

dti

GOVERNMENT RESPONSE

Government Response to
the Consultation Paper on
Implementing the Unfair
Commercial Practices
Directive

DECEMBER 2006

URN 06/2121

Executive Summary

The DTI issued a consultation paper in December 2005 seeking views on implementing the EU Directive on Unfair Commercial Practices (2005/29/EC) and amending existing consumer legislation. The consultation closed on 8 March 2006.

69 responses were received. These included consumer bodies, business and business organisations, trading standards departments, regulators, professional institutions and academics.

The DTI published a Summary of Responses in June 2006¹. This included a list of all respondents. Copies of the original responses are available on request. Please contact Peter Deft on 0207 215 0341 or via email at peter.deft@dti.gsi.gov.uk for further information.

This document sets out the Government's formal response to the comments received. This will inform decisions in relation to drafting regulations implementing the Unfair Commercial Practices Directive and accompanying interpretative guidance. The Government intends to consult on draft regulations and guidance in the New Year.

We would like to thank respondents for their time and thought. Views expressed have substantially informed the approach set out below.

The consultation paper sought views on three areas:

- Interpretation
- Enforcement
- Simplification of existing legislation

Interpretation

Most respondents agreed with the DTI's view of definitional issues. This will therefore form the basis of a guidance document, currently being drafted by DTI and OFT.

Enforcement

The Government agrees with the findings of the Macrory Review² that modern regulatory regimes require a flexible toolkit in order to tackle effectively the full range of enforcement activities. The regulations will therefore be enforceable by civil and criminal proceedings. Appropriate enforcers will have access to enforcement powers equivalent to those they currently enjoy (including criminal investigative powers).

¹ Available at the DTI website: <http://www.dti.gov.uk/files/file30152.pdf>

² Further information on the Macrory Review can be found at:
http://www.cabinetoffice.gov.uk/regulation/reviewing_regulation/penalties/index.asp

Criminal prosecutions should be reserved for the most serious breaches and other, notably civil, action may be the more appropriate response for dealing with most unfair practices. We are therefore separately consulting on the merits of raising the evidential threshold for criminal offences from strict liability to *mens rea* (guilty mind). In addition, in order to meet concerns that the inclusion of criminal offences does not inadvertently undermine successful self-regulatory systems, the implementing legislation will contain a provision for enforcers to consider the desirability of breaches by traders being dealt with by established means. Certain related provisions will also not be made subject to criminal offences where to do so might be seen to undermine self-regulatory systems.

Simplification

Given that the UCPD's broad scope means that it inevitably overlaps with existing laws, the Government had proposed to modernise and simplify overlapping consumer laws wherever sensible and appropriate. This follows the Government's belief that the existing consumer protection framework is complicated and fragmented and does not reflect the requirements of a simplified and modern legal framework.

Following consideration of consultation responses, the Government will repeal provisions in 22 of the 29 laws assessed, or repeals in 75% of the laws considered. This is because the legislation implementing the UCPD will provide similar or greater protections. These 22 laws arguably include the most important laws considered, as they account for over 95% of prosecutions taken under all 29 between 2000-2005 (as notified to the OFT)³.

Conclusion

The coming into force of the UCPD will mark a new era in UK fair trading history. The UCPD will allow enforcers to tackle those practices that are unfair but not currently unlawful, taking either civil or criminal enforcement action as appropriate. Simplification and modernisation of the existing framework will also make the law easier for its users – business, consumers and enforcers – to understand and apply. The Government is confident that the wide-ranging changes set out below will help it meet its objective of raising the UK's consumer protection regime to the level of the best in the world.

³ OFT data

Government Response

Interpretation

The Summary of Responses highlighted broad agreement with the DTI view on most definitional questions. Respondents also agreed that further clarification would be necessary in guidance especially as the Government proposed in the main to adopt a copy-out approach to implementation. Many respondents asked for guidance to be concise and straightforward. The DTI and OFT have therefore started to draft guidance based on the interpretations contained in the consultation paper. As noted above, the intention is to consult on guidance in the New Year.

A large majority of respondents supported the Government's proposal to clarify that all three variations on the "average consumer" benchmark (ie the "average consumer", the "average member of a particular group" and the "vulnerable consumer") apply to Articles 6-9. The implementing regulations will consequently ensure that this meaning is made clear.

