Services Board (LSB), which oversees lawyers in England and Wales,¹⁰⁹ considers applications made by bodies to become 'Approved Regulators.' So one Option could be for a Trading Standards body, perhaps the Trading Standards Institute (TSI), to apply to become a new Approved Regulator which could then award individual Trading Standards professionals approval to present cases in County Courts. However, there are considerable costs involved in setting up and maintaining a new Approved Regulator.¹¹⁰ As there is no existing organisation that can meet the requirements for Approved Regulator for Trading Standards professionals it would mean setting up a completely new body to become a new Approved Regulator. This could represent a disproportionate cost.
- 4.8. Alternatively, an existing Approved Regulator already approved by the LSB to authorise people to undertake reserved legal activities, such as presenting cases in civil courts could be used to authorise the necessary rights of audience. Such an Approved Regulator could apply to the LSB to change their regulatory arrangements to extend their membership to include Trading Standards professionals. The Approved Regulator would then be able to grant the right to Trading Standards professionals whom they have approved to present civil cases.¹¹¹
- 4.9. This would bring those Trading Standards professionals wishing to present cases in civil courts under the regulatory control of that Approved Regulator, which would include setting standards that officers must meet before being able to undertake this work and also the conduct of officers carrying out this work. This provides assurance that officers' competency is adequately monitored and effectively maintained by a respected and trusted Approved Regulator. For example, the achievement of Approved Regulator status by the Institute of Legal Executives (Ilex) for Associate Prosecutors may provide a useful model which could be applied to Trading Standards Services.

Case study - CPS Associate Prosecutors¹¹²

The Institute of Legal Executives achieved Approved Regulator status for litigation rights for Associate Prosecutors, enabling associate prosecutors in the Crown Prosecution Service (CPS) to exercise litigation and advocacy rights in the Magistrates Courts under the stewardship of the Approved Regulator. Associate Prosecutors are CPS employees who have been designated by the Director of Public Prosecutions to exercise the right to present cases and conduct litigation. Selection procedures have been put in place to select suitable candidates to undertake the Associate Prosecutor qualification, and details of the advocacy and litigation training scheme and assessments that trainee Associate Prosecutors must complete provide assurance of the competency of persons in carrying out the work.

¹⁰⁹ So the proposal here does not apply to Scotland and Northern Ireland due to differences in their laws

¹¹⁰ In addition, under the Legal Services Act, the Approved Regulator must separate its regulatory functions from any representative functions.

¹¹¹ under Part 3 of Schedule 4 to Legal Service Act 2007

¹¹² Ilex Professional standards,

http://www.ilex.org.uk/ips/ips_home/notice_board/ap_litigation_and_advocacy.aspx

- 4.10. Trading Standards professionals would need to have achieved significant Trading Standards experience and then undergo specific training in order to attain an appropriate level of competency to undertake this work. Courses could be accredited by the Approved Regulator and provided through a body, such as the Trading Standards Institute (TSI). Officers would also need to ensure their competencies were kept up to date through continual professional development.
- 4.11. We do not foresee that taking this Option forward would require any legislative changes, but is likely to require a further consultation by whichever Approved Regulator takes on this role. It will then be a matter for the Approved Regulator to determine the details of this change.
- 4.12. An alternative could be to introduce a statutory provision to give Trading Standards the authority to present cases in County Courts similar to that for criminal cases in Magistrates' Courts.¹¹³ The competency of Trading Standards professionals would still need to be addressed and assured, however, through some form of training and monitoring to the satisfaction of the courts. In the absence of such assurance, Trading Standards professionals may need to obtain a recognised formal qualification to demonstrate competency to undertake this work, otherwise there is a risk that Judges could refuse to hear officers on the basis of a perceived lack of competence. An example of a suitable qualification is the Ilex Legal Executive lawyer qualification which takes around 4 years to acquire through part-time study.
- 4.13. Although, in theory it might be possible to circumvent the requirements of the Legal Services Act through primary legislation in this way, this is considered highly undesirable as the Legal Services Act ensures balance between opening up legal services to competition and ensuring appropriate professional standards are maintained. The Government therefore, intends to proceed by inviting an existing 'Approved Regulator' to approve Trading Standards professionals' role in civil courts. This would provide appropriate assurance that the competency of Trading Standards professionals to present civil cases is adequately monitored and effectively maintained by a respected and trusted Approved Regulator. It also provides a cost effective model which is flexible to meet the differing needs of individual Trading Standards Services. This may be an area of work where expertise could be focussed in Trading Standards regional groups or lead local authorities, thereby reducing costs for individual Trading Standards Services.

