

# Annual Report and Resource Accounts 2009-10

## Annexe J

**Simplification and Burden Minimisation Plan 2010 – A summary of better regulation compliance measures carried out by the OFT in 2009-10 and planned measures for 2010-11**

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### 1 INTRODUCTION

1.1 The table in Part 2 of this annexe sets out:

- The actions that the OFT has undertaken during 2009-10 to meet its better regulation obligations generally, and particularly to comply with the requirement under Part 4 of the Regulatory Enforcement and Sanctions Act 2008 (RES Act), voluntarily accepted by OFT, to keep performance of its *regulatory functions* under review and secure that they do not impose or maintain unnecessary burdens on business, and
- The actions that the OFT intends to carry out in 2010-11 to continue to meet those obligations.

1.2 The OFT's *regulatory functions* are: consumer enforcement, consumer credit licensing, and anti-money laundering supervision<sup>1</sup>.

1.3 Part 3 of this annexe includes a summary of some of the further measures that the OFT has taken to continue to address the better regulation agenda more generally, in relation to its non-regulatory work.

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<sup>1</sup> For a detailed analysis of which of the OFT's functions do and do not fall within the scope of 'regulatory functions' as defined by Part 4 of the RES Act, see Chapter 2 of the OFT 'Simplification Plan' (OFT1067), March 2009, [http://www.of.gov.uk/shared\\_of/529862/oft1067.pdf](http://www.of.gov.uk/shared_of/529862/oft1067.pdf)

## 2 TABLE OF SIMPLIFICATION AND BURDEN MINIMISATION MEASURES

OVERARCHING INITIATIVES				
Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
1	Transparency	To provide better information about the work we do, what we are doing, how long it is likely to take, and how we will engage with stakeholders so as to minimise burdens and increase our accountability.	During 2009, we consulted on proposals for improving the OFT's transparency. This was the latest stage in a project begun in 2008. During the consultation, we met a number of interested organisations to hear their views. Taking into account the responses, we have developed our approach to engagement and transparency in relation to certain areas of our enforcement and project work. Details of our work to improve our transparency can be found at: <a href="http://www.offt.gov.uk/about/transparency">www.offt.gov.uk/about/transparency</a>	We will publish a statement outlining our commitments to those involved in our work. The statement sets out what information we will provide throughout the life of a case or project and how we will engage with them. The commitments made in the statement will be fully implemented in summer 2010. We will also consider the focus of the next phase of our transparency work.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
2	Evaluation	To evaluate whether the OFT delivers its objectives proportionately to costs and burdens, and to help the OFT target and follow up its work to maximise benefit to consumers.	<p>In 2009-10, we evaluated the impact of a range of our interventions, including consumer enforcement interventions, consumer credit interventions, competition advocacy work and (in compliance with our CSR commitment to evaluate one market study per year) the 2003 market study on restrictions of entry in the pharmacy sector.</p> <p>These in-depth ex-post evaluations assess the impact resulting from our interventions and consider, when appropriate, the impact on businesses. By helping us to gain a better understanding of the impact of our interventions on markets, they also inform our future work and how it is conducted.</p> <p>Full details are set out under 'Evaluation' in the 'Improving the way we work' section of our Annual Report 2009-10. We also publish the outcomes of our evaluations on our website at:  <a href="http://www.offt.gov.uk/advice_and_resources/resource_base/evaluation/">http://www.offt.gov.uk/advice_and_resources/resource_base/evaluation/</a></p>	We will continue to conduct in depth evaluations – including, amongst others, one market study and OFT consumer campaign.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
3	Stakeholder engagement	To increase mutual understanding between the OFT and businesses, consumers and other stakeholders, and in particular to hear any concerns about unnecessary burdens.	<p>We continued to be more systematic in our engagement with the organisations that have an ongoing interest in our work. We maintained dialogue with business groups, including through regular high-level meetings to discuss policy, compliance and other areas of common interest. The Chairman, Chief Executive and senior directors addressed specific business audiences including the Trade Association Forum, Industry Forum and Scottish Council for Development and Industry. In November 2009, we set up a Competition Compliance Business Working Group which brought together OFT officials with representatives from the CBI, Institute of Directors, Trade Association Forum and Federation Small Businesses to explore ways of improving business compliance with competition law. To support this work we conducted an extensive survey of the business community to gain insight and help shape our thinking and next steps. We continued to liaise closely with consumer groups including Which?, Citizens Advice and Consumer Focus on a wide range of issues from campaigning activities and market studies through to our shared concerns about the effect on vulnerable consumers of the economic downturn.</p> <p>Further details of our stakeholder engagement work are set out in our Annual Report 2009-10, particularly in the "Improving the way we work" section.</p>	<p>We will continue our dialogue with business organisations on areas of mutual interest and will consider a range of speaking and engagement opportunities. The Competition Compliance Business Working Group will consider how to take our communications around competition compliance forward. We will also continue to work closely with consumer groups particularly in relation to our consumer-facing work.</p> <p>We have improved our engagement with stakeholders at a project level, and will continue to ensure that those interested in, or effected by, our work are, where possible, given an opportunity to be involved. Following the publication of our transparency statement, we will implement our proposals from July 2010 and also embark on 'stage 2' of the project. We will continue to work with the Competition Commission and other regulators to ensure the effective operation of the competition and consumer regimes.</p>

