

dti

**Implementing the EU
Regulation on Consumer
Protection Co-operation**

Consultation

5th July 2005

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dti

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

Explanation of the wider context for the consultation

An EU Regulation on Consumer Protection Co-operation was agreed last year and is designed to strengthen co-operation across Europe on the enforcement of consumer protection laws. This consultation seeks views on how this Regulation should be implemented in the UK. It is aimed primarily at regulators and enforcers, and consumer and business representatives.

In the UK, many of the basic tenets of the network established by the Regulation already exist. We have a long established public enforcement regime, and current legislation provides for most of the enforcement and information sharing powers required by this Regulation. However, some changes to the powers of enforcement bodies will be needed. The other main implementation issues are the designation of competent authorities and defining our strategic aims for the wider EU enforcement agenda. This consultation document seeks views on these issues in particular.

Issued 5th July 2005

Respond by 3rd October 2005

Responses to

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Executive Summary

The Regulation on Consumer Protection Co-operation (CPC) will establish a network of public authorities with powers to co-operate and share information with each other for the purposes of enforcing EC legislation that protects consumers' interests (that is, 15 directives and regulations listed in the annex to the Regulation). It operates to protect the "collective interest of consumers"¹, not individual consumers, and will also provide an enhanced role for the Commission in facilitating administrative co-operation and common projects designed to inform, educate and empower consumers.

The Government have strongly supported this Regulation from the start. One of DTI's top-level objectives underpinning our vision to create 'prosperity for all' is placing empowered and protected consumers at the heart of an effective competition regime. Ensuring that laws are effectively and consistently enforced is as essential part of making consumer policy work. But effective enforcement must also stretch across borders as many consumer problems emanate from abroad. Within Europe, enforcement co-operation is key to building up confidence for business and consumers to trade across borders, thus helping to strengthen the internal market.

In the UK, many of the basic tenets of the network established by the Regulation already exist. We have a long established public enforcement regime, and current legislation provides for most of the enforcement and information sharing powers required by this Regulation. However, some changes to the powers of enforcement bodies will be needed. The other main implementation issues are the designation of competent authorities and defining our strategic aims for the wider EU enforcement agenda.

This consultation seeks views on how the CPC Regulation should be implemented in the UK.

Competent Authorities and the Single Liaison Office

The principal effect of this Regulation is the creation of a network of competent authorities with mutual assistance rights and obligations. Article 3(c) defines competent authorities as "any public authority established at national, regional or local level with specific responsibilities to enforce the laws that protect consumers' interests" (these laws are specified in the Annex to the Regulation). There are no restrictions on the number of competent authorities in a Member State.

¹ The collective interests of consumers is described in Article 3(k) as "the interests of a number of consumers that have been harmed or are likely to be harmed by an infringement"

This consultation seeks views on which UK consumer protection enforcement authorities should be designated. The Department strongly favours the designation of the OFT as both a competent authority and Single Liaison Office for the UK and designation of others is a matter for discussion and consultation with those authorities. When considering this and which other authorities may be designated, it is important to bear in mind that (i) the Regulation allows for other bodies that are not competent authorities, to act in some circumstances (see Article 8,3) with their existing powers and responsibilities; and (ii) this mutual assistance network is not designed to cut across existing co-operation networks or practices.

Enforcement powers

Article 4 sets out the powers that each competent authority must be able to exercise in order to fulfil the obligations of this Regulation. Not all these powers are currently available to all enforcers, for example, the Regulation requires competent authorities to have an 'on-site inspection' power'. This consultation seeks views on how any new enforcement powers should be framed and applied, having regard to the Hampton Review principles. This consultation also sees views on the best way to implement this regulation in law.

Role of consumer organisations

This Regulation foresees an important role for consumer organisations in contributing to its aims and activities. This consultation seeks ideas on how this may be achieved. (See Recital 14 and Article 17(1)b).

Third country agreements

This Regulation provides for enforcement co-operation agreements between the EU and third countries. This consultation seeks views on which countries should be prioritised for this kind of agreement. (See Article 18).

Community activities

Chapter IV of the CPC provides for a wide variety of enforcement and administrative activities. These include: Training and exchange programmes for enforcement officials; development of a common framework for consumer complaints; common information and advice projects and development of communication and information tools for enforcers. This consultation seeks views and ideas on which activities the network should focus on as priorities.

How to Respond

The DTI welcomes comments, including supporting evidence by 3rd October 2005.

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

A response can be submitted by letter or email to:

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

Confidentiality & Data Protection

Your response may be made public by the DTI. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the policy issues raised in this document can be addressed to Clare Williamson at the contact details given above.

Complaints

The Code of Practice on Consultation can be found as Annex C to this document. If you wish to make a complaint about, or comment on, the way in which this consultation has been conducted, please contact:

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As well as answers to the specific questions asked, we would welcome any further views on the content of this consultation.

Next Steps

The closing date for this consultation is 3rd October 2005. We will then consider all submissions before finalising and publishing our response within three months of the close of this consultation.

List of Questions

Competent authorities and the Single Liaison Office

1. Do you have any comments on which UK public consumer protection enforcement bodies should be designated as 'competent authorities' and the 'single liaison office'?
2. Do you have any suggestions as to how we can ensure an effective, co-ordinated response to a request for assistance?

Enforcement powers

4. Do you have any comments about the legislative implementation of this Regulation?
5. Do you agree with the possible approach to framing an on-site inspection power? What other issues or approaches should we consider?
6. Should the on-site inspection power be limited to intra-Community infringements or apply also to domestic infringements of the same laws?
7. Do you have any comments about the definition or application of any of the other enforcement powers?

Role of consumer organisations

8. Do you have any suggestions for how consumer groups can contribute to the aims and activities of this Regulation or how their activities can be supported?

Third country agreements

9. Which countries do you think are priorities for an EU-wide agreement?

Community activities

10. What enforcement and co-operation activities do you think are priorities for action?

Introduction

1. In its 2001 Green Paper on EU Consumer Protection the European Commission argued that a legal framework was required for co-operation between public authorities to create a more robust enforcement network across the European Union. The argument was based on the identification of a number of gaps and shortcomings in the application of cross-border co-operation between Member States under current systems and agreements. This can be caused by inadequate powers to investigate infringements outside their jurisdictions; the inability to share information cross borders; and the lack of a necessary counterpart body in another jurisdiction with whom to co-operate. Further, there are other factors coming into play that demand a stronger, more effective cross-border enforcement framework. These include the growth of shopping across frontiers, driven by electronic commerce and the Euro, and the enlargement of the EU.