Some business respondents queried whether the "professional diligence" test also applied to the specific categories of misleading and aggressive practices (Articles 6-9) and not merely the general prohibition (Article 5). They argued that it was contradictory for some elements of the general prohibition to be used in the interpretation of Articles 6-9 (eg the vulnerable consumer benchmark) but not others (the professional diligence test). The *travaux préparatoires* and the wording of the directive clearly indicate the intention of the legislation's drafters that Articles 6-should function independently of the general prohibition. The Government is consequently satisfied that its original interpretation is correct.

Enforcement

As explained in the following section, the Government will undertake a wide-ranging simplification of existing consumer laws. The consequence is that the UCPD will form the mainstay of fair trading legislation in future. This makes it even more important to set up an appropriate enforcement regime for the UCPD.

The Government's aim is to establish an enforcement regime that is capable of tackling rogue and unfair practices effectively while minimising burdens on fair trading businesses. Relevant in this context is the Government-commissioned review of regulatory sanctions, known as the Macrory Review. The Macrory Review emphasises the importance of providing enforcers with a wide range of enforcement tools so that they can deal effectively with the entire range of enforcement activities, from assisting compliance to prosecuting truly criminal or rogue operators⁴.

⁴ Further information on the Macrory Review can be found at:
http://www.cabinetoffice.gov.uk/regulation/reviewing_regulation/penalties/index.asp

This is also at the core of the Government's approach to implementing the UCPD. In a modern fair trading framework the main enforcement mechanism for non-serious breaches ought not to be criminal prosecutions; alternative tools, including civil sanctions, will normally be more appropriate and proportionate. The Government may therefore also consider whether adopting additional intermediate enforcement tools, such as administrative penalties, that may be recommended by the Macrory Review. Yet there continues to be a need for criminal sanctions and associated investigative powers to tackle truly rogue behaviour and unscrupulous trading activities. For these reasons, the UCPD will be enforceable both by civil injunctive action and by criminal prosecutions. The detail of this is set out below.

Enforcement – Civil

The Directive requires that Member States provide a system under which the courts or national administrative authorities can order traders carrying on unfair commercial practices to stop. In the UK this means giving designated bodies the power to apply to the courts for orders (injunctions) to stop or prevent traders from using unfair commercial practices. The Government agrees with the large majority of consultation responses that this can be satisfactorily achieved solely by adding the UCPD to the Community infringements regime under Part 8 of the Enterprise Act 2002. The Government will therefore not be establishing an additional separate injunctive regime. All general and designated Part 8 enforcers will be able to apply for injunctive relief to enforce the UCPD.

Part 8 will need amending to give the courts the power to require proof of the accuracy of factual claims made in a commercial communication. However, some respondents argued that extending this power in relation to all the legislation to which Part 8 applies, rather than solely in respect of alleged breaches of the UCPD, amounted to gold-plating. The Government is satisfied that restricting this power to claims made in commercial practices will mean that it will apply where it is of most benefit, in checking the truthfulness of factual claims made in advertisements and other representations. The Government will therefore ensure that it only applies in relation to the determination of the accuracy of factual claims made in commercial communications to which the UCPD applies.

The Directive also granted Member States the option of allowing enforcement action to be taken against a group of traders. This might be useful where a group of traders all used a similar unfair practice. We are satisfied that the current method of taking a representative test case and promulgating the outcome to traders appears effective in dealing with such situations. The Government consequently agrees with most consultation responses that no changes should be made to court procedures to enable actions to be brought jointly against a group of traders where this is not already permitted.

Existing consumer law often imposes a duty to enforce on certain bodies, notably the Trading Standards Service. Given the central role the Directive will play in the UK's consumer protection framework, the Government will place a duty on the OFT and Trading Standards Service to enforce the implementing

legislation. This does not automatically mean that formal (civil or criminal) enforcement action will be taken in respect of each and every infringement. Instead, the duty will oblige enforcers to take steps to promote compliance by the most appropriate means, in line with their enforcement priorities and consistent with available resources. The Government has consequently decided not to include the alternative of a duty to consider complaints.

Some consultation responses made suggestions for improving the functioning of civil enforcement. One respondent argued that new powers – such as access to the RIPA regime (directed surveillance and interception of communications data)⁵ – should be made available to enforcers in order to ensure consistency between investigative powers used for civil and criminal action. The Government will reflect on this proposal when considering its response to the Macrory Review. Other respondents argued that duly authorised Trading Standards Officers should have a right of audience in civil (county) courts, to mirror their existing rights of audience in criminal (magistrates) courts. It was argued that this would save enforcers time and money and enable swifter action to be taken. The Government agrees that this position appears anomalous and will consider the practicalities of giving designated enforcers a right of audience in the county court.

