

dti

UK CONSUMER LAW

Public consultation on a proposal to repeal the Trading Stamps Act 1964 and amend associated provisions by means of a regulatory reform order

May 2003

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Summary of Proposals

The Government is proposing to repeal the Trading Stamps Act 1964 ("the 1964 Act") and to amend the Supply of Goods and Services Act 1982 ("the 1982 Act").

What is being proposed?

The 1964 Act contains requirements in respect of the issue, use and redemption of trading stamps, and implies various warranties on the redemption of trading stamps for goods. The Act places unnecessary burdens on business, without providing any real protection to consumers. The type of customer incentive scheme originally targeted by the Act (such as the Green Shield Stamp scheme) has fallen into disuse. Certain incentive schemes exist which technically fall within the remit of the 1964 Act, but there appears to be no good reason to distinguish these from incentive schemes which are more usual nowadays, for example those where an electronic card is "swiped" and the customer is awarded points. The Government's view is that "electronic" schemes fall outside the definition of "trading stamp" in the 1964 Act and instead fall within the remit of the 1982 Act. It is therefore proposed that consumers of goods received under all types of incentive scheme shall be protected under the 1982 Act.

Why are these changes needed?

Businesses will no longer have to comply with the specific requirements in the 1964 Act for transparency of information about trading stamp schemes and the provision of protection against receiving unsafe or unsatisfactory goods through those schemes. The Government considers that specific legislation in this area is no longer necessary. The removal of the burdens imposed by the 1964 Act will save businesses some administrative costs, and, together with the further proposed changes, will provide a harmonised legal framework for the operation of promotional activities in the retail sector. It is anticipated that this harmonisation will encourage retailers to devise more promotional activity for the benefit of themselves and their customers.

How will the repeal and amendment affect businesses?

As noted above, shops and other retailers will have more flexibility to encourage and reward customer loyalty. Consumers will of course continue to be protected against the risk of receiving unsafe or shoddy goods through sales promotions. Given that there is not widespread use of promotional schemes that fall within the provisions of the

How will the repeal affect consumers?

1964 Act it is thought that there are few consumers who currently take advantage of such schemes. However, there will be no negative financial impact on such consumers – schemes that currently fall within the provisions of the 1964 Act will still be able to operate and there is no reason to expect that those currently operating will cease due to the proposals outlined in this document.

You are invited to comment on any aspect of the proposals set out in this consultation, but specific questions are set out in Annex H. To assist the analysis of responses **it would be helpful if you used the response form provided, and returned it to the address stated by 20/8/2003**. Alternatively, please send comments by e-mail to tsact@dti.gsi.gov.uk (see paragraph 1.9 below).

This consultation is being made in accordance with the Regulatory Reform Act 2001 (summary at Annex C) and the terms of the Government's Code of Practice on Written Consultation (Annex D).

We need to be sure that an Order does not remove any necessary protection from individuals or organisations, and that it does not prevent them from exercising existing rights or freedoms that they might reasonably expect to continue to exercise. When an Order imposes a burden, it must be desirable. It must also strike a fair balance between the public interest and the interest of those who are affected by the burden being created, and the burden must be proportionate to the expected benefit.

We intend that the proposed repeal and amendments will be made through a Regulatory Reform Order under the Regulatory Reform Act 2001. Subject to the outcome of consultation, we propose that the changes are implemented as soon as practicable.

What should I do?

What are the criteria for this consultation?

How will these proposals be taken forward and when will they be implemented?

Crynodeb o'r Cynigion

(Summary of proposals – Welsh language version)

Mae'r Llywodraeth yn cynnig diddymu Deddf Stampiau Masnachu 1964 ("Deddf 1964") (the Trading Stamps Act 1964) a diwygio Deddf Cyflenwi Nwyddau a Gwasanaethau 1982 ("Deddf 1982") (the Supply of Goods and Services Act 1982).

Beth a gynigir?

Mae Deddf 1964 yn cynnwys gofynion mewn cysylltiad â dosbarthu, defnyddio a chyfnewid stampiau masnachu, gan ymhygu amrywiol warantiadau wrth gyfnewid stampiau masnachu am nwyddau. Ystyrir bod y Ddeddf yn gosod beichiau diangen ar fyd busnes, heb roi unrhyw wir ddiogelwch i ddefnyddwyr. Mae'r math o gynllun cymell cwsmeriaid a oedd mewn golwg wrth lunio'r Ddeddf wreiddiol (megis Cynllun Stampiau Green Shield) wedi mynd o arfer bellach. Mae rhai cynlluniau cymell yn bodoli sydd, yn dechnegol, yn dod o fewn cwmpas Deddf 1964, ond nid ymddengys fod rheswm da dros wahaniaethu rhwng y rhain a chynlluniau cymell sy'n fwy arferol erbyn hyn, er enghraifft rhai lle caiff cerdyn electronig ei "sgubo" trwy beiriant fel bod y cwsmer yn cael pwyntiau. Barn y Llywodraeth yw bod cynlluniau "electronig" y tu allan i'r diffiniad o "stampiau masnachu" a roddwyd yn Neddf 1964 a'u bod yn hytrach yn dod o fewn cwmpas Deddf 1982. Cynigir, felly, i ddefnyddwyr nwyddau a dderbynnir o dan bob math o gynllun cymell gael eu diogelu o dan Ddeddf 1982.

Pam bod angen y newidiadau hyn?

Ni fydd yn rhaid mwyach i fusnesau gydymffurfio â gofynion penodol Deddf 1964 o ran tryloywder gwybodaeth am gynlluniau stampiau masnachu a darparu diogelwch rhag derbyn nwyddau anniogel neu anfoddfaol trwy'r cynlluniau hynny. Mae'r Llywodraeth yn teimlo nad oes angen deddfwriaeth benodol yn y maes hwn mwyach. Bydd cael gwared â'r beichiau a osodwyd gan Ddeddf 1964 yn arbed rhai costau gweinyddol i fusnesau, ac, ar y cyd â newidiadau pellach a arfaethir, yn darparu fframwaith cyfreithiol cyson ar gyfer dilyn gweithgareddau hybu yn y sector manwerthu. Rhagwelir y bydd y cysoni hwn yn symblu manwerthwyr i ddyfeisio rhagor o weithgarwch hybu er eu lles eu hunain a lles eu cwsmeriaid.

Sut y bydd y diddymu a'r diwygio yn effeithio ar fusnesau?

Fel y nodwyd uchod, bydd gan siopau a manwerthwyr eraill fwy o ystywthder i feithrin a gwobrwyo ffyddlondeb

Sut y bydd y diddymu yn

cwsmeriaid. Wrth gwrs, bydd defnyddwyr yn parhau i gael eu diogelu rhag perygl derbyn nwyddau anniogel neu eilradd trwy hyrwyddiadau gwerthu. O gofio nad oes manteisio helaeth ar y cynlluniau hybu sy'n dod o dan ddarpariaethau Deddf 1964, teimlir mai ychydig o ddefnyddwyr sy'n cael budd o gynlluniau o'r fath ar hyn o bryd. Fodd bynnag, ni fydd ardrawiad ariannol negyddol ar ddefnyddwyr o'r fath - bydd modd i gynlluniau sy'n dod o dan ddarpariaethau Deddf 1964 weithredu o hyd, ac nid oes rheswm dros gredu y bydd y rhai sy'n gweithredu ar hyn o bryd yn gorfod peidio oherwydd y cynigion a amlinellir yn y ddogfen hon.

effeithio ar ddefnyddwyr?

Fe'ch gwahoddir i gyflwyno sylwadau am unrhyw agwedd ar y cynigion a nodir o dan yr ymgynghoriad hwn, ond mae cwestiynau penodol i'w gweld yn Atodiad H. I hwyluso dadansoddiad yr ymateb **byddai o gymorth pe baech yn defnyddio'r ffurflen ymateb a ddarparwyd, a'i dychwelyd i'r cyfeiriad a roddwyd erbyn 20/8/2003.** Fel arall, byddwch cystal ag anfon sylwadau trwy e-bost at tsact@dti.gsi.gov.uk (gweler paragraff 1.9 isod).

Beth y dylwn ei wneud?

Cynhelir yr ymgynghoriad hwn yn unol â Deddf Diwygio Rheoleiddiol 2001 (crynodeb yn Atodiad C) a thelerau Cod Ymarfer y Llywodraeth ar Ymgynghori Ysgrifenedig (Atodiad D).

Beth yw meini prawf yr ymgynghoriad hwn?

Mae eisiau inni fod yn siŵr nad yw Gorchymyn yn cael gwared ag unrhyw ddiogelu angenrheidiol a fwynheir gan unigolion neu sefydliadau, ac nad yw'n eu hatal rhag arfer hawliau neu ryddid presennol y gallent ddisgwyl yn rhesymol gael parhau i'w harfer. Lle bo Gorchymyn yn gosod baich, rhaid i hwnnw fod yn rhywbeth i'w ddymuno. Rhaid iddo hefyd daro cydbwysedd teg rhwng lles y cyhoedd a lles y rhai yr effeithir arnynt gan y baich a gaiff ei greu, a rhaid i'r baich fod yn gymesur â'r fantais ddisgwyliedig.

Bwriadwn i'r diddymu a'r diwygio arfaethedig gael eu gwneud drwy Orchymyn Diwygio Rheoleiddiol o dan Ddeddf Diwygio Rheoleiddiol 2001. Gan ddibynnu ar ganlyniad yr ymgynghori, cynigiwn i'r newidiadau ddod i rym cyn gynted ag y bo hynny'n ymarferol.

Sut yr eir ymlaen â'r cynigion hyn a pha bryd y cânt eu gweithredu?

Introduction

1.1 This consultation paper sets out in detail the Government's proposals for reforming the legislation governing trading stamp schemes. The 1964 Act was introduced to regulate trading stamp schemes for the protection of consumers, and revision of that Act was originally proposed in the Government's Consumer White Paper (July 1999) which is to be found on the DTI website at <http://www.dti.gov.uk/consumer/whitepaper>. Consultation in spring 2000 revealed strong support for repeal, as the Act was seen as irrelevant in relation to modern customer loyalty schemes (the results of the consultation are set out at Annex B). Following the decision not to proceed with a Consumer Bill, the Government proposes to repeal the Act and amend the 1982 Act under the provisions of the Regulatory Reform Act 2001. A full analysis of the proposals is at page 17.

