

dti

**CONSUMERS ESTATE AGENTS AND
REDRESS BILL**

Regulatory Impact Assessment

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Consumers, Estate Agents, and Redress Bill Regulatory Impact Assessment

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EXECUTIVE SUMMARY

The DTI is committed to a robust and effective consumer and competition regime - one that is fair to consumers and businesses.

Consumers have a right to be dealt with honestly and fairly by business - whether they shop at home, on-line or in the high street. This can affect not only individual businesses but also the health of the market at large.

Competitive markets and empowered consumers go hand in hand. The key to the success of competitive markets is the informed consumers who drive them. This Bill is part of the Government's drive to empower and protect consumers in the UK by strengthening and streamlining consumer representation; establishing new redress schemes for energy and postal service customers; make it compulsory for estate agents to join a redress scheme; and strengthen the regulation of estate agents and doorstep selling.

The provisions of the Bill all fall within the overarching 'umbrella' of increasing the rights of consumers but are not directly linked. Therefore, in order to cover the provisions coherently, this RIA is divided into three separate, 'mini' RIAs covering each of the main policy areas i.e. 'Consumer Voice' (Part 2), 'Estate Agents' (Part 3), and 'Doorstep Selling' (Part 4).

Each of the RIAs includes a full breakdown of the options, costs and benefits associated with each policy objective.

The following table provides an overview of the total costs and benefits for the Bill as a whole (based on the preferred option in each policy area)

Consumer Voice

Preferred Option	Benefits	Costs
Bring together consumer representation to form a stronger body ("Consumer Voice") excluding the existing consumer panels, and create a redress scheme(s) for the energy and postal services sectors.	<p>Net cost savings of about £8.9 million per annum from complaint handling, a reduction in the regional office networks and consolidation of offices and staff.</p> <p>Consumer advocacy body has critical mass to engage effectively with Government, regulators and industry;</p> <p>Facilitates the adoption (or retention) of specialist consumer panels by sectoral regulators where they wish</p>	One-off implementation costs of about £8.7 million in the year of implementation.

	<p>to do so;</p> <p>Single point of contact for consumers (Consumer Direct);</p> <p>Redress schemes to ensure redress for consumers and incentives on industry to resolve complaints themselves;</p>	
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Estate Agents

Preferred Option	Benefits	Costs
<p>Implement the OFT's regulatory recommendations and introduce a mandatory requirement for estate agents to belong to schemes that offer independent redress (dealing with all types of consumer complaints about the buying and selling of residential property, and those in Scotland and Northern Ireland)</p>	<p>Benefits up to £15.7m p.a</p> <p>Will make it easier for OFT and Trading Standards departments to enforce the EAA more effectively and lead to less complaints from consumers. Targets action on rogue agents.</p> <p>Will also ensure 100% of consumers have access to independent redress. This should also provide an incentive for estate agents to improve service standards, and make it easier for regulators to identify poorer agents and take remedial action, including where appropriate banning unfit agents.</p> <p>This is particularly important in the context of the introduction of Home Information Packs (HIPs), which potentially make the role of the estate agent more crucial and increase the importance of consumers having access to redress when things go wrong.</p>	<p>Costs: £0.5m p.a.</p>

Doorstep Selling

Preferred Option	Benefits	Costs
Extend cancellation rights to solicited visits	Simpler procedures for business Enforcement and sales made easier by not having to determine whether visit was solicited or unsolicited Consumers protected against pressure selling by the right to a cooling off period and to cancel the contract within seven days	Re-printing contracts and informing salespeople (negligible) Additional cancellations impose costs (under £11 million per year)

We do not anticipate that any of the proposals contained in the Bill will have any significant adverse impact on small firms within the sectors affected, in terms of additional costs or administrative burdens. We do anticipate a number of positive impacts on small firms.

We have not identified any impacts for charities or voluntary organisations.

The Cabinet Office, Better Regulation Executive has provided comments and advice to DTI in the drafting of the final RIA on the Consumers, Estate Agents and Redress Bill.

INTRODUCTION

Contents of the Bill

1.1 The Consumers, Estate Agents and Redress Bill covers three broad policy areas:

‘Consumer Voice’ proposals include measures to –

- strengthen and streamline consumer representation, by bringing together energywatch, Postwatch and the National Consumer Council to form a more coherent and effective consumer advocacy body (which will also be called the ‘National Consumer Council’). The new body will be a more powerful consumer advocate with the critical mass to engage effectively with Government, regulators and industry sectors, and with the benefit of being able to draw on experience and expertise from a number of sectors, as well as providing greater value for money for consumers;
- enable the Secretary of State to require suppliers in the energy and postal services sectors, (and potentially the water sector after consultation in 2008) to belong to a redress scheme to ensure complaint resolution for consumers and award compensation where warranted;
- enable regulators in the energy and postal services sectors to make regulations to prescribe complaint handling standards which will be binding on suppliers in those sectors; and
- extend Consumer Direct to cover enquiries and simple complaints from consumers in the gas, electricity and postal services sectors (and potentially also the water sector after consultation in 2008) to provide a simpler line of communication between a complainant in the regulated sectors and a single consumer advice service.

‘Estate Agents’ proposals include measures to –

- require estate agents to belong to an independent approved ombudsman scheme which will determine disputes between estate agents and buyers or sellers of residential property in the UK;
- require estate agents to make and keep adequate records of their dealing with a client for six years;
- give the Office of Fair Trading (OFT) and Trading Standards Officers powers to inspect an estate agent’s files on a transaction; and
- give the OFT more scope to consider an estate agent’s fitness to practice

Doorstep Selling proposals include measures to –

- extend to solicited visits, the cancellation and cooling off period that consumers currently enjoy for unsolicited visits

PROPOSALS TO STRENGTHEN AND STREAMLINE CONSUMER ADVOCACY

Purpose and Intended Effect of the Measure

2.1 This section of the Regulatory Impact Assessment considers the options and the associated costs and benefits for strengthening and streamlining consumer advocacy. It is based on the recommendations made in the report by the Department of Trade and Industry (DTI) and HM Treasury, "Consumer Representation in Regulated Industries"¹ and the DTI consultation document on the draft Consumer Strategy². The recommended option also takes into account the responses to the consultation, "Strengthen and Streamline Consumer Advocacy"³; the results of a due diligence exercise undertaken by KPMG on behalf of the DTI, and the implications of the Hampton Review, "Reducing administrative burdens: effective inspection and enforcement"⁴.

Objective

2.2 The proposals are intended to provide much greater:

- clarity and ease of use for consumers;
- effectiveness and the critical mass to increase the ability of the consumer representative body to engage productively with Government, regulators and industry;
- flexibility to respond to consumer concerns and to prioritise across markets;
- effectiveness in resolving (rather than just handling) consumer problems; and
- value for money for taxpayers and consumers.

¹ Copies of this report are available at <http://www.dti.gov.uk/files/file25252.pdf>.

² "Extending Competitive Markets: Empowered Consumers, Successful Business" (published 14 July 2004; consultation ended 31 October 2004).

³ "Strengthen and Streamline Consumer Advocacy: Consultation on consumer representation and redress" (published 25 January 2006; consultation ended 19 April 2006). Available at <http://www.dti.gov.uk/files/file29876.pdf>.

⁴ Available at http://www.hm-treasury.gov.uk/budget/budget_05/other_documents/bud_bud05_hampton.cfm.

Background

- 2.3 UK consumers now benefit from choice in most of our essential services. This has been brought about by a long-term commitment by Government to champion open, competitive markets wherever possible, to deliver this choice and to foster high standards and good value in our key markets.
- 2.4 Liberalisation of the markets for essential services, and the development of the regulatory regimes, took place over a lengthy period. But there was a common model: licensed companies overseen by an independent economic regulator, and a consumer body with duties in respect of each individual sector.
- 2.5 This has led to the current position where we have several sectoral consumer bodies – as well as the National Consumer Council (NCC) – who represent the consumer interest across a range of markets.

The need for Consumer Representation

- 2.6 Increasing competition in many of the regulated sectors⁵ has provided significant benefits for many consumers. In energy and electronic communications markets, for example, consumers have a choice from an increasing number of suppliers and an array of different tariffs. In this phase of market development, strong consumer bodies can play an important role in articulating the consumer interest, ensuring that suppliers take their responsibilities to customers seriously and provide the high quality information and advice consumers need to take full advantage of competitive markets and to shop around to get the best deals available.
- 2.7 Influential consumer councils and well-informed consumers therefore have a vital transitional role to play in newly competitive markets in improving standards and encouraging customers to compare prices in order to make informed choices. However, the need for effective consumer representation is equally strong, if not stronger, in those markets in which customers do not have a choice of supplier or where competition is restricted.
- 2.8 Usually, it is a primary duty of the Regulator to protect the interests of consumers. The regulators for gas and electricity, water and electronic communications have objectives to (broadly) promote or protect the interests of consumers. The Postal Services Commission (Postcomm) has a primary duty to ensure the provision of a universal postal service. Subject to this primary duty, Postcomm is required to promote effective competition where this is beneficial to consumers. The Financial Services Authority (FSA) has regulatory objectives which include securing the appropriate degree of protection for consumers.

⁵ The regulated sectors are taken throughout this Regulatory Impact Assessment to mean those that have a sector specific regulator i.e. gas, electricity, postal services, water, air transport, electronic communications and financial services.

