

**dti**

**DOORSTEP SELLING AND COLD  
CALLING**

Response to the Public  
Consultation

SEPTEMBER 2006

URN 06/1802

## Government Response to the Public Consultation on Doorstep Selling and Cold Calling

1. This document sets out the Government's position following the public consultation on doorstep selling and cold calling in 2004 and subsequent consultation with stakeholders in 2005 and 2006. A Regulatory Impact Assessment (URN 06/1807) analysing the impact of the seven options recommended by the Office of Fair Trading (OFT) in its report (May 2004)<sup>i</sup> has been published to accompany this document.
2. A statistical summary of the responses to the consultation was published in October 2005<sup>ii</sup>. The document gave the background to the consultation and explained why the OFT put forward the seven options for consideration in their market study report on doorstep selling, which also recommended the Government should conduct a full public consultation.
3. As well as disclosing the number of people who responded to each option, whether in support or opposition, the Statistical Summary also gave some of the overarching views of stakeholders. In addition to this, it explained the Unfair Commercial Practices Directive (UCPD) and the Government's Consumer Strategy<sup>iii</sup>, and the likely effect these will have on high pressured selling.
4. Officials met interested stakeholders in November 2005 to consult further on the detail of specific options and, following ministerial approval, wrote to them in March 2006 to seek their views on the Government's proposals.

### Unfair Commercial Practices Directive (UCPD)

5. The adoption (May 2005) and current implementation of the UCPD has altered the regulatory landscape since the publication of both the OFT's market study and the Department's public consultation. As explained in the Statistical Summary, the UCPD is an important new piece of consumer protection and internal market legislation that will help address many of the underlying problems identified in the OFT report.
6. The Directive prohibits unfair commercial practices that harm consumers' economic interests. Specifically, it introduces a general prohibition on all unfair commercial practices known as a 'general duty not to trade unfairly'. The general duty will act as a safety net

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<sup>i</sup> Doorstep Selling: A Report on the Market Study, OFT 2004 [www.offt.gov.uk/NR/rdonlyres/D0B198FE-DB7E-42E3-B9C4-A819D3D7388D/0/oft716.pdf](http://www.offt.gov.uk/NR/rdonlyres/D0B198FE-DB7E-42E3-B9C4-A819D3D7388D/0/oft716.pdf)

<sup>ii</sup> Statistical Summary of responses to the Doorstep Selling and Cold Calling consultation. URN 05/1614. [www.dti.gov.uk/files/file25481.pdf](http://www.dti.gov.uk/files/file25481.pdf)

<sup>iii</sup> Consumer Strategy: [www.dti.gov.uk/consumers/policy/index](http://www.dti.gov.uk/consumers/policy/index)

protecting consumers from unfair commercial practices that are not already unlawful. Its wide scope – it applies to all business sectors – and deliberately flexible provisions means that it will plug gaps in existing EU and UK consumer protection legislation; and set standards against which new practices will automatically be judged.

7. The Directive's general duty is supplemented by additional provisions that prohibit practices that mislead (by action or omission) or are aggressive (by harassment, coercion or undue influence). This means that the Directive will address high-pressure sales and misleading information techniques used by unscrupulous traders in the doorstep selling and cold calling sector. Sanctions have yet to be decided but it is possible that certain breaches of the Directive, such as in relation to aggressive commercial practices, will carry criminal penalties.
8. A significant feature of the Directive is that it will apply 'maximum harmonisation' to all Member States' laws on business-to-consumer commercial practices, subject to certain important exemptions. This means that no EU country, including the UK, will be allowed to deviate from the standard level of protection in the Directive, except where specifically provided for. This is to ensure that the consumer protection laws in all Member States achieve the necessary harmonisation to allow for easier cross-border trade, thereby increasing choice and competition for consumers. A consequence of this is that any new legislative proposals, which come within the Directive's maximum harmonisation requirements, will have to conform with its principles.
9. Some of the options consulted on comply with the Directive and can therefore be adopted. Others would need to be implemented by mid-2007 if they are to be temporarily permitted by the Directive, as they would then need to be repealed by 2013 (Art. 3(5) UCPD). The latter options would therefore not be in line with better regulation and good policymaking due to the short implementation period and the confusion this would cause to consumers and business. Also, others would not comply with the Directive even if they were implemented by mid-2007 and cannot therefore be adopted. These issues are discussed further later in this document.