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
4	Prioritisation	To ensure that we make appropriate decisions about which projects and programmes of work we undertake across all areas of our responsibility, so as to target our work effectively in terms of real outcomes for UK consumers.	Our Prioritisation Principles were published in October 2008 (see <a href="http://www.offt.gov.uk/shared_offt/about_offt/oft953.pdf">www.offt.gov.uk/shared_offt/about_offt/oft953.pdf</a> ). Since then we have focused on ensuring the principles are understood and interpreted consistently throughout the organisation. We held a stock take on how we make prioritisation decisions with our Board in September 2009, and undertook an internal audit on decision making in February 2010.	A full review of the prioritisation principles is scheduled for October 2010, two years after their publication.
5	Impact estimation and monitoring	To provide estimates of the likely impact of prospective interventions, including burdens on business, so as to inform prioritisation decisions and ensure that interventions are risk-based and well-targeted.	<p>We continued to support project teams on estimating and monitoring the impact of our work. During initial prioritisation, we estimate the likely impact of intervention, with the estimates updated in the course of the project and after completion. As part of impact estimation, teams are advised to consider the impact of any intervention on businesses.</p> <p>In 2009, we published a monitoring report on the 2007 Internet Shopping market study.</p> <p>Full details are set out under 'Evaluation' in the 'Improving the way we work' section of our Annual Report 2009-10. We also publish the outcomes of our evaluations on our website at: <a href="http://www.offt.gov.uk/advice_and_resources/resource_base/evaluation/">http://www.offt.gov.uk/advice_and_resources/resource_base/evaluation/</a></p>	We will continue to embed impact estimation across the organisation and, following the suggestions made by Prof. Davies in his independent review, further refine our impact estimation methodologies.