- 2.9 The essential nature of the services provided by the regulated markets, the risk of significant consumer detriment, and in some cases the limited nature of competition all mean that there will be a continued need for some form of consumer representation in these markets.
- 2.10 There are four market characteristics that together support the requirement for specialist consumer representation in the regulated sectors:
- the degree of monopoly power exercised within the market. Competition does not necessarily remove the need for consumer representation, but consumer bodies may be particularly important in monopoly sectors where customers cannot change suppliers;
 - the extent to which the product is an essential service and the proportion of regulated activity that can be considered as such;
 - informational problems and other supply side market failures that impact upon consumers e.g. mis-selling; and
 - the size of the market.
- 2.11 There are also a number of other factors that are relevant to decisions over consumer representation, such as:
- the degree of market maturity;
 - the complexity of products and market institutions;
 - the degree of infrastructure constraints that limit the exercise of competitive freedom; and
 - the degree to which today's market developments may have longer-term implications.
- 2.12 It is important also to note that the market characteristics outlined above are not set in stone. Indeed, effective consumer representation should seek to reduce consumer detriment and to press for increased competition where this would be beneficial to consumers. Market changes mean that new problems can arise, and competition will not necessarily eradicate all of the causes of consumer detriment. Nevertheless, the form of consumer representation in a sector – and the resources devoted to it – should be reviewed regularly over time to ensure it continues to be proportionate to need.

Rationale for Government Intervention

- 2.13 A study undertaken for the DTI in 2000⁶ to assess and measure consumer knowledge and skills across all sectors found that more than one in three consumers (38%) reported having reason to complain about a good or service

⁶ MORI survey (on behalf of the DTI), 2000, *The Consumer Knowledge Survey*.

over the previous year. The survey found that while 35% of consumers actually made a complaint, consumers aged 55 and over were less likely than average to have made a complaint (25%); while 33% of people from socioeconomic groups C2, D and E actually made a complaint, compared with 45% of those from socioeconomic groups A, B and C1.

- 2.14 Most consumers who complain do so to the product seller or service provider (87%). However, 46% of these consumers are not satisfied with the result of their complaint, and of these dissatisfied consumers, only 15% then pursue their complaint further. Disputes can cause stress to the consumer, especially where they take time to be resolved.
- 2.15 A survey prepared for the OFT in 2004⁷ found that about 40% of consumer-facing businesses had no consumer policies in place for dealing with disputes, and 32% thought that consumer legislation did not apply to them.
- 2.16 Consumer welfare is enhanced by the satisfactory resolution of complaints. However, business also benefits. The OFT's survey found that 70% of consumers who had their complaint resolved satisfactorily will continue to trade with the same company. Good complaints procedures and effective means by which to resolve disputes can improve business performance.

Problems with the Current System of Consumer Representation

- 2.17 Despite the valuable service provided to consumers by the existing sectoral consumer bodies, there exists three key issues with the current system of consumer representation that need to be addressed. First, the sectoral consumer bodies currently labour under a significant burden of complaints which they can only seek to resolve through persuasion. They do not have powers to enforce resolution and cannot provide redress or compensation for consumers who have encountered problems. This is the role of a redress scheme, and it is the creation of new, separate, redress services that form a key part of the proposals.
- 2.18 Second, almost every household in the country is a consumer of all or most of the key services, such as electricity, gas, and postal services. For the majority of these markets, the consumer is the same person. Despite this, any consumer who encounters a problem or who wants advice or assistance needs first of all to establish where to go to obtain help. Promoting the existence of the consumer bodies as a source of help has been a consistent problem, and each of the relevant bodies continues to try, individually, to make consumers aware of their services.
- 2.19 Third, while companies increasingly offer a variety of regulated and unregulated⁸ services to consumers, each sectoral consumer body can only deal with the aspect of a company's service to consumers which falls within its statutory duties. Sectoral regulators work together on issues of common

⁷ Survey prepared for the OFT by Synovate, May 2004, "Competition Act and Consumer Rights", available at <http://www.of.gov.uk/NR/rdonlyres/9FB811E0-666E-42D3-BD41-1FCCEDCF22B2/0/of736intro.pdf>.

⁸ "Unregulated" in this context means that the services are not regulated by a specific sectoral regulator.

interest, and although the Consumer Action Network offers the possibility of increased co-operation between sectoral consumer bodies, there are reports of apparently insurmountable difficulties arising from proper legal restrictions on exchange of information between bodies, and claims that individual governance and administration arrangements prevent any meaningful sharing of resources or facilities.

- 2.20 The fragmented nature of consumer representation in the UK means that there is not a single, coherent, voice for the consumer that can analyse relative levels of consumer detriment and thereby reflect priorities across the different markets, or that can speak with expertise and authority for all consumers in discussion with companies, with Government, or in Europe. Increased cross-border activity in most services means that Europe has become a crucial forum for representation of the consumer viewpoint. Many of our consumer bodies are extremely active in pursuing the consumer interest at the European level. However, apart from specific sectoral fora, the UK currently needs to field several representatives from different consumer organisations in order to cover issues thoroughly.

The Proposed Model of Consumer Advocacy

- 2.21 The proposed model has three elements:

- **Consumer Direct** (already in existence) to provide a single point of contact to provide consumers with information and advice for all sectors;
- **New “Consumer Voice”**, which would bring together the National Consumer Council and sectoral consumer bodies to represent the interests of consumers across all markets; and
- **New redress scheme(s)** (already operating in electronic communications, financial services and energy) to resolve complaints where service providers have not been able to do so.

- 2.22 The proposal to consolidate the existing sectoral consumer bodies was raised in the July 2004 report by DTI and HM Treasury, “Consumer Representation in Regulated Industries”⁹, and consulted on in the DTI draft Consumer Strategy¹⁰. The proposals followed a detailed investigation of sectoral consumer representation, which attempted to identify best practice across a number of sectors. The DTI/HM Treasury report noted that, in some cases, the sectoral bodies laboured under a burden of large numbers of complaints, to which a significant proportion of staff and budget resources needed to be devoted. The report concluded that each of the sectoral bodies needed to become more strategic and proactive in its approach to consumer representation, and demonstrate value for money. Creating a more effective and coherent Consumer Voice body would be an important step in carrying

⁹ Copies of this report are available at <http://www.dti.gov.uk/files/file25252.pdf>.

¹⁰ “Extending Competitive Markets: Empowered Consumers, Successful Business”. Consultation closed 31 October 2004.

through the report's recommendations and delivering on the Consumer Strategy.

- 2.23 Assessment of the current provision for consumer representation was aided by a Benchmarking Survey of energywatch and Postwatch that was undertaken for DTI, HM Treasury and the National Audit Office by PricewaterhouseCoopers¹¹. The National Audit Office also published a separate, independent, report on energywatch and Postwatch¹².

Consultation

Within Government

- 2.24 We have consulted on these proposals with HM Treasury; the Department of Health; the Department for Transport; the Department for Constitutional Affairs; the Department for Culture, Media and Sport; the Department of the Environment, Food and Rural Affairs; the Scottish Executive; Scotland Office; the Welsh Assembly Government; Wales Office, and the Department of Enterprise, Trade and Investment (Northern Ireland).

Public Consultation

- 2.25 The DTI undertook a public consultation on its draft Consumer Strategy in July 2004. Included within that consultation document were proposals designed to strengthen and streamline consumer representation in the regulated industries.
- 2.26 A further 12 week consultation, setting out the possible plans and timetable for the proposals, was undertaken between 25 January and 19 April 2006. More than 80 responses were received to the consultation. The overwhelming majority of respondents indicated their support for the general thrust of the proposals and signalled their agreement in principle with the fundamental objectives behind the proposed measures. A number of respondents provided comments in response to the questions set out in the partial Regulatory Impact Assessment that accompanied the consultation document, specifically on the cost and benefit estimates and the impact of the proposals on small firms and competition. These comments are set out in the relevant sections below.
- 2.27 A summary of the responses and the Government's response to the consultation can be found at <http://www.dti.gov.uk/consultations/closedwithresponse/index.html>, published on 17 October 2006.
- 2.28 We have also discussed the proposals in outline with the Energy Retail Association, Water UK, the Competition Appeal Tribunal, the Competition

¹¹ Available through <http://www.dti.gov.uk/bbf/competition-law/Competition%20Policy/Economic%20Regulation%20Team/index.html>.

¹² National Audit Office, October 2004, "Energywatch and Postwatch: Helping and protecting consumers". Available at http://www.nao.org.uk/publications/nao_reports/03-04/03041076.pdf.

Commission, the National Consumer Council, the Consumer Action Network and the sectoral consumer bodies.

Options

Option 1: Bring together consumer representation to form a stronger consumer body (“Consumer Voice”) and create a redress scheme(s) for the regulated sectors.

2.29 Under option 1, consumer representation would be made up of three elements:

- **Consumer Direct** as a single point of contact for consumers in all sectors;
- a new consumer advocacy body (working title, “**Consumer Voice**”) to undertake research, advocacy, and to have a consumer education role (alongside the OFT) as well as to represent the interests of consumers; and
- a **new redress scheme(s)** for consumers in the regulated markets included within the proposals¹³ with the power to resolve every complaint. Complaints would be transferred to the redress scheme from Consumer Direct for resolution if needed

Consumer Direct

2.30 The new model would utilise Consumer Direct as the single point of contact for all consumers. Consumer Direct is a telephone and online consumer advice service – created by the Department of Trade and Industry and now supported by the Office of Fair Trading – which is designed to deal with enquiries and simple complaints.

New Consumer Advocacy body – “Consumer Voice”

- 2.31 The new “Consumer Voice” would bring together sectoral consumer representation roles with that of the National Consumer Council to create a more coherent, independent, consumer champion.
- 2.32 It is envisaged that the role of Consumer Voice would be to represent consumers in all markets, advising the OFT, competition authorities and other regulators; providing expert input to the development of policy by regulators and Government; and promoting consumer interests with industry and commerce. Consumer Voice would undertake cross-sectoral research proactively to identify key consumer issues, and play a key role in formulation of public policy both in the UK and in Europe. Complaints data flowing back to Consumer Voice from Consumer Direct and the redress schemes would be a key input to the advocacy work.

¹³ Redress schemes would be required to deal with complaints in the postal services sector and also for gas and electricity complaints that are not already within the remit of the Energy Supply Ombudsman service (redress schemes already exist in financial services and electronic communications).