#### European Commission Review of the Consumer Acquis

10. The European Commission is reviewing the eight consumer directives, including the 'doorstep selling' Directive<sup>iv</sup> that make up the consumer acquis in the EU. This review will evaluate the extent to which the directives, as a whole and individually, meet the Commission's consumer protection and internal market goals, including looking at

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<sup>iv</sup> Directive on contracts negotiated away from business premises (85/577/EEC)

how they are applied in different countries. The aim is to modernise the directives, and where possible, to simplify and harmonise them.

11. The European Commission intends to publish a green paper on the review by the end of 2006. The DTI commissioned research on the implementation of the eight directives in the UK and consulted on these findings. For more information please see the following website: [www.dti.gov.uk/consumers/policy/eu/review/index.html](http://www.dti.gov.uk/consumers/policy/eu/review/index.html)

## Summary of options and proposed government response

OFT-recommended option	Government to take forward?
1) Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders	Yes. Primary legislation will be brought forward
2) Amending regulation 7(2)(iv) of the Doorstep Selling Regulations 1987, which enables a trader to recover costs of fitting or installing goods if a contract is cancelled, so that this protection for traders applies only in cases where a customer asks for work to commence as soon as possible and is aware of the effect on cancellation rights	No. Stakeholder consensus that this measure is not necessary and could be confusing
3) Prohibition on goods being delivered or work being carried out under a contract before the seven-day cooling-off period has elapsed in the case of unsolicited visits	No. UCPD will help address consumer detriment in this area
4) Prohibition on money being paid or taken before the seven-day cooling-off period has elapsed	No. UCPD will help address consumer detriment in this area
5) A ban on cold calling to offer property services with possible necessary exceptions	No. UCPD will help address consumer detriment in this area
6) Requiring cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost	Yes. Secondary legislation will be brought forward
7) Firms trading via doorstep selling to provide consumers with greater transparency on prices for their products and demonstrate greater willingness to provide written quotes	Yes. By industry self-regulation

## Recommendation

### **Option 1: Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders**

1. This option will be taken forward
2. This was one of the most favoured options in the consultation and received the most support at the stakeholder event in November 2005. Both the OFT and enforcement bodies saw this option as the most desirable outcome of the doorstep selling study; that cooling off periods are the only way of dealing with the problems identified in this area. Representatives of Trading Standards see this measure as a minimum level of consumer protection.
3. Businesses who responded to the consultation tended to support this proposal, with many representatives saying that among their members it is already best practice to offer a cooling off period for solicited visits.
4. Stakeholders agreed that this option would simplify consumer rights, making the Regulations easier for consumers, business and enforcement officers to understand.
5. It is possible that implementing this measure may have the negative effect of increasing the number of unsolicited visits, as there will no longer be any benefits in traders seeking a solicited visit. However, stakeholders agree that the positive effect will outweigh this.
6. In addition, the UCPD, whilst not providing cooling-off periods, will impact on the underlying harm that this option seeks to tackle. In particular, the Directive's prohibition on aggressive commercial practices will outlaw unfair high-pressure selling techniques and its prohibition on misleading actions and omissions should tackle the provision of misleading or false information that frequently leads to problems in this area. Provided these provisions are appropriately enforced, fewer consumers should end up being pressurised into signing contracts for goods or services they do not want.
7. This option goes some way beyond the intentions of the 'doorstep selling' Directive. Our assessment of the financial and numerical significance of contracts entered into as a result of solicited visits, compared with unsolicited visits (covered by the doorstep selling Directive) is that implementing this option will require new powers under primary legislation.
8. We intend to legislate at the earliest opportunity to provide a power to amend the existing legislation to effect this option.

**Option 2: Amending regulation 7(2)(iv) of the Doorstep Selling Regulations 1987, which enables a trader to recover costs of fitting or installing goods if a contract is cancelled, so that this protection for traders applies only in cases where a customer asks for work to commence as soon as possible and is aware of the effect on cancellation rights**

1. This option will not be taken forward
2. The consultation exercise showed that respondents were unsure about the possible effects of amending or removing regulation 7(2)(iv). This option, along with options 3 & 4, received joint lowest support from our consultation.
3. The main reason behind OFT's recommendation of this option was to prevent traders deliberately using the legal exception to undermine the cooling off period. If goods were installed within seven days of the contract agreement, the consumer would have to meet the cost if the contract was subsequently cancelled. However, responses to the consultation showed that simply removing this Regulation would not address the problems caused by rogue traders and bogus callers.
4. Stakeholders raised concerns that if this option was taken forward, there could be other unintended consequences, recognising that the Regulations must achieve a balance of rights and responsibilities on consumers as well as businesses.
5. If option 1 and 2 were both implemented, then the option 2 measure could be open to potential abuse by 'cowboy customers' who take advantage of business. For example, it would be unreasonable for unscrupulous consumers to ask for work to be carried out immediately at their specific request, then try to exercise their right to cancel without having to reimburse the trader for received goods and associated services. Consumers would suffer if the effect of the proposal was to make businesses less willing to supply services within the cooling-off period.
6. Some stakeholders mentioned that in reality they were unsure what goods were over £35 (the threshold for when these Regulations apply<sup>v</sup>), and were wanted by the consumer to be installed within seven days of an unsolicited visit.