A few respondents also argued that businesses, or certain businesses, should be able to enforce the Directive themselves. This would assist in increasing compliance e.g. in preventing copycat packaging intended to deliberately confuse consumers. The Government believes that existing enforcement arrangements are adequate for dealing with cases that result in real consumer detriment. In addition the Gowers Review of Intellectual Property is currently assessing the performance of the UK's IP regime to ensure that it achieves appropriate outcomes for rights holders and consumers appropriate for the digital age. Ahead of the Review's conclusions, the Government does not propose to make any changes to allow businesses to take enforcement action for breaches of the UCPD⁶.

Enforcement – Criminal

Given the importance of ensuring that effective action can be taken against rogue trading activities, the Government will ensure that breaches of most of the provisions of the UCPD are subject to criminal offences. This includes the general prohibition (Article 5) and the prohibition on misleading omissions (Article 7(1)), where subsequent consideration in the light of consultation responses has indicated that these prohibitions are sufficiently certain for human rights purposes. The Government has separately launched a mini-consultation to consider whether enforcers should be required to prove a mental element (*mens rea* or guilty mind) before an offence is established, or whether to retain strict liability/due diligence & innocent publication defences predominant in regulatory law. Copies can be found at [F].

Regulation of Investigatory Powers Act 2000

⁶ Further information on the Gowers Review can be found at: http://www.hm-treasury.gov.uk/independent_reviews/gowers_review_intellectual_property/gowersreview_ind_ex.cfm

Some concerns were expressed that the introduction of criminal offences would undermine existing self-regulatory regimes. These are not shared by the Government, as existing self-regulatory regimes already overlap with consumer protection laws (such as the Trade Descriptions Act 1968 and Part III of the Consumer Protection Act 1987) that contain criminal sanctions. Nonetheless, in order to underline the Government's belief that certain self-regulatory regimes should in appropriate cases be given the first opportunity to stop unfair practices, we will include a provision in the implementing legislation establishing that enforcers should have due regard to the suitability of using established means to deal with breaches. In addition, the Government will not criminalise certain provisions relating to self-regulation (Art. 6(2)(b) (codes of conduct); Annex 11 (using editorial content to promote a product without making that clear to consumers); and Annex 28 (directly exhorting children to buy advertised products or persuade their parents to do so)).

The UCPD implementing legislation will also ensure that there is access to enforcement powers to replace those that will be repealed, similar to those in the Trade Descriptions Act. The Government will consult on the detail as part of the consultation on the draft legislation in the New Year. Subject to the outcome of the *mens rea* consultation, the UCPD implementing legislation will seek to maintain defences in circumstances where they currently apply, and extend them where appropriate.

In its consultation response, the OFT recommended that it be given the ability to bring criminal prosecutions for breaches of the UCPD. This would achieve greater consistency in the investigative powers available to OFT and the Trading Standards Service and allow action to be taken by the most appropriate body. The Government agrees that this position appears anomalous and we are seeking views on the OFT having the power to prosecute.

Enforcement – private right of redress

The Government agrees with many consultation responses that providing a private right of redress in relation to the UCPD could clarify existing consumers' rights. It would also enhance consumers' rights in areas where the Directive provides new or improved protections – eg in relation to aggressive commercial practices – and should stimulate traders to greater compliance with the law. However, the Government is concerned that adopting a private right of action for the whole of the Directive might have unintended and adverse consequences, by potentially providing consumers with undesirable latitude to sue traders and by impacting on the law of misrepresentation. The Government is therefore considering asking the Law Commission to consider this issue as part of its next Work Programme.

Enforcement – self-regulation

The UCPD allows Member States to use codes of conduct (practice) to control unfair commercial practices. The Government believe that the self-regulatory regime for broadcast and non-broadcast advertising should

continue to be the main (established) means for dealing with misleading advertisements. The OFT, working with other enforcers, will consider how other self-regulatory mechanisms could become established means in future.