- 2.33 The current consumer bodies encompass a range of different types of body. Energywatch and Postwatch, for example, are statutory independent bodies with their own staff, accommodation, and budgets. The Financial Services Consumer Panel and the Office of Communications (Ofcom) Consumer Panel, for example, are also statutory bodies with their own members and chair, but they depend on their respective sectoral regulators for accommodation, support staff and budget.
- 2.34 Consumer Voice will take over the specific duties currently attributed to sectoral consumer bodies. These duties will need to include input into price reviews, monitoring post office closures, and other proposals that would have a major impact on consumers. The arrangements to establish Consumer Voice will also take account of the need to retain sectoral expertise.
- 2.35 It is envisaged that Consumer Direct will be a single point of contact for consumers with enquiries or simple complaints, and more complex complaints will be referred to redress schemes for resolution. However, there is still a role for Consumer Voice to provide ongoing support to those consumers who require help articulating or progressing their complaint with the company concerned, and before it is appropriate to refer the complaint to the redress scheme.
- 2.36 There will also be a role for Consumer Voice to develop strong partnerships with other relevant organisations and agencies to better understand the issues that face consumers within local communities, who might otherwise be missed.
- 2.37 Under option 1, the new Consumer Voice body would incorporate the following existing consumer organisations^{14, 15}:
- the National Consumer Council (NCC);
 - energywatch;
 - Postwatch;
 - the Financial Services Consumer Panel; and
 - the Ofcom Consumer Panel.

New redress scheme(s)

¹⁴ The government recently carried out a fundamental review of rail regulation, which included reorganising consumer representation in that sector. We therefore do not propose to change the arrangements in rail, or include the rail sector within the proposals at this stage. However, the rail sector may be brought within the proposals at some point in the future.

¹⁵ The Consumer Council for Water (CCWater) was established on 1 October 2005, when it replaced WaterVoice as the consumer body for the water sector. It was set up under the provisions of the Water Act 2003, and has important new functions, including functions in relation to water saving and sustainable development. In recognition of the need for the new body to establish itself, and to tackle the objectives that it has been given, it is not proposed that CCWater should be part of the initial tranche of sectoral consumer bodies to be incorporated in the new arrangements. We will undertake a further public consultation in 2008, to assess the views of stakeholders in the water sector at that time on whether CCWater should be included at a future date. In Scotland, customer interests are covered by the Water Industry Commission for Scotland and Waterwatch Scotland.

- 2.38 Where the consumer has been unable to resolve a complaint with the supplier or service provider, Consumer Direct would – under the new model – refer consumers to new redress schemes for resolution. All companies in each of the sectors included within the proposals¹⁶ would need to belong to a redress scheme. Redress schemes already operate in the electronic communications, energy and financial services sectors, and provide a real incentive for companies to deal effectively with consumer complaints, because onward referral to the redress scheme is costly to the company for each complaint referred.
- 2.39 Each redress scheme would have powers to resolve completely all referred complaints. Decisions would be binding on companies (but not on consumers), and specific redress and compensation could be awarded when appropriate. Consumer bodies cannot do this using their statutory powers. It is worth noting that in their response to the recent supercomplaint on billing by energywatch, one of Ofgem's recommendations was that the industry should set up an ombudsman scheme to deal with billing. The Energy Retail Association have subsequently established the Energy Supply Ombudsman service (from 1 July 2006) to handle complaints related to energy billing and transfers.
- 2.40 The consumer representation and redress consultation document set out a number of different options for the proposed redress scheme(s): a separate redress scheme for each sector; a single redress scheme for all regulated sectors; and a model similar to that which currently exists in the electronic communications sector. Nearly all respondents to the consultation agreed that extending redress schemes to cover energy complaints not currently handled by the Energy Supply Ombudsman scheme and all complaints in the postal services sector would be beneficial, and a small majority agreed that the flexibility of the electronic communications model would be the preferred option.
- 2.41 With this approach, companies may choose to come together to establish a redress scheme; gain regulatory approval and operate the scheme subject to regular reviews by the regulator. The requirement for approval and monitoring by the regulator permits control over the standards of the redress scheme(s) to ensure that standards are kept at or above approved levels. Co-ordination would be necessary to ensure that redress schemes that cover more than one regulated sector would be acceptable to all the relevant regulators without having to undergo separate assessments.
- 2.42 This approach would provide a legal requirement for firms in the energy and postal services sectors to belong to a redress scheme, but would not specify a particular scheme, other than it must be approved by the regulator. The main benefit of this approach is its inherent flexibility – companies may either join an existing scheme, or alternatively to set up their own scheme if existing redress services are not deemed to be appropriate for the requirements of their particular sector.

¹⁶ Gas, electricity, postal services, financial services and electronic communications.

- 2.43 A concern that was raised by a number of respondents to the recent consultation was the possibility that this approach permits of a plethora of competing redress schemes being set up in each sector. However, the opportunity to take advantage of existing infrastructure and expertise of established redress schemes, as well as the potential for benefiting from economies of scope and scale, should create a disincentive for companies to establish a number of individual schemes. This is backed up by the need for approval by a regulator which should also guard against any undue proliferation of schemes.

Option 2: Bring together consumer representation to form a stronger body (“Consumer Voice”) incorporating expert panels, and create a redress scheme(s) for the regulated sectors.

- 2.44 Option 2 is similar to option 1 in that it would rely on Consumer Direct as a single point of contact for consumers with enquiries and simple complaints; it would consolidate the existing consumer bodies to form a stronger and more coherent consumer advocacy body; and it would create redress scheme(s) for the regulated sectors included within the proposals.
- 2.45 However, compared to option 1, this option allows for Consumer Voice to maintain expert panels for the regulated sectors. Like the existing consumer panels, these expert panels would be experts in a particular sector, able to input specialist information and advice to Consumer Voice as required. They would not have a consumer facing role. However, unlike the consumer panels, which are located within the relevant regulator and provide advice directly to the regulator on the consumer interest, the expert panels would be located within the consumer body – Consumer Voice – and would provide specific sectoral consumer advice to Consumer Voice rather than the sectoral regulator.

Option 3: Bring together consumer representation to form a stronger body (“Consumer Voice”) excluding the existing consumer panels, and create a redress scheme(s) for the regulated sectors.

- 2.46 **Option 3 is the preferred option.** This has been informed by the responses to the consultation which ended on 19 April 2006, as well as the results of the due diligence analysis undertaken by KPMG on behalf of the DTI. This due diligence exercise produced estimates for the costs and benefits associated with implementing each of the three main options, as given in the relevant sections below.
- 2.47 Like option 1, option 3 would consolidate the consumer bodies into a stronger organisation and create redress scheme(s) for the regulated sectors. The only difference in option 3 is that the regulator’s consumer panels would be excluded from consolidation into Consumer Voice. The consumer panels can generally be characterised as having a different function from the statutory independent consumer bodies: statutory independent consumer bodies conduct a full range of services aimed directly at the consumer, whereas consumer panels primarily provide advice to the relevant sectoral regulator on

the consumer interest. For example, they do not provide advice to consumers or engage in assisting with the resolution of complaints.

- 2.48 Where regulators do not currently have an integrated consumer panel, this option would leave open the possibility for (but not oblige) sectoral regulators to establish and maintain their own in-house expert consumer panel to provide them with advice on consumer issues in their sector.
- 2.49 Whilst these consumer panels would remain separate from the consolidated consumer advocacy body, **Consumer Voice would still be responsible for representing consumers in all sectors**, including those where the regulators retain their consumer panels.

Option 4: Retain the current system of consumer representation.

- 2.50 This option would retain the existing system of consumer advocacy, consisting of separate consumer bodies for essential services, including the National Consumer Council, the Financial Services Consumer Panel and the Ofcom Consumer Panel. It would not address the three issues identified with the current system of consumer representation outlined in paragraphs 2.17 – 2.20 above.

Option 5: Bring together consumer representation to form a stronger body, but do not establish redress schemes.

- 2.51 This option would change the current system of consumer advocacy to provide:
- a **single point of contact** for consumers in the form of Consumer Direct to provide information and advice on all sectors; and
 - a **new consumer advocacy body** which brings together all the sectoral consumer representation roles with that of the National Consumer Council to represent consumers in all markets. However, this body would not have powers to enforce resolution of complaints – specific redress and compensation could not be awarded
- 2.52 Sector specific expertise would need to be maintained, but common ‘back office’ functions could be undertaken by a single team, working for all the business sectors included within the new body.
- 2.53 The existing redress schemes in electronic communications and financial services would not be affected by the proposals and would continue to operate as they do currently. As now, industry would be free to establish redress schemes, but there would be no regulatory obligation to do so.

Devolution

- 2.54 We propose that the new body has a UK-wide remit, but with certain territorial limitations. Currently, the remit of the NCC (and its associates, the Welsh and

Scottish Consumer Councils) is to cover the whole of the United Kingdom, working closely with the General Consumer Council for Northern Ireland (GCCNI). Postwatch also has a remit to represent consumers throughout the United Kingdom. This compares with energywatch which covers Great Britain only – energy consumers in Northern Ireland are represented by the GCCNI. It is therefore proposed that the new consumer advocacy body continues to represent postal services consumers in Northern Ireland.

Funding

- 2.55 We propose that the costs of the new consumer advocacy body will be met partly through Government funding (grant-in-aid) and partly from licence fees (sectoral consumer bodies are currently funded through licence fees). These licence fees will be collected from those sectors with consumer bodies that will be consolidated with the National Consumer Council i.e. initially from the energy and postal services sectors, and later from service providers in other sectors who may be brought within the proposals at a later date (such as the water sector). This is in order to reflect the specific sectoral functions that the new consumer advocacy body will be taking over from the sectoral consumer bodies.
- 2.56 We propose that the extension to Consumer Direct to provide advice on the energy and postal services sectors will also be funded by the relevant industry sector. Funding of the redress scheme(s) will be left for industry to agree within the chosen scheme, but will likely be funded by companies partly by subscription, and partly on a per complaint basis.