1.2 This further consultation is being conducted in accordance with section 5 of the Regulatory Reform Act 2001. The response form set out at Annex H (page 50) requests views on a number of specific questions and on all aspects of the Consultation Paper.

Regulatory Reform Order requirements

1.3 Each proposal for a Regulatory Reform Order must satisfy a number of legal tests. The questions in this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Committees that, among other things, the proposals satisfy these tests. In particular, the Regulatory Reform Act requires information on:

- what legal burdens are being removed or reduced;
- whether any of the proposals could remove any necessary protection, and, if so, how that protection is to be continued;
- whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom;
- whether any burdens are being imposed on any person in the carrying out of an activity and, if so, whether the additional tests described at paragraph 1.5 below are met;
- whether any savings or increases in cost are estimated to result from the proposals and, if so,
- the reasons why savings or increases in cost should be expected, and
- if it is practicable to make an estimate of the amount, that amount and how it is calculated,

- any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals;
- whether it may be appropriate to provide for future flexibility by designating certain provisions as subordinate so that they can be changed subsequently by subordinate provisions order.

1.4 For this reason, we would particularly welcome your views on how each aspect of the proposed changes in this consultation document meets the following tests:

Necessary protection - the Minister making a Regulatory Reform Order (RRO) must be of the opinion that it does not remove any necessary protection. This means that no Order can be made unless the Minister is of the opinion that it would maintain any protections that the Minister considers to be necessary. Such protection relates to the checks and balances associated with a particular regulatory regime. The protection does not have to be statutory in nature and does not have to be for the purposes originally intended by Parliament. If the Minister considers a particular protection to be no longer necessary, he or she must provide the Parliamentary scrutiny committees with compelling evidence to support this view; and

Rights and freedoms - an RRO cannot be made unless the Minister is satisfied that it does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to enjoy. This test recognises that there are certain rights that it would not be fair to take away from people under these procedures.

OTHER SAFEGUARDS

1.5 In order to provide for the effective reform of regulatory regimes, RROs can re-state existing burdens and create new burdens. But, where that is the case, stringent additional safeguards apply:

proportionality - If a new legal burden is being imposed, or an existing burden retained or increased, then the Minister must ensure that it is proportionate to the benefit it brings. This means, for example, that imposing a burden of several thousand pounds on charities for some negligible benefit would not pass the test.

fair balance - before proposing any RRO that has the effect of imposing legal burdens, the Minister must be of the opinion that a fair balance is being struck between the interests of anyone affected by the Order and the interests of the wider public. In this context, fairness does not mean that everyone must benefit. What it does mean is that the benefit to society as a whole must be such as to justify the additional burden on a small group or the individual.

desirability - the Minister making the RRO must be of the opinion that the extent to which it removes burdens or brings other benefits makes the Order as a whole desirable.

Consultation

1.6 The Act requires Departments to consult widely on regulatory reform proposals. It requires them to collect evidence on a number of issues from a wide range of consultees. A list of consultees, including the devolved administrations, to whose attention the document has been drawn can be found at Annex A. The consultation document is available on the Internet at:

<http://www.dti.gov.uk/consultations/>

<http://www.cabinet-office.gov.uk/regulation/act/condocs.htm>; and

<http://www.ukonline.gov.uk/>

1.7 The Parliamentary Committees who will deal with orders under the Regulatory Reform Act have requested that a note explaining the Parliamentary process for orders to be made under the Act be annexed to all consultation papers so that consultees understand when and to whom they are able to put their views, should they wish to do so. This is set out in Annex C.

1.8 This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations under the Cabinet Office Code of Practice on Consultation are set out in Annex D.

How to respond

1.9 Comments are invited from all interested parties, and not just from those to whom the document has been sent. Representative groups are asked to provide a summary of the people and organisations they represent when they respond. A response form is at Annex H. *Please be aware that any e-mail response sent from a corporate system may carry an automatically generated notice stating that the content of the message should be treated as confidential. Where you do not wish your views to be treated as confidential, please make it clear that such an automatically generated message does not apply.*

Disclosure of responses

1.10 Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the Act provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft Order. You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.

1.11 Please identify any information which you or any other party involved do not wish to be disclosed. You should note that the Scrutiny Committees will be able to request sight of your representation as originally submitted. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will only be used rarely and on an exceptional basis.

1.12 Comments should be sent by 20th August 2003 at the latest to

Mr David King
Department of Trade and Industry
Fair Markets Group
Bay 609
1 Victoria Street
London
SW1H 0ET

Telephone: 020 7215 5374
Fax: 020 7215 2837
E-mail: tsact@dti.gsi.gov.uk

(from whom printed copies of this document may also be obtained)

The origins and current status of the Trading Stamps Act

2.1 The 1964 Act was introduced "to control and regulate the activities of trading stamp practice"¹ in response to the growth of trading stamp schemes run by companies (such as Green Shield) that sold trading stamps to retailers and provided them with books and catalogues. A contract therefore existed between the promoter and the retailer. The trading stamps were issued to customers making purchases from shops, petrol stations etc as an incentive to buy from those retail outlets. When sufficient stamps had been collected they were exchanged for goods by retailers or at showrooms operated by the scheme promoters. There was, however, no contract between the customer and the promoter. The Act was passed in 1964 to allay concern about a potential lack of information about who was running the schemes and other details, and about the perceived risk to consumers of exchanging trading stamps for goods of doubtful value and quality.

2.2 The 1964 Act sets out a number of requirements on trading stamp scheme operators and participating retailers. One of these is an option for cash redemption of trading stamps, which should also bear a cash value on their face. Trading stamp promoters, however, simply place a nominal value on the face of each stamp, for example 0.001 pence, which effectively rules out exchange for cash because vast quantities of stamps would be needed to secure the minimum refund of 25p stipulated by the Act. The Act also provides for the display of certain information in trading stamp catalogues and at sales outlets, and for terms to be implied on the redemption of stamps so that, in particular, any goods supplied should be safe and of satisfactory quality. To avoid any overlap with the 1982 Act, which also implies terms into certain types of contract, trading stamps (as defined in the 1964 Act) were specifically excluded from the remit of the 1982 Act.

2.3 The trading stamp schemes which gave rise to the legislation, such as Green Shield, have long since disappeared. Some promotional methods still fall within the definition of "trading stamps", for example money-off tokens issued with retail purchases, within packets or as part of the packaging, to encourage further purchases of certain product lines. However, these bear little relation to the type of scheme for which the legislation was enacted. Tokens received with newspapers or other journals are excluded. Cigarette coupons, which are thought to fall within the 1964 Act's definition of trading stamps, are expected to have fallen into disuse by May 2003 under the provisions of the Tobacco Advertising and Promotion Act 2002.

¹ Commons Hansard 31 January 1964, col 677

2.4 Increasingly, instead of receiving stamps and sticking them in collection books, retail customers participate in sophisticated modern schemes using electronic loyalty cards which accumulate "points". In some cases, vouchers, representing the value of accumulated points, are issued for redemption by customers, but, apart from these instances, the Government considers that these electronic schemes fall outside the 1964 Act's remit because the Act's definition of "stamp"² appears to include only stamps of a physical nature. These modern loyalty schemes benefit retailers by providing information on customers' spending patterns and benefit their customers in some cases by providing individually tailored offers regarding both goods and services. In at least one major scheme, members can monitor their points totals and access related information via the internet.

2.5 There is no specific legislation dealing with electronic schemes, but protection in respect of the goods received under these schemes is afforded by the Sale of Goods Act 1979 ("the 1979 Act") and by the 1982 Act, as explained in paragraph 2.6 below.

² Section 10(1) of the Trading Stamps Act 1964 defines "stamp" as "any stamp, coupon, voucher, token or similar device, whether adhesive or not, other than lawful money of the realm".

"Stamp book" "means a book or similar article in or to which it is intended that trading stamps shall be affixed". (continued overleaf)

"Trading stamp" "means a stamp which is, or is intended to be, delivered to any person on or in connection with either-

(i) the purchase of any goods, or

(ii) the bailment or (in Scotland) the hiring of any goods under a hire-purchase agreement,

(other than the purchase of a newspaper or other periodical of which the stamp forms part or in which it is contained) and is, or is intended to be, redeemable (whether singly or together with other such items) by that or some other person:

Provided that a stamp shall not be deemed to be a trading stamp if-

(a) it is delivered or is intended to be delivered to a person (in this definition called "the purchaser") on or in connection with the purchase of any goods by the purchaser, or the bailment or (in Scotland) the hiring to him of any goods, and

(b) it is not intended to be, and is not, redeemable from any person other than-

(i) the person (in this definition called "the seller") from whom the purchaser purchased those goods, or who bailed or hired those goods to him, or

(ii) any person from whom the seller (whether directly or indirectly) acquired those goods, and

(c) in the case where a business is carried on by six or more retail establishments, the stamp is one of a kind obtainable at no more than six of those retail establishments, and not obtainable by the public elsewhere, and the arrangements under which it is redeemable are entirely separate from arrangements under which any other stamps, whether trading stamps or not, are redeemable

and references in this definition to the purchase of goods include references to the obtaining of services for money;"

[Please note that some published versions of the 1964 Act contain an error in this definition in that they omit the first "not" in paragraph (ii)(b) if the definition of "trading stamp"]

Sale and exchange of goods

2.6 The sale and exchange of goods is governed by various pieces of legislation introduced since the 1964 Act:

- The 1979 Act implies terms regarding title, passing of the property free from encumbrance, quiet possession, correspondence of the goods with their description, and satisfactory quality into contracts for the sale of goods but does not apply to mortgages or other securities.
- The 1982 Act implies the same terms as those in the 1979 Act into contracts for the transfer of goods (other than, amongst other things, contracts for the sale of goods) and to contracts for the hire of goods (other than, amongst other things, a hire purchase agreement). The 1982 Act specifically excludes contracts under which the property in goods is (or is to be) transferred in exchange for trading stamps on their redemption because these are dealt with under the 1964 Act.
- The Supply of Goods (Implied Terms) Act 1973 ("the 1973 Act") implies terms into contracts for hire purchase.
- The 1973, 1979 and 1982 Acts are amended by the Sale and Supply of Goods to Consumers Regulations 2002 which implement the Consumer Guarantees Directive³. In brief, the Regulations provide additional remedies to consumers in certain circumstances. They also contain provisions on the legal status of guarantees offered to consumers and place obligations on guarantors in relation to such guarantees.
- The Trade Descriptions Act 1968 broadly makes it an offence to apply a false or misleading description to goods or to supply or offer to supply goods to which a false or misleading trade description is applied. A trade description can be given verbally, in writing (for example in an advertisement or brochure), by illustration (for example in an advertisement or on packaging) or by implication. For the purposes of this Act, advertisements include catalogues.
- The Control of Misleading Advertisements Regulations 1988 provide that an advertisement is misleading if in any way, including its presentation, it deceives persons to whom it is addressed or whom it reaches and, by reason of its deceptive nature, it is likely to affect their economic behaviour or injure a competitor. Advertisement is defined widely and means any form of representation which is made in connection with a trade, business or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations.