The Directive also gives Member States the option of allowing action to be taken against a code owner where a code promotes non-compliance with legal requirements. Many respondents advocated adopting this proposal, though some expressed concern that this could have a negative effect on code owners' current willingness to provide advice on compliance with their codes. The Government believes such concerns are overstated. This option would only be enforceable by civil action and not by criminal prosecutions. In addition, Part 8 of the Enterprise Act requires enforcers, except in serious instances, to consult traders and seek undertakings before they can commence formal court action. The Government believes that this will ensure that injunctions would only be sought in the extremely rare circumstances when code owners had a genuine difference of opinion with an enforcer as to the fairness of a practice proposed in its code. The Government therefore proposes to implement this option.

The consultation paper also asked whether the proposal should be extended to allow enforcers to take civil action against all persons promoting non-compliance with legal requirements. The Government now agrees with concerns expressed about potential gold-plating and will therefore not extend the option to include all persons.

Simplification

The third part of the DTI consultation paper asked for views on how to deal with 28 laws or provisions of laws identified as potentially affected by the Directive. The main options generally were either amendment or repeal, though on occasion the option of doing nothing was also available on the basis that the provision might fall outside the scope of the UCPD. The paper argued that, given that existing protections were often replicated or bettered by the UCPD, this represented a good opportunity to simplify the existing legislative framework. The Government therefore committed itself to simplifying existing laws wherever sensible and appropriate in order to establish a modern and robust fair trading framework.

Since the consultation closed, the Government identified one further law that was potentially affected, the County of Cleveland Act 1987.

Following further consideration, and taking into account the responses received to the consultation, the Government will repeal provisions in 22 of the 29 laws affected. 13 of these laws will be repealed outright; 9 in part. This represents repeals in 75% of the laws considered. These 22 arguably include the most important laws considered, as they account for over 95% of prosecutions taken under all 29 between 2000-2005 (as notified to the OFT)⁷.

Decisions not to repeal laws have been because the Government is now satisfied that these fall outside the scope of the Directive. Conversely, the

⁷ OFT data

Government is confident that decisions to repeal laws can be safely made because the Directive will, taken overall, provide equivalent or at times better protections than existing laws. The Government consequently believes that these proposals will considerably simplify and improve the consumer protection framework whilst ensuring that any repeals do not inadvertently reduce existing levels of consumer protection.

The Government will repeal:

- Administration of Justice Act 1970, section 40 (its effect), to the extent that it applies to business-to-consumer practices falling within the Directive's scope
- Business Advertisements (Disclosure) Order 1977
- Consumer Protection Act 1987, Part III
- Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 2005
- (and amend) provisions of the Consumer Credit Act 1974 & the Consumer Credit (Advertising) Regulations 2004
- Consumer Transactions (Restrictions on Statements) Order 1976
- Fraudulent Mediums Act 1951
- relevant provisions of 5 local Acts (County of Cleveland Act 1987; Kent County Council Act 2001; Medway Council Act 2001; North Yorkshire County Council Act 1991; Nottingham City Council Act 2003)
- Mock Auctions Act 1961
- Price Indications (Method of Payment) Regulations 1991
- Price Indications (Resale of Tickets) Regulations 1994
- Price Marking (Food and Drinks Services) Order 2003
- Tourism (Sleeping Accommodation Price Display) Order 1977
- Trade Descriptions Act 1968, with certain savings
- Trade Descriptions Act (Sealskin Goods) (Information) Order 1980
- Trading Representations (Disabled Persons) Act 1958
- Weights & Measures Act 1985, section 29

The regulations implementing the UCPD will provide these protections. They will also give appropriate enforcers access to enforcement powers equivalent to those they currently enjoy, including criminal investigative powers.

In order to ensure that business-to-business protections are adequately provided in the new fair trading framework, the Control of Misleading Advertisement Regulations 1988 (as amended) (CMARs) will be amended to make misleading advertisements a criminal offence. Enforcers will have access to powers comparable to those provided in the TDA. (The protections in CMARs extend far beyond that which would traditionally be regarded as advertisements: it applies to any form of representation made to promote the supply of goods or services, immovable property, rights or obligations.)

The Government will retain:

- Food Safety Act 1990, s14
- Accommodation Agencies Act 1953, s1

- relevant provisions of the Charities Act 1992 & the Charitable Institutions (Fund Raising Regulations) 1994
- relevant provisions of the Timeshare Act 1992 & the Time(Cancellation Information) Order 2003
- relevant provisions of the Trading Schemes Regulations 1997

These 29 laws are considered below.

