

Consumer reforms

A consultation paper

August 2002

Part of a series of consultation papers about how the provisions of the Enterprise Bill will work in practice

OFT502

Date: 16 August 2002

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ENTERPRISE BILL 2002: Public Consultation on Consumer Reforms Guidance

The Office of Fair Trading (OFT) is conducting a public consultation on the guidance it is required to publish about the reforms to consumer protection legislation once the Enterprise Bill becomes law. A copy of the proposed guidance is enclosed and can also be found on the OFT's website, www.oft.gov.uk. The introduction to the consultation draft is available in Welsh.

Details about the Enterprise Bill, including an explanatory note, can be found on the Department of Trade and Industry's website www.dti.gov.uk/enterprisebill

The Enterprise Bill remains subject to parliamentary debate and approval. This draft guidance reflects the content and clause numbering of the Bill as at 19 June. The OFT will publish the finalised guidance after the Bill receives Royal Assent and becomes the Enterprise Act 2002.

The aim of Part 8 of the Enterprise Bill is to create a more consistent enforcement regime, replacing Part III of the Fair Trading Act 1973 and the Stop Now Orders (EC Directive) Regulations 2001 in relation to the United Kingdom. This will improve consumer protection by giving enforcers strengthened powers to obtain court orders against businesses that fail to comply with their legal obligations to consumers. The proposed guidance sets out the impact of the Part 8 reforms on consumer protection legislation and the OFT's general approach to enforcement.

Consumer bodies and representatives of business are being invited to comment on the proposed guidance in order to improve its clarity. Respondents to this consultation are asked to supply a brief summary of the people and organisations they represent, where



appropriate. We are open to suggestions of other individuals or organisations about who should be consulted.

We will be taking queries by phone, but any suggested changes or comments should be submitted in writing (by letter or email as indicated below). We will reply to all written submissions or queries. The OFT can only consider suggested changes to the guidance, not the underpinning legislation, as the latter is a matter for Parliament and not covered by the consultation exercise. Responses may be made public unless confidentiality is specifically requested.

This consultation exercise will last for 13 weeks. The OFT therefore asks that your comments on the proposed guidance are submitted to it no later than the 15 November 2002. It may not be possible to take into account any suggested changes or comments after the deadline for receipt.

Enterprise Bill Part 8 Consultation Team

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Further copies

Further copies of this paper can be downloaded from our web site at www.offt.gov.uk/news/consultations/reforms.htm

OFT publications order line

OFT information leaflets can be ordered free of charge on 0870 6060321.

Information on the internet

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1 INTRODUCTION

- 1.1 This guidance refers to Part 8 of the Enterprise Bill. It deals with new procedures for consumer protection legislation. It will apply throughout the UK.
- 1.2 The Bill itself is not the subject of this consultation document. This document explains the consumer protection provisions and the way in which the OFT plans to enforce them. The guidance also explains how the various enforcers and other interested parties empowered under the Bill can work together in the most effective way.
- 1.3 Details about the Enterprise Bill, including an explanatory note and the latest version of the Bill, can be found free of charge via the Department of Trade and Industry's (DTI) website, www.dti.gov.uk/enterprisebill. Copies of the Bill can also be bought from Her Majesty's Stationery Office.
- 1.4 The Enterprise Bill remains subject to parliamentary debate and approval. This draft guidance reflects the content and clause numbering of the Bill as at 19 June 2002. The OFT will publish the finalised guidance after the Bill receives Royal Assent.
- 1.5 The Office of Fair Trading (OFT) is required under [clause 224] of the Enterprise Bill to issue guidance explaining the consumer protection provisions of the Bill once it becomes law. It also requires the OFT to consult those affected by the provisions when such guidance is being prepared. This consultation exercise fulfils that requirement. It is being carried out in line with the requirements of the Cabinet Office Code of Practice on Written Consultation. The consultation criteria are on page 44 of this document.

1.6 A copy of the proposed guidance, including a summary, is enclosed. A copy of this consultation can also be found on OFT's website, www.offt.gov.uk. The introduction to the consultation draft is available in Welsh.

1.7 The final guidance will fall into three parts: a summary, the main guidance, and an annexe. The annexe will provide a brief summary of the legislation that will be specified in the relevant Statutory Instrument following Royal Assent.

1.8 This consultation is directed at:

- business and its representatives
- consumer organisations, and
- enforcers.

A list of the organisations we are consulting can be found at Annexe A (page 39). All responses, from whatever source, will be very welcome. We recognise that consultation takes time but responses will help us to deliver a more co-ordinated and effective regime, with greater benefits for the protection of consumers.

1.9 To help focus on the key issues a short series of questions are on page 4. It will be very helpful to us if your answers are specifically related to those questions and, where relevant, to the paragraph numbers in the draft guidance. If you are replying as a representative of others, please explain briefly in your reply who they are.

1.10 Just over three months have been set aside for you to consider the draft and respond before the deadline of 15 November 2002.

1.11 On page 5 you will find the names and contact details of two people in the OFT. One will receive responses and deal with enquiries about the

content of this document. The other is the consultation co-ordinator who has been appointed to ensure that the process is carried out in line with the Cabinet Office Code of Practice on Written Consultation. Comments about the consultation process should be directed to him.

- 1.12 All responses will be analysed, and a summary of them will be published. Individual responses may also be made available. If you wish your comments to remain confidential you should make that clear in your response.
- 1.13 Subject to Parliamentary approval of the Bill, we aim to issue the final guidance and the summary of responses at least twelve weeks before the reforms are implemented. If significant amendments occur during the Bill's passage through Parliament or new options or ideas emerge from the consultation process, we may consult again on those specific issues.
- 1.14 We hope that you will play a full part in this consultation exercise and look forward to receiving your views.

The closing date for responses is 15 November 2002.

The address for responses is on page 5.

2 KEY QUESTIONS

- 2.1 Does the draft guidance provide a clear and adequate explanation of the law and the way the OFT and other enforcers will seek to enforce it?
- 2.2 Is the procedure for the consultation periods with traders sufficiently explained?
- 2.3 Is the proposed mechanism for applying the law appropriate and proportionate?
- 2.4 Could the co-ordination arrangements to ensure consistency and the avoidance of duplication be improved? If so, how might that be done?
- 2.5 Should we do more to explain the draft guidance? Can you identify, for example, conferences, seminars or other similar events that might be helpful in this respect?
- 2.6 Is there anything you can suggest to help business become more aware of, and work with, this guidance? If so, what is it?
- 2.7 Is the guidance written in clear and unambiguous language? Does it provide sufficient detail?
- 2.8 Are there any other comments you wish to make?