³ Directive 1999/44/EC of the European Parliament and of the Council of 25th May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ No L171 7.7.99 pg 12).

- Further protection is provided by the Consumer Protection Act 1987 which broadly deals with product liability, consumer safety (the provisions on consumer safety may afford some protection to consumers receiving goods in exchange for trading stamps) and misleading price indications, and the Consumer Credit Act 1974 which regulates traders concerned with the provision of credit.

2.7 Consultees should be aware that the European Commission proposed a Regulation on Sales Promotions in October 2001. As a Regulation, this legislation, if adopted, will apply directly in UK law. The current draft of the Regulation does not conflict with any of the provisions in the 1979 or 1982 Acts. The aim of the proposal is to create a harmonised regime for sales promotions involving offers of discounts (which includes vouchers and coupons), free gifts, premiums, and promotional competitions and games. In brief, the proposal provides that there shall be no general prohibition on sales promotions and that the promoter must comply with various information requirements. These include the provision of identity and address in any commercial communication; disclosure of the exact amount of any discount, disclosure of the redemption value of a coupon or voucher, any limitation on its use and the goods or services against which it can be redeemed including the expiry date, together with disclosure of the value of a free gift. The Regulation therefore covers some of the matters currently covered in the 1964 Act, for example cash redemption and the need for the promoter to provide his details. The proposal is currently being considered by the European Council and European Parliament through the Co-Decision procedure, although the exact timescale for agreement and adoption is uncertain. Further information about the proposal can be found at <http://www.dti.gov.uk/ccp/topics1/business.htm> - salesprom.

Extent of the legislation

2.8 The 1964 Act applies to Great Britain. The regulation of trading stamps is a reserved matter under section C7 of Schedule 5 to the Scotland Act 1988. The 1964 Act does not extend to Northern Ireland, which has its own Trading Stamps (Northern Ireland) Act 1965. Northern Ireland also has plans to repeal its 1965 Act and to rely on the 1982 Act for protection in respect of goods received under a promotional scheme.

2.9 The 1982 Act extends to England, Wales and Northern Ireland. Part 1A of the Act extends only to Scotland. Parts I and II do not extend to Scotland. Section 1(2)(c), which prevents the 1982 Act from applying to goods received on the redemption of trading stamps, applies in Northern Ireland for the purposes of the 1965 Act.

The Proposals: reasons for proposed repeal and amendments

3.1 As explained above, certain promotional schemes fall within the 1964 Act and certain schemes do not, with the result that the protection afforded to the consumer in respect of promotional schemes is inconsistent. Businesses undertaking promotional activities which provide customers with the means to obtain future price concessions are therefore obliged to consider whether the 1964 Act is relevant. This process involves additional administrative costs, not only in planning new promotions, but also in attempting to comply with the Act's requirements or ensuring that schemes fall outside its scope.

3.2 For example, customer loyalty schemes run by some major retailers offer a wide range of discounted benefits to their members including free or reduced admission to theme parks and other family attractions and discounts on holidays, air travel, therapy centres etc. The 1964 Act is of relevance only where such schemes also offer tokens or vouchers for redemption against goods, and it is questionable whether such specific protection is necessary in view of the costs of compliance.

3.3 The objective of the proposals is therefore to:

- reduce burdens on business by repealing the 1964 Act for the reasons given above;
- repeal section 1(2)(c) and the definition of “trading stamps” in section 18(1) of the 1982 Act.

3.4 The proposals will lift the burden of compliance with the 1964 Act from the promoters of trading stamp schemes of the kind which the Act was originally intended to cover, and will lift the restriction on certain people being able to undertake a trading stamp scheme. This is expected to lead, in the Government's view, to more innovative, attractive and beneficial opportunities for consumers, as retailers compete for their custom.

3.5 This leads to the question whether consumers would lose necessary protection as a result of the proposed repeal. Prior consultation carried out in 2000 (see summary of responses at Annex B) revealed no evidence of consumer detriment in relation to trading stamp schemes, or of relevant prosecutions.

3.6 Businesses have welcomed the proposals, one respondent commenting that all future projects would be free to make choices in the most cost-effective way, without being limited by detailed regulatory provisions that had served their purpose. Another had found that the Act was incompatible with the supply of goods to consumers by a third party under the terms of a loyalty scheme. The scheme's proprietor had therefore been obliged to structure the scheme so as to fall outside the Act's ambit, so as to ensure that

the provider of goods would incur liability in respect of the goods supplied, and not the promoter, as the Act would have provided. Significant legal and other costs were incurred with no apparent benefit to anybody.

3.7 In reality, the modern retail climate is markedly different from that of the 1960s. Retailers are far more enlightened in their approach to customer care, often with automatic replacement and/or refund in case of dissatisfaction, and they commonly treat complaints equally whether goods are provided for cash or vouchers. Some important protections provided by the 1964 Act, regarding misleading advertising and consumer safety, are available through other legislation in any case, and normal sale of goods legislation would apply in the case of unsatisfactory goods that are provided in return for cash or a combination of cash and vouchers. Other provisions of the 1964 Act seem to have little relevance to the modern retail sector. The Government therefore considers that consumers are no longer in need of specific legal provision as afforded by the 1964 Act, having regard to the costs it imposes on business.

Costs, savings and other benefits

3.8 A full analysis of costs, savings and other benefits can be found in the Regulatory Impact Assessment at Annex E. In summary, the repeal is not expected to result in cost for businesses, which would not be obliged to change their existing schemes, or for Government. There should be significant savings for those retailers such as larger supermarkets and petrol stations that operate incentive schemes. Initial consultation attracted a small number of responses on the question of costs of complying with the 1964 Act's requirements. Administrative costs, of up to £45,000 per annum in one case, were cited, including the cost of displaying relevant information at sales outlets (at an estimated cost of £50 per outlet). **Consultees are invited to provide detailed costings of the expense to loyalty scheme promoters/retailers of compliance with the 1964 Act, distinguishing between legal and administrative costs.** There might also be long-term benefits resulting from the repeal of the Act, such as more prompt introduction of new promotional schemes.

3.9 Legal fees in connection with the Act were also said to range from £5,000 to £10,000 per annum per large business where promotional schemes are regularly devised. While legal fees are not burdens for the purposes of the Regulatory Reform Act (see paragraph 4.38 above) the increased legal clarity which the Act's repeal would bring about would be a clear benefit.

3.10 It should be noted that the 1964 Act does not apply to trading stamp schemes operated on a small scale in the circumstances set out in section 10(1)(a)-(c) (see footnote 2 on page 11). This provides that promotional schemes operated "in house" by retailers and others to the limited degree specified are deemed not to be trading stamp schemes in any case, and small firms in particular may therefore gain no benefit from the proposed repeal if they operate schemes of this nature, which are already outside the remit of the Act.

3.11 Consumers may also be expected to benefit from the lifting of the Act's restrictions through faster and greater access to the benefits of promotional activities by retailers.

Analysis: Repeal of the Trading Stamps Act 1964 and amendment of the Supply of Goods and Services Act 1982

I. Removal and reduction of burdens

4.1 Section 2(1)(a) of the Regulatory Reform Act states that a “burden” includes “a restriction, requirement or condition (including one requiring the payment of fees or preventing the incurring of expenditure) or any sanction (whether criminal or otherwise) for failure to observe a restriction or to comply with a requirement or condition, and any limit on the statutory powers of any person (including a limit preventing the charging of fees or the incurring of expenditure), but does not include any burden which affects only a Minister of the Crown or government department”.

4.2 The 1964 Act does a number of things which impose a “burden” within the meaning of the Regulatory Reform Act, namely it:

- restricts the categories of persons who may carry on business as promoters of trading stamp schemes (section 1)
- requires a statement of the cash value to be printed on the face of a trading stamp, together with the name of the promoter of the scheme (section 2)
- requires the redemption of stamps for their cash value, where the aggregate value of the stamps which are sought to be redeemed is not less than 25p (section 3)
- implies certain terms relating to quality etc when trading stamps are redeemed for goods (section 4)
- requires the name of the promoter of the scheme to be printed in catalogues (section 5)
- sets restrictions and requirements on the manner in which trading stamps are advertised (section 6)
- requires certain information to be displayed in sales outlets where a scheme is in operation (section 7)
- sets penalties for breaches of the Act's requirements.

4.3 In the following paragraphs we analyse the removal of each of those burdens against the tests of “Necessary protection” and “Rights and freedoms”.

4.4 The sections of the 1964 Act are discussed in sequential order, other than section 4. In view of the length of discussion relating to this section it is placed at the end of the discussion of other sections.