2. The Commission also anticipate the need for a stronger enforcement structure to support the Directive on Unfair Commercial Practices (UCP) is likely to be formally adopted in June of this year (and which will be added to the list of laws covered by this Regulation). Member States will then have two years to transpose it into their domestic legal orders. The Directive, when implemented, will act as a safety net filling gaps in the existing legislative base of EU consumer law. Further information about the UCP can be found at www.dti.gov.uk/ccp/topics1/unfair.htm.

3. In July 2003, the European Commission published its proposal for a Regulation on Consumer Protection Co-operation (CPC) and political agreement was reached in April 2004 under the Irish Presidency. The relative speed of this negotiation (agreed after First Reading in Parliament) reflects the widespread view amongst Member States, MEPs and stakeholders that stronger cross border enforcement co-operation is needed. The Regulation was finally adopted on 27th October 2004².

Summary of provisions

4. The CPC Regulation will establish a network of public authorities with powers to co-operate and share information with each other for the purposes of enforcing EC legislation that protects consumers' interests. The Regulation operates to protect the "collective interest of consumers"³, not individual consumers. It will also provide an enhanced role for the Commission in

² Full text of the Regulation accompanies this consultation document but can also be found at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_364/l_36420041209en00010011.pdf.

³ The collective interests of consumers is described in Article 3(k) as "the interests of a number of consumers that have been harmed or are likely to be harmed by an infringement".

facilitating administrative co-operation and common projects designed to inform, educate and empower consumers.

5. Its key features are:

- Formalised co-operation through a network of public authorities (called 'competent authorities') on the enforcement of intra-Community laws that protect consumers' interests;
- Required enforcement powers for those authorities;
- Requirements to provide mutual assistance for the exchange of information and co-operation on cross-border cases;
- A single liaison body in each Member State to facilitate this co-operation;
- Co-ordinating and supporting role for the Commission;
- Establishment of an Advisory Committee to assist in implementing the practical procedures for the operation of the Regulation and to facilitate co-operation of a broad range of enforcement co-operation activities (e.g. technical assistance projects or co-operation with third countries).

6. A regulation was chosen as the appropriate instrument because it provides arrangements for co-operation between public authorities of direct applicability. The legal basis is Article 95 of the Treaty of the European Community, which supports the functioning of the internal market.

Background to UK policy and approach to the Regulation

7. One of DTI's top-level objectives underpinning our vision to create 'prosperity for all' is placing empowered and protected consumers at the heart of an effective competition regime. Ensuring that laws are effectively and consistently enforced is as essential part of making consumer policy work.

8. Effective enforcement must also stretch across borders as many consumer problems emanate from abroad. Some of the cross border scams our enforcers deal with on a day to day basis include fake lotteries; misleading prize draws; alleged 'psychics' and clairvoyants; misleading health and diet claim; and timeshare or holiday club scams. Within Europe, enforcement co-operation is key to building up confidence for business and consumers to trade across borders, thus helping to strengthen the internal market. The Government is therefore a strong supporter of this Regulation and the important contribution it will make to achieving these objectives.

9. In the UK, many of the basic tenets of the network established by the Regulation already exist. We have a long established public enforcement regime, and current legislation provides for most of the enforcement and information sharing powers required by this Regulation. However, some changes to the powers of enforcement bodies will be needed.

10. Article 18 of the Regulation allows for the establishment of mutual assistance agreements between the Community and third countries. Whilst we are yet to have sight of a mandate from the Commission regarding such agreements, we envisage that such agreements will sit along side an existing framework of co-operation agreements with international partners to which the UK is a signatory. These include the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁴ and bilateral competition and consumer protection co-operation agreements with the United States Federal Trade Commission, Canada, Australia and New Zealand.

11. Another core element of this framework is the International Consumer Protection Enforcement Network (ICPEN), an informal forum of consumer enforcement agencies (mainly from OECD countries) that facilitates practical aspects of co-operation and best practice sharing. ICPEN also has a European sub-branch (ICPEN Europe), which is the main body for informal co-operation within the EU. The Office of Fair Trading (OFT) is President of ICPEN and ICPEN-Europe from August 2004 until August 2005. When the Regulation is fully adopted, we expect that significant overlaps will appear between the committee that will support the functioning of the CPC (the 'comitology' committee), and ICPEN Europe. This may result in the latter being subsumed by the CPC committee, but this will be worked out in due course.

12. The Government is mindful that there are wider questions about the enforcement framework that have yet to be worked out. This is particularly with regard to implementation of the Hampton Review of Regulatory Inspection and Enforcement⁵ which will affect the structure of consumer protection enforcement in the UK. This document refers to these bodies as they currently stand. Implementation of this Regulation will also take due account of the Hampton recommendations on investigative activity.

Implementation schedule

13. This Regulation is not due to be fully implemented by Member States until December 2006 – 2 years after adoption. This is because most Member States need time to make changes to their enforcement structures and laws. Indeed some Member States such as The Netherlands, need this time to establish a public enforcement authority.

14. However, some parts of the Regulation are due to be implemented one year after adoption – December 2005. These parts include the enforcement and administrative co-operation activities contained in Articles 16 and 17, the

⁴ See www.oecd.org/sti/consumer-policy
⁵ See www.hm-treasury.gov.uk/hampton

establishment of a comitology committee, the designation of competent authorities, and the provisions on third country agreements.

15. Work has already begun by the Commission and Member States to get the Regulation up and running in practice as soon as possible. Informal meetings of the comitology committee are taking place to help get the mechanics of the Regulation in place including the creation of the network's secure database. These meetings are also being used to discuss policy questions related to the implementation and provide updates on progress.

Consultation on the Implementation of the Regulation of the European Parliament and Council on Co-Operation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws (“The Regulation on Consumer Protection Co-Operation”)

Designation of Competent Authorities and the Single Liaison Office

16. The principal effect of this Regulation is the creation of a network of competent authorities with mutual assistance rights and obligations. Article 3(c) defines competent authorities as “any public authority established at national, regional or local level with specific responsibilities to enforce the laws that protect consumers’ interests”. There are no restrictions on the number of competent authorities that a Member State may have.

17. This means that bodies designated as competent authorities would be under an obligation to act in the interests of consumers in another Member State if requested by a competent authority in that country. Article 11(1) makes clear that “competent authorities shall fulfil their obligations under this Regulation as though acting on behalf of consumers in their own country”. These requests may be for information or for enforcement action or both, depending on the circumstances. In each case, the competent authority making the request (the ‘applicant authority’) is also under obligation to provide “sufficient information to enable the requested authority to fulfil the request” (Article 12,1). If this is fulfilled, the requested authority must act without delay. If requested to take enforcement measures, the competent authority must “take all necessary enforcement measures to bring about the cessation or prohibition of the intra-Community infringement without delay” (Article 8,1).