Business Sectors and Groups Affected

- 2.57 The business sectors initially affected by the preferred option – option 3 – are the gas and electricity sectors and the postal services sector (this option leaves the consumer representation arrangements in the financial services and electronic communications sectors unchanged). The proposals will affect all businesses within these industries, but should not affect particular groups of firms within these sectors any more than others (depending on the system of funding of the redress scheme(s) which companies themselves will need to decide and agree upon, and which will need to be approved by the sectoral regulator).
- 2.58 The proposed system would also affect all gas, electricity and postal services consumers. Consumer representation would be brought up to a consistent level across the sectors affected, and should not diminish for consumers in any sector.
- 2.59 We will also consult on the inclusion of the water sector in the proposals in 2008. If there is agreement to bring water within the proposals at that time, this would affect all water suppliers and all water customers in a similar way to the energy and postal services sectors.

Benefits¹⁷

Option 1: Bring together consumer representation to form a stronger body (“Consumer Voice”) and create a redress scheme(s) for the regulated sectors.

2.60 One benefit of this option would be to create efficiency savings in the form of economies of scope and scale, as all common functions of the existing consumer bodies are undertaken by one body. This should allow for a significant reduction in the overall cost of consumer representation, which could be achieved in three main ways – moving complaints handling from the consumer bodies into redress schemes; consolidating the existing consumer bodies into a stronger consumer advocate (Consumer Voice); and reducing the number of regional offices.

Complaints handling

2.61 Analysis by KPMG¹⁸ on behalf of the DTI produced an estimate of the current cost of complaints handling within energywatch and Postwatch (the NCC, the Ofcom Consumer Panel and the Financial Services Consumer Panel do not handle complaints). This estimate took account of dedicated staff costs including call centres and dedicated consumer advisors responsible for more complex complaints. The total cost of complaints handling at energywatch and Postwatch in 2005/06 was estimated to be about £5.3 million.

2.62 Taking complaints handling out of the remit of the consumer body will therefore reduce costs by £5.3 million, which will be partially offset by the cost to Consumer Direct in expanding the scope of its service to cover more sectors, and a cost to industry of establishing a redress scheme(s). These costs are estimated to amount to about £4.3 million (see the section on costs below for details) giving a net saving from complaints handling of about £1 million per annum.

Consolidating the existing consumer bodies

2.63 Consolidating the separate consumer bodies into a stronger consumer advocacy body (Consumer Voice) will reduce overall running costs by exploiting economies of scale and scope. The analysis by KPMG referred to above suggests that there could be non-staff cost savings in relation to the consolidation of administrative functions, integrated information technology systems, and the termination of redundant outsourced service contracts.

2.64 In terms of staff cost efficiencies, the remit of Consumer Voice will include the sectoral functions that are currently undertaken by energywatch and Postwatch, such as engaging with the sectoral regulators in the development of policy to ensure that consumers are fairly represented in any proposals and monitoring the closure of post offices. The new body will therefore need sufficient staff to be an effective consumer advocate across all markets, as

¹⁷ All estimates of the benefits (and the cost figures given in the following section) are given in real terms, in 2006 prices.

¹⁸ The KPMG analysis is based on information obtained from the consumer bodies in January to March 2006.

well as to undertake specific sectoral functions in the energy and postal sectors.

- 2.65 In addition, it is envisaged that a team will need to be established that can assist those consumers who need help articulating and progressing their complaint with the company (over and above the help provided by Consumer Direct), as well as providing immediate help and support for consumers facing disconnection by their energy supplier. Further, Consumer Voice is assumed to maintain a team to work with local organisations and agencies, working with local communities to reach consumers who may otherwise be missed.
- 2.66 However, staff efficiencies can still be achieved in the areas of complaints handling (which will be taken up by Consumer Direct and the redress scheme(s), the costs of which are set out in the section on costs below) and posts where there is currently an overlap in duties when the existing consumer bodies are consolidated.
- 2.67 The KPMG analysis suggests that the consolidation of these duplicated staff members could amount to monetary savings of about £2.7 million per annum. The analysis also suggests that the consolidation of information technology and administrative expenses could save about £3.5 million per annum. By consolidating the existing consumer panels into Consumer Voice, the total budget of the two panels (£1.6 million per annum) would also be saved, resulting in savings overall for option 1 from the consolidation of office resources of about £8 million¹⁹ per annum.

Reducing the number of regional offices

- 2.68 The current spread of national and regional offices across the consumer bodies is expensive to maintain, and is sub-optimal in terms of effectiveness. For example, in 2003/04 the regional office network accounted for 59% of the energywatch budget and 34% of the Postwatch budget²⁰.
- 2.69 Regional complaint handling prevents the exploitation of economies of scale and risks dissipation of effort and duplication of resources. It also requires strong central management and control to ensure effective communication across the organisation.
- 2.70 However, a regional dimension to consumer representation may be said to assist with delivery of consumer awareness and education programmes; regional communications functions; and maintenance of relationships with the regional media.
- 2.71 But in practice, the network of regional offices can never be so large or well-staffed as to reach into all parts of the region. Delivery is often undertaken in association with other bodies with a local presence in all areas, such as Help the Aged or local authorities. Regional committees may add considerable

¹⁹ Figures rounded to nearest £0.1 million.

²⁰ DTI and HM Treasury report, July 2004, "Consumer Representation in Regulated Industries" (available at <http://www.dti.gov.uk/files/file25252.pdf>).

value, but it is not apparent that each committee needs to be supported by a regional office.

- 2.72 Over the last few years, all sectoral consumer bodies with a regional presence²¹ have considered programmes of rationalisation of their regional offices, with a view to substantially reducing either the number of staff, the number of offices, or both.
- 2.73 These moves, together with the proposal to handle complaints in new redress schemes, remove much of the justification for retention of regional office networks. It is therefore proposed that Consumer Voice retains three offices for England, Scotland and Wales, and that the existing Scottish and Welsh Consumer Councils (as associates of the NCC) are brought within the new structure. In addition, it is envisaged that an office in Northern Ireland would be necessary to deliver the UK-wide remit of Postwatch (for options 1, 2, 3, and 5) and the Ofcom Consumer Panel (for options 1, 2 and 5) as constituent bodies of Consumer Voice²².
- 2.74 Maintaining only four permanent offices will reduce ongoing property costs compared to the current position. However, the existing consumer bodies currently have lease commitments that extend further than the proposed implementation date of 2007 – 2009. The KPMG analysis on behalf of the DTI considered the length and cost of each lease held by the consumer bodies, and whether there existed either a break clause, or the opportunity to sub-let the property (and whether this would result in a saving or a loss, given the current open market rental values). Given the need to retain offices for Consumer Voice in England, Scotland and Wales (and Northern Ireland to cover postal services), and the assumptions made about the size and structure of the new body, the analysis concluded that net property cost savings could amount to about £1.5 million in 2008/09, rising to about £2.5 million per annum from 2015/16 as existing redundant property leases come to an end.
- 2.75 Overall, as an indication of the level of the **net annual cost savings** as a result of these proposals, we could expect to save about:
- £1 million on complaint handling;
 - an additional £8 million on consolidation of offices and staff; and
 - an additional £1.5 million (rising to £2.5 million) from the reduction in property costs.

This provides total **net ongoing savings for option 1 of about £10.5 million per annum**, increasing to £11.2 million by 2015/16 as redundant property leases come to an end.

²¹ Energywatch, Postwatch and WaterVoice (now Consumer Council for Water).

²² It is not part of these proposals to make any changes to the General Consumer Council for Northern Ireland, which already covers a very wide range of consumer issues, including energy, water, transport, and education.

- 2.76 It should be noted that this would represent a saving to industry (and ultimately consumers) and not a saving to Government, as sectoral bodies are funded by the individual industries that, in turn, recover their costs from consumers.
- 2.77 One respondent to the consultation (Postwatch), suggested that there exists the potential to make monetary savings against the cost of the current system in areas such as accommodation, support services, and reducing physical regional presence. Further, work already being undertaken under the Consumer Action Network (CAN) umbrella suggests that substantial levels of savings could be achieved in these categories simply by sharing overheads, without dismantling existing structures and merging consumer bodies.
- 2.78 However, while some of the cost savings may be achieved by consolidating existing back office functions, we believe that the proposals bring about greater benefits to consumers than simply saving money.
- 2.79 For example, option 1 would create a simpler line of communication between a complainant in the regulated sectors and a consumer advice service in the form of Consumer Direct.
- 2.80 The consolidation of fragmented consumer representation into a more effective and coherent body would also provide a powerful consumer advocate, able to address consumer issues that frequently exist across sectors of the economy. It would bring a number of specific benefits, including the critical mass to engage effectively with Government, regulators and industry sectors, on the basis of expert and informed analysis, as well as the benefit of being able to draw on experience and expertise from a number of sectors. Responsibility and authority to speak for consumers would rest with one organisation, thus providing a stronger and more effective policy voice in the UK and EU.
- 2.81 In addition, extending the availability of redress schemes from electronic communications and financial services to postal services and the remaining energy complaints not already within the jurisdiction of the existing Energy Supply Ombudsman scheme, would also be intended to produce the following benefits for consumers:
- strong incentive for companies themselves to resolve complaints effectively and efficiently;
 - consumers have certainty of resolution of a complaint, as decisions are binding on the companies (but not on the consumer);
 - compensation and redress for consumers where this is warranted;
 - quicker resolution of complaints for consumers as companies would have to resolve the complaint within a set period of time or the complainant could go to the redress scheme. Redress schemes, in

general, get complaints resolved quicker than the courts as they have targets on the time taken to make a decision on a case; and

- the service is entirely free to consumers.