Section 1: Restrictions on persons who may carry on business as promoters of trading stamp schemes

Necessary protection

4.5 The purpose of this section was to provide a measure of protection to the public against the promotion of trading stamp schemes by disreputable operators. Companies, by virtue of various provisions, are required to operate in a transparent manner. Information such as who their shareholders and directors are must be publicly available and they must provide professionally audited accounts. Thus the public, and retailers considering entering a scheme, can have access to information about a company's financial standing. Under the Industrial and Provident Societies Act 1965, such societies are in many respects run akin to a company and this was perhaps in mind when the 1964 Act was enacted. There were no similar provisions in respect of partnerships at that time. The Limited Liability Partnerships Act 2000 provides for the introduction of such partnerships and for these to be registered at Companies House. The Limited Liability Partnership Regulations 2001 provide that the accounting and audit provisions of the Companies Act 1985 are to apply to such partnerships. The Government therefore sees no reason to distinguish who may undertake the promotion of a trading stamp scheme and does not believe that any necessary protection is lost.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.6 In the Government's view, removal of the above restriction enhances, rather than takes away, the rights and freedoms of any person who is not a company or an industrial and provident society.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 2: Statements required on face of trading stamps

Necessary protection

4.7 In addition to the section 3 requirement for stamps to be redeemable for cash, this requirement ensured that the trading stamp scheme was transparent and the cash value of the stamp appeared on the face of the stamp. At the time of the Act there were rival trading stamp schemes and the purpose of this restriction was that consumers would be better able to judge what they were getting for their money.

4.8 It is doubtful whether the requirement to print the cash value of a stamp on its face has ever given protection to the consumer. The requirement for the cash redemption value to be stated gave only limited protection since the consumer was more interested in what value the goods the stamps would produce when cashed in. In any case, this requirement was rendered meaningless by printing values of a tiny fraction of a penny.

4.9 The requirement to place the name of the promoter on the stamp was intended to protect consumers who obtained the stamps from a retail outlet and may have been unaware of the identity of the trading stamp promoter. In modern promotional schemes, the name of the promoter would usually appear on a voucher or coupon and electronic schemes rely on the use of a card on which the name of the promoter would automatically appear. In practice, therefore, we believe that this requirement is no longer necessary.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.10 in the Government's view, removal of the above restriction does not interfere with any existing right or freedom.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 3: Redemption of trading stamps for cash

Necessary protection

4.11 This section was of some concern when the 1964 Act was introduced. The concern was that a realistic redemption value should be set on the stamps. If the stamp company put on a very low cash redemption it would not be worth redeeming the stamps at all. However, it would have prohibited stamp trading activity altogether if the redemption value of the stamps were made equivalent to merchandise value. It was suggested by the Consumer Council at the time that the redemption value should be closely related to the wholesale purchase price of the goods.

4.12 In practice, this has not happened and the redemption value on stamps is extremely small. Very many stamps would be needed to obtain the minimum amount of 25p as provided for in the Act. This was a fear that was specifically expressed in the debates when the 1964 Act was introduced and it has turned out to be well founded. In practice, therefore, the redemption value provides no protection to the consumer.

4.13 In addition, the requirement for a redemption value does not exist in respect of other promotional schemes such as electronic loyalty schemes, and

the removal of this requirement will harmonise the law in this respect. In the Government's view, no necessary protection would be lost.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.14 The removal of this restriction will take away a right of the consumer to obtain cash in exchange for a trading stamp. However, as explained above, this right is not one which can be exercised in practice.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 5: Catalogues and stamp books to include name and address of promoter

Necessary protection

4.15 This section requires that trading stamp catalogues and collection books display the name and registered office address of the scheme's promoter. As with the requirement in section 2 that the name of the promoter should appear on the face of a trading stamp, this is intended to assist consumers readily to identify and locate the promoter of any scheme. There are provisions of the Companies Act 1985 and the Industrial and Provident Societies Act 1965 which provide that 'notices and official publications' and in the case of industrial and provident societies, advertisements, must indicate the entity's name, though not its address. A catalogue, and perhaps to a lesser extent a stamp book (to the extent that these still exist), can be considered "official publications". For the purposes of the Industrial and Provident Societies Act 1965 a catalogue is also likely to be considered an advertisement. In the Government's view the removal of this restriction will not result in a loss of necessary protection.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.16 The removal of this requirement will not affect rights and freedoms as it is of no practical benefit nowadays.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 6: Advertisements referring to value of trading stamps

Necessary protection

4.17 Advertisements by trading stamp scheme promoters or retailers etc must not convey the cash value of a stamp in terms which associate the worth of the stamp with the amount of expenditure needed to obtain it, nor must they be misleading or deceptive. This provision targeted advertisements offering, for example, "£1 worth of additional stamps free when spending £1 or more" as an incentive to make a purchase, where the stated monetary value appeared to represent the goods obtainable for the trading stamps offered, whereas it was in fact the amount of trading stamps which a payment of that amount would have secured. As far as the Government is aware, the type of trading stamp scheme which gave rise to this misconception, such as Green Shield, has died out. It is not in any case thought that specific provision concerning advertisements is required in addition to the general body of legislative protection against misleading advertisements which now exists, including the Control of Misleading Advertisements Regulations 1988. It should be noted that, whilst section 6 of the 1964 Act provides for a criminal offence, the 1988 Regulations provide for complaints that an advertisement is misleading to be made to the Office of Fair Trading. The OFT may, where it thinks appropriate, bring proceedings for an injunction against any person concerned with the publication of the advertisement. The Government's view is that removal of this restriction will not result in a loss of necessary protection.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.18 in the Government's view, the removal of these requirements would neither remove anyone's rights or freedoms.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 7: Display of information in shops

Necessary protection

4.19 As already discussed, the requirement for trading stamps to display a cash value has been rendered ineffective through small fractions of a penny being printed. Notices displaying this information therefore serve no useful purpose. The display of the number of stamps to which customers are entitled on any purchase and of any current scheme catalogue can provide them with useful information. Such information is, however, commonly

displayed, to encourage participation, in the modern retail sector and participants in a number of promotional schemes are also sent relevant promotional material through the post, and can obtain such information on the internet. Specific legal provision in this context is not therefore considered to be necessary. The Government does not believe that any necessary protection will be lost.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.20 As explained above, it is not thought that the enjoyment of a right or freedom would be affected by the proposal.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

Section 8: Offences committed by corporations

Necessary protection

4.21 This provision, as to who might be liable for offences committed by corporations, would serve no purpose in the event of the repeal of the preceding sections.

Rights and Freedoms

4.22 As noted above, this section would be of no effect in the light of the other proposed changes.

Section 4: Warranties to be implied on redemption of trading stamps for goods

Necessary protection

4.23 Section 4 of the 1964 Act implies warranties as to title, quiet possession, freedom from encumbrance and satisfactory quality. The Act had to make specific provision in this regard because, at the time of enactment, implied terms only existed on a statutory basis in the case of goods sold and not in respect of goods provided without money being exchanged.

4.24 The 1982 Act was subsequently enacted in respect of contracts under which one person transfers or agrees to transfer to another the property in goods, other than an excepted contract. Section 1(2)(c) provides that an excepted contract includes one under which the property in goods is (or is to be) transferred in exchange for trading stamps on their redemption. In addition to the repeal of the 1964 Act, the Government proposes to remove

this exclusion. This will extend the protections in the 1982 Act to those goods. These protections are broadly similar to those currently found in the 1964 Act, but the section entitled "burden" below discusses the extent to which they might impose a heavier burden on the retail sector and trading stamp scheme promoters than is the case currently.

4.25 The following paragraphs discuss the implied terms in the 1964 Act, all of which are warranties, and compare them with the provisions of the 1982 Act, which include both warranties and conditions. The difference between a warranty and a condition is that breach of a condition allows the consumer to repudiate the contract whereas breach of a warranty only allows the consumer to pursue an action for damages but not to reject the goods and treat the contract as repudiated.

- A warranty on the part of the promoter of the trading stamp scheme that he has a right to give the goods in exchange (section 4(1)(a)).

The 1982 Act implies a condition that the transferor has a right to transfer the property (section 2(1)). The 1982 condition provides more protection to the consumer than the 1964 Act warranty in that it extends to agreements to transfer property as well as to the transfer itself. However, agreements to transfer property are unlikely to be relevant to goods obtained on the redemption of trading stamps.

- A warranty that the goods are free from any charge or encumbrance not disclosed or known to the person obtaining the goods before or at the time of redemption and that that person will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known (section 4(1)(b)).

The 1982 Act also contains implied warranties in respect of the above (section 2(2)).

- A warranty that the goods are of satisfactory quality.
 - (i) as regards defects specifically drawn to the attention of the person obtaining the goods before or at the time of redemption or
 - (ii) if that person examines the goods before or at the time of redemption as regards defects which that examination ought to reveal.(It should be noted that the Government interprets this provision to mean that there is an implied warranty in the 1964 Act that goods are of satisfactory quality generally, and not just in the circumstances mentioned in subparagraphs (i) and (ii). However, this provision is ambiguous).

4.26 The 1982 Act implies a condition that goods transferred in the course of a business are of satisfactory quality. The definition of "satisfactory quality" is similar to that in the 1964 Act save that the 1982 Act provides specifically that price must be taken into account. The 1964 Act provides that "all relevant circumstances" shall be taken into account (as does the 1982 Act) and it is

likely that price would be considered to be a relevant circumstance. Both the 1964 Act and the 1982 Act define “quality” as including the following aspects:

- (a) fitness for all the purposes for which goods of the kind in question are commonly supplied;
- (b) appearance and finish
- (c) freedom for minor defects
- (d) safety and
- (e) durability.

4.27 Both the 1964 and 1982 Acts provide that the terms implied do not extend to any matters making the quality of goods unsatisfactory which are specifically drawn to the transferee’s attention before the contract is made or, where the transferee examines the goods before the contract is made, which that examination ought to reveal.