Accommodation Agencies Act 1953, s1

Section 1 of this Act appears to fall within the UCPD's exemption from maximum harmonisation for immovable property. It therefore does not require amendment. The Government also accepts respondents' views that the UCPD may not adequately replicate all the protections contained in this provision. The Government will therefore make no changes to Section 1.

Administration of Justice Act 1970, s40

The prohibitions in this section appear to be more than adequately covered by the UCPD with respect to business-to-consumer practices. Nevertheless, there are substantial areas which are not because they are outside the scope of the UCPD, eg business-to-business and consumer-to-consumer practices. This provision will therefore be changed so that it does not apply to business-to-consumer commercial practices falling within the scope of the UCPD.

Business Advertisements (Disclosure) Order 1977

The Government agrees with the majority of consultation responses that the UCPD provides broadly equivalent protections to the Order. It can therefore be safely repealed.

Charities Act 1992 ss60(3), (4), (5) and 61; & Charitable Institutions (Fund Raising Regulations) 1994 regulation 7

These provisions appear primarily aimed at regulating matters concerned with taste and decency. As such, they fall outside the scope of the UCPD. The Act and Regulations will therefore not require any changes.

Consumer Protection Act 1987, Part III

Part III is effectively replicated by the UCPD. Indeed, the UCPD appears to offer wider protection than Part III: it applies to all immovable property, rights and obligations, and not just some; and unlike Part III, the UCPD does not include a limited list of factors to be taken into account when assessing whether a price is misleading. The Government consequently agrees with the majority of respondents that Part III can safely be repealed.

Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 2005

By repealing Part III CPA the Code of Practice – which is made under it – will automatically lose its statutory effect. The essential purpose of the Code – to give practical guidance and promote desirable practices – can be equally achieved through non-statutory guidance. In any event the current statutory effect of the Code is very limited. However, a large majority of respondents preferred that the Code should continue to be available as guidance. The Code will therefore be reproduced as part of the guidance material on the new Regulations. The DTI will consult separately on further changes to the Code appropriate to this context.

Consumer Credit Act 1974, ss46, 77, 78, 79, 103, 110

Section 46, which makes it an offence to give a false or misleading credit or hire advertisement, is replicated by the UCPD and its repeal should therefore not lead to any obvious loss of consumer protections. The remaining sections oblige traders to give debtors or hirers under a regulated consumer credit or hire agreement certain information on request, eg termination statements. The Government considers that there may be doubt whether the criminal sanctions in relation to sections 79, 103 and 110, in so far as they apply to consumer hire, can be maintained consistently with UCPD. In any event it no longer believes that the criminal offences in these sections are proportionate, and will therefore remove these offences. For the sake of consistency this repeal will apply to the entire scope of sections 103 and 110 and not just as far as they concern consumer hire; and to comparable provisions in sections 77 and 78 concerning consumer credit. It will nonetheless remain possible for enforcers to take injunctive action to stop breaches of these provisions, and the agreement will continue to be unenforceable while the default to provide the information continues. Compliance with s103, which currently has no private law consequences, will be made a statutory duty.

Consumer Credit (Advertising) Regulations 2004

The information obligations in Regulations 3, 4 & 7 are sufficiently replicated by the UCPD (and those setting out the content of the information required appear to be entirely replicated by the UCPD). To the extent they apply to consumer hire, these will therefore be repealed.

Consumer Transactions (Restrictions on Statements) Order 1976

The Government agrees with the majority of respondents that the Order's effect is adequately replicated by the UCPD. The Order will therefore be repealed.

Food Safety Act 1990, s14

Section 14 appears to be primarily concerned with maintaining quality and safety standards for food rather than protecting consumers' economic interests. This therefore falls outside the scope of the UCPD. No changes will consequently be made to this section.

Fraudulent Mediums Act 1951

The effect of this Act is largely replicated by the UCPD, and indeed the Directive should provide better protections for vulnerable consumers than the Act. It can therefore safely be repealed.

5 Local Acts (County of Cleveland Act 1987, s 23; Kent County Council Act 2001, s13; Medway Council Act 2001, s13; North Yorkshire County Council Act 1991 s6(6) and 7; Nottingham City Council Act 2003 s12)

The positive information obligations in these sections are generally incompatible with the UCPD and at the very least would require substantial amendment to conform with the UCPD. The result would be a complex offence. In any case, traders' identifying information will still need to be provided to enforcers as part of the notification regime in these Acts. Enforcers will therefore still have access to this information. The Government consequently believes that the better approach is to repeal these provisions.