2.82 There will also be benefits for companies as members of a redress scheme, such as:

- consumer access to a redress scheme that can offer certainty of redress will enhance their confidence in purchasing a service should the situation arise whereby the customer has a complaint with the service received;
- in more competitive markets, treating complaints seriously and having a reputation for excellent customer service may be a deciding factor for customers when choosing a provider;
- the cost of the redress scheme(s) is borne by the relevant companies who therefore gain control of the administrative costs of complaints resolution;
- a redress scheme will provide a valuable way of resolving burdensome and difficult complaints – in the long run it may save time and resource to have a dispute dealt with outside the company; and
- the investigation of a complaint may throw light on company practice or systems which it is in the interests of the provider to change.

2.83 Currently, the number of complaints directed to the sectoral consumer bodies (as opposed to being resolved directly with the company involved) places a considerable burden on these consumer bodies. Experience from the financial services and electronic communications sectors has shown that service providers have a very strong incentive to resolve customer complaints effectively if a redress scheme exists that is funded by subscriptions from companies and/or by charging companies directly for each complaint referred.

2.84 Compared to option 3, where the existing consumer panels are left outside of the new consumer advocacy body, option 1 would also have the advantages of:

- clear delivery of the objective to strengthen and streamline consumer representation; and
- delivery of greater cohesion and coherence for consumer advocacy.

Option 2: Bring together consumer representation to form a stronger body (“Consumer Voice”) incorporating expert panels, and create a redress scheme(s) for the regulated sectors.

- 2.85 In addition to the benefits for option 1 (outlined above), this option would provide Consumer Voice with panels of experts in each of the regulated sectors to offer expert or technical input as required. This may be particularly valuable given that the proposed remit of Consumer Voice is to look across all sectors of the economy. The particular sectors in which expert panels would need to be established would be left to Consumer Voice to determine.
- 2.86 However, in order to provide an estimate of the costs of option 2, an assumption has been made whereby Consumer Voice establishes expert panels for the financial services, electronic communications, energy and postal services sectors. These panels are assumed to cost about an additional £0.4 million per annum. This reduces the savings from the consolidation of offices and staff to £7.6 million per annum, resulting in **net annual ongoing savings of about £10.1 million for option 2**, which will increase to £10.8 million by 2015/16 as leases for redundant properties come to an end.

Option 3: Bring together consumer representation to form a stronger body (“Consumer Voice”) excluding the existing consumer panels, and create a redress scheme(s) for the regulated sectors.

- 2.87 The monetary benefits in terms of the cost savings for option 3 are slightly lower than options 1 and 2 as cost savings from the consolidation of the Ofcom and Financial Services Consumer Panels are not available. The cost of the two consumer panels currently amounts to about £1.6 million. This option envisages that the budgets of the existing consumer panels remain at current levels. Thus this option would result in **net ongoing savings of about £8.9 million per annum**, increasing to about £9.6 million per annum by 2015/16 as redundant property leases come to an end.
- 2.88 In addition, this option could involve the cost of establishing a consumer panel for energy (to sit within Ofgem) and for postal services (to sit within Postcomm). However, it is not proposed that the establishment of these panels is obligatory. If Ofgem and Postcomm both decide to create a consumer panel for their respective sectors, this could reduce the cost savings associated with this option by about £0.3 million per annum.
- 2.89 This option would allow for the retention (or adoption) of specialist consumer panels by the sectoral regulators, and we consider that the advantages of maintaining the regulator facing role undertaken by the consumer panels outweighs the lower cost savings achieved under this option.
- 2.90 Consumer panels primarily provide advice direct to the relevant sectoral regulator on the consumer interest at an early stage in the development of proposals by the regulator. They do not provide advice to consumers, or engage in assisting the resolution of complaints, for example, which are

generally functions of statutory independent consumer bodies (such as energywatch and Postwatch). However, both roles are considered to be very valuable for effective consumer representation within a sector. Option 3 allows for both roles to be undertaken in all of the regulated utility sectors.

- 2.91 This option would also enhance existing consumer advocacy in those sectors where there is no consumer body with a direct consumer relationship, and it would retain or create expertise in individual sectors where necessary. We propose to facilitate the ongoing co-ordination between the consumer panels and Consumer Voice through cross-appointments.
- 2.92 In response to the consultation, both Ofcom and the Financial Services Authority strongly emphasised the benefits that they believe the existence of the consumer panels in these sectors have brought for consumers. Both regulators stated that the panels' position within the regulator enabled those panels to provide essential and ongoing advice and challenge at a formative stage in the development of regulatory policy. This then helps to ensure that the consumer interest is effectively built in as the regulators develop and shape their proposals, in addition to the formal consultation process.
- 2.93 Examples of these benefits cited included the Ofcom Consumer Panel's evidence-based advice on how the needs of vulnerable groups should be addressed in the run-up to digital switchover, and the Financial Services Consumer Panel's valuable input in influencing the FSA's response to EU initiatives on mortgage regulation and the development of the FSA's 'basic advice' regime.

Option 4: Retain the current system of consumer representation.

- 2.94 This option would not result in any additional benefits. However, it would avoid any one-off costs associated with the other options, but would also therefore not achieve the potential ongoing efficiency savings or consumer benefits associated with the alternative options.

Option 5: Bring together consumer representation to form a stronger body, but do not establish redress schemes.

- 2.95 This option would provide a single point of contact (Consumer Direct) for consumers in the regulated sectors with a simpler, clearer line of communication for making enquiries and resolving simple complaints. It would also create a powerful consumer advocate body to engage effectively with Government, regulators and industry, and could result in potential cost economies.
- 2.96 Compared to option 1, this option would save industry the cost of establishing and funding a redress scheme(s). However, this saving would be offset by the cost of handling complaints in a different body. Further, this option would not provide an incentive for companies to handle complaints themselves, and consumer benefit would not be maximised: the consolidated consumer body

would not possess the powers to enforce the resolution of complaints or force a redress.

2.97 The responses to the consultation were generally strongly in favour of the principle of extending redress scheme(s) to the energy and postal services sectors. The benefits of this option have therefore not been developed further.

Costs

Option 1: Bring together consumer representation to form a stronger body (“Consumer Voice”) and create a redress scheme(s) for the regulated sectors.

Policy costs

2.98 The analysis undertaken by KPMG on behalf of the DTI has estimated that the **one-off implementation costs of option 1 would amount to about £8.7 million**²³ in the year of implementation. These one-off implementation costs are made up of:

- change management costs in order to establish Consumer Voice, including project management of the change process and the integration of existing information technology and human resources in the separate organisations;
- redundancy (and possibly recruitment) costs;
- set-up costs (development and start-up) for a redress scheme(s) to cover the remaining energy complaints not already within the jurisdiction of the existing Energy Supply Ombudsman scheme and all complaints in the postal services sector; and
- the cost of migrating the existing databases used by energywatch and Postwatch to the National Case Handling System operated by Consumer Direct.

2.99 In terms of the potential ongoing annual cost of the proposals, there would be a running cost for Consumer Voice, as well as an additional cost to Consumer Direct to extend its coverage to include enquiries and simple complaints from the energy and postal services sectors, and a cost to industry of funding the new redress scheme(s) in these sectors.

2.100 On behalf of the DTI, KPMG produced an initial estimate of the additional cost to Consumer Direct as a result of the proposals, and we will be working with the OFT to refine this figure. The initial estimate takes into account the increase in the volume of telephone calls and letters/emails expected to be

²³ This estimate is based on a number of assumptions that have been made for modelling purposes only. For example, an assumption has had to be made on the structure and therefore the number of staff and the resource requirements of the new organisation.

received, based on the number of enquiries received by energywatch and Postwatch in 2005/06. The average call length to Consumer Direct is longer than the current average call length to energywatch. However, it has been assumed that Consumer Direct will take the same amount of time to answer energy and postal enquiries and help with complaints as their current average for other sectors, based on the procedures in place at Consumer Direct that are not envisaged to change as a result of the proposals.

- 2.101 The cost to Consumer Direct of handling enquiries by letter or email is higher than the cost of an enquiry by phone. Using the split between written and telephone enquiries currently received by energywatch and Postwatch, the annual cost to Consumer Direct of expanding its service to cover energy and postal enquiries is estimated to be **about £2.1 million per annum**. However, Consumer Direct will continue to market their telephone service in preference to dealing with written enquiries. If enquiries were to be received by Consumer Direct in the same format as they are currently (with 98% of enquiries by telephone), this cost would reduce to about **£1.8 million per annum**.
- 2.102 The estimate of the cost of extending redress services to the energy and postal services sectors takes account of the existence of the Energy Supply Ombudsman scheme established by the Energy Retail Association on 1 July 2006. It also assumes that the number of complaints to reach the redress scheme(s) does not fall from the levels received by energywatch and Postwatch in 2005/06²⁴. The KPMG estimate suggests an ongoing cost to industry of the redress scheme(s) of **about £2.2 million per annum**. This compares to the electronic communications ombudsman, Otelo, which had administrative expenses totalling £1.4 million in 2005²⁵.
- 2.103 In terms of the running costs of Consumer Voice, a number of assumptions were made for the purpose of analysing the costs and benefits associated with the proposals, such as the structure of the new body, including staff numbers. Estimates of the potential cost savings compared to the cost of the existing system of consumer representation are given in the section on benefits above. The projected cost of the existing system from 2007/08 is £27 million²⁶. The benefits section above sets out the estimated net cost savings for option 1, which amount to about £10.5 million per annum. This gives an annual cost of the new system of consumer representation of about £16.5 million. This ongoing cost is made up of the additional cost to Consumer Direct (£2.1 million) and the redress scheme(s) for all remaining energy complaints and all postal services complaints (£2.2 million) (as set out above).

²⁴ In practice we might expect this number to decrease, given the incentive on firms to resolve complaints satisfactorily themselves in order to avoid paying the fee to the redress scheme.

²⁵ Otelo Annual Report 2005 (available at http://www.otelo.org.uk/UserFiles/File/Otelo_Annual_Report_2005.pdf?PHPSESSID=8f7a30addc6247afb677cfb6a9cf d1ba).