4.28 The 1982 Act contains the following provisions, of which there is no equivalent in the 1964 Act:

- Section 3 of the 1982 Act provides that where the transferor agrees to transfer the property in goods by description, then there is an implied condition that the goods will correspond with the description. Although there has been some academic debate as to the appropriateness of an implied term in respect of sale by description, this condition is of significance. It has been interpreted to cover an important category of case – where although the goods are substantially what is required, there is some small discrepancy from the contract particulars. Some of the cases decided under this provision concern very small deviations from the contractual specification, where the court nevertheless held the buyer entitled to reject; for example, cases where the packaging (not the goods) failed to meet the specification.
- A provision that the term implied does not extend to any matters making the quality of goods unsatisfactory where the property in the goods is transferred by reference to a sample
- which would have been apparent on a reasonable examination of the sample. It is unlikely that goods redeemed in exchange for trading stamps will be transferred by reference to sample.

Consultees are invited to inform us if samples are provided of goods exchanged for trading stamps.

- Under section 4(4) of the 1982 Act, where the transferee makes known a particular purpose for which goods are being acquired, the Act implies a condition that goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, unless it is shown that the transferee does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the transferor.

- Section 5A of the 1982 Act provides that, where there is a breach of a statutory implied condition, then in certain circumstances the remedies available to non-consumers will be the same as if there had instead been a breach of a warranty, unless the contract says otherwise.

4.29 The traditional trading stamp scheme did not involve payment by the consumer. In recent years however there has been significant growth of promotions which involve the provision to the consumer of vouchers or coupons which give money off a product, in other words, which require only part payment of the usual price of the goods by the consumer. Some of these vouchers or coupons may fall within the remit of the 1964 Act but only to the extent that these are not excluded by the definition of “trading stamp” in section 10. For example, a voucher issued to the value of say, 50p, £1 or £2.50 on the purchase of some goods in a retail outlet will only constitute a “trading stamp” if it is redeemable from a person other than the seller from whom the purchaser purchased the goods with which the voucher was given or, the scheme is run by a company in more than six of its branches.

Consultees are invited to provide examples of any promotional schemes involving vouchers or coupons stating whether or not they are currently considered to fall within the definition of “trading stamp” in the 1964 Act. Please also indicate how many retail outlets and how many consumers participate in each scheme.

4.30 Nothing in the Sale of Goods Act 1979 affects any existing enactment relating to the sale of goods which is not expressly repealed or amended by that Act. Therefore, where a voucher or coupon is used as part-payment for goods, the sale of products would fall within the remit of the 1964 Act rather than the 1979 Act. In the event of repeal of the 1964 Act, the 1979 Act will apply to such transactions, with the voucher or coupon forming part of the consideration in the contract for sale.

4.31 Like the 1982 Act, the 1979 Act contains implied terms regarding title, passing of the property free from encumbrance and quiet possession, correspondence of the goods with their description; and satisfactory quality. As under the 1982 Act, the terms are conditions not warranties (as regards England and Wales and Northern Ireland). The 1979 Act applies to agreements to sell as well as to sales; the definition of “quality” extends to price. Like the 1982 Act, the 1979 Act contains provisions relating to sale by description; sample; fitness for a particular purpose and modification of remedies for breach of condition in non-consumer cases, none of which appears in the 1964 Act. In summary, the Government does not believe that removal of the restrictions in section 4 of the 1964 Act will result in a loss of necessary protection.

Consultees are requested to advise whether they consider that any element of necessary protection would be lost if this restriction is removed.

Rights and Freedoms

4.32 The removal of the above burden does not, in the Government's view, affect the rights and freedoms of any person in the carrying on of an activity.

Consultees are requested to advise whether they consider that any rights or freedoms of any person have been taken away.

II. The re-enactment of provisions imposing burdens and the imposition of new burdens

4.33 The 1979 Act already applies to trading stamp transactions where there is a sale aspect. No new legal burden is therefore created in this respect.

4.34 The deletion of the exception in section 1(2)(c) of the 1982 Act will have the effect that the provisions of the 1982 Act will apply to any transactions involving trading stamps. As described above, the 1982 Act imposes various requirements. Each of these will constitute a legal burden for the purposes of the Regulatory Reform Act. Each requirement is set out below together with a discussion of whether the imposition of such requirement is proportionate, fair and desirable. **Consultees are requested to state their views on the issues of proportionality, fair balance and desirability in each instance.**

Section 2(1) - Implied condition that the transferor has the right to transfer the property

Proportionality

4.35 This implied term exists already in the 1964 Act, although only as a warranty rather than a condition. It is the Government's view that the imposition of this burden is proportionate because this condition constitutes continuing necessary protection for the consumer on repeal of the 1964 Act. We think it unlikely that agreements to transfer/sell goods would be relevant to trading stamp schemes and we do not therefore believe that the provisions in the 1979 and 1982 Acts in this respect would constitute a burden in practice.

Fair Balance

4.36 The legal burden is more onerous than that under the 1964 Act since the 1982 terms are a condition rather than a warranty as in the 1964 Act. The effect of this is that a consumer will be able to reject goods which they received in exchange for trading stamps and which are not of satisfactory quality. Whilst the burden is more onerous on business a condition as to title, rather than a warranty will benefit consumers. The Government therefore believes that the imposition of this requirement is fair.

Desirability

4.37 Section 3(2)(b) of the Regulatory Reform Act provides that an Order may create a burden affecting any person in the carrying on of any activity only if the Minister is of the opinion that the extent to which it removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for the Order to be made. As already discussed, the Government believes that the promoters of trading stamp, voucher and loyalty schemes will benefit from the ending of the obligation to comply with the requirements of the 1964 Act where appropriate.

4.38 Harmonisation of the provisions in respect of the supply of goods will produce increased legal clarity. For many businesses, this will allay the cost of obtaining legal advice on the applicability of the 1964 Act to promotional schemes. Respondents to the consultation in spring 2000 stated that this expense was significant in some instances (see Annex E and paragraph 76 of the explanatory notes to the 2001 Act, at <http://www.legislation.hmso.gov.uk/acts/en/01en06-b.htm>).

Section 2(2)-(5) - Implied warranties that the goods are free from encumbrance and that the transferee will enjoy quiet possession of them

Proportionality

4.39 These requirements mirror existing burdens in the 1964 Act. These implied terms are necessary in order to provide for continued protection of consumers and are therefore proportionate in the Government's view.

Fair Balance

4.40 An issue of fair balance does not arise since the burden under the 1982 Act is the same as that under the 1964 Act.

Desirability

4.41 As set out in paragraph 4.38 above, the imposition of these requirements is desirable due to the beneficial effects of harmonising the legislation in respect of supply of goods.

Section 3 - Implied term that the goods will correspond to the description where transfer is by description

Proportionality

4.42 There is no such implied term in the 1964 Act. The provisions relating to sale by description may well be relevant, not least where goods are chosen through a catalogue. It is the Government's view that the imposition of this requirement is proportionate since the term already applies to the supply of

goods other than those which involve trading stamps. In practice, suppliers of goods may not distinguish between those which will be supplied in trading stamp transactions and those which will be supplied in the course of any other transactions.

Fair Balance

4.43 This implied term may be important where goods are substantially what is required, but there is some small discrepancy from the contract particulars. The practical burden on businesses may not be great since they are already complying with this requirement in respect of goods supplied other than under trading stamps transactions. However, the term will benefit consumers and the Government therefore believes that the imposition of this requirement is fair.

Desirability

4.44 As set out in paragraph 4.38 above, the imposition of these requirements is desirable due to the beneficial effects of harmonising the legislation in respect of supply of goods.

Section 4 - Implied term that the goods are of satisfactory quality

Proportionality

4.45 This requirement mirrors the requirement in the 1964 Act save that, in the definition of “satisfactory quality”, the 1982 Act provides specifically that price must be taken into account. The requirement therefore constitutes the continuance of necessary protection for the consumer and, as such, is proportionate in the Government’s view.

Fair Balance

4.46 Since the requirements in respect of the term of satisfactory quality are, in effect, identical in both the 1964 and 1982 Acts, the question of fair balance does not arise.

Desirability

4.47 As set out in paragraph 4.38 above, the imposition of these requirements is desirable due to the beneficial effects of harmonising the legislation in respect of supply of goods.

Section 4(5) - Implied term as to fitness for a particular purpose

Proportionality/Fair Balance

4.48 In practice, it seems unlikely that this provision would impact upon trading stamp schemes since most schemes provide a catalogue of goods or

specify a particular product which will be given in exchange for trading stamps and the consumer will not therefore specify any purpose.

Desirability

4.49 As set out in paragraph 4.38 above, the imposition of these requirements is desirable due to the beneficial effects of harmonising the legislation in respect of supply of goods.

Section 5 - Implied term where transfer is by sample

4.50 This requirement is unlikely to be relevant in respect of trading stamp transactions. Issues of proportionality and fair balance do not therefore arise. As above, the requirement is desirable in the light of the harmonisation of provisions.

Section 5A - Modification of remedies for breach of statutory condition in non-consumer cases

Proportionality/Fair balance

4.51 The 1964 Act does not distinguish between consumers and other persons insofar as the implied terms are concerned. The implied terms in the 1964 Act are all warranties in any event. The 1982 Act provides that where an implied term is a condition, in the case of a transferee who does not act as a consumer, the terms in the 1982 Act shall be deemed to be warranties. The Government's view is that the imposition of this requirement is proportionate. Issues of fair balance do not arise since the effect of the 1982 provision will be the same as the provision in the 1964 Act.