18. Competent authorities may however, in certain circumstances, decline to assist. These circumstances are set out in Article 15(2) and include the ability to refuse assistance if the requested authority establishes that no infringement has taken place. In the event of a disagreement between applicant and requested authorities, the matter may be referred to the Commission who will issue an opinion (Article 15,5). We also expect the comitology committee to have an arbitration role in these cases.

19. In terms of resourcing, the Regulation makes clear that any action taken at the request of an applicant authority will be undertaken at the expense of

the requested authority (Article 15,1)⁶. This does not preclude financial assistance from another Member State, but this is not explicitly provided for in the Regulation.

20. Other requirements on the competent authority include the obligation to notify other competent authorities if they become aware of an intra-Community infringement, or reasonably suspect one may occur. In practice, this will be done via the network's secure database. The Regulation also envisages the development of assistance agreements with third countries, which could mean extended assistance obligations beyond EU states.

21. With regard to the Single Liaison Office, this is defined in Article 3(d) as "the public authority in each Member State designated as responsible for co-ordinating the application of this Regulation within that Member State". Requests for information flow through the Single Liaison Office and they will have a role in co-ordinating enforcement activity if more than one enforcement body is involved.

22. There are a number of public consumer protection enforcement authorities in the UK that could be designated as competent authorities – these include the sectoral and utility regulators - Financial Services Authority, the Civil Aviation Authority, OFCOM and the Medicines and Healthcare Products Regulatory Agency. Annex A lists the authorities that currently have enforcement powers related to the Directives that are covered by the Regulation. The Government does strongly favour the designation of the OFT as both a competent authority and Single Liaison Office for the UK. The OFT is already the UK's foremost authority in the area of international consumer protection enforcement co-operation both in Europe and worldwide and its role in co-ordinating nationwide responses to cross border cases recommends them strongly for the role of Single Liaison Office.

23. The designation of other competent authorities is a matter for consultation and discussion with the enforcement agencies themselves but this consultation also invites views from other stakeholders. Designation as a competent authority has implications with regard to the enforcement powers that the authority can exercise, and with regard to resources. The latter issue is further addressed in the Regulatory Impact Assessment which accompanies this consultation. The Government is mindful however that there is a balance to be struck between ensuring the right authority can act quickly and effectively, and creating a simple, streamlined structure for cross-

⁶ There is one exception to this rule. Article 15(1) states that Member States shall waive all claims for reimbursement of expenses incurred in applying the regulation except the Member State of the applicant authority "shall remain liable to the Member State of the requested authority for any costs and any losses incurred as a result of measures held to be unfounded by a court as far as the substance of the intra-Community infringement is concerned". This clause is designed to protect against frivolous requests for action.

border co-operation. When considering which authorities should be designated, there are two important factors to take into account:

- **The Regulation allows for other bodies that are not competent authorities to act.** Article 8(3) provides that a requested authority may, with the agreement of the applicant authority, pass the mutual assistance request to another body which has a "legitimate interest in the cessation and prohibition of intra-Community infringements". This means a public or private body that has the power and ability - under current national laws - to take action that would be at least as effective as that taken by the competent authority and can guarantee the same confidentiality safeguards. If a request is passed on to another body in this way but results in a failure to bring about the cessation or prohibition of the infringement, the obligations on the requested competent authority remain.

This provision was inserted to assist some Member States who do not have a public enforcement tradition but do have other bodies, including consumer associations, that play a significant role in enforcing consumer protection rules. This provision also allows some helpful flexibility in the UK, as it ensures that the competent authorities can pass requests to other bodies that may be more appropriate to act, including non-public bodies. This approach also enables the appropriate body to act without the necessity of having all the required enforcement powers and assistance obligations. The competent authority would however be ultimately responsible for appropriate action being taken, and for this reason, we envisage the need to update Memorandums of Understanding between the competent authorities and other interested bodies to allow for these circumstances to be handled smoothly.

- **This mutual assistance network is not designed to cut across existing co-operation networks or practices.** This co-operation network should complement other existing ones such as those that exist in financial services or television broadcasting. Article 2(4) states that the Regulation will be "without prejudice to the fulfilment by the Member States of any additional obligations in relation to the mutual assistance on the protection of the collective economic interests of consumers...". If cases arise where action could be taken under more than one mechanism, a common sense decision should be taken as to which one is used.

Enforcement powers

24. Article 4 sets out the powers that each competent authority must be able to exercise in order to fulfil the obligations of this Regulation. The powers can be exercisable directly by the competent authority; under the supervision

of the judicial authorities; or by application to a court (see Article 4,1). The powers may only be used 'where there is reasonable suspicion of an intra-Community infringement' and shall include at least the right to:

- a. access any relevant document, in any form, related to the intra-Community infringement;
- b. require the supply by any person of relevant information related to the intra-Community infringement;
- c. carry out necessary on-site inspections;
- d. request in writing that a seller or supplier concerned cease the intra-Community infringement;
- e. obtain from the seller or supplier responsible for the intra-Community infringement an undertaking to cease the intra-Community infringement; and, where appropriate, to publish the resulting undertaking;
- f. require the cessation or prohibition of any intra-Community infringement and, where appropriate, to publish resulting decisions;
- h. require the losing defendant to make payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision.

25. The majority of these powers are provided for in existing UK laws. Most of them are listed in Part 8 of the Enterprise Act 2002, although the on-site inspection power is not. Similarly, Part 8, with the exception of the Regulation on Denied Boarding and the Directive on Unit Pricing, a breach of the other legislation listed in the annex to the Regulation would be a Community infringement for the purposes of Part 8 where it harmed the collective interest of consumers. The simplest way to implement this Regulation may therefore be to refer to Part 8 in the implementing Regulations. This would require some amendment to the Act, i.e. the addition of the two instruments to Schedule 13 (which lists the European legislation covered by the Act). The legislation implementing the two EC instruments would also have to be added to the Enterprise Act 2002 (Part 8 Community Infringements Specified in UK Laws Order) 2003.

26. One effect of this approach would be that it would enable 'Community qualified entities' in other Member States to take action in the UK courts for infringements of these instruments but does not provide reciprocal arrangements i.e. UK enforcers could not take action under these two instruments in other Member States. This is because the Injunctions Directive does not cover these two Directives. However the risk of this happening is low because it would be easier and more convenient to use the co-operation arrangements provided for in the Regulation. The alternative would be to establish an entirely separate enforcement regime for this Regulation via the implementation statutory instrument. This approach would not require any amendment to Part 8 but does risk confusing the UK's enforcement regime adding this separate element.