Question 23: Do you agree that seeking accreditation of Trading Standards professionals from an existing Approved Regulator is the most appropriate way to enable Trading Standards to present civil cases in County Courts? If not, please give reasons.

Question 24: Are you content with our assessment that enabling Trading Standards professionals to present simple cases in County Courts will result in a net resource saving for those who wish to take up this option? Please provide any comments or evidence that could help refine our assessment.

¹¹³ see section 223 of the Local Government Act 1972

Chapter 5 – More flexible qualification and competency requirements

Key proposal

- Replace the statutory weights and measures qualification for Trading Standards professionals with a general competency requirement that ensures officers have suitable qualifications for all of the areas of regulation they enforce and that competency is maintained through continuous professional development.

Introduction

- 5.1. Trading Standards Services enforce a wide range of consumer law and it is clearly important that officers are suitably qualified and keep up to date with legal requirements. This ensures that businesses are assured that officers are able to adequately support and advise them on how they can comply with their legal obligations.
- 5.2. Currently the only statutory qualification requirement for Trading Standards professionals appears in the Weights and Measures Act 1985.¹¹⁴ The Act places a restriction on local authorities so that only those officers who hold this qualification can be appointed as weights and measures inspectors. The weights and measures qualification reflects the technical nature of weights and measures enforcement and provides assurance of officers' skills and knowledge in this area at the time of qualification. However, there is no equivalent statutory requirement for Trading Standards professionals to hold a qualification in relation to other consumer law they enforce.
- 5.3. In 2008 most respondents to the Consumer Law Review¹¹⁵ recognised that the weights and measures discipline is highly technical, so it is appropriate to test the necessary knowledge and skills. Also officers can be called upon as expert witnesses to give evidence on technical weights and measures matters. Therefore, it was argued, a statutory requirement for a qualification gives confidence to businesses and others that officers are trained to a certain standard. Some respondents also felt that the requirement for a qualification promotes consistency of enforcement.

¹¹⁴ As required by section 73(1) of the Weights and Measures Act 1985. The National Measurement Office (NMO), on behalf of the Secretary of State, and in conjunction with the Trading Standards Institute (TSI), holds the examinations and grants certificates of qualification to officers who pass these examinations

¹¹⁵ Consumer Law Review: Call for Evidence: Summary of Responses, pages 61, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.bis.gov.uk/files/file52071.pdf>

- 5.4. However, other respondents noted that once officers are qualified, there is no further statutory requirement for maintaining competency through re-testing.¹¹⁶ Other respondents pointed out that the requirement for officers to hold a particular qualification in one particular field can leave local authorities without the flexibility they need to fulfil the full range of enforcement responsibilities efficiently.¹¹⁷ In response to the Consumer Law Review, Trading Standards East Midlands commented:¹¹⁸

“TSEM does not see the necessity for a statutory qualification requirement for Inspectors of Weights and Measures when it is not required for other areas of consumer law. It would be preferable for local trading standards authorities to be required to employ competent officers. We believe that ‘competency’ should be defined in terms appropriate to each piece or group of legislation.”

- 5.5. This view was echoed in the TSI survey of the Association of Chief Trading Standards Officers in October 2011. 98% of respondents felt it would be of benefit to have a generic and core competency for all enforcement staff which would underpin specialist knowledge requirements. 38 respondents favoured flexible qualifications which are maintained across a broad competency framework, whereas 24 favoured maintaining the current system with the statutory weights and measures qualification but adding other qualifications relating to other law that officers enforce.
- 5.6. A good example of a less prescriptive competency requirement is found in the Health and Safety at Work etc Act 1974 in relation to the appointment of Health and Safety Inspectors. This enables enforcement bodies to appoint persons who have suitable qualifications as they think necessary to enforce the relevant legislation. This leaves it to the enforcement bodies to determine what qualifications are suitable for officers..¹¹⁹

Proposal: Replace the statutory weights and measures qualification with a generalised statutory competency requirement