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<sup>v</sup> The £35 threshold is based on the Directive's threshold of €60

**Option 3: Prohibition on goods being delivered or work being carried out under a contract before the seven-day cooling-off period has elapsed in the case of unsolicited visits**

**Option 4: Prohibition on money being paid or taken before the seven-day cooling-off period has elapsed**

7. These options will not be taken forward

8. Options 3 and 4 are essentially the same, designed to prevent unscrupulous traders trying to circumvent the seven-day cooling off period.

9. These options, along with option 2, received the least support from our 2004 consultation.

10. If these two options were brought in, there would need to be a number of exemptions, particularly if option 1 was implemented. Some suggestions from the consultation were the sale of domestic coal fuel, assistive products, funerals and small building works. There was also a suggestion that consumers sign a waiver if they wanted to receive goods or services within seven days. Exemptions would create another loophole open to exploitation by rogue traders and bogus callers. This option would also put the direct selling sector at a significant disadvantage.

11. There was also concern of reduced consumer choice as some consumers may want to receive goods and services within seven days of signing a contract.

12. In addition, both these options incur difficulties with respect to the maximum harmonisation principles contained in the UCPD. Prohibitions on contracts that fall within the scope of the 'doorstep selling' Directive, are temporarily permitted by the UCPD and could be introduced, if it is done before the date on which the laws implementing the UCPD are required to be published (12 June 2007). This is because they rely on the minimum clause<sup>vi</sup> in the Directive and so are not *immediately* subject to the UCPD's maximum harmonisation requirements. However by mid-2013, all EU countries need to ensure their consumer protection regime is fully compatible with the UCPD and the measures in these two options would have to be repealed.

13. It appears unlikely that the important legislative changes these options would require could be made in time to meet the mid-2007 deadline. And, as mentioned above, the UCPD will require us to repeal these

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<sup>vi</sup> Minimum clauses enable EU countries to adopt/retain provisions that provide greater protection for consumers, on matters within the directive concerned, provided the protection does not breach the rules in the EU Treaty, for example on the free movement of goods.

prohibitions in 2013 (Art. 3(5) UCPD). Introducing these measures would therefore not be in line with better regulation and good policymaking due to the short implementation period and the confusion this would cause to consumers and business.

14. It is worth noting that the UCPD will help to tackle the considerable consumer detriment suffered in this area. Its ability to tackle unfair high-pressure selling techniques, which may be underpinned by criminal sanctions, should help address the unfair behaviour that is the core problem being considered here. In addition, the Government is considering whether consumers should be able to seek redress (for example, sue for damages) where they have suffered financially from an unfair practice. If adopted, this would give consumers greater opportunities to obtain redress than they currently enjoy.

## Option 5: A ban on cold calling to offer property services with possible necessary exceptions

1. This option will not be taken forward
2. This option was put forward on evidence collected during the OFT study into doorstep selling that cold calling by rogue traders to offer property services was a source of significant economic detriment to consumers.
3. We believe this option would be a disproportionate response to the problem. It is likely to seriously damage the interests of a significant sector of the economy and it is unclear that it would actually prevent rogue traders or bogus callers from taking advantage of consumers by other means.
4. This option received the greatest support during our consultation, mainly due to support from individuals responding to newspaper campaigns and websites, where attention was drawn to this option as a single issue, without explaining its principles or those of the other six options.
5. Another issue with this option relates to the definition of 'property services'. During our consultation we sought comments from stakeholders on what this term covered – the consensus was that this was difficult to define.
6. In addition, this option incurs similar difficulties with respect to the UCPD's maximum harmonisation requirements as options 3 and 4. This is because it would rely on the minimum clause in the Directive and so would not *immediately* be subject to the UCPD's maximum harmonisation requirements. However by mid-2013, all EU countries need to ensure their consumer protection regime is fully compatible with the UCPD and this measure would have to be repealed.
7. Again, however, it is worth highlighting the considerable potential of the UCPD to tackle the harm that this option seeks to address. The UCPD's principle-based approach to banning all unfair commercial practices, irrespective of business sector, will establish a much more systematic and coherent consumer protection framework than currently exists in the UK. It should help plug gaps in the existing legislative framework and will set standards against which new practices will be judged. Importantly, it will provide new protections to ensure that consumers are able to make free and informed choices before, during and after making a purchasing decision: free, because they have not been pressured into agreeing to the work as a result of an aggressive commercial practice; and informed, because they have not been misled, either by action or by omission. With any breach of

the Directive potentially punishable by criminal sanctions, the Government expects that the UCPD will become a core legislative tool for tackling sharp and rogue practices, especially in the area of unfair doorstep selling.