<b>CONSUMER ENFORCEMENT</b>				
<b>Item</b>	<b>Work area</b>	<b>Relevant objectives</b>	<b>Actions in 2009-10</b>	<b>Proposed actions in 2010-11</b>
6	Market-wide, targeted analysis of consumer problems	To facilitate better targeting of, and more consistent, consumer enforcement action.	In 2009 the Consumer Market Group was born out of the previous Consumer Protection Group. A focus of the group is efficient delivery of high impact, targeted work. To achieve this, we added market studies to the toolkit. Market studies involve an investigation into areas that do not appear to be working well for consumers. They can either be sector specific or look at issues that cut across markets. They help us to identify and understand the causes of consumer detriment and to identify appropriate remedies. This helps ensure that any subsequent action that we take is effectively targeted at the consumer harm and that action is taken consistently across a market rather than being aimed only at some individual firms. In some cases, there may be no need to precede enforcement action by a market study but, even in these cases, where appropriate, we may take action across an industry, rather than targeting only individual firms. In 2009-10, we completed a market study into second hand cars. Full details of the second hand cars market study and its outcomes are set out in the 'Market Studies' section of the OFT Annual Report 2009-10.	We will continue to use market studies to help us take targeted and consistent enforcement action. We will complete market studies into advertising of prices, online targeting of advertising and prices, and consumer contracts. We will also investigate the use of 'exit fees' across the retirement home sector.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
7	e-consumer protection	To facilitate more consistent consumer protection and greater transparency amongst enforcers and stakeholders in relation to the protection of consumers using the internet	We launched the development of an e-consumer protection strategy. We began dialogue with stakeholders and assembled a cross agency working group.	We will publish a draft e-consumer protection strategy for public consultation. We will hold consultation events with key stakeholder groups (businesses, business associations, consumer bodies and consumers, other enforcers and other government agencies). We will publish the final e-consumer protection strategy.
8	Civil Sanctions Pilot	To facilitate increasingly proportionate action by allowing access to alternatives to prosecution, including where appropriate informally encouraging compensation payments.	BIS have announced plans to run compensation pilots from Autumn 2010/Spring 2011. We are continuing to consider participation alongside 10 Trading Standards Services. The Pilot would give OFT access to the new administrative civil sanctions in Part 3 of the Regulatory Enforcement and Sanctions Act, including Stop Notices, monetary penalties, enforcement undertakings and discretionary remedies as an alternative to criminal sanctions and under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).	We will respond publicly to the Civil Sanctions Pilot consultation which BIS published on 5 March. We expect to work with Local Better Regulation Office in partnership with Trading Standards Services and contribute to work on Guidance relating to the pilot.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
9	Guidance for second-hand car dealers	To facilitate consistency of action (between OFT and TSS and among TSS) and to help improve businesses understanding of CPRs applicability to the sector, thus potentially lowering their legal costs	We are publishing guidance for second-hand car dealers on compliance with the CPRs and Sale of Goods Act. We launched a public consultation on draft guidance in December 2009, running until 12 March 2010.	We aim to publish the final guidance in Spring 2010.
10	Consumer protection enforcement principles	To ensure that the OFT's consumer protection enforcement complies with the principles of better regulation and the Regulators' Compliance Code, and does not impose unnecessary burdens on business	We have undertaken to review our statement of consumer protection enforcement principles on an annual basis. We reviewed the principles and published a revised version reflecting our current practices in March 2010. The statement is available at: <a href="http://www.offt.gov.uk/shared_offt/reports/consumer_protection/OFT1221">http://www.offt.gov.uk/shared_offt/reports/consumer_protection/OFT1221</a>	We will continue to review the principles on an annual basis, consulting with stakeholders to ensure that the principles and our enforcement practice are fully in line with our better regulation obligations.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
11	Estate agency regulation	To help estate agents to comply with the requirements of the Estate Agents Act 1979 through advice and published guidance and to monitor compliance, with a view to taking proportionate enforcement action if necessary in line with the principles of better regulation and the Regulators' Compliance Code.	We undertook a market study into how homes are bought and sold that included an assessment of the enforcement and self regulatory regime. The study recommended we work to 'improve co-ordination between Trading Standards, OFT and the Ombudsmen to achieve a targeted response to complaints about estate agents which raise serious concerns'. The study also concluded that there wasn't a strong case for introducing more regulatory structures and rules in this sector.	We will work with Trading Standards Services, redress providers and industry to implement the recommendations of the market study.
12	Use of intelligence	To improve overall outcomes of work carried out by the OFT (and, where possible, its enforcement partners such as TSS) by increasing the use of intelligence to ensure that interventions are risk-based and well-targeted.	We implemented an intelligence management database that allows OFT and Trading Standards Services (TSS) to collate, analyse and share intelligence on fair trading issues. The database is open to all TSS in the UK as well as the OFT and will enable more effective processing of intelligence to identify and target serious issues that affect consumers. We also negotiated with the Association of Chief Police Officers to allow TSS direct access to the Police National Computer, which will provide TSS with quick and accurate intelligence on criminal activity. This follows a successful pilot in the Southwest region run by Bristol City Council.	We will continue to roll out of the intelligence management database to all TSS across the UK and implement access to the Police National Computer across all TSS regions.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
13	Compliance partnerships	To maximise compliance with the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Business Protection from Misleading Marketing Regulations 2008 (BPRs) through means other than formal enforcement action.	We prepared a set of principles to apply when working with compliance partners to maximise compliance with the CPRs and BPRs. Our Compliance Partners have tried and tested systems for dealing with non-compliance and include self-regulatory bodies, statutory enforcers, industry funded self-regulatory and co-regulatory bodies, code scheme operators (OFT approved and non-OFT approved), trade and business associations. This approach fits within the context of our wider consumer protection enforcement principles. The adoption of a risk-based approach allows the OFT and our partners to apply the principles of proportionality and to make the best use of resources through a mix of incentives, support and enforcement. The principles we will apply in working with compliance partners are set out at: <a href="http://www.ofc.gov.uk/shared_ofc/consultations/OFT1043resp.pdf">http://www.ofc.gov.uk/shared_ofc/consultations/OFT1043resp.pdf</a>	We will apply the principles when dealing with cases, adopting a risk-based approach that allows the OFT and our partners to apply the principles of proportionality and to make the best use of resources through a mix of incentives, support and enforcement.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
14	Self-regulation	To promote and safeguard consumers' interests without resort to formal enforcement mechanisms, by helping them identify traders who promise to treat them fairly and to encourage businesses to improve their levels of customer service beyond the basic requirements of consumer law.	<p>We published a policy statement which explained how we consider opportunities for working with self-regulatory mechanisms – including understanding the benefits, the risks and the potential effectiveness of individual schemes – and introduced new tools for the analysis of self-regulatory solutions. Our policy statement was informed by the perspectives of a range of external stakeholders following the publication of a policy discussion document and a paper on the economics principles behind self regulation in March 2009, along with a major 'Business Leadership in Consumer Protection' conference which we hosted in March 2009. The self-regulation policy statement is available at: <a href="http://www.offt.gov.uk/shared_offt/reports/consumer-policy/oft1115.pdf">http://www.offt.gov.uk/shared_offt/reports/consumer-policy/oft1115.pdf</a></p> <p>We also agreed a 3-5 year promotional strategy that sets out how we will work in partnership with Code Sponsors to raise awareness of the Codes in the sectors in which they operate.</p> <p>Details of codes of practice that have achieved approval under the OFT Consumer Codes Approval Scheme are set out on the OFT website at: <a href="http://www.offt.gov.uk/OFTwork/ccas/">http://www.offt.gov.uk/OFTwork/ccas/</a></p>	We will continue to engage with self-regulation where possible to resolve consumer problems and increase compliance with the law, including through the Consumer Codes Approval Scheme. Promotion of the Scheme will continue, primarily working with the trade bodies in the sectors that have OFT approval of their code. A new consumer code portal will be launched on the OFT website in May.

Item	Work area	Relevant objectives	Actions in 2009-10	Proposed actions in 2010-11
15	Consumer education campaigns	To enable consumers to better protect their consumer interests and thereby improve consumer welfare generally without resort to formal enforcement action.	We ran a number of campaigns to raise consumer awareness on a variety of different issues and to help consumers build lifelong consumer skills. The campaigns were carried out in partnership with organisations such as local authority Trading Standards Services and Consumer Direct. Further details of key campaigns are set out in the 'Campaigns and Education' section of the OFT Annual Report 2009-10.	We will continue to run consumer education and awareness campaigns. Further details can be found at: <a href="http://www.offt.gov.uk/OFTwork/consumer-protection/campaign-strategies-10-11/">http://www.offt.gov.uk/OFTwork/consumer-protection/campaign-strategies-10-11/</a>

<b>CONSUMER CREDIT LICENSING</b>				
<b>Item</b>	<b>Work area</b>	<b>Relevant objectives</b>	<b>Item</b>	<b>Work area</b>
16	Consumer credit stakeholder strategy	To increase the quality of dialogue between the OFT's credit group and stakeholders to aid transparency, enhance compliance with the Consumer Credit Act and improve the intelligence to facilitate better targeting of enforcement.	We prepared a stakeholder management plan for coordinated engagement with stakeholders across the credit group.	We will implement the recommendations arising from stakeholder management plan. Credit staff will continue to present at industry events and ensure key regulatory impacts to maximise compliance with the credit regime. Strong links will be maintained with LACORS and TSS through the Trading Standards Partnership Team and the local exchanges that underpin credit competence visits.
17	Extension of online application facilities	To reduce administrative burdens on businesses by enabling them to complete the full application for a consumer credit licence online.	The full application process was made available online with effect from 29 December 2009. While the Services Directive does not apply to consumer credit, we have nonetheless determined to comply with its provisions to improve accessibility for those requiring to be licensed.	We are studying, and will introduce as cost beneficial, a further set of revisions specifically geared to improving the on-line experience of applicants, reducing their costs in providing, and OFT costs in recording, essential information for determining fitness. This will be accompanied by major changes to OFT website material for licence applicants.

Item	Work area	Relevant objectives	Item	Work area
18	Providing guidance on consumer credit issues	To provide clarity to stakeholders and facilitate improvements in the consumer credit sector	<p>We published guidance setting out practices that we consider constitute irresponsible lending. Publication of the guidance followed a consultation exercise which attracted a large number of responses. The guidance can be found at:  <a href="http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1107.pdf">http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1107.pdf</a></p> <p>We published guidance for the second charge lending industry. The guidance sets out the minimum standards we expect from businesses engaged in such lending. It covers the whole lending process from advertising and selling techniques, customer care, contractual terms and conditions, to practices around managing arrears or defaults. The guidance is available at:  <a href="http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1105.pdf">http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft1105.pdf</a></p> <p>We published draft guidance for consumers and industry on the application of sections of the Consumer Credit Act that allow consumers to request information about their credit agreements. The guidance is to help address concerns that some debtors are being misled into thinking that these sections can be used to get their debts written off and that some creditors are not following legal obligations to provide information to customers. The draft guidance consists of a document setting out the technical legal issues for businesses and consumer advisers, and a simpler version for consumers. The consultation concluded in April 2010.</p>	<p>We will publish finalised guidance on the application of sections of the Consumer Credit Act that allow consumers to request information about their credit agreements.</p> <p>Continuing improvements will be made to the consumer credit pages of the OFT website.</p>

ANTI-MONEY LAUNDERING				
Item	Work area	Relevant objectives	Item	Work area
19	Anti-money laundering (AML) regulations	To assist the OFT's supervised businesses to comply with requirements through advice and published guidance and to monitor compliance and take proportionate enforcement action in the event of non-compliance in line with the Regulators' Compliance Code and the principles of better regulation.	In launching registration in July 2009, we published guidance for businesses (in hard copy and on the OFT website) on the registration form and the registration scheme. We also operated a dedicated AML Helpline and email address for individual queries on registration. We published Enforcement Principles covering our role in supervising business. In February 2010, we launched a consultation on our future approach to supervision. The consultation – which covered identifying those who have not registered with us, monitoring and enforcement, penalties, and future fee structures – gave firms that fall under our supervision the opportunity to have their say on the best way for us to meet the obligations set out in the Regulations. The consultation is available at: <a href="http://www.oft.gov.uk/shared_oft/consultations/oft1157con.pdf">http://www.oft.gov.uk/shared_oft/consultations/oft1157con.pdf</a>	We will finalise our supervisory approach in the light of consultation responses. We will publish a summary of the responses as well as our response to the consultation. As part of finalising our future approach to supervision we will publish an enforcement policy as well as policies on penalties and on inspection visits. We will also review our guidance on the Regulations and update as necessary.

### **3 THE OFT'S NON-REGULATORY CONTRIBUTION TO SIMPLIFICATION**

3.1 The following measures were undertaken in the course of the OFT's work during 2009-10 that does not fall within the definition of regulatory functions for the purposes of better regulation legislation (see footnote 1 above). They therefore cannot be seen as meeting any statutory obligation in that connection. However, they are properly understood as reflecting OFT's broad commitment to the principles of good regulation.

- Guidance containing advice and information for businesses was published in relation to:
  - Private litigation in competition cases
  - Mergers
  - Second charge lending
  - Irresponsible lending
- Draft guidance containing advice and information for businesses was published for consultation in relation to market studies.
- A pilot was begun of a new short-form opinion tool to provide guidance to businesses and policy makers on novel or unresolved questions about the application of competition law to prospective collaborative conduct.
- A series of presentations were made to people operating in the construction sector to aid their understanding of competition law.
- Competition case procedures were reviewed with the aim of streamlining cases while respecting parties' rights of defence.

3.2 Further details of each of these measures are included in the main body of the OFT Annual Report 2009-10.