²⁶ Since the KPMG analysis was undertaken, adjusted indicative budgets for 2007/08 and 2008/09 have been agreed with Postwatch. This reduces the cost of the current system by £1.6m in 2007/08, and £1.75m in 2008/09, which would lower the cost savings achieved by the proposals compared to the cost of the current system. However, this will also reduce the cost of implementing the new system, as, for example, the cost of closing Postwatch's outsourced regional offices will already have been incurred.

This indicates a cost of the new Consumer Voice body for option 1 of **about £12.2 million per annum**.

- 2.104 Some of the respondents to the consultation expressed concern that the current role that existing consumer bodies fulfil in terms of helping customers articulate and progress their complaints (over and above the role of Consumer Direct and before complaints can be referred to the redress scheme) would be lost in the new arrangements. However, we propose that this role should be assigned to Consumer Voice, and the cost estimates above for Consumer Voice include the costs of a dedicated team to undertake this role.
- 2.105 Overall, therefore, option 1 is expected to incur **one-off implementation costs of about £8.7 million** in the year of implementation, with ongoing annual costs of about £16.5 million per annum. This compares to the cost of the existing system of about £27 million per annum, which gives rise to the cost savings of £10.5 million for option 1 outlined in the benefits section above.
- 2.106 The qualitative costs of this option include a concern that removing complaints handling from the consumer body removes the consumer advocate from having direct knowledge of issues of greatest importance to consumers. Consumer Direct, Consumer Voice and the redress schemes would need to ensure that there was provision for and existed good lines of communication and information flows between them, to ensure that this risk is not realised.
- 2.107 A further potential concern associated with this option is a loss of regional representation from the proposed reduction in the regional office network. As discussed above, while the current system of regional offices may not be providing sufficient value for money for consumers, the new system will need to ensure that where there is a real need for regional representation, this is maintained or improved by the proposed model.
- 2.108 There is a further possible concern that amalgamating the separate sectoral consumer bodies to form Consumer Voice and having a single customer facing organisation in the form of Consumer Direct will result in a loss of sectoral expertise in consumer representation. Perhaps as a result of this, there is a concern that the particular circumstances of individual sectors will be overlooked, particularly where a broadly based body tries to adopt general policies.
- 2.109 However, the new consumer body will be responsible for consumer advocacy in all sectors, and will therefore need to consider the specific needs of consumers across all sectors in order to ensure that it is an effective advocacy body for all consumers. Consumer Voice will need to ensure that it has sufficient sectoral expertise where required; indeed, option 2 allows for the creation of expert panels within the consumer advocacy body, and option 3 envisages consumer panels sitting within the sectoral regulators who will be able to provide Consumer Voice with sectoral expertise as required. However, even within option 1, Consumer Voice will need to ensure that it has sufficient sectoral expertise to perform effectively.

Administrative costs

- 2.110 Under option 1, regulators who are accustomed to having an “in-house” consumer panel to provide advice would need to establish an effective relationship with the new body.
- 2.111 There may be some increase in costs to industry of improving their customer service to handle complaints themselves, rather than passing them on to the consumer bodies. However, this is arguably the proper responsibility of industry.
- 2.112 There may also be a marginal administrative cost for business in confirming their membership of a redress scheme with the relevant authority, although this is expected to be minimal. Similarly, there will be an additional cost to regulators of approving a redress scheme(s) (potentially a one-off cost, depending on the number of schemes approved).
- 2.113 Consumer Direct staff are already trained to deal with complaints across a wide range of sectors, and this existing training would need to be extended to cover the additional sectors.

Option 2: Bring together consumer representation to form a stronger body (“Consumer Voice”) incorporating expert panels, and create a redress scheme(s) for the regulated sectors.

- 2.114 As for option 1, the one-off implementation costs for option 2 would be expected to cost about **£8.7 million** in the year of implementation. However, in addition to the annual ongoing cost of option 1, option 2 would also include the cost of maintaining expert panels within Consumer Voice. The cost of maintaining expert panels in energy, postal services, electronic communications and financial services is estimated to cost in the region of £0.4 million per year. This suggests that the ongoing cost of option 2 would be about £16.9 million per annum (resulting in cost savings for option 2 over the current system of £10.1 million per annum, as outlined in the section on benefits above).

Option 3: Bring together consumer representation to form a stronger body (“Consumer Voice”) excluding the existing consumer panels, and create a redress scheme(s) for the regulated sectors.

- 2.115 The implementation cost of option 3 is estimated to amount to about the same as option 1, at **£8.7 million** in the year of implementation. The ongoing cost of option 3 differs from option 1 in that it includes the cost of maintaining the Ofcom and Financial Services consumer panels (about £1.6 million per annum). This suggests an ongoing cost of option 3 of about £18.1 million per annum (resulting in cost savings associated with option 3 over the current system of £8.9 million per annum, as outlined in the section on benefits above). If Ofgem and Postcomm both took up the opportunity to establish an internal consumer panel to advise the regulator directly on consumer issues in

the energy and postal services sectors respectively, the annual cost of option 3 would be expected to increase by about £0.3 million.

2.116 There are also certain issues associated with this option that would need to be addressed:

- the need for clarity about the relative roles of Consumer Voice and a regulator's consumer panel:
 - the panel would exist principally to advise the relevant regulators about the consumer interest, broadly as for the current consumer panels;
 - Consumer Voice could provide executive support for all panels for research, analysis, and outreach activities. Regulators would need to provide funding and resource for a consumer panel secretariat from within the regulator's own administrative structure. As now, panels would be able to draw on additional specialist resource provided by regulators; and
 - Consumer Voice would be obliged to co-ordinate its outreach activities and education in consultation with the panels, regulators and the OFT
- the need to be clear that the existence of a regulator's consumer panel would not prevent Consumer Voice from being active on behalf of consumers in the relevant market.

2.117 In their response to the recent consultation, the Financial Services Authority raised a concern that there would be an additional cost to the Financial Services Consumer Panel of any new co-ordination arrangements with Consumer Voice. However, it is anticipated that the arrangements that the panel currently has with the NCC are simply maintained instead with Consumer Voice. We do not, therefore, envisage that this will create any significant additional cost over and above that of maintaining the current system.

Option 4: Retain the current system of consumer representation.

2.118 This option would not result in a change to the existing cost of the system of consumer representation over and above the cost of maintaining the separate consumer bodies, projected to amount to about **£27 million** in 2007/08. Any potential efficiency savings, or benefits to consumers from improved consumer advocacy as a result of the proposed changes, will not be realised.

Option 5: Bring together consumer representation to form a stronger body, but do not establish redress schemes.

2.119 This option would involve implementation costs associated with consolidating the existing consumer bodies and creating the new consumer advocacy body, Consumer Voice. Compared to the other options, it would avoid the cost to industry of establishing a redress scheme(s). However, Consumer Voice

would need to maintain complaints handling capability over and above the service offered to consumers by Consumer Direct (and that proposed for Consumer Voice in options 1, 2 and 3), due to the absence of redress schemes in key sectors.

2.120 Given that the responses to the consultation were strongly in favour of the principle of extending redress scheme(s) to the remaining energy complaints and all postal services complaints, the costs of this option have not been developed further.

Small Firms' Impact Test

2.121 The impact on small firms will depend on the system of funding the new redress scheme(s). Companies will be required only to belong to a redress scheme, which they can design and fund as agreed with other members of their scheme. The impact of the agreed system of funding on small firms will therefore depend on what they agree with other companies in their scheme.

2.122 Respondents to the recent consultation raised two main issues about the effect of the proposals on small firms. First, there was a concern that subscription fees payable to a redress scheme may not be proportionate to firm size, and therefore may have a disproportionate impact on small firms. While we do not intend to be prescriptive about any aspect of the redress schemes to which firms in the postal services sector and the energy sector (for complaints not already within the jurisdiction of the existing Energy Supply Ombudsman scheme) must belong, there will be a requirement that each redress scheme must be approved by the relevant regulator. In doing so, regulators should follow the principles of good regulation, as set out by the Better Regulation Executive²⁷, such as proportionality and targeting to ensure that no unintended consequences will result from the regulation being implemented.

2.123 Existing redress schemes in the financial services and electronic communications sectors are funded partly by subscription and partly by a charge levied on the relevant service provider for each complaint referred. As an example, the telecommunications ombudsman, Otelco, recovers 80% of its budgeted costs through the per complaint charge, and only 20% through the subscription charge. Subscription fees are related to the retail value of the services and products covered by the ombudsman service. The lowest subscription fee is £100 a year. About 90% of the 200 members pay a fixed fee of between £100 and £750. If a small company has a relatively small customer base and offers good customer service that generates no demand for referral to the redress scheme, then that is all they will pay.

2.124 The second issue raised in response to the consultation concerned representation of small firms by the consumer advocacy body. Currently, for

²⁷ See

http://www.cabinetoffice.gov.uk/regulation/consultation/consultation_guidance/planning_a_consultation/principles_good_regulation.asp.

example, energywatch will provide help and advice to small businesses as well as to domestic energy consumers. We propose that the remit of Consumer Voice will be to represent all consumers, including small firms. It will be left to Consumer Voice to determine where and to whom the greatest detriment in each market falls, and therefore on which issues to concentrate its resources.

2.125 We therefore do not anticipate that these proposals will have any significant or complex impact on small firms within the sectors affected by the proposed changes.

Effect on competition

2.126 The results of the competition filter showed that there was no need to do a detailed assessment of the impact of these proposals on competition.

2.127 The proposed scheme will have an impact on all firms in the energy and postal services sectors in that they will all be required to be members of an approved redress scheme, and will therefore have to pay a fee to contribute towards the cost of the scheme. As industry itself will be setting up the schemes, the fees will need to be agreed by all member firms.

2.128 It is therefore unlikely that the fees will be set at levels that will affect competition between firms in the same sector. If charges for a particular scheme are considered to be too high, firms will either have the option of joining a different scheme, or establishing a new one.

