

**dti**

**IMPLEMENTING THE EU  
REGULATION ON CONSUMER  
PROTECTION COOPERATION**

Response to a public  
consultation on the  
Consumer Protection  
Cooperation Regulation

DECEMBER 2005

URN 05/1954

**dti**

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

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

*A Consultation on the Consumer Protection Cooperation  
Regulation*

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## **Introduction**

The DTI launched a public consultation on the implementation of the EU Regulation on Consumer Protection Co-operation (CPC) in July 2005. The consultation closed on 3 October 2005. The DTI received 17 responses and is grateful for the constructive input. A copy of the consultation document can be downloaded from [here](#).

### 1. **Breakdown Of Responses**

A total of 17 responses were received representing 25 organizations (excluding individual memberships of organizations). These comprised:

- Enforcement or regulatory organizations - 5
- Industry - 5
- Consumer organizations – 7

A full list of respondents is attached in Annex A.

### 2. **Executive Summary**

Respondents gave a considerable degree of support for the aims and objectives of the Regulation although there was some concern that parameters and definitions be clarified on specific areas of text.

There was unanimous support for the proposal that the Single Liaison Office (SLO) be the Office of Fair Trading (OFT). Views on Competent Authorities (CAs) were mixed. Under the Regulation, the UK must provide, to the Commission, a list of SLOs and CAs by 29 December 2005, consequently this list will nominate the OFT and a number of sectoral regulators. Other bodies can be added at a later date if necessary. A list of the bodies to be nominated is in Annex B attached.

The area of the consultation that attracted the greatest comment and polarization of views was the question of whether, or not, the on-site inspection power should apply domestically. Ministers have agreed that it should apply domestically, the rationale for this decision is outlined in the response to question 6 below.

DTI will consider the consultation responses in framing the on-site inspection power. A further consultation will be conducted once the draft Statutory Instrument is completed. It is expected this will take place by mid-2006.

## **Detailed Summary Of Responses By Question**

The consultation solicited a response to a number of implementation questions. This summary will use each question as a heading and summarise the responses below. Decisions taken, based on the responses, will be highlighted in bold.

### *Q1. Comments on which UK public consumer protection enforcement bodies should be designated as 'Competent Authorities' and the 'Single Liaison Office'?*

There was consensus that the single liaison office should be the Office for Fair Trading and a confluence of views on Competent Authorities suggesting the Office of Fair Trading, Financial Services Authority, Civil Aviation Authority, Medicines and Healthcare Products Regulatory Agency and OFCOM.

#### **Ministers have agreed that the OFT will be the Single Liaison Office.**

There was a divergence of views on whether Local Trading Standards Authorities (TSAs) should be a Competent Authority. Some respondents believed that this was in line with their existing function, others felt that the powers required, under the Regulation, by Competent Authorities greatly expanded TSAs sphere of activity. There were also concerns over consistency of application due to the number of TSAs, and the potential impact of the Hampton review.

The Regulation requires that all authorities nominated as Competent Authorities have a minimum level of enforcement powers. Most are already available to UK enforcers but the exception is the on-site inspection power, which would be largely new to the OFT, some of the sectoral regulators and TSAs for the enforcement of *civil* sanctions (TSAs do have this power in relation to consumer laws with criminal sanctions, but these are not covered by this Regulation).

Given that decisions about the new consumer protection enforcement structure have yet to be made, DTI think it would be sensible to see how this structure and the new EU arrangements bed down before giving TSAs these additional cross border responsibilities (The Commission have indicated that Competent Authorities can be designated at any time in the future).

The CPC regulation is intended to put in place a simple structure for communication and co-operation between enforcers across the EU. Although there is no upper limit on the number of Competent Authorities a Member State can have, DTI believe by keeping numbers down the system will be streamlined and easily comprehensible to users.

Additionally, designating TSAs as Competent Authorities would mean that they would be given new enforcement powers which would significantly widen

the application of the new powers, especially if they were extended to domestic as well as intra-Community breaches of these consumer laws – See Q6 below.

DTI would prefer to strengthen the evidence base before making such proposals. This is coherent and consistent with work being undertaken in this area as part of the Hampton Review.