Mock Auctions Act 1961

Whilst the Act's highly specific prohibitions are not replicated by the UCPD, the Directive's broad provisions – and especially its general duty – should be able to catch the psychological selling techniques and theatre used in mock auctions. The Government therefore agrees with the vast majority of respondents that the Act should be repealed.

Price Indications (Method of Payment) Regulations 1991

The Directive will provide greater flexibility to traders in the manner and way in which they display the required pricing information. However, it should fully replicate the Regulation's essential requirement to provide information about the different prices charged. The Government therefore agrees with the majority of consultation responses recommending the Regulations be repealed.

Price Indications (Resale of Tickets) Regulations 1994

The information obligations in these Regulations are currently incompatible with the UCPD and will at the very least require substantial amendment. The result would be a complex offence. Given that the UCPD will provide equivalent protection where a failure to provide the relevant information is likely to adversely affect the average consumer's behaviour, the Government believes that the better option is to repeal these Regulations and rely on the UCPD. Ticket resellers will therefore continue to have to tell consumers the original price of ticket and information about the location of the seat or space to which the ticket gives access, and any adverse features of the seat, in circumstances where a failure to do so would adversely affect the average consumer's purchasing decision.

Price Marking (Food and Drinks Services) Order 2003

The information obligations in this Order will eventually require substantial amendment to make them conform with the UCPD. The result would be a complex offence. As the UCPD will in any case adequately replicate the effect of the Order – notably the requirement to provide prices to consumers in good time before placing an order – the Government believes that the better option is repeal.

Timeshare Act 1992 & the Timeshare (Cancellation Information) Order 2003

The only provisions requiring amendment by the UCPD are those relating to timeshare in caravans. However, the Timeshare Directive is currently under review and its scope may be amended to include caravans. The Government has consequently opted to retain these provisions pending the outcome of this review.

Tourism (Sleeping Accommodation Price Display) Order 1977

As with other laws considered above, the information obligations in this Order will require substantial amendment to make them conform with the UCPD. The result would be a complex offence. Yet the UCPD will adequately replicate the effect of the Order. In addition, we agree that this Order is becoming increasingly obsolete, given that most hotel bookings are now made by phone or internet. The Government will consequently repeal this Order.

Trade Descriptions Act 1968, with certain savings

The Act's broad offences are almost entirely replicated by the UCPD (Articles 6 & 7) for business-to-consumer commercial practices, and by the Control of Misleading Advertisements Regulations (CMARs) 1998 for business-to-business practices. The sole exception relates to situations where traders are buying products from consumers (eg traders buying second-hand cars from consumers). The implementing Regulations will consequently clarify that the UCPD will apply in such situations as well. Given the very extensive duplication between the TDA and the UCPD, the Government believes that in the interest of simplicity the better option is to repeal the bulk of the TDA, including s1 and s14.

As noted previously, this is contingent upon the UCPD and CMARs being made subject to criminal sanctions, with defences where appropriate.

A raft of other legislation unaffected by the UCPD relies on certain of the TDA's provisions including those relating to enforcement. Accordingly certain savings in respect of the TDA provisions or consequential amendments to the other legislation will need to be made.

The Government is still considering whether to maintain in force s12 and s16.

Trade Descriptions Act (Sealskin Goods) (Information) Order 1980

There is very little annual reported trade in sealskins goods in the UK. With no civil actions or criminal prosecutions reported for the period 2000-2005, the Government has opted to repeal this Order.

Trading Representations (Disabled Persons) Act 1958

The effect of this Act is replicated by the UCPD where statements made are false. With no prosecutions reported between 2000-2005, it also appears to be largely obsolete. The Government will therefore repeal this Act.

Trading Schemes Regulations 1997

Most, if not all, participants in trading schemes appear not to be acting as “consumers” but rather astraders. As such, the Regulations appear primarily to deal with business-to-business matters and hence fall outside the scope of the UCPD. The Regulations will therefore not require any amendments.

Weights & Measures Act, s 29

The effect of s29 is replicated by the UCPD and CMARs and can consequently be safely repealed. Decisions on s30 and s31 are still outstanding.

December 2006