2.129 Those respondents who commented on the effect of the proposals on competition in their response to the recent consultation generally agreed that the proposals would not affect competition, or may even have a beneficial effect as companies' customer services are improved. However, a few respondents commented that redress scheme subscription charges that disproportionately affect small firms would be detrimental to competition. As stated above, any redress scheme will need to be approved by the relevant sectoral regulator who should follow the principles of good regulation to ensure that the risk of any such unintended consequence does not materialise.

2.130 One respondent also raised a concern that if small firms are asked to pay more for consumer representation, this could deter firms from entering the market or cause existing firms to withdraw from the market due to higher costs. However, the proposals do not envisage any sector paying more than they do currently – the cost for firms in the energy and postal services sectors will be significantly lower than the cost of the current system, and there will be no additional cost for firms in other sectors as a result of these proposals.

2.131 Overall, therefore, we do not anticipate that the proposed changes will have an effect on competition in any of the sectors affected by the proposals.

Enforcement and Sanctions

2.132 We propose to create a statutory requirement for every service provider in the gas, electricity and postal services sectors to belong to a redress scheme, which must be approved and enforced by a regulator. Enforcement should be in line with the Hampton principles of regulatory enforcement, as set out in the Hampton report²⁸. For example, regulators should provide authoritative, accessible advice about approved schemes easily and cheaply. Explicit consideration should be given to how membership can be enforced using existing systems to minimise the administrative burden imposed. Any businesses refusing to meet the requirement to belong to an approved redress scheme should be identified quickly, and face proportionate and meaningful sanctions.

Monitoring and Review

2.133 To ensure that the new arrangements provide all consumers with a more effective level of representation than the current arrangements, and that the other benefits outlined above are realised, it is vital that the new consumer advocacy body can add real value, and that this value can be demonstrated.

2.134 Performance measurement is an important method by which consumer bodies can monitor the progress of their organisation and the success of particular initiatives. This is a challenging area for all consumer bodies. It is often more straightforward to measure inputs, or processes, rather than those outcomes that are often most important. Unlike private sector companies, there are no simple metrics, such as profitability or shareholder value, by which different types of activity can be compared. In achieving policy change, it can be difficult to disentangle the impact of any one organisation on the final outcome. However, as with other consumer bodies, Consumer Voice and their Departmental spending team will need to develop meaningful measures of performance.

2.135 To address the complexities associated with this issue, the joint DTI/HM Treasury report on consumer representation²⁹ recommends that consumer bodies should have at least three levels of performance indicators:

- consumer bodies should ensure they monitor performance of operations. These indicators should be monitored over the longer term and should remain consistent in terms of measurement;
- outcome-focused performance indicators should be set for specific campaigns or initiatives. At the outset of each initiative, desired outcomes should be defined and indicators should be identified by which it would be possible to evaluate whether or not outcomes have been achieved. For example, when initiating a particular campaign, consumer

²⁸ March 2005, “Reducing administrative burdens: effective inspection and enforcement”, available at <http://www.hm-treasury.gov.uk/media/A63/EF/bud05hamptonv1.pdf>.

²⁹ DTI and HM Treasury report, July 2004, “Consumer Representation in Regulated Industries” (available at <http://www.dti.gov.uk/files/file25252.pdf>).

bodies need to ask themselves ‘what success would look like’ and how they intend to measure progress toward meeting their desired outcomes; and

- consumer bodies also need to measure impact at an aggregate level. To be effective, consumer bodies need to be heard and respected by their key stakeholders. Stakeholder surveys provide a useful benchmark and feedback loop from those organisations that consumer bodies are seeking to influence.

- 2.136 The PricewaterhouseCoopers benchmarking review of energywatch and Postwatch³⁰ identified the NCC’s approach to measuring impact as best practice. The NCC measures their ‘impact’ – on decision makers, on legislation, and on consumers – and their ‘reputation’, as they consider that their reputation is directly related to the level of influence they are able to exert. To that end they have developed a hierarchy of performance measures and indicators for “Impact” and “Reputation”, which aim to measure the outcomes of their work rather than focusing on outputs or processes.
- 2.137 Impact is measured on a case study basis. Individual project quality, impact, and degree of influence exerted, are assessed through a variety of sources, e.g. meetings with stakeholders, seeking formal and informal feedback from partners and stakeholders, press cuttings and media reports. This material is used to develop an internal assessment of the project, and subsequently an external adviser will review and assess the project.
- 2.138 In terms of its reputation, the NCC considers this a critical success factor for its ability to work with, and influence, opinion-formers and decision-makers in a range of policy sectors across the UK. It is measured through a series of qualitative and quantitative surveys on decision makers and partnering consumer organisations whose views are sought on a range of factors, such as effectiveness, profile, strengths and weaknesses, to derive an assessment of its reputation. These surveys are repeated on an annual basis.
- 2.139 Monitoring the effectiveness of the new consumer advocacy body will be a key task for Consumer Voice and their Departmental spending team. As is current practice with existing consumer bodies, we would expect the details of how this will be undertaken and the criteria against which the effectiveness of the new body will be assessed to be set out in Consumer Voice’s Forward Work Programmes, and reported on within annual reports. Consumer Voice will be held to account for its performance against the priorities in this programme.

³⁰ PricewaterhouseCoopers, March 2004, “Benchmarking Review of Energywatch and Postwatch”, available through <http://www.dti.gov.uk/bbf/competition-law/Competition%20Policy/Economic%20Regulation%20Team/index.html>.

Implementation and Delivery Plan

2.140 The Bill is the primary legislation required to put these proposals into effect. Planning for implementation involving key stakeholders will commence very shortly. Within 6 months of Royal Assent, we expect to have made the appointments to the new body and for companies to have made significant progress towards establishing redress schemes. Within a year of Royal assent, we expect the redress schemes to be up and running and the new consumer body to have assumed the functions of energywatch, Postwatch and the NCC.

Summary and Recommendation

2.141 **Our preferred approach is option 3.** This has been informed by the views of the respondents to the consultation which ended on 19 April 2006, as well as the results of the due diligence project undertaken on behalf of the DTI by KPMG.

Option	Benefits	Costs
<p>Option 1: Bring together consumer representation (including the existing consumer panels) to form a stronger body ("Consumer Voice") and create a redress scheme(s) for the energy and postal services sectors.</p>	<ul style="list-style-type: none"> - Consumer advocacy body has critical mass to engage effectively with Government, regulators and industry; - Delivery of greater cohesion and coherence for consumer advocacy; - Single point of contact for consumers (Consumer Direct); - Redress schemes to ensure redress for consumers and incentives on industry to resolve complaints themselves; - Net cost savings of about £10.5 million per annum from complaint handling, a reduction in the regional office networks and consolidation of offices and staff. 	<ul style="list-style-type: none"> - One-off implementation costs of about £8.7 million in the year of implementation.
<p>Option 2: Bring together consumer representation to form a stronger body ("Consumer Voice") incorporating expert</p>	<ul style="list-style-type: none"> - Consumer advocacy body has critical mass to engage effectively with Government, regulators and industry; - Maintenance of sectoral expertise within the consumer 	<ul style="list-style-type: none"> - One-off implementation costs of about £8.7 million in the year of implementation.

<p>panels, and create a redress scheme(s) for the energy and postal services sectors.</p>	<p>advocacy body;</p> <ul style="list-style-type: none"> - Single point of contact for consumers (Consumer Direct); - Redress schemes to ensure redress for consumers and incentives on industry to resolve complaints themselves; - Net cost savings of about £10.1 million per annum from complaint handling, a reduction in the regional office networks and consolidation of offices and staff. 	
<p>Option 3: Bring together consumer representation to form a stronger body (“Consumer Voice”) excluding the existing consumer panels, and create a redress scheme(s) for the energy and postal services sectors.</p>	<ul style="list-style-type: none"> - Consumer advocacy body has critical mass to engage effectively with Government, regulators and industry; - Facilitates the adoption (or retention) of specialist consumer panels by sectoral regulators where they wish to do so; - Single point of contact for consumers (Consumer Direct); - Redress schemes to ensure redress for consumers and incentives on industry to resolve complaints themselves; - Net cost savings of about £8.9 million per annum from complaint handling, a reduction in the regional office networks and consolidation of offices and staff. 	<ul style="list-style-type: none"> - One-off implementation costs of about £8.7 million in the year of implementation.
<p>Option 4: Retain the current system of consumer representation.</p>	<ul style="list-style-type: none"> - No additional benefits. 	<ul style="list-style-type: none"> - No additional costs
<p>Option 5: Bring together consumer</p>	<ul style="list-style-type: none"> - Single point of contact for consumers (Consumer 	<ul style="list-style-type: none"> - One-off implementation costs

<p>representation to form a stronger body, but do not establish redress schemes.</p>	<p>Direct);</p> <ul style="list-style-type: none"> - Consumer advocacy body has critical mass to engage effectively with Government, regulators and industry; - Potential efficiency savings from economies of scope and scale. 	<ul style="list-style-type: none"> - No powers to ensure redress to consumers where warranted.
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2.142 The recommended option would strengthen and streamline consumer representation by:

- utilising Consumer Direct as a single point of contact for all consumers;
- consolidating the sectoral and national consumer bodies to form a more effective consumer advocate; and
- creating new redress services in the regulated sectors with the power to resolve consumer complaints. These schemes would be set up and financed by industry and monitored by the regulators.

2.143 We estimate that option 3 would involve an implementation cost of about £8.7 million in the year of implementation. However, it would also produce **net savings** of around £8.9 million per annum over the cost of the existing system of consumer representation, whilst still achieving the benefits of having a strong and effective consumer advocacy body (“Consumer Voice”). This option would further facilitate the adoption (or retention) of specialist consumer panels by sectoral regulators where they wished to do so, whilst providing for redress scheme(s) in the regulated sectors to ensure appropriate redress for consumers.