The CPC Regulation enables TSAs, as a ‘body with a legitimate interest’ to be involved in a cross border case without being formally designated as Competent Authorities. There is no question among respondents that TSAs should be involved as appropriate.

**Ministers have agreed designating the OFT and certain sectoral regulators as Competent Authorities now, and leave TSAs until decisions are made as to the future of enforcement structures. Officials will review the potential of extending the power to local TSAs in the future if necessary.**

TSAs are considering whether to be designated as a “body with a legitimate interest” under Art. 8.3 of the Regulation. Similarly, the Financial Services Authority and OFCOM, whilst recognising the importance of the Regulation, are reflecting on the role of Competent Authority and may attend future comitology sessions with a view to clarifying the role in the context of their existing commitments. In the meantime all three organizations have requested that they are not, for the time-being, nominated to the European Commission in any category.

*Q2. Any suggestions as to how we can ensure effective coordinated response to a request for assistance?*

There was a recognition that co-ordinated responses work two ways, where the UK is asked for assistance and where the UK seeks assistance from others. It was felt that the sharing of experiences of interested bodies at an early stage would be beneficial, that there should be a clear process of communication between consumer bodies and enforcement authorities, and that there should be an Memorandum of Understanding (MoU) between the SLO and CA’s to ensure requests are dealt with speedily and consistently.

**The OFT will convene meetings with bodies, jointly and severally, to discuss good practice, share experience, draft MoUs and options for implementation in early 2006.**

*Q’s4, 5 & 7. Comments on the legislative implementation of this Regulation; Approach to framing an on-site inspection power; Comments on definition or application of any enforcement powers.*

These questions signalled a wide divergence of views from respondents. In addressing these we consider these related questions together.

Before the question of framing powers can be addressed it is sensible to look at the existing powers nominated competent authorities have. That not being the case at the time of the Consultation, DTI acknowledge that respondents did not have this advantage, consequently most of the comments were general in content.

Concerns were raised by business and enforcement organizations over the conduct of an on-site inspection without a warrant. Additional concerns were over confidentiality issues in respect of seizure of documents and on-site inspection; proportionality of on-site inspection without notice; the openness and transparency of procedures; a definition of what constitutes an on-site inspection; how should reasonable suspicion be determined; parameters and definitions set for a number of phrases in the Regulation e.g. "without delay"; documents removed by inspectors should be logged; and businesses should have the right to keep copies of any documents removed.

Enforcement organizations and consumer groups generally would like to see; a right to enter *any* premises used for business purposes; the use of test purchase powers where appropriate; a right of access through an agent or employee of the seller or supplier; time limits for the provision of information; time limits for the cessation of any course of action; a clear indication of what the consequences or penalties would be for infringement of any powers; a fast track to judicial procedures to obtain freeze and sequester orders; the right to close down websites, mailing telephone, fax and e-mail operations and the establishment of a robust risk-based pre-inspection assessment criteria applied.

**DTI officials will examine the framing of these powers and consult again on the draft Statutory Instrument in early 2006.**

*Q6. Should on-site inspection powers be limited to intra-Community infringement or also apply to domestic infringements.*

Generally, respondents from business differed from other respondents on these questions.

In defining this power, the key issue is scope, because this Regulation specifically only requires Member States to make the powers available to Competent Authorities in cases where there has been an intra-Community infringement. There is a question therefore as to whether they should also be available in domestic cases.

One disadvantage of extending the power to domestic cases, is that this could be viewed as 'gold-plating' the Regulation, i.e. going above the minimum provisions required. (It is Government policy not to gold-plate, unless it can be justified by a cost-benefit analysis). Some business respondents to the consultation were reluctant to see the powers extended in this way without further analysis of the need for the new powers.

However, there are also arguments in favour of an extension of the power to domestic cases.

If the powers were restricted to cross border infringements, this would create an anomaly whereby enforcers would have more powers to investigate cases on behalf of consumers in other Member States than they would for UK consumers. The extension would be made therefore to address an inequality that may disadvantage UK consumers.