Desirability

4.52 As above, the requirement is desirable in the light of the harmonisation of provisions.

Supplemental/Incidental/Transitional Changes

4.53 Annex G sets out a chart indicating references in other legislation to "trading stamps". **Relevant Government Departments responsible for the legislation listed are asked to confirm the policy in respect of any consequential or incidental amendments that need to be made to the primary legislation. They are also requested to confirm the policy in respect of the secondary legislation in that list – this has not yet been considered in any detail. Any views that other consultees may have on the cross-references to "trading stamps" in other legislation are welcome.**

Annex A

List of consultees

Retailers and retail organisations

Adams Childrenswear Ltd.
Advertising Association
Air Miles Travel Promotions Ltd
Aldi Stores Ltd
Alexon Group PLC
Alldays PLC
Allders PLC
Alliance of Independent Retailers
Alliance Unichem
Allied Carpets Group PLC
Allsports (Retail) PLC
Alpha Travel Retail
Arcadia Group
Argos Business Solutions
Asda Group Ltd
Association of Convenience Stores Limited
Austin Reed Group PLC
Bargain Booze Ltd
Beale PLC
Bentalls PLC
BHS
Blockbuster Entertainment Ltd
Body Shop International PLC
Booksellers Association of Great Britain
Boots Company PLC
Box Clever Group
British Beer & Pub Association
British Chambers of Commerce
British Retail Consortium
Brown & Jackson PLC/ Poundstretcher
BT
Budgens PLC
C&J Clark
Carpetright PLC
Carphone Warehouse Group PLC
Cellar 5
Co-operative Group Ltd
Courts PLC
Debenhams PLC
Dixons Group PLC
Dolland & Aitchison Ltd
Dunnes Stores
Early Learning Centre Ltd
Esso
Etam PLC
Fads Holdings
Farmfoods Ltd
Fenwick Ltd
First Quench Retailing Ltd
Focus Wickes PLC
Furniture Village PLC
Furnitureland Ltd
Gap
Greene King Brewing & Retail Limited
H&M Hennes Ltd
Habitat (UK) Ltd
Halfords Limited
Harrods Limited
Harvey Nichols Group PLC
HMV Media Group PLC
Homebase Ltd
Homestyle Group PLC
House of Frazer PLC
Hughes Electrical
IBM UK Limited
Iceland Group PLC
Ikea Ltd
Institute of Sales Promotion
J Sainsbury PLC
James Beattie PLC
JD Sports PLC
JD Wetherspoon PLC
Jessops PLC
Jewson Ltd
JH Leeke
JJB Sports PLC
John Lewis Partnership PLC
John Menzies PLC
Kingfisher PLC
Laura Ashley Holdings PLC
Liberty PLC
Lidl & Schwarz
Littlewoods
Loyalty Management UK Ltd
Magnet Ltd
Makro Self Service Wholesalers PLC
Maplin Electronics PLC
Marks & Spencer PLC
Matalan PLC
MFI Furniture Group PLC
Millets/ Black Leisure
Moss Bros Group PLC
Mothercare PLC
N Brown PLC
National Magazines
Netto Foodstores
New Look Group PLC
Next PLC
NP PLC
O2 Limited

Office World
 Oldrid & Co. Ltd
 Orange Retail Ltd
 Peacock Group PLC
 Pets At Home Group Ltd
 PowerHouse Holdings Ltd
 Primark Stores Ltd
 RAC Motoring Services
 River Island Clothing Company Ltd
 Robert Dyas
 RS Group of Companies
 Safeway PLC
 Scottish Grocers Federation
 Selfridges PLC
 Service Point UK
 Shell UK Limited
 Signet Group PLC
 Somerfield PLC
 Spar (UK) Ltd
 Specsavers Optical Group
 Sports Soccer Ltd
 Staples (UK) Ltd
 Stylo PLC
 Superdrug PLC
 T&S Stores PLC
 Tesco PLC
 The Boots Company PLC
 The Disney Store
 The Games Store Group
 The Newspaper Society
 The Sidmouth Florist
 Time Group PLC
 TK Maxx
 TM Group Holdings PLC
 T-Mobile
 Topps Tiles PLC
 TotalFinaElf UK Ltd
 Tower Records
 Toys'R'Us Ltd
 ToyZone Limited
 Trading Computer Services Limited
 Trago Mills Group
 Virgin Retail
 Vision Express (UK) Ltd
 Vodafone Retail Ltd
 Warner Brothers Studio Stores Ltd
 WH Smith PLC
 Wilkinson Hardware Stores Ltd
 Wm Morrison Supermarkets PLC
 Woolworths PLC
 Yahoo! Europe
 Yorkshire Electricity

Other consultees

Barnsley Business Link
 Better Regulation Task Force
 Bond Pearce
 Bristol City Council

Centre for Commercial Law Studies
 Chamber of Wales c/o Cardiff Chamber of
 Commerce
 Chartered Institute of Marketing
 City & County of Swansea
 Community Enterprise Wales
 Confederation of British Industry
 Consumers' Association
 Department for Education & Skills
 Department for Environment, Food & Rural
 Affairs
 Department of Enterprise, Trade & Investment
 (NI)
 Department of Finance & Personnel (NI)
 Derbyshire Business Link
 Direct Marketing Association (UK) Limited
 Federation of Small Business (Wales)
 Federation of Small Businesses
 Gloucestershire Business Link
 Greater Nottingham Business Link
 Highlands & Islands Enterprise
 HM Customs & Excise
 HM Treasury
 Home Office
 Institute of Consumer Affairs
 Institute of Directors
 Law Commission
 Leicester Business Link
 Liverpool City Council
 Local Authorities Co-ordinators of Regulatory
 Services
 Local Government Association
 Lovells
 Manchester City Council
 National Association of Citizens Advice
 Bureaux
 National Association of Head Teachers
 National Consumer Council
 National Consumer Federation
 National Pharmaceutical Association
 Newport City Council
 Nuneaton and Bedworth Local Authorities
 Office of Fair Trading
 Office of the E - Envoy
 Pinsent Curtis Biddle
 De Montfort University
 Rochdale Business Link
 Royal Horticultural Society
 Royal Pharmaceutical Society of Great Britain
 Scottish Consumer Council
 Scottish Enterprise
 Scottish Executive
 Small Business Service
 Smithsons
 Social Exclusion Unit
 Southwark Trading Standards
 St John's Innovation Centre
 Suffolk County Council
 Surrey Business Link
 The British Chambers of Commerce

The British Institute of Innkeeping
The Law Commission
Trading Standards Institute
Union of Welsh Independents
University of Sheffield
Usdaw

Wales Co-operative Centre Limited
Wales Social Partners Unit
Wales TUC Cymru
Welsh Assembly Government
Welsh Consumer Council
York & North Yorkshire Business Link

Annex B

Summary of responses to earlier consultation

Consultation took place in spring 2000 with a view to including the proposal in a Consumer Bill. The original consultation document together with a draft Regulatory Impact Assessment were sent to 34 contacts from industry, government organisations and consumer and representative groups for their comments. Eighteen substantive responses to the consultation were received (see Annex F). These are summarised below:-

- Fourteen consultees (see Annex F) expressed approval of complete repeal. The consensus was that the Act afforded little worthwhile protection for consumers whilst imposing some costs on business which were clearly unjustifiable.
- The Esso Petroleum Company Ltd stated that the Act imposed significant restraints on the company and on the retailers that operated its service stations, on the manner in which promotions offering added value to consumers could be operated. The vouchers issued to customers very often constituted trading stamps within the very wide definition contained in the Act, which could be interpreted to apply to certain electronic card-based loyalty incentive schemes. The Act's provisions had restricted the types of promotions that could be offered to customers, and had given rise to significant legal and administrative costs (which were commercially sensitive). While the company was concerned that the interests of consumers were not prejudiced, it felt that the Act provided no worthwhile protection for them. The Department responded to the effect that electronic loyalty card schemes were not of themselves thought to constitute trading stamp schemes since electronic points were not tangible items in the terms of section 10 of the Act which denoted something with a physical presence (see paragraph 4.3 and footnote above). It was acknowledged, however, that companies might think it prudent to take a broader view.
- The Institute of Sales Promotion commented that the 1964 Act had been created against the background of the abolition of resale price maintenance, which had led to a great deal of competitive activity by retailers. The introduction of trading stamp schemes had been the subject of fierce opposition in some quarters, particularly from small independent retailers. Although the Act provided an option for cash redemption, there was no requirement for the declared value of stamps to be pitched at any particular level. Statements of their cash redemption value often had to be put on very small devices where space was at a premium, and this was impossible in the case of electronic points which might be regarded as trading stamps, and the value was often expressed in miniscule fractions of a penny. For that reason, the requirement had proved unrealistic and of no benefit to

consumers. The very wide definition of both "stamp" and "trading stamp" had obligated promoters to take regular legal advice. The Act had failed to provide any meaningful consumer advantage, and it was doubtful whether it had ever performed any useful function.

- Five retail organisations said that the costs imposed on businesses were extremely difficult to quantify.
- The Newspaper Society said that the Act had fallen into abeyance since the promotional devices it was enacted to restrict were no longer commonly used. Certain sales promotion devices, which are technically trading stamps within the original definition, rarely complied with the Act.
- HM Customs & Excise felt that the UK's derogation from the EC Sixth VAT Directive could be surrendered following the proposed repeal of the Trading Stamps Act, the VAT law on trading stamps having been repealed in 1996.
- The Boots Company PLC expressed reservations concerning the total repeal of the Act (no details were given), but nevertheless thought that it would free up some restrictive obligations applicable to loyalty schemes. It was thought unlikely that this would bring significant short-term savings but that any relevant future promotions could proceed in the most cost-effective way without being constrained by outdated regulatory provisions.
- Argos Limited considered that the Act had no relevance in modern marketing schemes as electronic cards allowed points to be collected and redeemed not only direct from outlets but also over the phone, internet and via home shopping TV. The pace of change was likely to accelerate with the growth of e-commerce, and the Act had been rendered both obsolete and irrelevant to both consumers and business while imposing legal and administrative costs on business. The repeal of the Act would not affect the company's pledge to provide clear, helpful and accurate information for the benefit of all customers of its loyalty schemes.
- Iceland Frozen Foods plc currently operated its own saving stamp scheme where the customer paid for stamps which carried a clear declaration of monetary value. The customer could then exchange the monetary value of the stamps for the retailer's own brand goods. This scheme (which, as a savings scheme, is not within the scope of the Trading Stamps Act) had lower costs for the retailer and was easier to administer than the defunct Green Shield scheme, in which stamps could only be exchanged at designated outlets for specified goods.
- The Office of Fair Trading supported repeal of the provision relating to redemption values, but questioned whether, following the proposed repeal, adequate protection would exist against misleading

advertisements in connection with both traditional trading stamp schemes and modern loyalty card schemes, and suggested that the relevant provisions of the Act, including the requirement for a promoter's name to be printed clearly on the face of trading stamps, should be retained. The Department responded to the effect that the Act had been rendered obsolete through the demise of traditional trading stamp schemes, and that sufficient protection in the areas concerned would be afforded by the Control of Misleading Advertisements Regulations 1988.