**Option 6: Requiring cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost**

1. This option will be taken forward
2. It is proposed that this option is taken forward by secondary legislation (under section 2(2) of the European Communities Act 1972), which will come into force at the same time as option 1, following the publication of revised regulations.
3. This was one of the most favoured options set out in the consultation. Although a potentially weak option on its own, it does complement extending the cooling-off period and cancellation rights to solicited visits.
4. At present traders are required to provide consumers with a written notice of their cancellation rights. This notice can either be in the contract itself or a separate document. Failure to provide consumers with a written notice of cancellation following an unsolicited visit is a breach of the Regulations and gives the consumer the right to have the contract set aside.
5. Notice of cancellation rights on separate sheets from the contract can cause enforcement problems. Traders can argue that the sheet was provided to the consumer, even if it was not, and it is difficult to prove one way or another. Requiring the notices to be contained in the contract would be preferable from an enforcement standpoint as consumers are more likely to retain contracts. There was strong consensus from the consultation responses that although the notice of cancellation was required to be of 'no less significance' than the rest of the contract, there should be no requirement for it to be of 'more significance' than the rest of the contract. A written notice of cancellation is still required to be given when an oral contract is concluded.
6. This option supports consumers' ability to make informed decisions and is the most consistent with the Consumer Strategy

## **Option 7: Firms trading via doorstep selling to provide consumers with greater transparency on prices for their products and demonstrate greater willingness to provide written quotes**

1. This option will be taken forward
2. It is proposed that this is taken forward via voluntary industry self regulation and in line with the Office of Fair Trading's (OFT's) Consumer Codes Approval Scheme (CCAS). In order for a consumer code to gain OFT approval it must meet the CCAS criteria, which stipulate that members of an OFT approved code must provide consumers with clear and accessible pre-contractual information, including clear, itemised pricing information. However, it should be noted that codes that are not OFT approved might not meet this requirement.
3. This measure was another well-supported option. The consensus from the consultation was that this option should be by voluntary self-regulation, taken forward where possible by OFT-approved codes of practice under the CCAS. A significant proportion of the direct selling industry already operates under an OFT approved code of practice.
4. The OFT is currently working with other code sponsors representing businesses operating in the direct selling channel. However, as the CCAS is voluntary, future success is dependent on the continued participation of code sponsors and their member businesses. The OFT only approves codes of practice that meet its criteria and demonstrate they are delivering real benefits to consumers. The OFT requires code sponsors to show a high level of compliance with all aspects of the code by its members, including obligations regarding price transparency, as well as high rates of customer satisfaction. On approval the OFT requires code sponsors to provide evidence of ongoing monitoring and also carries out its own independent monitoring of the effectiveness of the approved code.

## **Conclusion**

1. As explained in the Statistical Summary and above, the implementation of the Unfair Commercial Practices Directive (UCPD) into UK law will help address some of the underlying problems associated with doorstep selling and cold calling. To complement the additional protection, which the UCPD will bring when implemented into UK law, it is recommended that options 1, 6 & 7 are taken forward.
2. Option 1: Extending cancellation rights and cooling off periods to solicited visits. Given the importance of implementing option 1, officials carefully considered whether this change could be achieved

through secondary legislation, using powers contained in the European Communities Act 1972. However, based on the assessment of the financial and numerical significance of solicited visits compared to unsolicited ones covered by the Directive, it is clear we will need to bring forward primary legislation to obtain a new power to amend the existing legislation to effect this option. We intend to legislate at the earliest opportunity.

3. Option 6: Notice of cancellation to form part of written contracts. This can be achieved through amending the existing regulations using powers contained in the European Communities Act 1972. A written notice of cancellation will continue to be required for oral contracts. We intend to bring forward secondary legislation to introduce this measure, which will come into force at the same time as option 1.
  
4. Option 7: Traders operating via doorstep selling and cold calling to provide consumers with greater transparency on prices and products, and provide written quotes. The doorstep selling industry can be encouraged to do this by voluntary self-regulation via the OFT's Consumer Codes Approval Scheme. A significant proportion of the industry is already operating under an OFT approved Code of Practice.