3 CONTACTS AT THE OFT

Day-to-day contact for assistance with responding to this consultation paper, and the person to whom responses should be sent by **15 November 2002**:

Ms Charlotte Brain
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Consultation co-ordinator, to whom any observations or complaints about the process should be addressed:

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A full copy of the consultation document can be found on the OFT website at www.oft.gov.uk. The Act can be obtained as described in paragraph 1.3.

Closing date for responses is 15 November 2002. If you think you will require extra time please advise us promptly, explaining why.

4 SUMMARY OF THE ENFORCEMENT APPROACH

- 4.1 It should be noted that this guidance is not a substitute for the Enterprise Bill Part 8 and should be read in conjunction with it. It should not be regarded as a definitive interpretation of the provisions.

NOTE: The Enterprise Bill is currently before Parliament and remains subject to debate and approval. This guidance reflects the content and clause numbering of the Bill as at 19 June 2002.

What is the impact of the Enterprise Bill on consumer protection legislation?

- 4.2 Part 8 of the Enterprise Bill improves consumer protection by giving enforcers strengthened powers to obtain court orders against businesses who do not comply with their legal obligations to consumers. Part 8 will replace Part III of the Fair Trading Act 1973 (FTA 1973) and the Stop Now Orders (EC Directive) Regulations 2001 (the Stop Now Regulations) in relation to the UK. This reform will, in effect, introduce a more consistent enforcement structure. Orders obtained under Part 8 will be called 'Enforcement Orders'.
- 4.3 Part III of the FTA 1973 was introduced to deal with traders who do not comply with legislation and operate their business in a manner that is unfair and detrimental to the interests of consumers. Under Part III of the FTA 1973 the Director General of Fair Trading (the DG) can apply for an order requiring the trader to cease the activity that is detrimental to consumers. However, it has been widely recognised that the Part III enforcement regime is flawed and burdensome. Some improvement to the powers provided by Part III was made by the introduction of the Stop Now Regulations.

- 4.4 The Stop Now Regulations came into force on 1 June 2001 to provide a stronger mechanism for enforcing some of the existing consumer protection legislation. They provide the OFT and certain specified bodies, known as Qualified Entities¹, with a speedier means of acting against businesses in the UK and in the EU for breaches of certain specified consumer protection laws. The Stop Now Regulations provide for a mandatory consultation period with the trader and the removal of some of the burdensome aspects of Part III; for example, the need to show persistence in a course of conduct and to use best endeavours to secure compliance. However, the Stop Now Regulations only apply to the UK legislation implementing those European Directives specified in the Injunctions Directive. (The Directives listed in the Injunctions Directive can be found at http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just09_en.pdf)
- 4.5 Under the Stop Now Regulations, the OFT and the Qualified Entities are able to secure undertakings from, or take injunctive action against, traders who break the law where the collective interests of consumers are harmed. UK Qualified Entities are authorised to bring proceedings in the UK and in other member states. Qualified Entities from other member states can bring proceedings in the UK courts.
- 4.6 The Government has recognised that the co-existence of the Stop Now Regulations with Part III of the FTA 1973 has resulted in the creation of two separate enforcement regimes aimed at rectifying similar conduct by similar traders. Part 8 of the Enterprise Bill simplifies this structure by establishing a more consistent enforcement regime. This will enable injunctive action to be taken against traders who infringe a wider range of consumer protection legislation.

¹ UK Qualified Entities under the Stop Now Regulations are, in addition to the OFT, statutory regulators and the Trading Standards Service

What is the scope of Part 8 of the Enterprise Bill?

4.7 Under Part 8 of the Enterprise Bill, breaches of certain legislation are classed as two types of infringement:

- a domestic infringement, or
- a Community infringement.

Domestic infringements relate to breaches of potentially a wider range of UK law which will be specified in a Statutory Instrument to be made under the Enterprise Act. Community infringements are activities that breach legislation implementing the European Directives listed in Schedule 13 to the Bill. (The same list of Directives as contained in the Injunctions Directive.) The Secretary of State has the power to specify by Order the areas of UK law that fall within the scope of a Community infringement.

The OFT's role

4.8 Part 8 of the Enterprise Bill gives the OFT lead enforcement responsibility for action taken in respect of either type of infringement, including the responsibility for the co-ordination of action by all enforcers. The OFT is also required to publish advice and information on how the consumer protection elements of the Enterprise Bill will work.

Who are the enforcers?

4.9 There are three types of enforcers specified in the Enterprise Bill. These are:

- general enforcers, for example the OFT
- enforcers designated by the Secretary of State, and
- Community enforcers.

General enforcement principles

4.10 Through this guidance the OFT seeks to ensure that business and all other enforcers are aware of its own general principles for the enforcement of this legislation. The principles that the OFT will itself apply and will encourage others to follow, are that:

- action is necessary and proportionate, as set out in the Enforcement Concordat
- business will be given a reasonable opportunity to put matters right by discussion
- proceedings will be brought by the most appropriate body
- there will be proper regard for other statutory regulatory means and for non statutory mechanisms
- regard will be had for the Home Authority Principle
- the OFT will ensure that any action is co-ordinated so that the business concerned is not subjected to unnecessary multiple approaches, and
- in line with the OFT's general approach to putting information into the public domain, publicity on Enterprise Bill cases will be accurate, balanced and fair.

The OFT's co-ordination role

4.11 The Enterprise Bill gives the OFT a central co-ordination role to ensure that action is taken by the most appropriate body. The OFT has set up a co-ordination unit and a system for all enforcers to notify that unit of proposed action under Part 8.

4.12 Co-ordination and enforcement arrangements will in due course be set out in a formal memorandum between the OFT and all UK enforcers.

International action

4.13 The Enterprise Bill gives the OFT the power to take action against businesses in other member states that may be infringing certain European based legislation in cross-border sales. In line with its general enforcement principles, the OFT will try to ensure that, wherever possible, enforcement action will be taken by the most relevant Community enforcer in the member state where the business is based.

5 THE GUIDANCE

Introduction

- 5.1 This guidance refers to Part 8 of the Enterprise Bill that is concerned with the enforcement of certain consumer protection legislation and miscellaneous related matters. Guidance on other Parts of the Bill involving the OFT can be obtained from the OFT publications order line (0870 60 60 321) or via the OFT website (www.offt.gov.uk).
- 5.2 The aim of Part 8 of the Bill is to create a more consistent enforcement regime, replacing Part III of the FTA 1973 and the Stop Now Regulations. This will improve consumer protection by giving enforcers strengthened powers to obtain court orders against businesses that fail to comply with their legal obligations to consumers.
- 5.3 Those businesses that breach UK consumer protection laws will be affected by the powers afforded by Part 8. This guidance is intended principally to advise businesses, trade associations and all those who advise and represent businesses, of what will happen when enforcers use their powers under Part 8 to ensure compliance with the law. This guidance is also designed to help those businesses to understand the procedures followed.
- 5.4 Consumers will benefit from the stronger consumer protection and enforcement regime provided by the legislation. Part 8 gives no new rights to consumers. Consumers who have a dispute will still need to seek redress through a court or an alternative means of dispute resolution in the usual way. However, where consumers generally are harmed by a breach, the enforcement mechanism of Part 8 allows the authorities to stop the breach quickly so that the collective interests of consumers will be protected in the future.

- 5.5 This guidance will also help other enforcers to ensure a consistent approach to powers under Part 8.

Part I - Guide to Part 8 of the Enterprise Bill

WHAT ARE ENFORCEMENT ORDERS?

- 5.6 Part 8 will allow specified enforcers to apply to the courts for an enforcement order to stop a business from breaching certain legislation, where the breach harms the collective interests of consumers. Such breaches will be known as either 'domestic infringements' or 'Community infringements'.
- 5.7 Part 8 will not impose new obligations on business. It will provide a new enforcement tool and give enforcement powers to bodies previously unable to take action in certain areas. These powers will sit alongside existing regulatory and enforcement activities. Businesses that breach the law will need to be clear about the general principles of enforcement that will be applied to decisions to take action under Part 8.

Definition of consumers

- 5.8 Generally speaking, in order for an enforcer to take action under Part 8 in respect of a breach of the law, the enforcer must be able to demonstrate harm to the collective interests of **consumers**. However, the types of people who are to be treated as consumers differ between a domestic and Community infringement.
- 5.9 For a domestic infringement, a consumer will be an individual who receives, or seeks to receive, goods or services from a supplier. The supplier must be acting in the course of a business, but does not need to

have a place of business in the UK. A consumer must be an individual who is not acting in the course of a business, but the definition does extend to individuals who are setting up businesses but have **not yet** begun to trade.

- 5.10 The definition of consumer was deliberately widened to include individuals setting up a business in order to ensure that operations such as homeworking schemes and vanity publishers would be caught by the Part 8 enforcement mechanism. Except in this limited regard, business consumers are not covered.
- 5.11 For a Community infringement, definition of a consumer is taken from the Injunctions Directive and the European Directives listed in the annexe to that Directive. The Injunctions Directive is available at http://europa.eu.int/comm/consumers/policy/developments/acce_just/acce_just09_en.pdf The specific definition will therefore depend upon the legislation which is being enforced. However, generally speaking a consumer will be a person not exercising a commercial, industrial, craft, or professional activity.

Definition of business

- 5.12 The definition of 'business' that was used in the FTA 1973 has been retained in the Enterprise Bill for the purposes of domestic infringements. A business will therefore continue to include professional practices, activities conducted 'for gain or reward', and operations that charge for the supply of goods or services.

DOMESTIC AND COMMUNITY INFRINGEMENTS

- 5.13 As Part 8 will replace the Stop Now Regulations, it must contain all the necessary provisions to ensure the full implementation of the Injunctions Directive, including the facilitation of cross-border enforcement. It is for this reason that the Bill distinguishes between domestic infringements (which are concerned with ensuring a sufficient level of enforcement by

UK based enforcers) and Community infringements (for which cross-border enforcement is created).

Domestic infringements

5.14 A domestic infringement is a breach:

- that harms the collective interests of consumers
- that is committed in the course of a business
- of legislation which has been specified by the Secretary of State in a Statutory Instrument. The types of breaches, and therefore legislative provisions, which may be specified in this way must be of a particular type set out in [clause 206(2)(a) to (g)], and therefore the breach must consist of:
 - (a) a contravention of a law which imposes a duty, prohibition or restriction enforceable by criminal proceedings
 - (b) an act done or omission made in breach of contract
 - (c) an act done or omission made in breach of a non-contractual duty owed to a person by virtue of an enactment or rule of law and enforceable by civil proceedings
 - (d) an act or omission in respect of which an enactment provides for a remedy or sanction enforceable by civil proceedings
 - (e) an act done or omission made by a person supplying or seeking to supply goods or services as a result of which an agreement or security relating to the supply is void or unenforceable to any extent
 - (f) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to exercise a right or remedy relating to the supply in circumstances where the

exercise of the right or remedy is restricted or excluded under or by virtue of an enactment

- (g) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to avoid (to any extent) liability relating to the supply in circumstances where such avoidance is restricted or prevented under an enactment.

5.15 The DTI will shortly consult on the domestic legislation to be specified in the relevant Statutory Instrument made under [clause 206] of the Enterprise Bill. The final guidance will list that legislation at this point as well as providing a brief summary of each as an Annexe.

Community infringements

5.16 A Community infringement is an act or omission which:

- harms the collective interests of consumers, and which:
 - contravenes a Directive listed in Schedule 13 of the Bill (which are the Directives contained in the annex to the Injunctions Directive) that has been given effect by legislation or other provisions in an European Economic Area (EEA) state, or
 - contravenes such legislation or other provisions which provide additional permitted protections. These are consumer protection provisions that are provided in addition to the minimum protections required by the Directives, but which are also permitted by those Directives.

The OFT takes the view that the scope of the Community legislation covered includes any provision which directly implements provisions in the Directives listed in the Injunctions Directive or provides greater consumer protection of a related kind. There will be, however, a power

for the Secretary of State to specify by Order the provisions of UK law which are covered.

- 5.17 The OFT expects that the legislation that will be so specified by the Secretary of State will be similar to that listed in regulation 2(3) of the Stop Now Regulations.

Overlap of domestic and Community infringements

- 5.18 Where legislation is specified as enforceable as a Community infringement, it is not expected that it will generally also be specified for the purposes of a domestic infringement. However, there will be some cases where legislation will be specified twice in order to ensure that legislation can be effectively or coherently enforced. For example, it is not possible to draw a clear distinction between some of the provisions of the Consumer Credit Act 1974 that implement the Consumer Credit Directive and others that are outside the scope of the directive. In such cases, traders will be made aware of which infringement is being alleged and under which provisions they are being pursued.

- 5.19 In the final guidance, reference will be made to Annexe A. This will contain a list of each area of law covered by the Enterprise Bill. This list will be made known once the DTI has laid the relevant Statutory Instrument.

Collective interests of consumers

- 5.20 Part 8 is not a means of pursuing individual redress. It applies only to an infringement which harms the **collective** interests of consumers (consumers being defined in relation to the type of infringement alleged). It follows that the breach must affect, or have the potential to affect, consumers generally or a group of consumers. This must be established by the evidence gathered by the enforcers. The evidence must

demonstrate how a particular infringement has, or may in the future have, an adverse effect upon consumers. It may include an assessment of the importance of the practice or provision in question or of the prevalence and likely impact of the infringement. Some isolated breaches may not be harmful to the collective interest of consumers. However, examples of individual consumer harm may be used as evidence. There is no obligation to establish a specific number of individual consumer complaints or incidents of infringement.

- 5.21 Part 8 only applies to infringements that harm the collective interests of **consumers**. Although a consumer may have a slightly wider meaning for the purposes of a Community infringement, Part 8 will not generally cover activities affecting businesses. Some of the legislation that is likely to be enforceable under Part 8, such as dealing with misleading advertising, may also apply to or protect the interests of business. Action under Part 8 will not therefore be used in respect of breaches affecting only businesses. The enforcement mechanisms contained in the specific regulations will continue to be used in such circumstances.
- 5.22 The Secretary of State has the power to remove or add European Directives to the Enterprise Bill to reflect future changes to the Injunctions Directive. As appropriate, any amendments will be published.

BODIES EMPOWERED TO ACT UNDER PART 8

- 5.23 Under Part 8 of the Enterprise Bill three types of enforcers are identified:
- general enforcers
 - designated enforcers
 - Community enforcers.

5.24 In addition to the OFT, every Trading Standards Service in Great Britain is specified in Part 8 as having the power to act as a **general enforcer**, as is the Department of Enterprise, Trade and Investment in Northern Ireland (DETI).

5.25 A **designated enforcer** is any public body or private organisation in the UK which the Secretary of State designates, having identified that she thinks the person or body has the protection of the collective interests of consumers as one of its purposes.

5.26 Under the Stop Now Regulations, certain bodies were specified as public UK qualified entities and it is expected that these bodies will be designated by the Secretary or State as designated enforcers under the Bill. These bodies are:

- the Information Commissioner
- the Civil Aviation Authority
- the Gas and Electricity Markets Authority
- the Director General of Electricity Supply for Northern Ireland
- the Director General of Gas for Northern Ireland
- the Director General of Telecommunications
- the Director General of Water Services
- the Rail Regulator.

- 5.27 The Secretary of State may designate further bodies; the terms by which a body is designated may be limited to particular types of infringement, for example, within their particular sector.
- 5.28 A public body will only be granted designated enforcement powers if it is independent. By granting a public body designated enforcement powers, it is deemed that the body is conclusively identified as a public body for the purposes of Part 8. A private organisation will be granted designated enforcement powers if it fulfils the criteria to be specified by the Secretary of State in a Statutory Instrument. The DTI will issue a separate consultation on the criteria to be fulfilled, and on the process for designating bodies with enforcement powers under Part 8.
- 5.29 A **Community enforcer** is a body listed in the Official Journal of the European Communities, but which is not a general or a designated enforcer; thus, it will apply only to enforcers from other EEA states.
- 5.30 Any additions to the list of Enforcers will be shown on the OFT's website.

WHAT CAN THE ENFORCERS DO?

- 5.31 Proceedings for an enforcement order can be brought where a business has engaged in conduct that constitutes either a domestic or a Community infringement or is likely to engage in conduct that constitutes a Community infringement. Where the infringer is a company, Part 8 action may be taken against an accessory, i.e. a person who is a director, manager, secretary or other similar officer (or person purporting to act in such a capacity) or a person who is a controller of the company where in any of these situations that person has consented to or connived in the infringement. There are, however, important steps that normally need to be followed before proceedings are brought.

Consultation with the business

- 5.32 All UK enforcers must consult the OFT before applying to the court for an enforcement order.
- 5.33 Before seeking court action, the OFT or any UK enforcer will normally attempt to remedy a breach or stop an infringement by consulting with the transgressor (see details on the OFT approach at paragraph 5.61). The Bill makes certain periods of consultation mandatory. Where an enforcer wishes to seek an enforcement order, a minimum of 14 days must be allowed for the consultation. If the enforcer wishes to apply for an interim order, a shorter period of seven days is mandatory. In very urgent cases, an immediate application can be made to the court without giving any time for consultation, but the OFT must approve this action before a UK enforcer can dispense with the need to consult. The OFT would be likely to approve or take immediate action without consultation if it were satisfied that the case was urgent and that immediate action was vital to safeguard consumers' interests. This is unlikely to be a frequent occurrence. In many cases, provided that a positive outcome appears possible, the consultation period may be longer than the minimum set out in the Bill.
- 5.34 Although the OFT will have an express duty normally to consult with a business before taking action², this approach is nothing new. It has always been the OFT's practice to approach businesses first to attempt to resolve matters without court action.
- 5.35 The action which can be taken in respect of an infringement differs for each of the three enforcers:

² See clause 209

- General enforcers can apply for an order in respect of **all** infringements detailed in Part 8
- Designated enforcers may make an application for an order **only** with respect to those infringements for which they have been designated
- Community enforcers may make an application for an order **only** with respect to a Community infringement. The court may examine whether the purpose of the Community enforcer justifies it taking action in the particular case, and should the court think that it does not, it may refuse the application on those grounds.

Undertakings

- 5.36 Undertakings can be given either to an enforcer or to the court.
- 5.37 An **enforcer** may accept an **undertaking** from any person against whom proceedings could be brought. The undertaking would be from a person who has engaged, or is engaging, in conduct that constitutes an infringement or, with reference to a Community infringement, is likely to do so. Any breach of such an undertaking would be drawn to the attention of the court in any further action arising from a subsequent infringement.
- 5.38 In most cases the undertaking would be the outcome of consultation and discussion between the business and the enforcer. The OFT will consider on a case by case basis what, if any, publicity should be given to any undertakings accepted. [See paragraphs 5.76 and 5.77.]
- 5.39 A **court** may similarly accept an **undertaking** from any person against whom proceedings could be brought. The undertaking would be from a person who has engaged, or is engaging, in conduct that constitutes an infringement or, with reference to a Community infringement, is likely to

do so. As part of the undertaking to the court the respondent may be required to publish, in a manner that the court thinks appropriate, the terms of the undertaking (in full or in part) or a corrective statement. Only a subsequent breach of an undertaking to the court could result in contempt of court proceedings.

5.40 The undertaking, whether to an enforcer or to the court, must require that the person:

- does not continue or repeat the conduct
- does not engage in the conduct in the course of his business, or another business, and
- does not consent to or connive in the carrying out of such conduct by a body corporate of which he is an accessory (for example, a director or a controller).

Court proceedings

5.41 The OFT or any enforcer may apply for a **court order** where:

- resolution is not possible through discussion and undertakings, or
- the circumstances are such that proceedings must be brought as a matter of urgency. [See paragraph 5.61]

The case will be heard in the High Court or County Court (the Court of Session or Sheriff Court in Scotland). If the OFT or the enforcer wins its case and an order is made, the business will normally be required by the court to pay the enforcer's costs. If the OFT or the enforcer does not succeed and no order is made, the enforcer will normally be ordered by the court to pay the business's costs. Further details of the court

procedures and information about costs are available at www.courtservice.gov.uk for England and Wales, at www.scotcourts.gov.uk for Scotland, and at <http://www.courtsni.gov.uk> for Northern Ireland. More detailed information on the Civil Procedure Rules can be found at www.lcd.gov.uk.

- 5.42 The business will be informed about the proceedings and will always have the opportunity to defend itself against the action if it so wishes. If the circumstances warrant it, the court may be asked to make an interim order. Such an order is normally made to last until the final hearing. At that final hearing, if the OFT or enforcer succeeds, the court will make a final order, known as an **enforcement order**, to require the cessation of or otherwise prohibit the infringement. The Court may also make an order against an accessory to prevent him or her from continuing or repeating the conduct, whether in the current business or any other business and from consenting to or conniving in the conduct in any other body corporate.
- 5.43 An order made in a court in one part of the UK has effect in any other part of the UK as if it were made in a court in that part.
- 5.44 Failure to comply with the enforcement order could be regarded as contempt of court, which could lead to a fine or imprisonment.

Orders against bodies corporate

- 5.45 If the court makes an order or an interim order against a body corporate, the court may direct that the order is binding upon all other members of the group of interconnected bodies corporate of which it is a member. If the body corporate that is subject to an order or interim order becomes a member of a group of interconnected bodies corporate subsequent to the order, or the group is enlarged, the OFT has the power to apply to the court for the order to be binding on the new member(s). Two bodies

corporate are interconnected if one of them is a subsidiary of the other, or if both are subsidiaries of the same body corporate.

Access to information

- 5.46 Part 8 provides the OFT and other general and designated enforcers who are public bodies with a statutory power to require information, including documents, by means of a notice served on any person³.
- 5.47 A notice requiring information can be sent for a number of purposes. It can require information to enable the enforcer to establish whether to exercise its powers under Part 8. For example, certain information may be required to determine whether a complaint is the result of an isolated mistake by the trader or part of a deliberate pattern of unfair conduct.
- 5.48 A notice can also require information for the purpose of monitoring compliance with orders, interim orders, and undertakings.
- 5.49 General enforcers and designated public enforcers can only require information for the purposes of exercising or considering whether to exercise their own functions under Part 8 or to monitor compliance with an order or undertaking they have obtained. The OFT has wider powers to be able to require information to assist Community enforcers or designated enforcers that are private bodies who do not have the power to require the information themselves.
- 5.50 If a person fails to provide the information requested within the specified time, the enforcer may apply to the court for an order requiring the person to provide the information. Should the court make such an order, it may award costs against the individual or, if the person is a corporate

³ See clauses 219 and 220

body or an association, against any of its officers responsible for withholding the information.

CO-ORDINATION PROVISIONS

- 5.51 Part 8 gives the OFT a central co-ordination role to ensure that action is taken by the most appropriate body and is not duplicated⁴. General and designated enforcers who want to seek enforcement orders must first consult with the OFT as well as with the business against which it wants to proceed. If more than one enforcer is contemplating bringing proceedings, the OFT may direct which body may bring proceedings or that only the OFT may do so. The OFT will do its best to assist the co-ordination of proceedings under Part 8 by making appropriate arrangements with other enforcers. These arrangements, in the form of memoranda of understanding, will be made public.
- 5.52 Although the OFT must be consulted by all general and designated enforcers, it is not envisaged that the OFT will become directly involved in the discussions with the trader, except where the OFT is the enforcer or has been asked to do so by the trader.

INTERNATIONAL PROCEEDINGS

- 5.53 As Part 8 replaces the Stop Now Regulations and is the means by which the Injunctions Directive has effect in the UK, it contains provisions providing a statutory enforcement mechanism for action across national borders in respect of Community infringements. This means that action will be possible on a European-wide basis to protect consumers in one member state from the unlawful activities of businesses based in another. This provides an important additional means of consumer protection. Those states implementing the Injunctions Directive include all parties to the EEA Agreement - the member states of the European Union and three

⁴ See clause 211

of the four member states of the European Free Trade Association. A full list is on the OFT's website (www.offt.gov.uk).

- 5.54 The general enforcers and public designated enforcers will be able to bring proceedings in the EEA states for an order stopping or prohibiting Community infringements. General enforcers and enforcers that are designated in respect of Community infringements are able to take action in the UK to prevent Community infringements. This means that they can apply to the court on behalf of Community enforcers from other member states to enable the protection of consumers in those member states.
- 5.55 When a business in another member state harms the collective interests of UK consumers, the OFT will, in normal circumstances, ask the most relevant Community enforcer in the member state where the business is based, to take enforcement action on behalf of the OFT for the protection of UK consumers. Where a business in the UK harms the interests of consumers in another member state, a Community enforcer may ask a general enforcer or a relevant designated enforcer to take action against it. However, it should be noted that a Community enforcer is entitled to bring proceedings before a court in the UK without the consent of the OFT. Any Community enforcer doing so must consult with the OFT and the business in the same way as any UK enforcer [see paragraph 5.33].
- 5.56 There is scope within Part 8 for cross-border protection of consumers in respect of domestic infringements where goods or services are supplied wholly or partly outside the UK. In such cases, they are taken to be supplied to or for a person if the arrangements are made:
- orally in the UK
 - by one or more documents delivered in the UK, or
 - by correspondence posted from or to addresses in the UK.

However, although this enables UK enforcers to take action to prevent infringements in such cases, it does not give any particular powers to enforcers to apply to the courts abroad to prevent these breaches.

NOTIFICATION OF CONVICTIONS AND JUDGMENTS

- 5.57 Under Part 8, courts in the UK have the power to notify the OFT of convictions and judgments of which it might not otherwise be aware. The purpose of this will be to enable the OFT to decide whether to exercise its functions under this Part of the Enterprise Bill. As under Part III of the FTA 1973, the power also extends to notification for the purposes of the OFT deciding whether to exercise its functions under the Estate Agents Act. The Consumer Credit Act contains its own similar provision for functions exercised by the OFT under that Act.

Part II -

How the OFT expects Part 8 of the Enterprise Bill to operate

GENERAL ENFORCEMENT PRINCIPLES

- 5.58 Through this guidance the OFT seeks to ensure that all enforcers are aware of the OFT's own general principles for the enforcement of the provisions of Part 8. The OFT has a power to co-ordinate and will do its best to ensure that consistency in enforcement is achieved. But in many respects each enforcer has to make its own decisions on enforcement action.
- 5.59 The principles that the OFT will itself apply and will encourage others to follow are that:
- action is **necessary and proportionate**, as set out in the Enforcement Concordat (see paragraph 5.60), and only where there is evidence of

a breach (or in the case of a Community infringement, a likely breach) of the relevant consumer protection law and of resulting consumer harm stemming from the infringement

- business is given **reasonable opportunity**, in normal circumstances, to put matters right by discussion
- wherever possible court action will only be taken after voluntary undertakings have been sought
- proceedings are brought by the **most appropriate body**:
 - with **proper regard for other statutory regulatory means and non-statutory mechanisms**, and
 - with regard to the **application of the Home Authority Principle**.
- when the same business activity results in infringements of more than one of the pieces of legislation covered by the Enterprise Bill, the OFT will ensure that any **action is co-ordinated** so that the business concerned is not subject to unnecessary multiple approaches, and
- in line with the OFT's general approach to putting information into the public domain, **publicity** on Enterprise Bill cases will be accurate, balanced and fair.

Necessary and proportionate action

- 5.60 The OFT, the Trading Standards Service and some of the designated enforcers have publicly accepted the principles of good enforcement set out in the Cabinet Office's **Enforcement Concordat**. The full text of the concordat and the current list of subscribers can be seen at www.cabinet-office.gov.uk/regulation/publicsector/enforcement/

[concordat.htm](#). The OFT and all who subscribe to the concordat are committed to good enforcement policies and procedures. On the basis that prevention is better than cure, enforcement includes helping businesses to meet their obligations through giving advice and assistance with compliance. But where the risks, as shown by the evidence, and the potential for consumer harm are greater because businesses are uncooperative, then more formal enforcement action will be taken proportionate to the risks to consumers.

Reasonable opportunity

5.61 Except where urgent action is necessary, businesses will always be given a reasonable opportunity to stop the infringement before the OFT seeks an enforcement order. The effect of Part 8 is that in many cases there will be a minimum period of 14 days for negotiation and dialogue with the business. If the enforcer wishes to apply for an interim order, the period can be shortened to at least seven days. In very urgent cases, an immediate application can be made to the court without consultation with the business, but the OFT **must** approve this action before an enforcer can dispense with the need to consult. The OFT expects that immediate applications would **only** be sought in exceptional cases. The OFT or any other enforcer may accept an undertaking from any person against whom it can bring proceedings. Such an undertaking would be the outcome of consultation and negotiation between the business and the enforcement body.

5.62 In most cases the process will begin with a letter to the business. This letter will:

- provide details of the business activity or practice causing concern
- clearly state the consumer protection laws the business activity or practice breaches

- give a brief explanation of the Part 8 provisions being used, including whether it is anticipated that an interim or final order will be sought and the corresponding minimum consultation period that will be given
- state where to find more information on Part 8
- invite the business to open a dialogue, and
- outline the consequences to the business of a failure to respond to this request.

5.63 Some of the relevant factors in assessing whether the business activity causes concern are:

- the intent of the business - was the breach deliberate?
- the history of breaches by the business - is this a problem trader?
- the damage being done to consumers - for example, is there targeting of consumers who will suffer considerable detriment or be otherwise harmed unless action is taken?

5.64 The OFT does not expect that many cases would warrant action abandoning the minimum periods for consultation. An example of the kind of situation that **might** warrant such action would be if a business committing serious breaches of the law was about to launch a new marketing campaign that would mislead consumers about their rights. Under the Stop Now Regulations, so far no cases have arisen where the OFT has taken this action.

- 5.65 If a satisfactory undertaking were given no proceedings would be brought against the person giving and complying with the undertaking.
- 5.66 Where no undertaking has been given, or breaches are more serious, proceedings may be taken for an enforcement order.

Proceedings brought by the most appropriate body

- 5.67 The OFT will follow the principle that action under Part 8 should be taken by the most appropriate body and will encourage others to do the same. This means that, in nearly all cases, where local or sectoral action is required to prevent what is a local or sectoral problem, the relevant local or sectoral enforcer will take the action. Where the co-ordination procedure reveals that a number of enforcers are contemplating action against a single business, the OFT may direct which enforcer should bring the proceedings or that only the OFT may do so. This will avoid the possibility of simultaneous multiple actions against a business failing to comply with the relevant legislation.

Proper regard for other statutory and non-statutory mechanisms

- 5.68 In instances where there are well-established and effective systems of statutory and non-statutory regulation in place in the UK, for example, medicines and broadcast advertising, the OFT will refer complaints and cases about UK businesses to the relevant regulator for them to take action. The OFT will encourage other enforcers to do the same. Where action is sought against the practices of a business in another member state and the relevant UK regulators do not have effective powers to act, the OFT, other general enforcers and any relevantly designated enforcers may be better placed to act.
- 5.69 Similarly, the Control of Misleading Advertisement Regulations (the 1988 Regulations) require the OFT to have regard to whether the misleading

advertising can be stopped by the **established means** before itself taking action through the courts. The established means prior to the 1988 Regulations were the Advertising Standards Authority and the Trading Standards Service. The OFT has agreed case handling principles with the Advertising Standards Authority which provide that the OFT will normally refer cases to established means and will encourage other enforcers to consider doing so too. In exceptional cases, however, where there is clear evidence of an act contrary to the relevant legislation, which harms the collective interests of consumers, the OFT will need to act straightaway using the Part 8 powers.

Application of the Home Authority Principle

5.70 The **Home Authority Principle** has been developed by LACORS (Local Authorities Co-ordinators of Regulatory Services), to ensure good enforcement practice. The Home Authority acts as a valued source of advice and information for businesses about compliance issues. It commands the support of local authorities, central government, trade and industry associations, and consumer and professional regulatory bodies. It encourages an authority to place special emphasis on the legality of goods and services originating in its area by providing businesses with a source of guidance and support. It supports efficient liaison between local trading standards departments and provides a system for the resolution of problems and disputes at source including the taking of action where necessary so as to prevent infringements and protect the public. The text can be seen at

<http://www.lacors.gov.uk/pages/trade/publications/HAPrinciple.asp>

5.71 It is not intended that Part 8 will change the circumstances when a local trading standards department might consider it a necessary and appropriate response to bring a prosecution where there are breaches of existing consumer protection legislation. The OFT would expect local trading standards departments to continue to take primary responsibility

and to have regard to the Home Authority Principle as well as to the Enforcement Concordat when doing so. The OFT would itself have regard to the principle and expect all enforcers to do the same.

- 5.72 The OFT will encourage enforcers to use the Home Authority as a valued source of advice and information about businesses and recommends that the Home Authority should be consulted about the business well in advance of any action. However, the principle is voluntary and each enforcer must make its own decisions on enforcement action.

Action is co-ordinated

- 5.73 The OFT has set up a co-ordination unit and a system for all enforcers to notify proposed action under Part 8. This fulfils its role as central co-ordinator and assists the consultation process. The objective is to avoid multiple actions against a business. Enforcers and the OFT will work together with businesses to try to achieve cessation of the infringement.
- 5.74 The OFT, in partnership with LACORS and the DTI, has established a training programme to help trading standards officers to use the Stop Now Regulations effectively. Similar arrangements will be made for Part 8 of the Enterprise Bill.
- 5.75 The OFT is drawing up memoranda or concordats with all the other enforcers so that the principles that the OFT will apply to its own work under the Part 8 provisions are set out clearly. The arrangements for co-ordination will also be set out. The signed memoranda will be made public and placed on the OFT's website.

Policy on publicity for completed Part 8 cases

5.76 The OFT is committed to transparency and will usually put information on completed Part 8 cases into the public domain. Publicity will be accurate, balanced and fair. The factors that may be taken into account when considering publicity on Part 8 cases are:

- any legal restrictions on disclosure of information
- public accountability
- monitoring the future conduct of individual businesses
- deterring other businesses from engaging in the kind of conduct covered by the orders or undertakings obtained
- warning consumers about practices that are detrimental to their interests
- increasing consumers' awareness of their rights and how to exercise them
- facilitating complaints about further breaches
- educating the market, and
- encouraging best practice.

5.77 In the case of undertakings to the OFT where no infringement is necessarily admitted, the OFT may still publish the undertakings. However, care will be taken to indicate accurately, the full circumstances and the basis upon which the undertaking was given. Information about completed cases will be publicised by placing it on the public part of the

Consumer Regulations Website (see Chapter 6) or by issue of a news release. Publicity will not be given to cases where the OFT considers that no breach could properly be established and where no undertaking was obtained from the business.

INTERNATIONAL ACTION

Where UK consumers have complaints about a business based in another member state

- 5.78 In accordance with its general enforcement principles, the OFT will try to ensure that wherever possible, enforcement action will be taken by the most relevant Community enforcer in the state where the business is based. In these cases the role of the OFT will be to collate and provide evidence of a Community infringement to the relevant Community enforcer, where we have the disclosure powers to be able to do so, and to liaise and co-operate in order to facilitate the most appropriate course of action. But where no Community enforcer exists, or none is willing to take action, the OFT will consider initiating proceedings in another member state. In doing so, the OFT will follow the legislative and judicial procedures of the host state. Unless the case warrants immediate action, the OFT will, in accordance with its general enforcement principles, seek to achieve a cessation of a breach in consultation with the business.

Where consumers in other member states have complaints about a business based in the UK

- 5.79 When a Community enforcer refers a case, the OFT will review the evidence provided and assess whether it supports evidence of a Community infringement. Where it is appropriate to bring a case in the UK, the process adopted will be the same as that which the OFT would apply to cases of infringements harming UK consumers. Where it is

decided that the evidence does not support action, the Community enforcer will be advised accordingly. Where the case is relevant to another general or designated enforcer, as set out in the general enforcement principles, the case may be referred to them. The OFT expects, in most cases, it or another enforcer will seek to obtain a cessation of the infringement through discussion and consultation. There may be occasions, however, where a need to bring proceedings without delay is identified. Although the OFT must be notified and consulted, as must the business, a Community enforcer is entitled in all cases where an infringement is demonstrated to bring proceedings before a UK court without the consent of the OFT.

- 5.80 An order obtained in one member state against a particular business is generally not enforceable in another member state. The enforcer would either have to go back to the court that made the order to enforce it or bring fresh proceedings in the second member state.

FURTHER INFORMATION AND ADVICE

- 5.81 This advice may be subject to amendment, revision or replacement. In the case of major revisions or amendments all affected parties will be consulted.
- 5.82 It should be noted that this guidance is not a substitute for the Enterprise Bill Part 8 and should be read in conjunction with it. It should not be regarded as a definitive interpretation of the provisions.
- 5.83 As Part 8 of the Enterprise Bill is applied and experience develops, further advice and information may be published.