27. With regard to the on-site inspection power, this power can be exercised now by Trading Standards Authorities when investigating a criminal infringement, and is also available to some sectoral bodies in pursuance of their statutory duties. It is not however available to the OFT or to other enforcement authorities when investigating infringements of civil laws, and therefore would be new. This consultation seeks views on how this power could be framed and when it should be exercised. This new inspection power would be created in line with the principles of the Hampton Review, which recommends a policy of only making inspections where there is a clear reason.

Framing a new inspection power

28. At a minimum, this power should enable an enforcer to visit a business premises with written notice. Although this approach should be taken where possible, we foresee circumstances where visits without notice may be necessary. This could include cases where a business refuses to comply with a request for information or there is a risk that relevant records would be destroyed or the premises vacated if notice were given. As an example, OFT has taken cases against several holiday clubs, where the business winding up and individuals disappearing or starting other businesses using aliases have hampered investigations. Powers of on-site inspection would enable an authority to look for records or information linking businesses or individuals.

29. The Competition Act 1998 contains an existing example of how an inspection power is currently operated under civil law procedures. Under the Competition Act, the OFT has the power to enter premises to carry out inspections, either with or without a warrant if it has reasonable grounds for suspecting that an infringement has occurred. These powers enable the OFT to enter premises and to gain access to documents relevant to an investigation. The power to carry out inspections without a warrant is limited to business premises, which are defined in the Act as meaning any premises (or part of any premises) not used as a dwelling. It is not possible to enter businesses premises without a warrant unless at least two working days notice of the intended entry has been given. With a warrant, the OFT may carry out inspections of both business and domestic premises and there are wider search and entry powers.

30. Using this Act as a model, a new power could take the following provisions:

Possible powers on entry

31. The purpose of entering and searching premises is to gather evidence where there is a reasonable suspicion that an infringement has occurred or is likely to occur. Such evidence might include drafts of advertisements, written sales pitches, contracts between businesses etc.

32. On entering the premises the enforcer may need to be able to:

- Inspect both goods and documents;
- Copy documents and take originals away to be copied;
- Require information which is stored in any electronic form to be produced in a form which can be taken away and which is visible and legible or from which it can readily be produced in a visible and legible form;
- Seize and detain goods for the purpose of ascertaining, by testing or otherwise, whether there has been any breach;
- Seize and detain goods and documents which there is reason to believe these may be required as evidence in proceedings;
- Require containers, filing cabinets, safes, etc to be opened *on demand* and, if this is refused, the power to break them open;
- Take other persons and equipment with him as he thinks necessary.

Possible grounds of using the power

33. The Regulation already makes clear that powers will only be used where there is 'reasonable suspicion' that an infringement has taken place. We would also expect this power to be exercised only when other approaches have proved fruitless or an inspection is the only way to ensure relevant evidence can be obtained.

Application of the inspection power

34. This Regulation only requires Member States to make the powers available to competent authorities in cross border cases. In theory therefore, an enforcer would be able to use a wider range of enforcement powers when the harmed consumers are based abroad than if they were based in the UK. This could result in an unhelpful anomaly which could be addressed by applying the powers for domestic infringements of the Directives covered by the Regulation. If we do pursue this approach, we will need to explore further whether section 2(2) of the European Communities Act would provide an adequate legal basis to enable us to do so. This consultation seeks views on widening the application of this power in this way.

Questions

4. Do you have any comments about the legislative implementation of this Regulation?

5. Do you agree with the possible approach to framing an on-site inspection power? What other issues or approaches should we consider?

6. Should the on-site inspection power be limited to intra-Community infringements or apply also to domestic infringements of the same laws?

7. Do you have any comments about the definition or application of any of the other enforcement powers?

Role of consumer organisations

35. This Regulation foresees an important role for consumer organisations. Recital 14 states “Consumer organisations play an essential role in terms of consumer information and education and in the protection of consumer interests, including the settlement of disputes, and should be encouraged to co-operate with competent authorities to enhance the application of this Regulation”. Article 17(1)b, which sets out potential areas for administrative co-operation, explicitly provides for common action to “support the activities of consumer representatives”.

Question

8. Do you have any suggestions for how consumer groups can contribute to the aims and activities of this Regulation or how their activities can be supported?

Third country agreements

36. Recital (10) says that because enforcement challenges that exist go beyond the frontiers of the European Union “there is an need for international agreements to be negotiated with third countries regarding mutual assistance in the enforcement of the laws that protect consumers’ interests”. Article 18 provides for third country agreements.

37. UK attaches great importance to creating a solid global framework of co-operation as demonstrated by our existing enforcement agreements (see paragraph 9 above). Community-wide agreements potentially offer opportunity to create a seamless co-operation structure and the Commission is considering which countries to prioritise for a Community-wide agreement.

Questions

9. Which countries to you think are priorities for an EU-wide agreement?

Community activities

38. Articles 16 and 17 provide for a wide variety of enforcement and administrative activities. These include; training and exchange programmes for enforcement officials; development of a common framework for consumer complaints; common information and advice projects and development of communication and information tools for enforcers. We view these articles as a very important part of the Regulation as they create the framework for a deep co-operation and communication culture between Member States.

Question

10. What enforcement and co-operation activities do you think are priorities for action?

Annex A - Legislation covered by the CPC Regulation and enforcement authorities

Legislation covered by the CPC Regulation	Public authorities with current enforcement powers
Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002 ⁷
Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
3. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
5. Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
6. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
7. Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002

⁷ These authorities are: Financial Services Authority; Civil Aviation Authority; Office of Rail Regulation; Director General for Electricity Supply for Northern Ireland; Director General of Gas for Northern Ireland; Information Commissioner; Office of Communications (Ofcom); Director General of Water Services (Ofwat); Gas and Electricity Markets Authority (Ofgem). Although in theory these bodies can enforce most of the laws listed in this annex, in practice they would only act where an infringement was affecting their sector

8. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
9. Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising.	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
10. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
11. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
12. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
13. Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100	OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002, Medicines and Healthcare Products Regulatory Agency
14. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.	OFT, OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002
15. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights	Civil Aviation Authority
<i>16. Directive on Unfair Commercial Practices [when adopted]</i>	<i>OFT, Trading Standards, and designated enforcers under Part 8 of the Enterprise Act 2002</i>

Annex B – Partial Impact Assessment

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1. Purpose and intended effect

(A) Objective

1. To give UK businesses and consumers more confidence to trade across borders by creating an EU-wide co-operation network of enforcement authorities to tackle cross-border infringements.