- The Green Shield Trading Stamp Company Limited stated that it had ceased issuing stamps during 1990 and in the circumstances it had no comment to make on the proposal.

Annex C

Regulatory Reform Proposals and Orders – Parliamentary Consideration

1. This proposal to repeal the Trading Stamps Act 1964 will require changes to primary legislation in order to give effect to it. The Minister could achieve these changes by introducing a Regulatory Reform Order under the Regulatory Reform Act 2001. Regulatory Reform Orders are subject to preliminary consultation and to extended Parliamentary scrutiny (by Committees in each House of Parliament) of any subsequently proposed Order. On that basis, the Minister invites comments on these reform proposals as measures that might be carried forward by a Regulatory Reform Order.

Regulatory reform proposals

2. This consultation document has been produced because the starting point for regulatory reform proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
3. Following the consultation exercise, when the Minister lays proposals before Parliament under the Regulatory Reform Act, he or she must also lay a report for consideration by the Scrutiny Committees setting out a summary of:
 - the burden imposed by the existing law;
 - whether any of those burdens are proposed to be removed or reduced;
 - how the proposals otherwise further the other objects of the Regulatory Reform Act (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
 - whether there is 'necessary protection' and how it is to be continued;
 - how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
 - how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;
 - whether an Order that imposes burdens is desirable in terms either of the burdens it removes or the other benefits it brings;

- whether any parts of the proposed Order are being designated as ‘subordinate provisions’, allowing them to be changed by less elaborate Parliamentary procedures in the future;
 - what cost savings or increases are expected, and why;
 - what other benefits there will be from the proposals;
 - details of the consultation process;
 - any representations received as a result of that consultation; and
 - the changes made as a result.
4. On the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It lasts for 60 days, excluding Parliamentary recesses of more than four days. If you want a copy of the proposals and the Minister’s report, you will be able to get them either from the Government department concerned or by visiting the Cabinet Office’s website at www.cabinet-office.gov.uk/regulation/act/index.htm.

Parliamentary scrutiny

5. Both Houses of Parliament scrutinise regulatory reform proposals and draft orders. This is done by the Scrutiny Committees.
6. Standing Orders in the Commons stipulate that the Committee there considers whether proposals:
- (a) appear to make an inappropriate use of delegated legislation;
 - (b) remove or reduce a burden or the authorisation or requirement of a burden;
 - (c) continue any necessary protection;
 - (d) have been the subject of, and take appropriate account of, adequate consultation;
 - (e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;
 - (f) purport to have retrospective effect;
 - (g) give rise to doubts whether they are *intra vires*;
 - (h) require elucidation, are not written in plain English, or appear to be defectively drafted; or
 - (i) appear to be incompatible with any obligation resulting from membership of the European Union;
 - (j) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
 - (k) satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;

- (l) satisfy the test of desirability set out in section 3(2)(b) of the Act;
 - (m) have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or
 - (n) include provisions to be designated in the draft order as subordinate provisions; and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.
7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.
 8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee could then be expected to report:
 - whether the Minister should proceed to lay a draft order in the same terms as the original proposal, or
 - whether amendment is necessary, or
 - whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).
 9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also available on the Parliament website at:
 - <http://www.parliament.uk/commons/selcom/drghome.htm> for the Deregulation and Regulatory Reform Committee in the Commons; and
 - <http://www.parliament.the-stationery-office.co.uk/pa/ld/lddereg.htm> for the Delegated Powers and Regulatory Reform Committee in the Lords.
 10. After the 60 days for Parliamentary consideration, the Minister can lay a draft order before both Houses, this time for the approval of Parliament.
 11. Each of the Scrutiny Committees examines the draft order to see how far its views have been taken into account. They report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.
 12. The final draft order then has to be approved by both Houses of Parliament before becoming law.

How to make your views known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.
16. The Scrutiny Committees appointed to scrutinise Regulatory Reform Orders can be contacted at:
- | | |
|--|---|
| <p>Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 020-7219 3103
Fax: 020-7219 2571
email: DPDC@parliament.uk</p> | <p>Deregulation and Regulatory
Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020-7219 2830/2833/2837
Fax: 020-7219 2509
email: deregcom@parliament.uk</p> |
|--|---|

Non-disclosure of responses

17. Section 7 of the Act provides what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.
18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about third parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.
20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders.

Annex D

Consultation criteria

The criteria in the Code of Practice on Written Consultation issued by the Cabinet Office are as follows:

- A Timing of consultation should be built into the planning process for a policy 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 It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
- C 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.
- D 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.
- E 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.
- F Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
- G Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The complete Code is available on the Cabinet Office's website, at <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

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 Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET, or telephone him on 020 7215 6206, or e-mail <mailto:philip.martin@dti.gsi.gov.uk>

Annex E

Partial Regulatory Impact Assessment assessing the impact of deregulating The Trading Stamps Act 1964

Introduction

1 This proposed deregulation order would repeal the Trading Stamps Act 1964 and associated provisions in the Supply of Goods and Services Act 1982.

Issue and objective

2 The 1964 Act was introduced to regulate Green Shield and other trading stamp schemes. Its main provisions were to require that there was an option for cash redemption of trading stamps collected, and for terms to be implied on redemption of stamps so that, for example, any goods supplied in exchange for stamps were of satisfactory quality. To avoid any overlap with the 1982 Act, which implies similar terms into certain types of contract, the exchange of goods for trading stamps was excluded from the 1982 Act.

3 The use of trading stamp schemes (in the traditional meaning of the term) has long since ceased, having given way to modern schemes using electronic loyalty points. The Act thus no longer offers the benefits originally envisaged for consumers. There is now a significant amount of evidence that businesses are facing unnecessary costs, both legal and administrative, when devising new promotional schemes. Scheme promoters had adopted different approaches to the Act. One national retailer had designed its scheme to try to ensure full compliance with the Act's provisions, whereas the promoter of another widespread loyalty scheme had found the Act to be incompatible with its plans which involved a third party providing goods to consumers, and had therefore designed the scheme to fall outside the ambit of the Act. In each case considerable legal and administrative expense had been incurred in taking account of the Act's provisions. Consequently, new promotional schemes have incurred delay and loss of profit to businesses.

4 The objective of this proposal is to:-

- reduce burdens on business by repealing the 1964 Act in its entirety;
- simultaneously repeal section 1(2)(c) and the definition of "trading stamps" in section 18(1) of the 1982 Act to remove the exclusion of goods obtained in exchange for trading stamps. This will ensure that consumers continue to receive adequate protection against faulty goods received on redemption of trading stamps.

It is intended that these repeals should be timed to coincide with the proposed repeal of the Trading Stamps (Northern Ireland) Act 1965 (see paragraph 2.8 above).

Risk Assessment

5 If the proposals contained within this Regulatory Impact Assessment are not implemented, there is a risk that business resources will continue to be wasted ensuring compliance with an Act that is no longer needed for consumer protection purposes in view of changed promotional activities over the previous 40 years.

Options and issues of equity and fairness: Costs and benefits of options

OPTIONS

6 Two options have been identified:

Option 1 - allow the current legislation to remain in force;

Option 2 - repeal the 1964 Act; additionally to repeal section 1(2)(c) and the definition of "trading stamps" in section 18(1) of the 1982 Act so as to ensure that the latter Act's requirements that goods supplied be of satisfactory quality would apply equally to goods received through a scheme as defined in the 1964 Act.

EQUITY AND FAIRNESS

7 Issues of equity and fairness have been considered. Because the trading stamps legislation confers no measurable benefits on consumers in the present day, the changes outlined in option 2 would have no socially unacceptable side-effects nor impose unfair costs on any specific or vulnerable group of the population. Small businesses would not be affected by the repeal of the legislation as promotional schemes operated "in house" by retailers and others through no more than six retail outlets are deemed not to be trading stamp schemes in any case, and are already governed by the 1982 Act so far as the quality and fitness for purpose of goods are concerned.

COSTS AND BENEFITS

8 **Option 1** – no benefit in terms of reductions in administrative costs for businesses in attempting to comply with the Act; consequent delay would continue to inhibit the introduction of new incentive schemes which might otherwise benefit businesses and consumers.

9 **Option 2** - deregulation would reduce burdens on business without detriment to consumers. In the event of a scheme within the scope of the 1964 Act being in operation, the proposed amendment to the 1982 Act would ensure that the latter Act's requirements for goods supplied to be of satisfactory quality provided the necessary protection. Other provisions of the 1964 Act governing the display of certain information at retail outlets, and on stamps, have also become obsolete. In any case the printing of a cash

redemption value on stamps was of no benefit to consumers because it became common practice for such small monetary values to be shown (commonly 0.001p) that there was no realistic prospect of exchange for cash.

10 Cost savings for business can be calculated only broadly. Whilst the responses to consultation in spring 2000 received from or on behalf of well-known retail and other companies unanimously held the 1964 Act's provisions to be onerous, time-consuming and costly to comply with, businesses were generally unable to calculate the precise costs involved and some information was provided on a confidential basis for commercial reasons. On the other hand, it became apparent that little or no activity was taking place within small businesses in connection with the provisions of the Act, so that its effect was confined to a relatively small but significant number of larger concerns. On this basis an approximation of the savings can be made from the information received during consultation. The cost of legal advice was said to range between £5,000 and £10,000 per annum per business, with consequent administrative measures in some cases of up to £45,000. Leaving aside legal costs and on a rough estimate of between 50 and 150 larger businesses incurring some expense in connection with the Act, at an average cost of say £5,000 per business, the total annual cost saving would range between £250,000 and £750,000. While these figures are of necessity approximate, there is no doubt that the repeal of the provisions would provide meaningful and welcome benefits in the form of cost savings.

11 Any savings to business from the repeal of the statutory requirements might be passed on to consumers, producing a positive benefit for them.