6 CONSUMER REGULATIONS WEBSITE PROJECT

- 6.1 The OFT recognises the importance for business, enforcers and consumers to be able to access information about the Part 8 Enterprise Bill legislation and subsequent enforcement action. It is therefore leading the Consumer Regulations Website (CRW) partnership project to meet those needs.
- 6.2 All the bodies that were qualified to enforce the Stop Now Regulations, Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) and Consumer Protection (Distance Selling) Regulations 2000, are partners in the project. In addition to the Public UK Qualified Entities under the Stop Now Regulations, the Consumers' Association and the Financial Services Authority (FSA)- which have powers to enforce the UTCCRs, are also partners. Any UK Qualified Entity that the Secretary of State for Trade and Industry designated under the Stop Now Regulations further to those detailed in the legislation were able to join the partnership. The project is funded by HM Treasury for two years under the Invest to Save budget.
- 6.3 The CRW contains general information about the application and enforcement of the Enterprise Bill. There will be guidance to help businesses comply and information for business and consumers about the outcome of formal and informal action already completed. The CRW will also have a restricted password protected area where Part 8 enforcers can share information about investigations, possible actions and outcomes. This will assist co-ordination, consultation with businesses under investigation and avoid multiple actions against a business.
- 6.4 The project has been developed stage-by-stage to ensure that the system will be successful and provide the expected benefits. The full system will be implemented across an initial pilot group of 20 partners in August 2002. In October/November 2002 the CRW will be extended to all Stop Now enforcers. A separate training programme will be provided to enable

all Stop Now enforcers to participate fully in maximising the use of the CRW as a regulatory tool. The CRW is expected to be fully implemented in March 2003 following successful completion of the pilot stage.

ANNEXES

A WHO ARE WE CONSULTING?

The list that follows shows those organisations that have been asked to comment in the first stages of the exercise. Comments are however invited from any organisation or individual that wishes to contribute to this exercise. The full consultation document can be obtained either from the Office of Fair Trading website at www.offt.gov.uk or by telephoning the general enquiry contact listed at page 5.

Aberdeen City Council

Advertising Standards Authority

Air Transport Users Council

Association of British Chambers of Commerce

Association of British Insurers

Association of British Travel Agents

Association of Payment Clearing Services

Banking Code Standards Board

Banking Ombudsman

Better Regulation Task Force

British Bankers Association

British Chambers of Commerce

British Cheque Cashers Association

British Holiday and Home Parks Association Ltd

British and Irish Ombudsman Association

British Retail Consortium

British Standards Institute

British Vehicle Rental and Leasing Association

Buildings Societies Association

Building Society Ombudsman

Business Connect Wales

Call Centre Association

Chartered Institute of Arbitrators

Chief Trading Standards Officers

Citizen's Advice Scotland

Confederation of British Industry

Confederation of British Industry (Northern Ireland)

Confederation of British Industry (Scotland)

Confederation of British Industry (Wales)

Confederation of Scottish Local Authorities

Consumer Credit Trade Association

Consumer Credit Association of the United Kingdom

Consumers Association

Consumers International

Council of Mortgage Lenders

Convention of Scottish Local Authorities

Credit Services Association

Consumer Policy Institute

Consumer Credit Counselling Service

Civil Aviation Authority

Department of Trade and Industry (DTI)

Direct Marketing Association (United Kingdom) Ltd

Direct Selling Association Ltd

Department of Enterprise, Trade and Investment in Northern Ireland

Energywatch

Federation of Information and Advice Centres

Federation of Small Businesses
Federation of Small Businesses (Northern Ireland)
Federation of Small Businesses (Scotland)
Federation of Small Businesses (Wales)
Federation of Master Builders
Finance and Leasing Association
Financial Services Authority
Finance Industry Standards Association
Financial Services Ombudsman
Funeral Ombudsman
Funeral Standards Council

General Consumer Council for Northern Ireland
General Insurance Standards Council
Glass and Glazing Federation

Her Majesty's Treasury
Hire Association Europe

Independent Committee for the Supervision of Standards of Telephone
Information Services (ICSTIS)
Independent Television Commission
Institute of Consumer Affairs
Institute of Directors
Insurance Ombudsman
International Air Transport Association

Local Authorities Co-ordinating Body of Regulatory Services (LACORS)
Local Government Association
Local Government Office for Wales
London Personal Finance Association

Mail Order Traders Association of Great Britain

Mortgage Code Compliance Board
Money Advice Trust
Money Advice Association
Money Advice Scotland
Money Advice Liaison Group
Money Advice Liaison Group (Scotland)
Medicines Control Agency

National Assembly of Wales
National Association of Citizens Advice Bureaux (NACAB)
National Association of Estate Agents
National Consumer Council
National Consumer Credit Federation
National Consumer Federation
National Debtline
National Federation of Consumer Groups
Newspaper Society
Northern Ireland Association of Citizen's Advice Bureaux
Northern Ireland Assembly

Office of the Corporate Estate Agents Ombudsman
Office of the Investment Ombudsman
Office of the Legal Services Ombudsman
Office of the Scottish Legal Services Ombudsman
Ombudsman for Estate Agents Ltd
Organisation for Timeshare in Europe
Office of Gas and Electricity Markets
Office of the Information Commissioner
Office of the Regulation of Electricity and Gas
Office of the Regulation of Electricity and Gas (Northern Ireland)
Office of Telecommunications
Office of Water Services
Office of the Rail Regulator

Postal Services Commission (Postcomm)

Postwatch

Retail Motor Industry Federation Ltd

Royal Institution of Chartered Surveyors

Radio Authority

Scottish Executive

Scottish Building Employers Federation

Scottish Consumer Council

Scottish Motor Trade Association Limited

Social Exclusion Unit

Society of Allied and Independent Funeral Directors

Society of Motor Manufacturers and Traders Ltd

Society of Ticket Agents and Retailers

S4C Authority

Strategic Rail Authority

Trading Standards Institute

Trade Association Forum

United Kingdom Accreditation Service

WalesTrade International

Wales Office

Welsh Consumer Council

Welsh Development Agency

Welsh Trading Standards Institute

Yorkshire Building Society

B CONSULTATION CRITERIA

The OFT has made every effort to comply with the consultation criteria as laid down in the Cabinet Office Code of Practice on Written Consultation and will continue to do so in later stages of this consultation exercise. The criteria are set out below.

- B.1 Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
- B.2 It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- B.3 A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
- B.4 Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
- B.5 Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
- B.6 Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reason for decisions finally taken.

- B.7 Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.