(B) Background

2. Despite a substantial set of EU consumer protection laws, cross border enforcement is very difficult to achieve. Although the Injunctions Directive (98/27/EC) gives designated enforcement bodies the power to apply for injunctions in another Member State, where the interests protected by that enforcement body are affected by an infringement in that Member State, there remains the formidable hurdle of bringing an application in a foreign jurisdiction and under law with which the body may be unfamiliar. Indeed, it has only been used successfully once to date - an action taken against a Belgian direct selling company in 2004 by the Office of Fair Trading (OFT). This means there are gaps in consumer protection that can be exploited. The lack of a public enforcement body in some countries is a particular problem as it means that co-operation and information sharing can be severely limited.

3. In the UK, the Enterprise Act 2002 provided enforcers with more power to disclose information on consumer cases with overseas public enforcement bodies. It also gives our consumer protection a more international focus by providing that enforcement authorities can act in the interest of foreign consumers under certain circumstances. Welcome though these developments are, they are only effective if a public enforcement body exists in another Member State. There is also no guarantee that other countries will reciprocate by acting in the interests of UK consumers.

4. As well as the existing legal framework, informal co-operation arrangements exist. The main forum the International Consumer Protection Enforcement Network, and its European branch ICPEN Europe. ICPEN Europe facilitates co-operation and best practice sharing, and while this informal network is valuable, it can only operate within the existing legal co-operation frameworks.

5. The UK is signatory to multilateral and bilateral consumer protection co-operation agreements. In 2003, the Organisation for Economic Co-operation and Development (OECD) agreed a set of guidelines designed to improve co-operation between its members, including information sharing and co-

operation on cases of cross-border fraud². The DFEI and OFT are also signatory to co-operation agreements with the United States Federal Trade Commission³ and Canada, Australia and New Zealand.

6. Consumers and consumers associations have a role in bringing private civil law actions in courts, although the difficulty, length and cost of these actions mean this route is not an effective driver for consumer protection and redress in the EU.

7. Redress can also be sought via alternative dispute resolution (ADR), through ombudsmen or by arbitration. To facilitate ADR, the EC has set up the European Extra Judicial Network (EEJ-Net) of alternative dispute resolution bodies. EEJ-Net is designed to help consumers access ADR schemes if they have disputes with traders in other Member States. Although a valuable low cost and user-friendly complement to formal enforcement mechanisms, it can only be part of the enforcement picture, as it ultimately relies on the businesses involved being willing to co-operate and seek a resolution to the complaint.

8. The Regulation on Consumer Protection Co-operation (CPC) was designed to eliminate these barriers and gaps in cross border enforcement. In summary its key features are:

- Formalised co-operation through a network of public authorities (called 'competent authorities') on the enforcement of intra-Community laws that protect consumers' interests (15 Directives listed in the annex to the Regulation);
- Required enforcement powers for those authorities;
- Requirements to provide mutual assistance for the exchange of information and co-operation on cross-border cases;
- A single liaison body in each Member State to facilitate this co-operation;
- Co-ordinating and supporting role for the Commission;
- Establishment of an Advisory Committee to assist in implementing the practical procedures for the operation of the Regulation and to facilitate co-operation of a broad range of enforcement co-operation activities.

9. The Regulation was formally adopted and published by the Commission in July 2003 and political agreement was reached in April 2004 under the Irish Presidency. The relative speed of this negotiation (agreed after First Reading in Parliament) reflects the widespread view amongst Member States, MEPs and stakeholders that stronger cross border enforcement co-operation is needed. The UK was one of the most vocal supporters of this Regulation as

² More information about the OECD and the Guidelines can be found at www.oecd.org.

we have for some time called for a more formalised enforcement co-operation structure. The Regulation is due to be fully implemented by the end of 2006⁹.

10. The Government is mindful that there are wider questions about the enforcement framework that have yet to be worked out. This is particularly with regard to implementation of the Hampton Review of Regulatory Inspection and Enforcement¹⁰ which will affect the structure of consumer protection enforcement in the UK. This document refers to these bodies as they currently stand. Implementation of this Regulation will also take due account of the Hampton recommendations on investigative activity.

(C) Rationale for Government intervention

11. The Regulation stipulates that full implementation should be complete by December 2006. It is essential that the Government meet this deadline in order to comply with our Community obligations and avoid infraction proceedings. Further, having been a vocal supporter of this measure, it is also important that we implement this Regulation in a way that is practically workable from day one. Beyond fulfilling our Community obligations, Government intervention through this Regulation will address the objective by improving consumer protection and protecting extending the internal market.

Protecting consumers

12. Failure to implement this Regulation properly will leave UK consumers exposed to scams and other fraudulent trading that emanate from abroad. In 2004 the OFT received an average 386 cross border consumer complaints per month. This translates itself. The European Consumer Centre (ECC) and European Judicial Network (EEJ-Net) reported a 36 per cent increase on the number of cross-border queries dealt with during the first half of 2004, with the majority of these coming from consumers based in the UK or from UK Citizens' Advice Bureau.¹¹

13. Two of the biggest areas of consumer detriment – timeshare fraud and fake lotteries or prize draws often target UK consumers from other parts of Europe and beyond. Within the timeshare sector, the Organisation for Timeshare in Europe (OTE), estimates that approximately 8-10 per cent of sales are lost to rogue operators in Spain out of total revenue of €431 million per annum.

⁹ Full text of the Regulation accompanies this consultation document but can also be found at http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_364/l_36420041209en00010011.pdf.

¹⁰ The full report can be found at www.hm-treasury.gov.uk/hampton
¹¹ www.euroconsumer.org.uk/ecc.eej.interim_report_0704.doc

14. The OFT estimates that UK consumers lose £1 billion per year to a variety of scams that exploit low cost, mass marketing techniques. This includes £250 million a year on prize draws, sweepstakes and lottery mailings¹². Sir John Vickers, OFT Chairman, said "Cross-border fraud against consumers, such as deceptive telemarketing, is a growing problem, costing UK consumers many millions of pounds a year."¹³

Extending the internal market

15. Previous work by the European Commission¹⁴ gives an analysis of the extent of the limits to cross-border shopping which, even with reductions in the 'natural' barriers (such as cultural, language, distance and currency barriers) in recent years, has remained at low levels with only around 13% of EU consumers, and 14% of UK consumers, having made one or more cross-border purchases in the last 12 months.