Compliance costs for Business, Charities and Voluntary Organisations

12 No compliance costs for charities or voluntary organisations have been identified.

13 Businesses primarily in the retail sector, including stores, supermarket chains and petrol retailers are affected, as well as any former distributors or retail outlets of trading stamp schemes. Businesses in these sectors will not face any compliance costs in addition to those already incurred (primarily costs are incurred ensuring schemes either comply with, or fall outside the provisions of the 1964 Act). Repealing the 1964 Act is of benefit to all businesses and the majority of small businesses are already unaffected by the legislation as they do not run promotional schemes on a scale sufficient to bring the Act to bear (see paragraph 7 above).

Consultation with small business: "The Small Firms Impact Test"

14 As mentioned in the preceding paragraph, discussions with small retailers' representatives have indicated that schemes within the scope of the 1964 Act are very rare or non-existent. Furthermore, as explained in paragraph 7, such schemes if operated "in-house" on a small scale are

unlikely to fall within the scope of the 1964 Act. Following consultation with the Small Business Service, it has been agreed that there is no measurable impact on small firms.

Competition assessment

15 The proposed deregulation has potential effects in all retail sectors where “trading stamp” schemes may be used, for example supermarkets, department stores, corner shops, petrol retailers, DIY stores and garden centres. Deregulation will reduce costs and overheads for retailers operating promotional schemes that either do, or might, fall within the scope of the 1964 Act. Prior consultation suggests that larger retailers are most likely to operate such promotional schemes and thus most likely to benefit from consequential reductions in costs and overheads. Savings are likely to be broadly proportionate to the turnover of the affected retailer, and are likely to be small in relation to overall turnover of the firm concerned. Taking all these factors into account, the Government considers that the proposal is unlikely to have any significant effect on competition.

Identify any other costs

16 No public expenditure or other costs would arise from this deregulatory proposal.

Results of previous consultation

17 See analysis at Annex B.

Summary and recommendation

18 The following table summarises the costs and benefits of the available options.

	Costs	Benefits
Option 1- do nothing	To business, total annual administrative costs between £250,000 and £750,000. To consumers, costs and delays suffered by business prevent full benefits of innovation being passed on.	No perceived savings or other benefits
Option 2 – repeal entire Act and amend section 1(2)(c) of Supply of Goods & Services Act 1982	Nil	Business: saving in administrative costs and prompt introduction of new promotional schemes –

		<p>total estimated annual saving between £250,000 and £750,000.</p> <p>Consumers: potential for faster access to innovative promotional schemes involving financial or other benefits.</p>
--	--	--

19 It is therefore recommended that the entire Trading Stamps Act be repealed given that it has very little relevance to modern schemes and markets and in particular to electronic point "loyalty" schemes. In the modern trading environment there is no longer a need for specific legal provision in respect of this type of promotional activity. The simultaneous repeal of section 1(2)(c) of the Supply of Goods and Services Act 1982 would ensure that consumers enjoyed the protection afforded by that Act in respect of goods obtained through any scheme which might have fallen within the scope of the 1964 Act.

20 The reforms would provide harmonisation of the law protecting consumers against receiving unsatisfactory or unfit goods in this context. Worthwhile administrative and other cost savings would result for retailers who run promotional schemes, including those involving the collection of loyalty points. This would also put an end to delays and lost profits when awaiting advice concerning the effect of the 1964 Act on new schemes or on changes to existing ones.

Enforcement, Sanctions, Monitoring

21 Neither enforcement nor sanctions will be required, since the proposal is to lift certain burdens currently imposed by the Trading Stamps Act. No additional monitoring is envisaged in connection with this Regulatory Reform Order.

Consultation

22 We will consult with a wide range of business and consumer interests, allowing at least 12 weeks for responses.

CONTACT POINT

David King
 Department of Trade and Industry
 Bay 609
 1 Victoria Street
 LONDON SW1H 0ET
 Tel 020 7215 5374
 Fax 020 7215 2837
 e-mail: tsact@dti.gsi.gov.uk

Annex F

List of respondents who commented on the earlier consultation

Aberdeenshire Consumer and Trading Standards*
Argos Limited*
The Boots Company PLC
The British Chambers of Commerce*
The Co-operative Group (CWS) Ltd*
The Consumers' Association*
Esso Petroleum Company Limited*
Glasgow City Council Consumer and Trading Standards*
Green Shield Trading Stamp Company Ltd
HM Customs & Exercise
Iceland Frozen Foods plc*
Institute of Sales Promotion*
The Newspaper Society*
The National Confederation of Consumer Groups*
The Office of Fair Trading
Somersetfield plc*
Suffolk Trading Standards*
Tesco Stores Limited*

*expressing approval of complete repeal

Annex G

Summary of references to trading stamps in other legislation

SUMMARY OF REFERENCES TO TRADING STAMPS IN PRIMARY LEGISLATION			
Legislation	Department Responsible	Effect of provision	Proposed Amendment
Companies Act 1985 s254	DTI	The exemption from the requirement to deliver accounts and reports does not apply if the company carried on business as the promoter of a trading stamp scheme under the 1964 Act	To delete this qualification in s254 since we are repealing the 1964 Act.
Companies Act 1989 s34	DTI	A person with only a 1967 Act authorisation can audit the accounts of an unquoted company but this does not apply where the person carries on business as a promoter under the 1964 Act	Delete this reference.
Consumer Credit Act 1974 Schedule 4 Part I Part II	DTI	States that paragraphs 24-26 amend the Trading Stamps Act 1964 ss2,3 and 10(1) and that paragraphs 43-45 amend the Trading Stamps Act (Northern Ireland) 1965 ("the 1965 Act")	Consider whether to amend to reflect repeal of 1964 Act
Consumer Protection Act	DTI	Defines "supply as providing the	Delete the words "including trading

S46(1)(d)		goods in exchange for any consideration (including trading stamps) other than money.	stamps”
Criminal Damage Act 1971 Schedule Repeals Part II	Home Office	Repeals the words “injures or defaces” in the section 7(4) of the 1964 Act.	Consider whether to amend to reflect repeal of 1964 Act
Decimal Currency Act 1969 Schedule 2	HM Treasury	Amends the figures to decimal in the 1964 Act and 1965 Act.	Consider whether to amend to reflect repeal of 1964 Act
Sale and Supply of Goods Act 1994 Section 8 Schedule 2	DTI	Provides that the Act has effect in relation to the redemption of trading stamps and amends the 1964 Act.	Delete reference in section 8. Consider whether to amend Schedule to reflect repeal of 1964 Act
Scotland Act 1998 Schedule 5 C7	DTI – to extent it deals with reservations of DTI matters	Reserves “trading stamps”.	Consider whether to delete this reference on the basis that the sale and supply of goods is reserved
Supply of Goods (Implied Terms) Act 1973 Section 16	DTI	Section 16(1) substitutes section 4 of the 1964 Act and s4 of the 1965 Act	Consider whether to amend to reflect repeal of 1964 Act
Supply of Goods and Services Act 1982 Section 1 Section 6 Section 11A and G. Section 18	DTI/Scotland	Section 1 and 18 are the subject of this proposal. Section 6 refers to the redemption of trading stamps with regard to hire contracts. Section 11A and G relate solely to Scotland	Delete reference in section 6 Delete references in section 11 A and G in relation to Scotland
Unfair Contract Terms act 1977 Section 7 Section 21	DTI	Terms implied on transfer of ownership cannot be excluded under section 7 but the section does not apply to the 1964	Delete references in section 7 and 21

		or 1965 Acts. Liability cannot be excluded under section 21 but the section does not apply to the 1964 or 1965 Act	
Value Added Tax Act 1994 Section 52	HM Customs & Excise	Commissioners may modify parts of the Act to determine the value of goods transferred under trading stamp scheme	Presumably this would no longer be necessary if trading stamps are not subject to specific legal provision.
SUMMARY OF REFERENCES TO TRADING STAMPS IN SECONDARY LEGISLATION			
The following SIs will need to be considered:			
SI 1997/648 Producer Responsibility Obligations (Packaging Waste) Regulations 1997 SI 1995/3043 Value Added Tax (Trading Stamps) Regulations 1995 SI 1995/3042 Value Added Tax (Treatment of Transactions) (Trading Stamps) Order SI 1995/2518 Value Added Tax Regulations 1995 SI 1980/50 Consumer Credit Act 1974 (Commencement No 6) Order 1980 SI 1976/1813 Consumer Transaction (Restrictions on Statements) Order 1976 SI 1973/293 Value Added Tax (Trading Stamps) Regulations 1973			

Annex H

Response form

Respondent Details	Please return by 20 th August 2003 to:
Name: Organisation: Address: Postcode: Telephone: Fax: email:	Mr D J King Department of Trade and Industry Fair Markets Group Bay 609 1 Victoria Street London SW1H 0ET Tel: 020-7215 5374 Fax: 020-7215 2837 e-mail: tsact@dti.gsi.gov.uk

If you are replying on behalf of a representative group please summarise the people or organisations your group represents:

Please tick this box if you are requesting non-disclosure of your response:

Consultees are invited to give reasons for their answers.

Questions

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?
Comments:

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

Comments:

c) As regards the burdens described in paragraphs 4.34 to 4.52, do you consider that the tests of proportionality, fair balance and desirability are satisfied, as explained in Paragraph 1.5?

Comments:

d) To what extent are samples provided of goods exchanged for trading stamps? (see paragraph 4.28)

Comments:

e) Consultees are invited to provide examples of any promotional schemes involving vouchers or coupons stating whether or not they are currently considered to fall within the definition of "trading stamp" in the 1964 Act. Please also indicate how many retail outlets and how many consumers participate in each scheme. (see paragraph 4.29)

Comments:

f) Would Government policy officials and others please comment on the need for consequential or incidental amendments to other legislation? (see paragraph 4.53)

Comments:

g) Do you have any views on the costs and savings as addressed in the Partial Regulatory Impact Assessment attached at Annex E? Would businesses please provide a detailed breakdown of the expense to loyalty scheme promoters/retailers of compliance with the 1964 Act, distinguishing between legal and administrative costs? (see paragraph 3.8)

Comments:

h) Are there any other benefits that would be gained from these proposals? Do you have any other comments?

Comments:

