

BERR

Department for Business
Enterprise & Regulatory Reform

**CANCELLATION OF CONTRACTS
MADE IN A CONSUMER'S HOME
OR PLACE OF WORK ETC.
REGULATIONS 2008**

Government Response to the
Consultation

JUNE 2008

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Introduction

1. On 29 January 2008, the Department for Business, Enterprise and Regulatory Reform (BERR) published a consultation document seeking the views of businesses, consumers, enforcement authorities and other interested parties on the proposed ‘Cancellation of Contracts Made in a Consumers Home or Place of Work etc. Regulations 2008’.
2. The consultation closed on 22 April, 2008. A total of 38 responses were received. A breakdown of the number of responses received by type of organisation is as follows:

Small to Medium Enterprise	0
Representative Organisation	19
Trade Union	0
Interest Group	0
Big Business	1
Local Government	13
Central Government	1
Other (e.g. consultant or private individual)	4

3. BERR is grateful for the time taken by respondents to consider the questions included in the consultation document. All responses have been analysed and considered. Where appropriate, we have amended the draft Regulations to take account of respondents’ views.

Executive Summary

4. We propose to lay before Parliament the ‘Cancellation of Contracts Made in a Consumer’s Home or Place of Work etc. Regulations 2008’ (the Regulations) for the approval of both Houses, by affirmative resolution, before the Summer Recess on 22 July 2008.
5. A number of responses to the consultation suggested that the Regulations should be delayed because the European Commission review of the Consumer Acquis may mean further policy changes in this area. However, the Commission have confirmed to us that it is unlikely that future changes could be implemented until 2012. Given the ongoing detriment to consumers in relation to solicited doorstep selling visits, we do not intend to delay the Regulations until this time.

6. It is our intention that the commencement date for the new Regulations will be 1 October 2008. This will allow businesses sufficient time to amend their contracts to include notice of the right to cancel; to run down existing stocks; and to train staff in the requirements of the Regulations.
7. The Regulations are important in delivering objectives set out in the Government's 2005 Consumer Strategy and in meeting BERR's Public Service Agreement to have a consumer protection regime that is among the best in the world by 2008. They represent the next stage in the Consumer Rights legislative programme and compliment the 'Consumer Protection from Unfair Trading Regulations' (the CPRs) which are due to come into force on 26th May 2008.
8. The Regulations mean that all consumers will have the safety net of a cooling off period for contracts within the scope of the Regulations that are entered into in their own home. The law will be simpler and clearer for consumers, businesses and enforcement agencies. Consumers will be less at risk from disreputable traders exploiting the different treatment of solicited and unsolicited visits; businesses will, in general, be able to work with one contract for both unsolicited and solicited visits, reducing ongoing costs in training sales staff; and enforcers will not have to use valuable resources determining whether a visit was solicited or not as the same rules will apply.
9. The Regulations ensure that a consumer will be able to receive goods, or the provision of services before the end of the cooling off period if that is what they want. The Regulations provide a balance of rights and responsibilities on the part of consumers as well as traders to help ensure that cooling off periods are effective and are not undermined, and that traders are not reluctant to provide goods or services within the cooling off period for fear of non payment by the consumer.
10. The Regulations will apply more widely than the current Regulations. All traders who visit a consumer, including in response to an invitation by a consumer, and who enter into a contract with the consumer in the consumer's home or place of work or on an excursion organised by the trader away from the trader's business premises are likely to be affected by the Regulations. BERR and the Office of Fair Trading (OFT) are developing a joint communication strategy ahead of the planned commencement date of 1 October 2008. BERR will focus on business and enforcement activities, while the OFT will focus targeted activity at consumers.

Key Provisions of the Proposed Regulations

11. The proposed Regulations will:

- Replace the current Regulations i.e. the 'Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987;
- Extend the cooling-off period and right to cancel under the Regulations to certain contracts made during a solicited visit by a trader;
- Set the threshold at which the Regulations apply at a total payment value of £35 for contracts made as a result of either unsolicited or solicited visits by traders;
- Set the cooling off period at 7 calendar days both for contracts made as a result of unsolicited visits by traders and for contracts made as a result of solicited visits by traders;
- Make clear that the cooling off period starts on the day of receipt of a notice of the right to cancel from a trader;
- Require that the notice of the right to cancel be prominently displayed in the same document, where the contract is completed wholly or partly in writing;
- Require that the consumer must record his agreement in writing to performance of the contract beginning before the end of the cooling off period if that is what the parties propose;
- Require that where a consumer has agreed to performance of the contract beginning before the end of the cooling off period, the trader must include in the notice of the right to cancel, a statement that payment may be required to be made if the contract is subsequently cancelled;
- Provide that failure to include such a statement (as required in the paragraph above) in the notice of the right to cancel will constitute an offence, at level 5 of the standard scale, relating to failure to provide notice of the right to cancel;

- Extend the scope of the Regulations to apply to extensions, conservatories, patios, and driveways. This issue will be covered further in Guidance to business before the Regulations come into force, so business and consumers are clear about what is covered by the Regulations and what is not.
- Provide for the automatic cancellation of a related credit agreement where a cancellation notice which cancels a contract for goods or services is served on a trader.

Summary of Responses to Questions in the Consultation

Question1: Do you think that any of the ‘excepted’ contracts listed in Schedule 3 should be removed or limited so that the Regulations apply to that kind of contract?

12. Enforcement authorities and consumer groups were generally content with the scope of the excepted contracts listed in Schedule 3. There was a majority view that the Regulations should apply to extensions, conservatories and patios (which is dealt with in Question 2). A number of enforcement authorities expressed concern about the definition of ‘immovable property’. Points were also raised in relation to credit agreements not exceeding £35, brochure sales and the definition of a ‘regular roundsman’. Overall, business felt that the list of ‘excepted’ contracts should not be amended to extend the application of the Regulations to other kinds of contract. The National Association of Funeral Directors requested an exemption in relation to funeral arrangements.

Definition of Immovable Property

13. Enforcement authorities, consumer groups and some businesses, felt that the definition of “immovable property” needed to be clarified. They felt that the proposed Regulations should be clearer about what kind of home improvements and repairs the Regulations apply to. Consumer groups felt that consumers would be confused about their rights in relation to home improvements.

Government Response

14. We accept the need for a clearer definition of the term, ‘immovable property’. In its response to the Commission’s discussion paper on the review of Directive 85/577/ECC (December 2007), BERR recommended to the Commission that the definition as included in Article 3(2)(a) of the Directive, should be more clearly defined. BERR will continue to work with the Commission to clarify the definition as part of the review of the Doorstep Selling Directive and the review of the Consumer Acquis.

Credit Agreements Not Exceeding £35

15. The Office of Fair Trading (OFT) suggested that the exception included at Schedule 3, paragraph 6, relating to credit agreements not exceeding £35, should be removed.

Government response:

16. We are not persuaded that the evidence provided of detriment in relation to credit agreements under £35 provides sufficient grounds to introduce additional complexity into the Regulations by treating credit agreements any differently to any other agreements under £35. We have decided not to remove the exception at Schedule 3, paragraph 6.

Catalogue Sales

17. A number of enforcement authorities were concerned that the definition of 'catalogue' included in paragraph 3 Schedule 3 was not clear enough and that should be amended to make clear that the exception did not apply to 'brochure', 'leaflet', and 'pamphlets'. The view was that rogue traders may attempt to utilise this exception to exempt their sale from the Regulations.

Government response:

18. This issue will be covered in Guidance to business before the Regulations come into force, so business and consumers are clear about what is covered by the Regulations and what is not.

Definition of 'Regular Roundsman'

19. Several enforcement authorities expressed the view that the definition of 'regular roundsman' included in paragraph 2 of Schedule 3 needed to be clarified. One enforcement authority sought clarification as to whether itinerant sales which are 'regular', for example fish sellers that call every 3 months are excluded from the Regulations.

Government response:

20. We accept the need for a clearer definition of the term, 'regular roundsman'. In its response to the Commission's discussion paper on the review of Directive 85/577/ECC (December 2007), BERR recommended that the definition as included in Article 3(2)(b) of the

Directive, should be more clearly defined. BERR will continue to work with the Commission to clarify the definition as part of the review of the Doorstep Selling Directive and the review of the Consumer Acquis.

Funerals

21. The National Association of Funeral Directors requested an exemption in relation to funeral arrangements. A number of other business representatives thought that the requirements to obtain written agreement to a funeral service taking place before the end of the cooling-off period would seem inappropriate to consumers in the circumstances.

Government response:

22. In the draft Regulations provision is already made in regulation 9 for the position where certain contracts are commenced before the end of the cooling-off period. These include the conduct of funerals. The regulation provides for the consumer to pay for goods and services provided before the contract was cancelled. We consider that this provides the right balance between the needs of consumers to retain cancellation rights at a time when they are vulnerable, and the ability of funeral directors to be paid for work they have carried out before the cancellation of a contract. Insofar as contracts covered by these Regulations are entered into during this sensitive time, we do not consider inclusion of this provision to be inappropriate. We therefore do not propose to exempt funeral services from the Regulations.

Repeat Business

23. Two business representatives requested an exemption for repeat business from a previous customer.

Government response:

24. We do not see the merit in such a provision. In any event we could not exclude unsolicited repeat visits from application as this would be contrary to the terms of the Directive. Our aim in these Regulations is to as far as possible treat solicited and unsolicited visits consistently, to enable us to make the law clearer for consumers, businesses and enforcement agencies.

Coal Merchants

25. Representatives of the coal industry sought clarification on a number of points, including (a) whether solid fuels would be regarded as 'consumable' and therefore fall within Regulation 9(h); (b) whether a 'hawking round' would fall within the definition of a 'roundsmen' in Schedule 3, paragraph 2; and (c) whether certain requirements of the Regulations would contravene existing Weight and Measures Legislation.

Government response:

26. Solid fuels would in our view be treated as 'consumables'. Contracts resulting from a visit by a trader as part of a 'hawking' round would be treated as contracts resulting from an unsolicited visit for the purposes of the Regulations. We do not consider that the Regulations would contravene the requirements of existing Weights and Measures legislation.

Question 2: Do you think that the Regulations should apply to extensions, conservatories and patios (i.e. should Schedule 3 Paragraph 1 relating to 'immovable property' be limited so that extensions, conservatories and patios are not excepted)?

27. A clear majority of respondents felt that the Regulations should apply to extensions, conservatories and patios. A number of enforcement authorities considered that the Regulations should also apply to driveways. The OFT provided evidence from its report on the Doorstep Selling Market Study (OFT716, May 2004) indicating that home improvements, in particular double glazing and conservatories, had the potential to cause high consumer detriment. The OFT also cited data provided by Consumer Direct for the years 2006 and 2007 which showed that for doorstep sales, glazing products and installations (which includes conservatories) were for both years, the second highest category of goods /services complained about to Consumer Direct: home maintenance and improvements (which includes paving and general building work) generated the highest value of complaints.

Government Response

28. Given that home improvements and maintenance are the most complained about aspects of doorstep sales, and the potential for consumer detriment is high because of the value of the goods or services provided, it is our view that the Regulations should apply to contracts for the construction of extensions, patios, conservatories and driveways. We have amended the Regulations accordingly at Schedule 3 Paragraph 1.

Question 3: Do you agree that all credit agreements regulated under the Consumer Credit Act should be excluded from these Regulations pending transposition of the Consumer Credit Directive?

29. A clear majority of the respondents who commented on this question expressed the view that credit agreements regulated under the Consumer Credit Act should be excluded from these Regulations pending transposition of the Consumer Credit Directive.

30. OFT considered that the exclusion should be limited to agreements which are cancellable under the Consumer Credit Act and that these Regulations should introduce cancellation rights for other regulated credit agreements, pending implementation of the right of withdrawal in the Consumer Credit Directive. OFT also questioned the exclusion from the Consumer Credit Act 1974 of cancellation rights of agreements secured on or relating to the purchase of land (as set out in section 58 CCA) and argued that the opportunity should be taken in these regulations or in the transposition of the Consumer Credit Directive to provide cancellation rights for such agreements.

31. Age Concern felt that the provisions would mean that a consumer might have to cancel two separate contracts under two separate systems and suggested that provisions for the automatic cancellation of related agreements for goods and services be built in when the Consumer Credit Directive is transposed into UK legislation.

Government Response

32. We agree with views expressed by the majority of respondents, that to introduce cancellation provisions for credit agreements under the Regulations, only to amend these in two years when the right of withdrawal in the Consumer Credit Directive is implemented, would

generate unnecessary cost, duplication and technical problems and would also potentially confuse both business and consumers.

33. We note the comments made by OFT in relation to providing cancellation rights for agreements secured on or relating to the purchase of land. Government has a long standing policy of not providing cancellation rights in relation to such credit agreements. There are a number of practical difficulties associated with providing cancellation rights in such circumstances which could impact on the smooth running of the housing market.
34. The proposed Regulations will provide for the automatic cancellation of related credit agreements where a contract for goods and services is cancelled. The Consumer Credit Directive, however, does not provide a similar right in respect of related agreements for the provision of goods and services where a credit agreement is cancelled. Government notes the concerns expressed by Age Concern.

Question 4: Do you agree that the ‘cooling-off period’ should be set in ‘calendar’ days rather than ‘working’ days?

35. Of the 23 respondents who expressed a view, 19 considered that the cooling off period should be set in calendar days rather than working days. The general consensus of opinion was that calendar days would be more easily understood by businesses, consumers, and enforcement bodies. Working days could be interpreted either to include or not to include, weekends and bank holidays which could lead to confusion and disagreement.

Government Response

36. We agree that a ‘calendar’ day is the most appropriate definition as it makes it easier for the consumer and the trader to calculate the end of the cooling off period. ‘Day’ will continue to have its ordinary meaning of ‘calendar’ day for the purposes of the proposed Regulations.

Question 5: Which of the following do you think is the appropriate length of cooling off period for contracts made during both unsolicited and solicited visits (a) 7 days (b) 10 days or (c) 14 days?

37. Opinion was split on this question, with around half of respondents in favour of retaining a 7 day cooling-off period and half favouring a longer cooling-off period of 10 or 14 days. 7 responses made no comment on this question. The majority of those preferring a 7 day cooling-off period were businesses or represented business, but there were also 4 enforcement authorities and 1 consumer group who favoured this option.
38. Arguments put forward by those advocating a cooling-off period of longer than 7 days suggest that this would give consumers greater protection, especially if they have entered into a contract with a rogue trader. Some enforcement authorities suggest that consumers tend to seek help around the 7th or 8th day, although we have not been shown any quantifiable evidence on this point. Respondents arguing for 10 days suggest this is a good compromise between 10 and 14 and would allow for consumers to take advice or reflect over a weekend. One respondent reflected that over Christmas and New Year it may be difficult to get advice within 7 days. One enforcement authority thought the limit should be 7 days for solicited visits and 14 days for unsolicited visits. One consumer group thought that 14 days would offer the opportunity to see goods and assess them as they are not always available at the time of ordering. However, if goods are faulty or not as described then consumers have rights under the Sale of Goods Act to return them. What the Regulations provide for is an opportunity to reflect on a decision that may not have been made with the full facts available to the consumer or an opportunity to consider alternatives.
39. In addition a few enforcement authorities suggested that consistency between cooling-off periods in the Regulations and other regulations, such as distance selling, should be taken into account.
40. Those suggesting a cooling-off period of 7 days suggest that this provides a good balance in allowing a period of reflection if the visit was unsolicited and in allowing the completion of the contract if it was solicited. One consumer group commented that in a previous study they had found that most consumers wanted to cancel the day after the sale had been made, so that 7 days was usually sufficient protection. In addition it was pointed out that some businesses already offer more

than a 7 day cooling-off period as part of a code of practice (sometimes approved by OFT), and that these businesses perhaps gain a marketing advantage from already going further than the legislation requires. The Direct Selling association felt that whilst many traders will voluntarily give the consumer a longer cooling off period, that was insufficient argument to compel them to do so.

Government response:

41. The responses to the consultation reflect evenly divided opinion, across a range of different respondents, on the appropriate length of the cooling-off period. We have received no quantifiable evidence in response to the question, although many responses provided anecdotal evidence. We have also considered this point in the light of ongoing discussions on the Consumer Acquis and the likelihood that the European Commission will consider the cooling-off period over the whole Acquis, when it brings forward proposals later this year.
42. While we think there are good arguments for a longer cooling-off period than 7 days, on balance we do not consider that they are persuasive because no overwhelming case has been made with convincing evidence. We have therefore decided to maintain the cooling-off period at 7 days.

Question 6: If you are a small business or an organisation that represents the interests of small business, please explain the likely impact on small business of (a) a 7 day cooling off period for contracts made during both unsolicited and solicited visits (b) a 10 day cooling off period for contracts made during both unsolicited and solicited visits (c) a 14 day cooling off period for contracts made during both unsolicited and solicited visits?

43. The majority of business representatives agreed that a lengthening of the cooling off period from 7 calendar days would involve additional costs for businesses, particularly as it would increase the length of time during which there would be a risk of a consumer failing to take reasonable care of a product which was to be returned. However, it should be noted that we did not receive any responses from small business. In the case of traders who operate on the basis of not delivering prior to the end of the cooling off period it was felt that there would be a loss of cash flow on virtually all orders taken. A number of business representatives expressed concern that a lengthening of the cooling off period would disproportionately affect

smaller businesses. Business representatives were unable to provide any quantifiable evidence to support their arguments.

Government response:

44. As stated in response to question 5, we have decided to maintain the cooling-off period at 7 days. This option minimises the length of time that a consumer will be required to take reasonable care of any goods to be returned to the trader and should have the least impact on business in terms of additional costs incurred through damaged goods. An assessment of the overall costs and benefits of the proposed Regulations is included at Annex A.

Question 7: Do you agree that the length of the cooling off period should be the same for contracts made as a result of unsolicited visits by a trader and for contracts made as a result of solicited visits by a trader?

45. Of the 29 respondents who commented, 27 expressed the view that the length of the cooling off period should be the same for contracts made as result of unsolicited visits by a trader and for contracts made as a result of solicited visits by a trader. The consensus of opinion was that different cooling off periods would be likely to cause confusion and make the law more complicated to understand and to apply. A number of respondents expressed the view that different cooling off periods would mean that businesses would require two sets of paperwork - resulting in additional cost.

Government response:

46. One of the aims of the proposed Regulations is to make the law simpler and clearer for consumers, businesses and enforcement agencies. We agree with the majority of respondents that setting the same length of cooling off period for unsolicited and solicited visits will keep the law simple and help to minimise the compliance costs for business. The proposed Regulations will set the same 7 calendar day cooling off period for contracts made as a result of unsolicited visits and for contracts made as a result of solicited visits.

Question 8: Please provide any statistical evidence that shows the average cost to business of a visit (or visits) made to a consumer in order to secure a sale to that consumer.

47. Respondents did not provide any statistical evidence that showed the average cost to business of a visit made to a consumer in order to secure a sale to that consumer.

Government response

48. An assessment of the overall costs and benefits of the proposed Regulations is included at Annex A.

Question 9: What would be the additional cost to business of incorporating the written notice of the right to cancel in the contract document?

49. Age Concern, Citizens Advice, Energywatch, The Advertising Association, and the OFT shared that view that the cost to business of incorporating the written notice of the right to cancel in the contract document would not be significant. Citizen's Advice felt that in many cases the creation of a new document might be achieved through desktop publishing which would help to minimise the cost. Energywatch and OFT considered that the need for a single contractual document (rather than separate contracts for unsolicited and solicited visits) might result in cost savings for business.

50. The Advertising Association, British Retail Consortium, CBI, Direct Marketing Association and Direct Selling Association all expressed the view that the requirement to include the written notice of the right to cancel in the contract document would impose a significant additional cost to business. Costs would be incurred in creating and printing new contracts compliant with the new legislation and in disposing of any old non compliant stock. The Glass and Glazing Federation suggested that there may be costs involved in training staff to use the new forms. The CBI, Direct Marketing Association and Direct Selling Association all urged the Government to defer the Regulation's commencement date to 6 April 2009 in order to allow business additional time to comply with the Regulations and minimise costs.

51. None of the respondents provided quantifiable costs.

Government response

52. While we recognise that there may be some cost implications associated with the inclusion of the notice of the right to cancel in the written contract, we have seen no evidence to suggest that these costs would place a disproportionate burden on business. Impact assessment (URN 06 1807 – September 2006) identified the costs to business (of including the cancellation rights in the written contract) as being ‘negligible’ given that these rights must already be provided in writing for unsolicited visits. We recognise the need to provide business with sufficient time to comply with the Regulations and have decided that the commencement date for the proposed Regulations will be 1 October 2008.

Question 10: Do you think that the Notice of the Right to Cancel (Part 1 of Schedule 4) should include any additional information requirements?

53. The majority of business representatives considered that the existing information requirements were sufficient to protect consumers’ interests and that no additional information was needed. The Trading Standards Institute also considered that the information requirements were adequate to meet consumers’ needs.

54. Age Concern, Birmingham Trading Standards Service, Citizens Advice, Central England Trading Standards Service, Energywatch, Hampshire Trading Standards Service, the OFT, Trading Standards South East, LACORS, and Lancashire Trading Standards Service all felt that the notice of the right to cancel should be amended to provide better protection for the consumer. Respondents suggested a number of additional information requirements.

Government response

55. We feel it is important that the notice of the right to cancel includes sufficient information to make the consumer fully aware both of their right to cancel the contract and as far as is practicable the implications of cancelling the contract. Having considered the range of views and suggestions put forward by respondents we have decided to amend the regulations to include a requirement that the notice of the right to cancel (Part 1 of Schedule 4) include the following additional information:

- the legal entity name of the trader;
- a statement that, ‘notice of cancellation is deemed to be served as soon as it is posted /sent to the trader or from the day that an email is sent’
- paragraph 3 of schedule 4, part 1 is amended to read, ‘sending a written notice ...’
- a statement that where applicable any linked credit agreement will automatically be cancelled in the event of cancellation

Question 11: Do you think that the wording on the cancellation notice (Part II of Schedule 4) would make it easy for the consumer to exercise his right to cancel the contract?

56. The majority of business respondents shared the view that in the event that a consumer chose for any reason to cancel a contract arrived at in the circumstances foreseen by the Regulations, the wording of the cancellation notice would make it straightforward for the consumer to do so. In general, the enforcement bodies felt that the wording on the cancellation notice was clear. However, a number of additional information requirements were suggested including a requirement for the consumer to insert their name and address on the Cancellation Form to help the trader identify the contract if there was an error in the reference number; guidance making clear to the consumer the minimum information that they must provide to the trader in the event that the consumer wants to cancel the contract but decides not to use the cancellation form; and capitalisation of the word ‘must’ in the first sentence of the Cancellation Form to draw to the consumer’s attention the importance of giving cancellation in writing.

Government response:

57. It is important that the cancellation notice makes it easy for the consumer to exercise his right to cancel the contract. Having considered the range of views and suggestions put forward by respondents we have decided to amend the Cancellation Notice (Part 2 of Schedule 4) to include the following requirements:

- the consumer enter their name and address;
- the first sentence of Part II, Schedule 4 should be capitalised and read as follows, ‘If you wish to cancel the contract you **MUST DO SO IN WRITING** and deliver personally or send (which may be by electronic mail) this to the person named below’.

Question 12: Do you agree that the notes included in Part II of Schedule 4, provide the consumer with clear guidance on how to complete the cancellation notice?

58. The majority of business respondents felt that the notes included in Part II of Schedule 4, provide the consumer with clear guidance on how to complete the Cancellation Notice. A number of enforcement bodies felt that the guidance could be made clearer. A number of suggestions were put forward.

Government response:

59. It is important both that the consumer is provided with clear guidance on how to complete the Cancellation Notice, and that the consumer is clear of the information that they must provide to the trader in the event that they wish to cancel the contract but do not wish to use the cancellation notice. We consider that the additional information requirements in the notice of the right to cancel (see response to question 10) and the changes to the wording of the cancellation notice (see response to question 11) will make it easier for the consumer to exercise their right to cancel. We do not propose to make any further amendments to the notes included in Part II of Schedule 4.

Question 13: Do you think that the requirements of Regulation 7(5) are sufficient to ensure that the notice of the right to cancel will be sufficiently prominent within the contract to attract the attention of a consumer?

60. A majority of the enforcement bodies who commented felt that as drafted, the proposed requirements of Regulation 7(5) would fail to ensure that the consumer’s attention was drawn to the notice of the right to cancel and to the cancellation notice.

61. The OFT pointed out that lack of awareness of cancellation rights was a key issue identified in the OFT Market Study Report (2004). The

consumer survey carried out as part of the study had found that only six percent of consumers correctly identified that they had cancellation rights with regard to doorstep selling. The OFT experience of the current Doorstep Selling Regulations had demonstrated that cancellation provisions had been concealed within contracts by unscrupulous traders (examples included: using light grey text on pink background, printing the cancellation form on the bottom reverse of a contract, dispersing cancellation information throughout the contract).

62.LACORS expressed the view that many rogue traders do not comply with the spirit of the law and hide the cancellation notice in a large bundle of contracts, credit agreements etc.

63.A number of enforcement bodies and consumer representatives suggested additional requirements which they felt would make it easier for a consumer to locate information on the right to cancel.

64.A majority of the business representatives who commented felt that the requirements of Regulation 7(5) were sufficient to ensure that the notice of the right to cancel would be sufficiently prominent within the contract to attract the attention of a consumer.

Government response:

65.We are convinced by the arguments put forward that the proposed requirements of Regulation 7(5) are not adequate to ensure that the Notice of the Right to Cancel will be sufficiently prominent to attract the attention of a consumer. We have decided to amend Regulation 7 to include the following requirements:

- information in the Notice of the Right to Cancel should be presented as a whole, in a separate box in the contract document (rather than being dispersed throughout the agreement) and headed ‘Notice of the Right to Cancel’; and
- the Cancellation Notice should be presented in such a way so that there is no need for the consumer to return the whole contract – e.g. tear off or detachable.

Question 14: Do you agree that the consumer should be required to provide written agreement for performance of the contract to begin before the end of the cancellation period?

66. Of the 27 respondents who expressed an opinion in response to this question, 19 agreed that the consumer should be required to provide written agreement for performance of the contract to begin before the end of the cancellation period and 8 were against.

67. Some of the views expressed were as follows:

- Birmingham City Trading Standard's view was that written agreement gives both parties certainty in what has been agreed and when the performance of the contract can begin. They added that often in disputed cases there is no written proof that the consumer has agreed to the early commencement of the contract. Equally it places the trader in a much stronger position when any dispute arises.
- Central England Trading Standards agreed with the need for written agreement and highlighted the fact that there were many instances where rogue traders had started work at a property without the consumer's permission.
- Energywatch felt that the need for consumers to be informed clearly that their written agreement was required for early performance was, '...part and parcel of the need for consumer protection rules to promote clarity and understanding amongst consumers of their rights...'
- Age Concern commented, that 'Whilst we do not think requiring traders to get written permission from the consumer will necessarily deter unscrupulous traders, we do think getting written agreement would reduce any misunderstandings that could arise on this point'.
- The CBI expressed the view that the requirement for a consumer to pay for the goods and services received up to the date of cancellation, where performance of the contract had begun with the consumer's written agreement '...seemed to achieve a reasonable balance in most cases where we had envisaged that there could be problems'.

- The Trading Standards Institute said, ‘This would appear to be vital evidence in relation to future civil disputes and thus should be in writing’.
- The OFT said, ‘We consider that a requirement for the consumer to provide written agreement for performance of the contract to begin before the end of the cancellation period will afford protection to both consumers and businesses. This will provide better safeguards for both the consumer and the trader and help prevent potential disputes regarding the consumer’s consent to performance of the contract before the end of the cancellation period. It should not be sufficient to include a term in the contract purporting to authorise early performance – the consumer may not see this or appreciate its significance. Additionally, unscrupulous traders may seek to obtain agreement via well-hidden (and thus likely to be missed) contract terms. We consider that the consumer should be required to expressly request performance of the contract before the end of the cancellation period (rather than mere acquiescence to a term in the agreement).
- The Direct Marketing Association was not in favour of the requirement for a consumer to provide written agreement for performance of the contract to begin before the end of the cancellation period. They said this requirement would impose an unnecessary burden on both business and the consumer.
- The Newspaper Society expressed the view that, ‘It would seem disproportionate and unnecessary to require consumers to provide in every case written consent for the contract to commence before the expiry of the cancellation period’.

68. A number of enforcement bodies expressed concerns that unscrupulous traders might use pressure selling techniques to persuade the consumer to sign away their cancellations rights. Other respondents considered that it was impractical to require a consumer to provide written agreement for the supply of newspapers, periodicals or magazines, and unnecessary to require the consumer to provide written agreement in the case of perishable goods.

Government Response:

69. We feel that the inclusion of a requirement for the consumer to provide written agreement to performance of specified contracts (listed in regulation 9) beginning before the end of the cancellation period is essential. It will help to give both the consumer and the trader more certainty in what has been agreed and when the performance of the contract can begin. It will also offer further protection to consumers where work has been started without the permission of the consumer as a way of pressurising them into agreeing to have work carried out.
70. In agreeing to work beginning before the end of the cancellation period the consumer would retain the right to cancel the contract. However, the consumer would also be under a duty to pay in accordance with the 'reasonable' requirements of the cancelled contract for any goods or services supplied before the cancellation.
71. In the event that a consumer did not provide written agreement for performance of a specified contract (listed in regulation 9) to begin before the end of the cancellation period then the trader would not be under any obligation to begin work before the end of the cancellation period.
72. In the event that a trader began performance of a specified contract (listed in regulation 9) before the end of the cancellation period, and the consumer had not provided his written agreement for performance of the contract to begin before the end of the cancellation period, the consumer would be able to cancel the contract and would not be under any obligation to pay for goods and services provided up to the point of cancellation. In these circumstances the trader would be commencing performance of the contract at his own risk (i.e. the risk of non payment). The onus would be on the trader to ensure that he had the written permission of the consumer before commencing work.
73. In relation to concerns about pressure selling techniques, the Government recently introduced the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs will complement the proposed Regulations by prohibiting all unfair (mainly marketing and selling) practices. The CPRs will help to ensure that consumers are able to make free and informed choices before, during and after a purchasing decision: free and informed, because they have not been misled (either by action or omission), treated aggressively or

otherwise dealt with unfairly. The CPRs prohibit 31 practices outright. With most breaches of the CPRs being punishable by criminal sanctions, the Government expects they will become a core legislative tool for tackling sharp and rogue practices, especially in the area of doorstep selling.

Question 15: Do you think that any other kinds of contract should be added to the list at 9(1)?

74. A clear majority of those respondents who commented felt that the list should not be expanded. LACORs felt that there was a need for a fuller definition of what 'emergency' in 9(e) entails. South West Trading Standards Service agreed that the definition needed to be clarified to make clear whether repairs to domestic appliances such as washing machines and cookers were included within the definition.

Government response:

75. We have decided not to add any other kinds of contract to the list included as 9(1). Please see comments in relation to credit agreements under £35 at paragraphs 15 and 16.

Question 16: Do you think that any kinds of contract should be deleted from the list at 9(1)?

76. The Advertising Association, Age Concern, Birmingham Trading Standards Service, the CBI, the Direct Marketing Association, the Direct Selling Association, East Sussex Trading Standards Service, Hampshire Trading Standards Service, the Newspaper Society, the Trading Standards Institute, Trading Standards South East, and Trustmark felt that all the kinds of contract listed at 9(1) should be retained.

77. Central England Trading Standards Service, Citizens Advice, LACORs, Lancashire Trading Standards Service, OFT, and South West England Trading Standards Service all expressed concern that regulation 9 represented a weakening in the protection afforded to consumers.

78. OFT accepted that, in the case of an emergency or in the case of some funerals it was imperative that the consumer be given the choice to receive goods or the provision of a service before the end of the cooling off period. However, the OFT considered that in general the

list of specified contracts included in regulation 9 should be kept as narrow in scope as possible. In most cases the scope for undermining the cooling-off period outweighed the ‘consumer convenience’ argument. OFT felt that the scope for performance of the contract to begin before the end of the cooling-off period should be limited to ‘those circumstances where it is clearly necessary for work to begin within the cooling off period’. OFT advocated the deletion of the following kinds of contract from the list included at 9(1):

- 9(f) supply of goods made to a customer’s specifications or clearly personalised and any services in connection with the provision of such goods;
- 9(g) supply of perishable goods;
- 9(i) The supply of goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract; and
- 9(j) Services of any other kind

79. Citizens Advice, LACORs and South West Trading Standards Service also recommended the deletion of 9(i) and 9(j).

80. Central England Trading Standards Service, Citizens Advice and Lancashire Trading Standards Service all felt that 9(j) ‘services of any kind’ was ‘too wide’. Lancashire Trading Standards Service suggested the introduction of the following new headings, ‘Services to ensure resumption of service or to make physical goods serviceable’ and ‘Services associated with repair of property to meet an emergency’.

81. OFT, LACORs South West Trading Standards Service felt that the definition of ‘emergency’ needed to be more clearly defined in 9(e). LACORs and South West Trading Standards Service felt that it needed to be made clear whether or not ‘emergency’ included repairs to domestic appliances such as washing machines and cookers.

82. LACORs and South West England Trading Standards Service suggested that 9(e) should be redrafted to read, ‘the supply of goods and services to meet an emergency’ (assuming that the definition of ‘emergency had been more clearly defined). Central England Trading

Standards Service agreed but felt that 9(e) should apply only to solicited visits.

83. Hampshire Trading Standards Service, Trading Standards South East and LACORs felt that clarification should be given in 9(f) to what constituted items made to personal specification.
84. OFT suggested that where payment may be required to be made upon cancellation by virtue of a contract being included in Regulation 9, the statement in Schedule 4 Part 1 Paragraph 6 should cross refer to the terms of the agreement setting out the payments that may be required, or if this was impractical, a representative amount should be expressed as a sum of money or percentage of specified amount.

Government response:

85. We have decided not to remove any of the specified contracts included in regulation 9.
86. In its response to the public consultation on Doorstep Selling and Cold Calling (2006) the Government rejected proposals to ban goods being delivered or work being performed during the cooling off period.
87. The Government believes that a consumer should be able to agree to receive goods, or the provision of services before the end of the cancellation period if that is what the consumer wants. We recognise the concerns of some enforcement authorities that rogues may seek to exploit regulation 9. However, given that it is imperative that there is provision for situations such as emergencies and funerals, we would in any event need to explain to consumers that there may be situations when work starts before the end of the cooling-off period. We think it unlikely that many consumers will appreciate being told that they cannot receive a service until a cooling-off period has expired, and in our view this course of action would represent over-regulation of the situation. To some extent rogues will seek to exploit the situation whatever the legislation.
88. As previously stated, in relation to concerns about pressure selling techniques, the Government recently introduced the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs will complement the proposed Regulations by prohibiting all unfair (mainly marketing and selling) practices. The CPRs will help to ensure that consumers are able to make free and informed choices

before, during and after a purchasing decision: free and informed, because they have not been misled (either by action or omission) treated aggressively or otherwise dealt with unfairly. The CPRs prohibit 31 practices outright. With most breaches of the CPRs being punishable by criminal sanctions, the Government expects they will become a core legislative tool for tackling sharp and rogue practices, especially in the area of doorstep selling.

89. The Government also wishes to avoid imposing an unfair disadvantage on those companies which market their goods by direct selling to consumers on their doorsteps.

90. If cooling off periods are to be effective they need to be consistently applied and it is important that they are not undermined. The Regulations must achieve a balance of rights and responsibilities on the part of consumers as well as traders. It may not be fair for a consumer to ask for goods to be supplied, or for work to be carried out, before the expiry of the cooling off period, and then cancel the contract either without returning the goods to the trader or - if return of the goods is commercially unrealistic - reimbursing the trader for goods received or services supplied. It is important not to create a situation where traders are reluctant to provide goods and services within the cooling off period for fear of subsequent cancellation of the contact, and non payment by the consumer.

Question 17: Are the information requirements relating to an obligation to pay under the terms of a cancelled contract, in certain circumstances, given sufficient prominence in the notice of the right to cancel so as to warn the consumer (in advance of entering the contract) of the possible consequences of agreeing to performance of the contract beginning before the end of the cancellation period?

91. Age Concern, CBI, Direct Marketing Association, Direct Selling Association, East Sussex Trading Standards Service, Trading Standards Institute all considered that the information requirements relating to an obligation to pay under the terms of the contract were given sufficient prominence in the notice of the right to cancel.

92. Other respondents who commented made a range of suggestions for making the information requirements more prominent.

Government response:

93. We believe that the additional requirements previously described (in response to Questions 10 and 13) in relation to the content and presentation of the Notice of the Right to Cancel will be sufficient to ensure that the consumer's obligation to pay under the terms of a cancelled contract, in certain circumstances, will be given sufficient prominence in the notice of the right to cancel so as to assist the consumer's understanding.

Question 18: Do you agree that where a contract for goods or services is cancelled under these Regulations, any related credit agreement should also be cancelled automatically?

94. Of the 25 respondents who commented, a clear majority agreed that where a contract for goods or services is cancelled under these Regulations, any related credit agreement should also be cancelled automatically.

95. Age Concern and the Direct Selling Association sought clarification as to whether it was possible that a related credit agreement could be cancellable both under the Consumer Credit Act and also under the proposed Regulations.

96. OFT suggested amending the definition of a 'related credit agreement' in Regulation 2 to align it with the definition of 'linked credit agreements' for the purposes of the Consumer Credit Directive.

97. The Financing and Leasing Association felt that the draft Regulations did not achieve the stated aim, and suggested a number of drafting amendments.

Government response:

98. We have amended the regulations to clarify that the Regulations do not apply to a consumer credit agreement of the types listed at regulation 6 (1) except where it is a related credit agreement cancelled automatically as a result of the cancellation of a contract for the provision of goods or services, in which case the provisions of regulations 11 and 12 will apply as provided.

99. We do not think it appropriate to amend the definition of 'related credit agreement' before the implementation of the Consumer Credit

Directive into UK law. We recognise that aspects of the regulations may need amendment as part of the transposition of the Consumer Credit Directive but we take the view that such issues should be dealt with collectively at the time of transposition.

Question 19: Under regulation 11(4), where a related credit agreement gives similar rights to those provided under a CCA cancellable agreement (the type of contract referred to in regulation 6(1)(b)), the consequences of cancellation will flow from the credit agreement rather than the proposed Regulations. Do you agree with this approach or do you consider that the Regulations should provide for the consequences of cancellation in such circumstances?

100. Of the 19 respondents who commented, 17 agreed that where a related credit agreement gives similar rights to those provided under a CCA cancellable agreement (the type of contract referred to in regulation 6(1)(b)), the consequences of cancellation should flow from the credit agreement rather than from the proposed Regulations.

101. The OFT did not agree with the approach and felt that reference in regulation 6(1)(b) to an agreement ‘conferring similar rights as if the agreement were such a cancellable agreement’ made it unclear whether this meant that the rights must be no less favourable in all respects than those applicable under the CCA regime.

102. The Finance and Leasing Association agreed with the Government’s approach but felt that the wording needed revisiting.

103. Central England Trading Standards felt that the regulations were unclear as to which cancellation period will be applicable i.e. 5 days or 7 days.

Government response:

104. We have decided, in accordance with a clear majority of views expressed, that where a related credit agreement gives similar rights to those provided under a CCA cancellable agreement the consequences of cancellation will flow from the credit agreement rather than the proposed Regulations.

105. The reference to ‘similar rights’ in 6(1)(b) of the proposed Regulations is used in regulation 4(2) of the current Regulations. We

are not aware of any difficulties in relation to use of this term and therefore do not propose to amend it.

Question 20: Do you consider that the proposed arrangements for the cancellation of related credit agreements and the repayment of credit will be effective?

106. The majority of respondents who commented considered that the proposed arrangements for the cancellation of related credit agreements and the repayment of credit would be effective. There was general agreement that the arrangements would need to be reviewed as part of the transposition of the Consumer Credit Directive. The Finance and Leasing Association had made drafting suggestions in response to Questions 18 and 19.

Government Response:

107. We are grateful for the comments and suggestions put forward. We consider that having amended the proposed Regulations as appropriate, the arrangements for the cancellation of related credit agreements and the repayment of credit will be effective.

Question 21: What is the impact on you as an enforcement agency of the proposed regulations?

108. Some of the views expressed were as follows:

109. LACORs anticipated that complaints generally would increase and believed that the impact of the proposed Regulations would put pressure on local authority business support teams. Staff training would be required, and traders would have to be informed of changes in the law to ensure compliance. Publicity and education would be necessary as well as reworking standard service leaflets. LACORs was unable to provide a breakdown of the likely costs to local authorities, though offered to do so at a later date.

110. Lancashire Trading Standards Service, and the South West England Trading Standards Service highlighted the 'large education role' to appraise legitimate trade, and to make the public aware of the new Regulations. Both expected that the number of complaints would increase.

111. Central England Trading Standards Service felt that in its own geographical area of responsibility the impact would be limited to initial advice to traders as these were effectively reactive Regulations rather than proactive.
112. The OFT emphasised the need to ensure clarity of meaning in the Regulations. Ambiguity of interpretation may undermine effective enforcement, and may additionally cause problems of compliance for business.
113. The Trading Standards Institute felt that there would be an initial training need as the application of the proposed Regulations would be wider than the current Regulations. Trading Standards Institute did not expect compliance rates to rise and considered that more enforcement activity would be needed.

Government response:

114. We agree that it will be important to ensure that consumers are aware of their rights and new protections under the new Regulations, and also to ensure that businesses understand the changes in consumer law and are aware of their responsibilities. BERR and OFT have developed a joint communication plan which will be implemented in the period prior to commencement of the new Regulations. Exact details are yet to be finalised but the communication plan will include the following objectives:
- To advise business about their new responsibilities under the new Regulations in time for the commencement date;
 - To advise consumers that their cooling off and cancellation rights now apply to both solicited and unsolicited doorstep sales;
 - Empower consumers to use their new and current rights and give them the confidence to deal effectively with doorstep sellers; and
 - Highlight Consumer Direct services as the source of information, advice and support for consumers.
115. It is difficult to assess the exact impact that the Regulations will have on the enforcement bodies until quantifiable data is available. We recommend that this question is reviewed during the implementation of any change required in relation to the Doorstep

Selling Directive, when a period of time will have passed since implementation and we will be able to more clearly establish costs and benefits.

Question 22: Do you think that the penalty for failure to provide notice of the right to cancel is set at the appropriate level?

116. Of the 17 respondents who commented, 7 including the CBI and the Direct Marketing Association, felt that the penalty for failure to provide notice of the right to cancel was currently set at the correct level. 10 respondents including LACORS, OFT, South East Trading Standards Service and Trustmark felt that the level needed to be raised.
117. The Direct Marketing Association expressed the view that a fine of £2,500 was reasonable to expect business to comply. CBI felt that a fine of £2,500 seemed like a reasonable penalty.
118. OFT highlighted the fact that the proposed penalty currently equates to £2500. OFT referred to data from the Consumer Direct database for 2006 and 2007 which showed that, where the purchase method was doorstep selling, the average value of products / services complained about to Consumer Direct in those years for the categories Home maintenance and improvements and Glazing products and installations was in the region of £4,000. Given the high value of contracts, and levels of consumer detriment within this area OFT considered that the penalty should be set at the statutory maximum (currently £5000), in line with the provisions of the CPRs.
119. Central England Trading Standards Service, LACORs, the Trading Standards Institute, South West England Trading Standards Service and a number of other enforcement bodies supported an increase in the penalty to the statutory maximum.

Government response:

120. We have been convinced by the arguments put forward that the maximum penalty for the failure to provide a notice of a right to cancel should be increased to the statutory maximum of level 5 (£5000). We have amended the proposed Regulations accordingly. The increased level of penalty, in line with the provisions of the CPRs, will in our view, provide a more effective deterrent to any unscrupulous traders tempted to try to avoid the Regulations.

Question 23: Do you think that we should remove the £35 limit and apply the Regulations to all contracts regardless of value?

Question 24: Do you think that we should retain the £35 limit for contracts made as a result of unsolicited visits, and set a higher limit for contracts made as a result of solicited visits?

Question 25: Do you think that we should retain the £35 limit for contracts made as a result of unsolicited visits and set the same £35 limit to contracts made as a result of solicited visits?

(Questions 23, 24, and 25 have been taken together.)

121. A majority of the business representatives who commented strongly opposed removal of the £35 limit at which the current Regulations apply. In fact, there was a strong consensus among business representatives that the £35 limit was too low and that the limit should be increased significantly. Age Concern also recognised the argument for raising the limit.
122. The CBI felt that evidence of consumer detriment had been restricted to high value transactions, and that high value transactions was the area on which action should be focussed. The CBI referred to the fact that the £35 limit was derived from a 1985 EU Directive. The £35 limit had not kept pace with inflation and the increasing levels of disposable income within Member States.
123. The Direct Selling Association recommended that the level for solicited visits should be set at £325 - equivalent to the 400 euro threshold that the Direct Selling Association and the Federation of European Direct Selling Agents had proposed to the Commission in its current review of the Doorstep Selling Directive. The British Retail Consortium suggested a limit of £100. The Newspaper Society suggested setting a level of 500 euros for solicited visits.
124. A majority of the enforcement bodies who commented were against the removal of the £35 limit. It was generally considered by the enforcement bodies that there were not many complaints relating to contracts with a value of less than £35 and it seemed like a reasonable threshold. Citizens Advice commented that it was not aware of problems resulting from the £35 limit currently applying to unsolicited visits.

125. OFT recommended removal of the £35 limit and commented that whilst the OFT Doorstep Selling report indicated that low value purchases (those under £35) caused very few problems for consumers, evidence suggested that consumers have a limited understanding of their rights when purchasing at the doorstep. Having no threshold on application of the Regulations would be simpler for consumers – and also for businesses. OFT felt that whilst the scope for detriment may be limited for each transaction the consumer may enter into a number of such transactions within a short timeframe which could represent significant detriment for many consumers. Whilst there may be broad awareness of the prices of low value products in shops, and consumers can shop around if they wish, they may still feel under pressure to sign on the doorstep without shopping around or making comparisons, and may be misled as to the nature and cost of the particular product.

Government response:

126. We agree with the view expressed by the majority of respondents that there is considerable merit in having a common contractual value threshold for contracts made as a result of unsolicited and solicited visits. We believe that a common threshold will make the law a lot simpler for consumers and business to understand and to comply with. It will also make the Regulations more straight forward for the enforcement bodies to apply.

127. We are persuaded by the views put forward by the majority of business representatives, consumer representatives and enforcement bodies that the £35 threshold should not be removed. In general, the enforcement bodies consider that the number of complaints relating to contracts with a value of less than £35 is low and that there is little evidence of consumer detriment for contracts with a value below £35 limit.

128. We appreciate the argument put forward by the majority of business representatives that the £35 limit is too low. We believe that there is a case for raising the £35 threshold which has been in place for 20 years. BERR has recommended to the Commission that it consider raising the £35 threshold in its review of the Doorstep Selling Directive. However, any increase in the £35 threshold must be based upon clear and quantifiable evidence.

129. For unsolicited visits we are bound by the current £35 limit derived from the Directive.

130. Having considered all the views put forward. We have decided to apply the common contractual value threshold of £35 for contracts made as a result of unsolicited and solicited visits.

Question 26: If you are a small business¹ or an organisation that represents the interests of small business, please quantify the likely impact on small business of (a) removing the £35 limit altogether, (b) retaining the £35 limit for contracts made as a result of unsolicited visits and setting a higher limit for contracts made as a result of solicited visits and (c) retaining the £35 limit for contracts made as a result of unsolicited visits and setting the same £35 limit for contracts made as a result of solicited visits?

131. The Solid Fuel Association commented as follows (a) that removal of the £35 limit would increase costs and render some types of business uneconomic. Some of the sales made are by part time sales persons. It would not be economic for them to have to set up a system to refund for goods or services. (b) This option would be helpful for the likes of plumbers and heating engineers where the smaller firms might do a lot of the smaller jobs and (c) would increase costs for smaller trade persons.

132. Respondents did not provide any other quantifiable costs or benefits in response to this question.

Government Response:

133. An assessment of the proposed Regulations' impact in terms of costs and benefits is included in the Impact Assessment published separately with this response.

¹ A business having fewer than 250 full time employees

Question 27: Do you think that the proposed Regulations are likely to directly limit the number of traders carrying on doorstep sales?

Question 28: Do you think that the proposed Regulations are likely to indirectly² limit the number of traders carrying on doorstep sales?

(Questions 27 and 28 have been taken together.)

134. Of those respondents who commented the majority felt that the Regulations would not limit the number of legitimate traders carrying on doorstep sales as general compliance with the Regulations would not be difficult. Alignment of the protection afforded to solicited and unsolicited visits would level the playing field for legitimate traders by marginalising rogue traders who may have sought to exploit the lack of a level playing field. A number of respondents considered that only an outright ban on cold calling for property services would directly limit the number of traders carrying on doorstep sales.

Government response:

135. We are grateful to have received the views put forward by respondents. Those views have been considered in preparation of the Impact Assessment published separately with this response.

Question 29: Do you think that the proposed Regulations are likely to limit the ability of traders to compete?

Question 30: Do you think that the proposed Regulations are likely to reduce traders' incentives to compete vigorously?

(Questions 27 and 28 have been taken together.)

136. A majority of the respondents who commented considered that the proposed Regulations would improve the ability of traders to compete because all traders would have to comply with the same legislative requirements and would face the same penalties if they chose not to do so. Traders would also have more incentive to compete because they would be operating on a level playing field.

² Regulatory proposals can indirectly restrict the number of suppliers, primarily through their impact on suppliers' costs. Where the impact on costs is small and affects all suppliers equally, there is likely to be little effect on competition. Where the cost is significant, suppliers may choose to exit the market since their profitability may be adversely affected.

137. The Direct Selling Association commented that any regulation that affects one sector and not the other would inevitably affect the ability of traders to compete. There were costs implications from imposing or extending a mandatory right of cancellation. These did not affect high street retailers. Many traders selling in peoples homes were competing directly with high street retailers.

138. The Approved Coal Merchants Scheme felt that the Regulations could further limit coal merchants' ability to compete with oil, gas and electricity.

Government response:

139. We are grateful to have received the views put forward by respondents. An assessment of the proposed Regulations' impact on competition is included in the Impact Assessment published separately with this response. We do not consider that the Regulations are likely to limit a trader's ability to compete or remove a trader's incentive to compete vigorously.

Question 31: If you are a trade association, or another organisation that represents the interest of business, please provide an estimate of the number of traders actively engaged in the sale of goods or services in a consumer's home or place of work or on excursions organised by the trader.

140. A number of trade associations provided estimates of the number of traders actively engaged in engaged in the sale of goods or services in a consumer's home or place of work or on excursions organised by the trader.

Government response:

141. We are grateful to have received those estimates provided by respondents. The estimates have been used to inform the preparation of the Impact Assessment published separately with this response.

Question 32: What do you perceive to be the costs and benefits to small business of the proposed Regulations?

Question 33: What plans would small business have to make before and after implementations to comply with the proposed Regulations?

Question 34: Would the proposed Regulations change how small business operates generally, and how it relates to other businesses and consumers?

Question 35: Do you consider that the proposed Regulations provide an opportunity or a threat to small business generally?

(Questions 32, 33, 34, and 35 have been taken together.)

142. A majority of those respondents who commented felt that there would undoubtedly be some costs involved to small business. There would be two main elements first, revised contract forms would need to be designed and printed. Secondly, sales staff would need to be trained as to the legal position relating to the contracts that sales persons are promoting. There would also be potential cost implications in rescheduling deliveries until after the end of the cooling off period.

143. A number of business representatives felt that the additional costs would fall disproportionately on small businesses and that there would be no real benefit for them. There would be no real change in the way that small business operated generally.

144. A majority of respondents considered that, if implemented properly the Regulations would help to drive out the rogues and provide more opportunity for legitimate small businesses. Good regulation was of benefit to business. A potential benefit to business was that if the protection offered to consumers by the Regulations was widely publicised when the legislation comes into force, increased consumer confidence would flow and that would be a benefit to all businesses whatever their size.

145. The Direct Selling Association reiterated its comments about the negative impact that the Regulations would have on the ability of direct sellers to compete with high street retailers.

Government response:

146. We are grateful to have received the views put forward by respondents. We consider that the Regulations will not have a disproportionate impact on small business. There may even be a positive impact on competition in the sense that illegitimate traders may find it more difficult to operate, thus making competition fairer.

Question 36: Do you think that the proposed Regulations will have a negative impact on race equality, disability equality or gender equality?

147. The majority of respondents who commented felt that there would be no significant negative impact on race equality, disability equality or gender equality.

148. The Direct Selling Association commented that direct selling provided employment opportunities for women as well as for older workers and racial minorities. These groups would be adversely affected.

Government response:

149. We are grateful to have received the views put forward by respondents. Those views have been considered in preparation of the Impact Assessment published separately with this response.

Question 37: Do you think that the proposed Regulations will have a positive impact on race equality, disability equality or gender equality?

150. Age Concern felt that the proposed regulations would have a positive impact on women who live alone and older people with disabilities.

151. Citizens Advice commented that the proposed Regulations would help disabled consumers who may prefer home sales because of their restricted mobility. Disability aids and adaptations were often expensive to buy and needed careful consideration and comparison. Consumers with English as a second language should benefit from cancellation rights across those sales.

152. South West Trading Standards Service felt that the proposed Regulations would be likely to improve disability equality as they raise the prospect of a fairer deal for the elderly and those that lack mobility.

Government response:

153. We are grateful to have received the views put forward by respondents. Those views have been considered in preparation of the impact assessment published separately with this response.

Question 38: Do you think that the proposed Regulations will have any negative impact on sustainable development issues?

Question 39: Do you think that the proposed Regulations will have any positive impact on sustainable development issues?

(Questions 38 and 39 taken together)

154. The majority of respondents who commented felt that the proposed Regulations would have no significant impact on Sustainable Development.

155. Approved Coal Merchants scheme felt that deliveries might be less easy to plan and therefore less energy efficient which would have a negative impact upon the environment.

156. The Direct Selling Association felt that direct selling was more eco sustainable than shop retail or direct marketing since it was people rather than asset or paper based. To that extent the Regulations would have an adverse affect on eco sustainability.

Government response:

157. We are grateful to have received the comments provided by respondents. Comments have been used to inform the preparation of the impact assessment published separately with this response.

Question 40: Do you think that the proposed Regulations will have any negative impact on the environment?

Question 41: Do you think that the proposed Regulations will have any positive impact on the environment?

158. Those respondents who commented felt that the Regulations would not have any significant impact on the environment.

159. The Direct Selling Association felt that direct selling was more eco sustainable than shop retail or direct marketing since it was people rather than asset or paper based. To that extent the Regulations would have an adverse affect on eco sustainability.

Government response:

160. We are grateful to have received the comments provided by respondents. Comments have been used to inform the preparation of the impact assessment published separately with this response.

Question 42: Do you think that the proposed Regulations raise any particular issues with regard to Human Rights?

161. The majority of respondents who commented felt that the proposed Regulations would have not raise any particular issues with regard to human rights.

162. LACORS suggested that the continued acceptance by Government to allow cold callers is a continual denial of householders' human rights to privacy.

Government response:

163. We are grateful for the views put forward by respondents. The Government will be making a statement on the Regulations' compatibility with the European Convention on Human Rights.

Question 43: Do you have any views on the timing of the proposed Regulations, bearing in mind the EC Commission's review of Directive 85/577/EEC (Doorstep Selling Directive)?

164. The majority of business representatives who commented strongly urged the Government to defer introduction of the proposed Regulations until the Commission's review of the Consumer Acquis had been completed. The Review of the Acquis would be likely to see an updating of Directive 85/577/EEC, especially in terms of raising the £35 limit. A delay would not only provide more certainty to businesses and consumers, knowing that there would not be 2 sets of changes to the Regulations in a short time frame, but there would also be a reduction in the cost to business of complying with the new legislation.

165. The majority of consumer representatives and enforcement bodies who commented considered it important to extend protection for consumers as soon as possible. Age Concern and OFT research showed clearly that consumer detriment existed due to the lack of ability of consumers to cancel sales made in the home as a result of a solicited visit.

Government response:

166. Government has a long standing commitment to extend the cooling-off period and cancellation rights, which currently apply to contracts made during unsolicited visits by traders, to contracts made during solicited visits by traders; and to require a notice of the right to cancel the contract be prominently and clearly displayed in the contract document. We appreciate the need to consider the burden on business, consumers and enforcers in potentially having to adapt to changes from the original UK Regulations on two occasions within a relatively short space of time. However, we need to balance this against the potential benefits for consumers of acting now rather than later. Our understanding is that under the current timetable any revision of Directive 85/577/EEC is unlikely to be finalised before 2012. We have decided therefore that the proposed commencement date for the new Regulations will be 1 October 2008.

List of Respondents

Advertising Association
Age Concern
Anthony Williams
Approved Coal Merchants Scheme
Birmingham City Council Trading Standards
British Bankers Association
British Retail Consortium
Central England Trading Standards
Citizens Advice
CBI
Consumer Credit Association
Consumer Credit Trade Association
Direct Marketing Association
Direct Selling Association
East of England Trading Standards
East Sussex Trading Standards
Energywatch
Essex Trading Standards
Federation of Master Builders
Finance & Leasing Association
Glass and Glazing Federation
Gloucestershire Trading Standards
Hampshire Trading Standards Service
Information Commissioner
Laila Benfaida
LACORS
Lancashire Trading Standards Service
Leicestershire Trading Standards Service
National Association of Funeral Directors
Newspaper Society
Nottingham City Trading Standards Service
Office of Fair Trading
Scottish and Southern Energy
Solid Fuel Association
South West England Trading Standards
Trading Standards South East
Trading Standards Institute
Trustmark

Help with Queries

Questions about the policy issues raised in this document can be addressed to :

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