16. In a Eurobarometer survey¹⁵ on business experience of, and attitudes to, cross-border shopping, business reported that cross-border sales make up only a small percentage of sales to final consumers: 3% of Internet sales, 3.7% of telephone/mail order, 8% of door-to-door, 4.8% of sales to tourists in shops. Only 6.6% of advertising and marketing budgets are aimed at encouraging cross-border sales. The Commission argues that these low levels of cross-border transactions limit consumer choice, reduce competitive pressure for efficient pricing and represent a lost opportunity in terms of economic growth¹⁶. They suggest that the potential economic gains of addressing these problems are significant. A genuine internal market for consumers would also contribute to the Lisbon European Council goal of enhancing the EU's competitiveness and creating sustainable economic growth.

17. The Commission attributes the low level of cross-border shopping to a combination of business reluctance to market their products across borders and the unwillingness of consumers to purchase from businesses established in other countries.

¹² <http://www.of.gov.uk/NR/ronlyres/556C3C01-AD57-4C1A-8144-8751CF2D03FE/0/ft40scams.pdf>

¹³ www.sourceuk.net/articles/a03553.html

¹⁴ Commission staff working paper: Extended impact assessment on the Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive), 26 June 2003 (1094/03 ADD 1)

http://europa.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/impact_assessment_en.pdf

¹⁵ Standard Eurobarometer 57.2 - Flash Eurobarometer 128 Public opinion in Europe: Views on business-to-consumer cross-border trade, 14 November 2002

http://www.europa.eu.int/comm/public_opinion/archives/ebs/ebs_175_fl128_en.pdf

¹⁶ Commission staff working paper: Extended impact assessment on the Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive), 26 June 2003 (1094/03 ADD 1)

18. Of the 26 per cent of consumers who said they were less confident about purchasing goods or services cross border, a large majority (over 80 per cent in each case) said that important or fairly important contributors to their lack of confidence were¹⁷:

- It is harder to resolve after sales problems
- It is harder to take legal action through the courts
- It is harder to ask public authorities or consumer associations to intervene on my behalf

19. Around three quarters of those same respondents said that if they were able to ask their own authorities or an independent body to intervene on their behalf that they would be more confident to shop cross border.

20. A study prepared for the Commission¹⁸ suggests that up to 80 million European consumers might buy more cross-border if they were confident about making purchases from shops or sellers located in another EU country. Using the same methodology (which is rather simplistic), the equivalent figure for the UK is 10 million consumers.

2. Options

21. This is a Community Regulation and directly applicable in UK law. Therefore, the scope for interpretation and choice when implementing is very limited. There are however, two key areas where the Government has some discretion – designation of Competent Authorities and design of new enforcement powers. The 'do nothing' option is also included for completeness and as a benchmark.

Do nothing

22. Doing nothing would incur the penalties associated with non-compliance with our Community obligations. Any beneficial cost saving through non-action is vastly outweighed by potential financial and reputational costs of infraction proceedings. The costs to consumers of not tackling cross border infringements of consumer rules as set out above under section 1(C) apply to this option.

¹⁷ Standard Eurobarometer 57.2 - Flash Eurobarometer 128 Public opinion in Europe: Views on business-to-consumer cross-border trade, 14 November 2002

¹⁸ GFA Management "Ex-ante Impact Assessment of the options outlined in the Green Paper on EU Consumer Protection" (B5-1000/02/000074).
http://europa.eu.int/comm/consumers/policy/developments/fair_comm_pract/gfa_report_en.pdf

Options for designation of Competent Authorities

23. Member States have the responsibility to select competent authorities, and in the UK, there are a number of public consumer protection enforcement authorities in the UK that could be designated, including the OFT, sectoral regulators and Trading Standards Authorities.

Option 1. Do nothing

24. Designation of competent authorities is the core function of this Regulation. No action in this area therefore risks the same penalties as identified in the 'Do Nothing' action above

Option 2. Designation of the OFT only

25. The OFT plays an active and leading role in cross border consumer protection enforcement and, combined with their role as national enforcement co-ordinator, they are the natural choice for the main competent authority and single liaison office. Designation of the OFT only would ensure that there is a streamlined structure with cases of this type being dealt with or processed by one authority. In practice, we envisage that the types of cross border cases that this Regulation is aimed at (e.g. misleading lottery scams, timeshare fraud) are those that would be dealt with by the OFT as things are.

26. However, this Regulation will require the involvement of other authorities that deal with certain sectors or Directives. This includes infringements relating to financial services, air travel and medicinal products. Annex A lists the enforcement authorities associated with the legislation covered by this Regulation.

27. Designating the OFT only would not mean that they would act in cases where another enforcer was better placed to act. Article 8(3) provides that a requested authority may, with the agreement of the applicant authority, pass the mutual assistance request to another body which has a "legitimate interest in the cessation and prohibition of intra-Community infringements". This means a public or private body that has the power and ability to take action that would be at least as effective as that taken by the competent authority and can guarantee the same confidentiality safeguards.

28. In other words, that other bodies can take enforcement action on behalf of the OFT without making any changes to their status or powers. However, this does create a second level of co-operation action, and it may be preferable to have some other public enforcement agencies directly in the network. It should also be noted that competent authorities could be added or removed at any time.

29. In terms of meeting the implementation objectives this option would do so to some degree although there is a danger of restricting the network too narrowly.

Option 3. Designation of the OFT and other enforcement authorities on a voluntary basis

30. Designating other enforcement authorities as 'Competent Authorities' would therefore enable these bodies that deal with specific sectors or areas of consumer law to be directly involved. This option would meet the implementation objective to the greatest extent and is the Government's preferred option.

Option 4. Designation of all relevant public enforcement agencies

31. Designating all public authorities would mean that all authorities were directly involved in the network and the right authority could start taking action without the need for a second co-operation request to be made. However, this could have resource implications for all enforcers and threatens the simple, streamlined procedure that this Regulation is aimed at providing.

32. This option would meet the implementation objective to some extent. However this risks creating unnecessary burdens on enforcers and complicating the co-operation network.

Options for new inspection powers

33. The majority of these powers required by this Regulation are provided for in existing UK laws, but not all are available to all enforcers. The on-site inspection power is, for example, held by Trading Standards Authorities when investigating a criminal infringement, and is also available to some sectoral bodies in pursuance of their statutory duties. However, in the majority of cases, this power is not available to enforcement authorities, including the OFT, when investigating infringements of civil laws, and therefore would be new. New inspection powers would therefore need exact framing in UK law and will be subject to public consultation. This section sets out the options that will be subject to consultation.

Option 1: Do nothing

34. No action in this area therefore risks the same penalties as identified in the 'Do Nothing' action above.

Option 2: Minimum inspection powers

35. In order to comply with the Regulation at a minimum level, enforcement agencies should be able to request in writing that a visit be made to a

business premises. This request would state the nature of the visit, and request sight of specified documents or other evidence. This option would meet the objectives of the Regulation to some degree. However, it would not assist investigators in cases where rogue traders are likely to vacate premises or destroy evidence if the inspection was announced. For example the OFT have taken cases against several holiday clubs where investigations have been hampered by the business winding up and individuals disappearing or starting other businesses using aliases. There is a strong risk therefore that this minimum power would be ineffective.

Option 3: New inspection powers modelled on equivalent provisions in competition and consumer law.

36. The Directives that are covered by this Regulation are all currently enforced in the UK under civil law. The nearest equivalent powers on which to model a new inspection power on are the powers available under the Competition Act 1998. These enable inspections to be made without warning if necessary (e.g. if evidence may be destroyed if notice were given) and allows for inspections with and without warrants (the latter giving wider entry and search powers). This approach would also look to existing inspection powers in consumer law, such as those attached to the Trade Descriptions Act, which also enable visits without warning. The exact framing of the power would be the subject of public consultation and guidance (primarily aimed at business) would be produced setting out how the power would be used.

37. This option would meet the objectives of the Regulation to a great degree.

Option 4: New powers modelled on equivalent provisions in competition and consumer law and applied to domestic and cross border breaches of the laws covered by this Regulation.

38. This Regulation only requires Member States to make the powers available to competent authorities in cross border cases. In theory therefore this risks creating a situation where an enforcer would be able to use a wider range of enforcement powers when the harmed consumers are based abroad than if they were based in the UK. This anomaly could be addressed by applying these powers to domestic as well as cross border infringements of these rules covered by the Regulation. Although this would increase the scope of the measure beyond the minimum level set out in the Regulation, it could be defended on the grounds that it addresses a prejudicial inconsistency that would otherwise emerge.

39. This option would meet the objectives of the Regulation to the greatest degree, and ensure parity and consistency of enforcement activity for all cases.

3. Costs and benefits

Option 1: No action

40. The potential costs and benefits of action are set out in section 1(C) above.

Designation of competent authorities

Option 1: No action

41. This option would have no benefits and serious costs, as it would involve renegeing on our Community commitments.

Options 2 &3: Designation of the OFT only and designation of the OFT and other enforcement authorities on a voluntary basis

42. These options have considerable benefits as they enable the OFT to continue in its role as the primary authority on cross border enforcement action. Through this role, OFT has amassed the expertise, experience and resource to effectively handle cross border cases. These options also have the potential to significantly improve the ability of the OFT and other designated enforcement agencies to deal with cross border cases as they can call on the assistance of equivalent bodies to take enforcement action or help gather evidence against traders that are harming UK consumers. This mutual assistance will be increasingly important as the scope of EU consumer protection rules has just expanded through the adoption of the Directive on Unfair Commercial Practices, which establishes a 'general duty not to trade unfairly' and which will be added to the Annex of this Regulation when adopted.

43. These options also offer higher levels of protection for consumers by establishing an effective enforcement co-operation network. This also benefits business, as it will help close the net around wrongdoers, thereby ensuring legitimate business is not undermined by rogue elements in a market.

44. Option 3 has the additional benefit of enabling some authorities with a specific interest in a sector or Directive to be directly involved in the network. Having sector specific knowledge makes successful action against particular breaches of consumer protection more likely and also reduces the possibility that the authorities will pursue frivolous or unfounded cases.

45. In terms of costs, most are administrative costs that fall to enforcement agencies in order to effectively act under this Regulation. One potential outcome is an increase in requests for enforcement action from other

Member States. It is not expected however that there will be a substantial increase because:

- (a) Enforcers already handle cross border cases and this Regulation will ensure that cases can be dealt with more effectively by improving co-operation. Further, this network will work positively in this regard as it will oblige authorities in other Member States to take action on our behalf, replacing the need for UK authorities to pursue cross border cases on their own volition and expense.
- (b) Enforcers will not be required to investigate frivolous or unsubstantiated cases as the Regulation requires that requests for assistance meet clear thresholds of reasonable suspicion and evidence.

46. Implementation of the Regulation may also incur some administrative costs to those authorities designated as Competent Authorities. OFT estimate that 6 Full Time Equivalent (FTE) staff between October 2005-April 2007, including input from in-house lawyers. This period will involve putting in place the necessary processes, teams, training, IT enhancements etc. to be able to operate as a Single Liaison Office. After full implementation (from January 2007) OFT anticipate being net receivers of cases through the network. Based on resources the currently used on cross border cases, OFT anticipate around 12 FTE staff, encompassing resource spent on: co-ordination with other UK and EEA enforcers, case work (investigation, taking action etc.), participating in EU comitology meetings and IT support and liaison.

Option 4: Designation of all relevant public enforcement agencies

47. This approach has the benefit of ensuring that all appropriate authorities are within the network and able to act without a second request for assistance. As in option 3, the sector specific knowledge would be available to maximise the effectiveness of the authorities. However, this option could result in new resource commitments and enforcement responsibilities for authorities that do not necessarily need to be directly involved in these cases. It also risks unnecessarily complicating the co-operation network.

New inspection powers

Option 1: No new inspection power

48. This option would have no benefits and serious costs as it would involve renegeing on our Community commitments.

Option 2: Minimum inspection powers

49. This option would have the advantage of requiring minimal resource and training for enforcement authorities. This approach however runs a serious

risk of creating a power that would be ineffectual for enforcers when tackling wrongdoers who are likely to change locations and guises to evade detection. While this option is unlikely to require any new resources, it may have no real benefit to enforcers and ultimately consumers.

Option 3: New powers modelled on equivalent provisions in competition and consumer law

50. This option has the advantage of being able to benefit from existing experience of an inspection power in civil cases (i.e. under the Competition Act 1998). Its exact parameters however will be the subject of public consultation.

51. The CPC, with the inspection powers outlined in this option, will make it easier to tackle and deter bad practices. As a result there will be less consumer detriment and a potential benefit also for those companies who lose customers to companies engaged in rogue practices. The precise reduction in consumer detriment will depend on the effectiveness of enforcement and on consumer awareness of their rights.

52. With any new power however, there is a potential cost to businesses that are the subject, in this case of an investigation. For example, staff may be taken off their normal duties to assist inspection officers for what may be a day or more. It also takes staff time for the enforcers. Enforcers therefore need to consider the costs to both business and themselves and issue clear guidance on when and how the power would be used and train their officials accordingly.

53. This option is the most likely to create an effective inspection power and thereby meet the objectives of the proposal in terms of strengthening the internal market and also in reducing harm to consumers.

Option 4: New powers modelled on equivalent provisions in competition laws and applying them to domestic and cross border breaches of the laws covered by this Regulation.

54. This option would share the costs and benefits of option 3, but have the further benefit of ensuring that a level playing field exists for infringements of the laws under this Regulation, whether they are domestic or cross border. This is likely to increase the effectiveness of domestic enforcement too and will therefore have positive effects in reducing domestic consumer detriment, estimated by OFT in 2000 as costing £8.3 billion, as well as that suffered by those buying products or services in other Member States.

4. Summary of costs and benefits

Option	Benefits	Costs
No action	No benefit	Infraction proceeding and reputational harm
Designation of Competent Authorities		
Option 1: No action	No benefits	Infraction proceeding and reputational harm
Option 2 & 3: Designation of OFT only and OFT and other enforcers on a voluntary basis	<p>Enables OFT to continue in its role as the primary authority on cross border enforcement action.</p> <p>Improves the ability of the OFT and other designated enforcement agencies to deal with cross border cases through mutual assistance</p> <p>Offer higher levels of protection for consumers by establishing an effective enforcement co-operation network. This also benefits business as it will help close the net around wrongdoers</p> <p>Option 3 has the additional benefit of enabling some authorities with a specific interest in a sector or Directive to be directly involved in the network.</p>	Most costs are administrative on enforcement agencies in order to effectively act under this Regulation. Includes resource to provide training and guidance for enforcement officials and participate in a range of enforcement co-operation activities. OFT estimate 6-12 FTE staff needed.
Option 4: Designation of all consumer protection enforcement agencies		Could result in new resource commitments and enforcement responsibilities for authorities that do not necessarily need to be directly involved in these cases. It also risks unnecessarily complicating the co-operation network.

New inspection powers		
Option 1: No action	No benefits	Serious costs as it would involve renegeing on our Community commitments.
Option 2: Minimum inspection powers	This option would have the advantage of requiring minimal resource and training for enforcement authorities.	Serious risk of creating a power that would be ineffectual for enforcers when tackling wrongdoers who are likely to change locations and guises to evade detection.
Option 3: New powers modelled on equivalent provisions in competition and consumer law	<p>Advantage of being able to benefit from existing experience of an inspection power in civil cases (i.e. under the Competition Act 1998). Its exact parameters however will be the subject of public consultation.</p> <p>Option most likely to create an effective inspection power and thereby meet the objectives of the proposal</p>	With any new power however, there is a potential cost to businesses that are the subject, in this case of an investigation. For example, staff may be taken off their normal duties to assist inspection officers for what may be a day or more. Enforcers therefore need to consider the costs to both business and themselves and issue clear guidance on when and how the power would be used and train their officials accordingly.
Option 4: New powers modelled on equivalent provisions in competition laws and applying them to <u>domestic and cross border</u> breaches of the laws covered by this Regulation.	Option would share the costs and benefits of option 3, but have the further benefit of ensuring that a level playing field exists for infringements of the laws under this Regulation, whether they are domestic or cross border.	No additional costs

5. Small firms impact test

55. The Regulation will only directly affect small businesses that are trading fraudulently or unfairly. It could also impact those wrongly suspected of doing so which are subsequently subject to inspection.

6. Competition assessment

56. The Regulation does create new consumer protection rules, but ensures that existing laws are enforced properly. This focus on strong enforcement will have the effect of protecting legitimate business and deterring bad

practice and have a positive effect on both national and intra-community trade and competition.

7. Enforcement, sanctions and monitoring

57. The Regulation sets out in detail the procedures and practices for enforcement activity by the Competent Authorities. We hope and expect that execution of this co-operation will not be cumbersome and overly bureaucratic but simple and in the spirit of good will. The Government will encourage competent authorities to draw up guidelines as to how this Regulation will be implemented including how and when enforcement powers will be used; how cases will be handled if more than one agency needs to be involved; and how cases will be handled where another agency is acting on behalf of a competent authority. We also envisage that Government departments and business and consumer representative groups will play a role by, for example, helping to identify problem areas for consumers shopping across borders. The Government will also encourage competent authorities to ensure that this Regulation is implemented in light of the principles of the Hampton Review, for example in the way that inspections are carried out.

58. Regular monitoring of levels and effectiveness of enforcement is built into the Regulation, but it will also be subject to Parliamentary review every three years. The DTI has responsibility for ensuring the Regulation continues to be implemented effectively.

8. Summary and recommendations

59. The Government has been a vocal supporter of this Regulation throughout its negotiation, and we therefore aim to implement it quickly and effectively. Subject to further consultation we would support:

- Extending the OFT's leading role in cross border consumer protection by designating them as main competent authority and single liaison office
- Designating other willing enforcement authorities that deal with specific sectors or Directives to ensure that they are in the loop
- Introducing a meaningful inspection power that has the capacity to deal with hard-core offenders.

DTI
June 2005

Annex C – Code of Practice on consultations

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Nick van Benschoten, DTI Consultation Co-ordinator, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email to: nick.vanbenschoten@dti.gsi.gov.uk

Annex D – List of consultees

Advertising Association	Law Society for Scotland
Advertising Standards Authority	Local Authorities Co-ordinators of Regulatory Services (Lacors)
Air Transport Users Council	Local Government Association
Amazon	Mail Orders Traders Association
Association of British Travel Agents	Medicines and Healthcare Products Regulatory Agency
Association of Timeshare Owners Committees	National Assembly for Wales
British Bankers Association	National Consumer Council
British Chambers of Commerce	
British Retail Consortium	National Federation of Consumer Groups
Camelot	National Lottery Commission
Citizens' Advice	General Consumer Council for Northern Ireland
Citizens' Advice Scotland	Office of Communications
Civil Aviation Authority	Office of Fair Trading
Confederation of British Industry	Office of Gas & Electricity Markets (Ofgem)
Confederation of Passenger Transport UK	Office of the Information Commissioner
Consumer Credit Association	Office of the Rail Regulator
Consumers International	Office of Water Services (Ofwat)
Direct Marketing Association	Organisation of Timeshare in Europe
Direct Selling Association	Postwatch
Energywatch	Scottish Consumer Council
Federation of Small Business	Scottish Executive
Financial Ombudsman Service	Small Business Europe
Financial Services Authority	Timeshare Consumers Association
Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS)	Trading Standards Institute
Institute of Directors	
Law Commission	Watervoice
Law Society	Welsh Consumer Council
Law Society for Northern Ireland	Which?

End