The OFT has provided evidence as to why this power would be beneficial to their investigations wherever the harm has occurred. In the past, the OFT have taken cases against several businesses in the holiday club market where investigations have been hampered by a business winding-up and a very similar business being set up, sometimes on the same premises, with a different set of directors names on Companies House records (so-called 'Phoenix companies'). Although there may be suspicion that the same trader is continuing in business under a different corporate structure, this can be difficult to prove. The on-site inspection power would help by enabling enforcers to gain evidence before a company ceases trading or disappears.

Enforcers' tasks would be significantly more complicated if they have to establish whether they were dealing with an intra-Community or a purely domestic infringement before they know which enforcement powers they can use.

The [Regulatory Impact Assessment](#) that accompanied the consultation (page 35) concluded that this option would not result in extra costs to business than the 'cross-border only' approach. This would justify the extension on a cost/benefit analysis basis.

This proposed extension of the power was supported by the majority of consultation respondents, including some business respondents.

**Ministers have considered the risks of being seen to 'gold-plate' legislation against the anomaly that would be created by applying the new power to cross border cases only and concluded that it is not justifiable to leave UK consumers disadvantaged or create a double-standard, consequently it is intended that the Regulation will apply to both intra-Community and domestic infringements. DTI are continuing to consider whether it has the legal power in the implementing regulations to extend the on-site inspection power in this way.**

#### *Q8. Suggestions on the role of consumer groups*

There was a general recognition that consumer groups have a role in the provision of information and data to enforcement authorities, and in the wider promotion of the Regulation. Some business groups had concerns over commercial confidentiality issues if consumer groups are provided with detailed information.

Consumer groups felt that there should be;

- I. adequate representation in advisory bodies and implementation discussions;
- II. a shared database with enforcement authorities;
- III. a clear process of communication with enforcement authorities;
- IV. a (legal) right to raise significant issues of cross-border enforcement with the SLO and competent authorities and to file complaints with the SLO concerning any failure by the Competent Authority.

**The OFT and DTI will discuss options with consumer groups and business in early 2006.**

*Q9. Which Countries are priorities for EU-wide agreement.*

There was consensus over European countries not currently members of the EU (e.g. Switzerland, Turkey, Romania, Croatia etc.). Other countries suggested had strong 2-way trade links with the EU (e.g. USA, Taiwan, Hong Kong, Canada etc.). Another option was to target popular holiday destinations.

*Q10. What enforcement and cooperation activities should be priorities for Community action.*

Broadly responses fell into the categories of awareness raising, research and suggestions for substantive work.

#### Awareness raising

An EU commitment to increasing consumer awareness of their rights through education.

Training and exchange programmes for enforcement bodies and consumer groups.

#### Research

Analysis of data collected under the CPC with a view to setting priorities for future enforcement action.

Examination of redress mechanisms.

#### Specific suggestions for substantive action

Internet scams, prize draws, anti-spam, phishing, ID theft.

Support for bodies responsible for extra-judicial settlement of disputes

### Other Issues Raised

Some enforcement bodies expressed concerns that future activity does not overlap with work in other bodies.

**The responses to Questions 9 and 10 will be discussed with Member States and the European Commission through the comitology process.**

## Annex A.

### List of respondents

1. Trading Standards Institute.
2. LACORS.
3. SCOTSS.
4. Financial Services Authority
5. Office of Fair Trading.
6. Cattles plc.
7. Consumer Action Network
8. CBI.
9. British Retail Consortium.
10. Federation of Small Businesses
11. Mid-Yorkshire Chamber of Commerce.
12. Which?
13. Air Transport Users Council.
14. Consumer Protection Group.
15. Citizens Advice Bureau.
16. The Consumer Council.
17. The Consumer Action Network (a joint response from Postwatch, Rail Passengers Council, Age Concern, Consumer Council for Water, European Consumer Centre, Citizens Advice, and Energywatch).

Annex B.

**SINGLE LIAISON OFFICE**

Office of Fair Trading.

**COMPETENT AUTHORITIES**

Office Of Fair Trading

CAA

MHRA

Ministry Of Trade And Industry (Gibraltar)

**BODIES WITH A LEGITIMATE INTEREST (Art 8.3 BODIES)**

ICTSTIS