- 5.7. The statutory weights and measures qualification would be replaced by a general statutory competency requirement which would include a requirement for officers to be suitably qualified and to maintain their competency over time. This statutory requirement could be fulfilled through the existing TSI qualification framework and Trading Standards Practitioner definitions¹²⁰ and the Local Better Regulation Office’s (LBRO) Common Approach to Regulatory Competence initiatives.¹²¹ This would provide assurance to

¹¹⁶ Consumer Law Review: Call for Evidence: Summary of Responses, pages 61-62, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.bis.gov.uk/files/file52071.pdf>

¹¹⁷ Consumer Law Review: Call for Evidence, page 44, Department for Business, Enterprise and Regulatory Reform (BERR), May 2008, <http://www.bis.gov.uk/files/file45196.pdf>

¹¹⁸ Consumer Law Review Responses S-Z, page 52, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file52000.pdf>

¹¹⁹ See section 19(1) of the Health and Safety at Work etc Act 1974

¹²⁰ The Trading Standards Institute is a professional membership association which represents trading standards professionals in the UK and overseas in local authorities, the business and consumer sectors and in central government, TSI’s Trading Standards Qualification Framework enables Trading Standards Services to ensure that its officers are appropriately qualified and possess the necessary competencies at the point of qualification, <http://www.tradingstandards.gov.uk/quals/tsqqualification.cfm>

¹²¹ Until 31 March 2012, LBRO is an executive non-departmental public body of the Department of Business, Innovation and Skills (BIS). The World Class Coalition Common Approach to Regulatory Competence was launched

businesses that officers maintain necessary knowledge and skills for all the areas of law they enforce. The existing statutory requirement under the Weights and Measures Act would be repealed.

- 5.8. The new statutory competency requirement would be backed up by a voluntary Code of Practice. The Code would be drawn up by BIS, the National Measurement Office, TSI and LBRO and other interested parties. It will set out the qualifications and competencies officers in Trading Standards Services should possess for the work they perform and how they can be assessed and maintained. Defining qualifications and competencies through a Code of Practice will provide assurance to businesses and signpost employers to a flexible tool and enable Trading Standards Services to benchmark their officers' skills and competencies. It will also enable local authorities more flexibility in resourcing and structuring their services, perhaps specialising in certain areas, and cooperating with neighbouring authorities, especially at a time of increased budgetary pressures.

Question 25: Do you agree that the prescriptive statutory qualification requirement for Trading Standards professionals should be replaced by a more generic competency requirement, backed up by a voluntary code of practice?

Question 26: Do you agree with our assessment that officers' competency standards can be maintained with a more flexible general qualification and competency requirement at the same or lower cost? Please provide any evidence that could help refine the assessment of costs and benefits.

Chapter 6 – Enabling competition in the calibration of measurement standards market

Key proposal

- To reduce costs to local authorities by opening up an alternative route for the calibration of Trading Standards measurement standards so that they can be tested by either the National Measurement Office (NMO) or any United Kingdom Accreditation Service (UKAS) accredited laboratory thereby allowing competition in calibration services at no cost to business.

Introduction

- 6.1. Consumers (and businesses acting as consumers) have no way of ascertaining the purported quantities of weight, volume or length of goods offered for sale, such as petrol and many food and household items, so it is important to ensure accuracy and consistency of measurement, ultimately enabling consumers to compare products for sale and make informed decisions. The requirements under weights and measures law aim to ensure that quantity information and measurements are accurate in order to protect consumers and law-abiding businesses from unfair competition, through for example, short measure goods.
- 6.2. Trading Standards Services enforce weights and measures legislation using standard weights and measures ('working standards') to inspect and verify the accuracy of measuring instruments businesses use for trade (for example, petrol pumps, water meters, weighbridges etc). These working standards need to be sufficiently accurate and traceable back to national standards in order for their checks to have the confidence of business and the metrology community. Trading Standards Services are also responsible for maintaining 'local standards' that are in turn used to check working standards.
- 6.3. The Weights and Measures Act 1985 requires that Trading Standards Services must use the National Measurement Office (NMO),¹²² to calibrate their standards. This provides no flexibility for any alternative, equally efficient and potentially cheaper routes for calibration. Another calibration route in the UK (but not for these statutory weights and measures purposes) is through independent laboratories accredited by the United Kingdom Accreditation Service (UKAS), but the two different systems have different re-

¹²² acting on behalf of the Secretary of State

calibration requirements and this increases costs for those Trading Standards Services that wish to maintain local standards under the two systems.

- 6.4. Feedback from some Trading Standards professionals in 2008¹²³ was that a better, slightly deregulated model for calibration and traceability of standards would be desirable to potentially reduce the costs involved in maintaining standards to the two different routes. Whilst, this view was not universal, in a shared services environment, where Trading Standards activities are coordinated around a region, the greater flexibility of deregulation is appealing.

Proposal: An alternative mechanism for calibration of measurement standards

- 6.5. This proposal is to modernise the current system by removing the unnecessarily prescriptive calibration requirements. This would open up the calibration of measurement standards market to allow competition by providing another calibration route for legal standards through UKAS or equivalent accredited laboratories while still maintaining the existing route through NMO as an alternative. The NMO would maintain the capability to calibrate the standards in the event that no accredited laboratories offer the service.
- 6.6. This will benefit those who need their standards calibrated. The UKAS system and the legal system would no longer be in conflict with each other and the need for some authorities to seek calibration from both bodies would be removed. It would therefore provide flexibility and future-proofing for any developments in the science of metrology in the future. There will be no cost to business but an opportunity for business to enter the market if they choose.

Question 27: Do you agree that the Weights and Measures Act should be amended to enable competition in the calibration of local authorities' standards? We welcome comments on any potential impacts on the accuracy of standards or business confidence in the measurement system.

Question 28: What further changes are desirable to manage the calibration of standards in future?

Question 29: Can you identify and estimate any savings or costs arising from the proposal to enable competition in the calibration of measurement standards?

¹²³ to the NMO's 'reform project'

Annex 1: Glossary of terms

ACTSO	Association of Chief Trading Standards Officers
AFI	Accredited Financial Investigator
BIS	Department for Business, Innovation and Skills
CAA	Civil Aviation Authority
CPC	EU Consumer Protection Cooperation Regulation
CPRs	Consumer Protection from Unfair Trading Regulations 2008
DETI	Department for Enterprise, Trade and Industry in Northern Ireland
DHSSPS	Department of Health, Social Services and Public Safety in Northern Ireland
GPSR	General Product Safety Regulations 2005
FCA	Financial Conduct Authority
FSA	Financial Services Authority
HSE	Health and Safety Executive
IPS	Ilex Professional Standards
LBRO	Local Better Regulation Office
LGA	Local Government Act 1972
LSB	Legal Services Board
MHRA	Medicines and Healthcare Regulatory Authority
NAO	National Audit Office
NMO	National Measurement Office
NPIA	National Police Improvement Agency
Ofcom	Office of Communications
OFT	Office of Fair Trading
POCA	Proceeds of Crime Act 2002
TSI	Trading Standards Institute
TSS	Trading Standards Services
UKAS	United Kingdom Accreditation Service

Annex 2: List of individuals and organisations consulted

Assay Offices

Association of Chief Trading Standards Officers

Association of District Judges

British Hallmarking Council

British Chambers of Commerce

British Retail Consortium

Chief Environmental Health Officers group in Northern Ireland

Citizens Advice

Civil Aviation Authority

Confederation of British Industry

Consumer Council for Northern Ireland

Consumer Focus

Convention of Scottish Local Authorities

Council of HM Judges

Department of Enterprise, Trade and Investment in Northern Ireland

Department of Health, Social Services and Public Safety in Northern Ireland

Financial Services Authority

Federation of Small Businesses

Health and Safety Executive

Intellectual Property Office

Illex Professional Standards

Legal Services Board

Local Government Association

Lord Chief Justice's Office

Magistrates' Association

Medicines and Healthcare Regulatory Authority

National Association of Estate Agents

National Federation of Property Professionals

National Measurement Office

Office of Communications

Office of Fair Trading

Office of the Master of the Rolls

Ombudsman Services: Property

PhonepayPlus

Society of Chief Officers of Trading Standards in Scotland

Solicitors Regulatory Authority

Trading Standards Institute

Trading Standards Institute Business Members Group

The Property Ombudsman

The Royal Institution of Chartered Surveyors

Welsh Heads of Trading Standards

Annex 3: Impact Assessments of Consultation

The Impact Assessments accompanying this consultation document can be obtained at the following url: <http://www.bis.gov.uk/policies/consumer-issues/consumer-rights/consumer-law-enforcement-powers>

Annex 4: The Consultation Code of Practice Criteria

Formal consultation should take place at a stage when there is scope to influence policy outcome.

Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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