Contact

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PROPOSALS TO IMPROVE THE REGULATION OF THE ESTATE AGENCY SECTOR

Introduction and Summary

- 3.1 This section of the Regulatory Impact Assessment assesses the costs and benefits of Government proposals to introduce compulsory redress for estate agents and to improve the regulation of the estate agency sector, which were originally set out in the Government response³¹ to the March 2004 OFT market study report on the estate agency market in England and Wales³². The proposals are aimed at dealing with the OFT findings that there is a high degree of consumer dissatisfaction with estate agency services, that consumers find it difficult to complain and obtain redress, and that enforcers are restricted in their ability to take action by limitations on their powers and the scope of the Estate Agents Act 1979 (EAA).
- 3.2 The OFT recommended that action was needed to improve estate agents' standards of customer service by improving service quality and means of redress by developing self-regulatory codes of practice. They also recommended that powers should be obtained to establish a statutory redress mechanism against the possibility that voluntary codes do not deliver improvements. As far as the EAA itself is concerned, OFT recommended some changes to make the existing regulatory regime more effective. To increase transparency there should be new documentary requirements for estate agents, including obligations to keep clear records of all offers made and copy these to both sellers and potential buyers. To facilitate enforcement, OFT and trading standards officials should be given enhanced powers to gain access to these records so it is easier for them to obtain evidence of breaches of the legislation and take enforcement action against agents who do not comply with regulatory requirements, including where justified banning unfit agents.
- 3.3 The Bill provisions will apply to those businesses that engage in estate agency work as defined by the EAA (which essentially applies to the buying and selling of residential property but not to lettings) and to both buyers and sellers.

Background

Existing regulatory regime

- 3.4 Estate agents in the UK are regulated by the EAA, which:

³¹ Government response to the OFT report on estate agents available online at <http://www.dti.gov.uk/files/file25880.pdf>

³² OFT report '*Estate agency market in England and Wales*' 2004 available online at <http://www.of.gov.uk/NR/rdonlyres/C60D0986-86B4-4A32-ACE8-41C48865693E/0/oft693.pdf>

- regulates the conduct of estate agents in the course of estate agency work, but does not cover the letting of properties;
- lays down the duties that agents owe to clients (such as the passing on of offers, handling money and giving details of charges) and to third parties (such as disclosure of personal interest); and
- gives the OFT the power to issue warning or prohibition notices against those persons they consider to be unfit to carry on estate agency work.

3.5 The Act establishes a “negative” licensing system; while estate agents do not have to obtain a licence to operate, the OFT can ban those agents they consider unfit to do so.

OFT Market Study

3.6 The OFT set out to find out if the market for estate agency services in England and Wales³³ was working well for both buyers and sellers. The OFT’s main conclusions were that:

- Although there were no obvious competition problems in relation to the structure of the market, there was evidence of a lack of price competition - consumers would benefit if they shopped around and negotiate on fees more often;
- Consumers were not happy with the services they received from estate agents and many had legitimate grievances. Some of these complaints concerned serious mischiefs that the legislation ought to deter, while others concerned quality of service issues, which could be appropriately dealt with under industry redress mechanisms if estate agents’ internal complaints procedures did not prove satisfactory;
- The EAA needed to be brought up to date and made more workable. Recommendations included: giving enforcement agencies more powers to investigate complaints and ban rogue agents; requiring estate agents to maintain written records of offers to sellers;
- extending the Act to cover new ways of buying and selling; and
- ensuring that estate agents’ contract terms and conditions were made clearer and easier to understand.

3.7 The OFT wanted the industry to improve service quality and means of redress by developing voluntary codes of practice that meet the requirements for OFT code approval under its Consumer Code Approval Scheme.

³³ Although the EAA applies to the whole UK the OFT excluded Scotland and Northern Ireland from the scope of the report – see paragraph 2.2 of the OFT report.

- 3.8 Powers should be sought to establish a statutory redress mechanism in the event that voluntary codes of practice did not deliver improvements and access to low cost redress remained low.

Rationale for Government Intervention

- 3.9 Estate agents play a central role in the housing market with over 90% of people buying and selling a home in England and Wales using an agent. In 2004 there were approximately 1.8 million house sales in England, Wales and Scotland with a total value of around £266 billion³⁴.
- 3.10 OFT's research found that 21% of sellers and 23% of buyers³⁵ reported problems with their agents. Some of these were serious problems that the legislation should deter. Less serious problems concerned service issues which do not usually warrant regulatory action by enforcement authorities or court action on the part of aggrieved consumers, but are more appropriately dealt with by estate agents' internal complaints procedures or by independent redress mechanisms. These complaints also include those complaints that are unfounded.
- 3.11 In addition to these complaints there is probably a significant number of consumers who would have complaints had they been fully aware of the actions of their estate agent. Serious issues, such as failing to pass on an offer, would not be reflected in the complaints percentages if consumers were unaware that there had been a problem.
- 3.12 The OFT identified a number of problems with the EAA which make it difficult to enforce and thus undermine its effectiveness in protecting consumers. As a result, consumers currently cannot be confident that they are adequately protected against potential abuses of their interests such as failure by estate agents to pass on offers and agents' bias towards buyers who also accept their financial services. These risks can be addressed by implementing the OFT's regulatory recommendations.
- 3.13 The Ombudsman for Estate Agents (OEA) scheme offers a free to the consumer, independent redress mechanism against the standards set out in a code of practice. In September 2005 the OEA code of practice received full OFT approval under the latter's Consumer Code Approvals Scheme. This should provide consumers with assurance that the scheme has reached high standards both in terms of its contents and its monitoring and enforcement. Since April 2006 the National Association of Estate Agents (NAEA) has required its member firms' principals, partners and directors to belong to the OEA scheme. The Royal Institution of Chartered Surveyors (RICS) does not offer an equivalent redress mechanism but it is currently piloting an ombudsman scheme in Scotland, which, if successful, will be rolled out

³⁴ HM Revenues and Customs Survey of Property Transactions in England and Wales – Tables T16.1 (England and Wales) and T16.1A (Scotland). Available on-line at: http://www.hmrc.gov.uk/stats/survey_of_prop/menu.htm

³⁵ OFT report '*Estate Agency Market in England and Wales*' p60-1

throughout the UK. Complaints picked up by the RICS scheme are transferred to the OEA for consideration if they concern estate agency work.

- 3.14 However, only about 60% of agents currently belong to the OEA scheme. Many consumers with complaints therefore do not have the option of seeking redress through a free and independent redress mechanism. Housing markets are local so, in some areas, it is possible that consumers find it very difficult to identify any agents who belong to the scheme. Furthermore, buyers (whose rights are also protected by the OEA scheme) may be unable to exercise choice in whether to go to a scheme member, since the property they are interested in, may be marketed by an agent outside the scheme. It is also possible that many consumers are unaware of the existence of the scheme.

Consultation

- 3.15 The OFT consulted widely in preparing their report and since its publication DTI, in preparing our initial response and resulting proposals, has consulted other Government departments with an interest in estate agents – the Department for Communities and Local Government, the Department for Constitutional Affairs, HM Treasury, the Cabinet Office, the Scottish Executive, the Department for Enterprise, Trade and Industry in Northern Ireland and the Welsh Assembly Government.
- 3.16 DTI has also met with representatives of the National Association of Estate Agents, the Royal Institution of Chartered Surveyors, the Ombudsman for Estate Agents, the Office of Fair Trading, *Which?*, the Trading Standards Institute, the Local Authorities Coordinators of Regulatory Services, and the British Standards Institute. We have taken their views into account in coming forward with our proposals.

Options

- 3.17 The Government agrees that this is a market where consumers stand to benefit from increased transparency of the offer process, more effective enforcement and improvements in estate agents' service quality and access to redress. This RIA therefore considers the costs and benefits of a number of options for addressing the problems OFT identified and which the Government intends to address. The options considered here are:

Option 1: Do nothing

Option 2: Implement the OFT's regulatory recommendations to change the EAA but take no action on redress

Option 3: Implement the OFT's regulatory recommendations and encourage subscription to independent redress schemes

Option 4: Implement the OFT's regulatory recommendations and introduce a mandatory requirement for estate agents to belong to schemes that offer independent redress.

Option 5: Introduce a new "positive" licensing system and/or require estate agents to belong to industry bodies, which require adherence to approved codes of practice.

3.18 The Government propose to proceed on the basis of option 4 which will improve transparency and enforcement in this sector and guarantee consumers access to independent redress when they have a problem with an agent, while not placing onerous costs on agents or adversely affecting competition.

3.19 The Government has already taken through Parliamentary provisions in Part V of the Housing Act 2004 which enable the Secretary of State to require estate agents to belong to a redress scheme (such as an ombudsman) which will determine complaints about Home Information Packs (HIPs). The Government intends to enact the redress provisions in the Housing Act and lay an order requiring all HIP providers to belong to an approved scheme by the time HIPs are introduced on 1 June 2007.

3.20 The provisions on estate agents in this Bill will:

- extend the statutory powers for redress so that it covers consumers throughout the UK (the 2004 Act only applies to England and Wales) and enable all relevant complaints about the buying and selling of residential property to be considered by a redress scheme;
- widen the circumstances in which the OFT can issue prohibition and warning notices, for example to prohibit an estate agent from continuing to practice where he has committed, but has not necessarily been convicted of, an offence;
- require estate agents to keep certain records relating to property transactions and the requirements of the EAA; and
- give the OFT and Trading Standards Officers greater powers to inspect estate agents' records where they have a reasonable suspicion that the EAA has been infringed.

3.21 In the options just described, "Implementing the OFT's regulatory recommendations" means implementing the measures described in paragraph 3.7. The Government stated in its response to the OFT report, that it was minded to accept a number of other recommendations. Not all of these required primary legislation, such as encouraging estate agents to subscribe to Codes of Practice, and we will be consulting in due course on how estate agency contracts can be made more transparent and on whether offer letters should be copied to buyers, which can be implemented through secondary legislation. Regarding the recommendation to widen the circumstances in

which estate agents have to disclose their personal interest in property transactions, it is considered that the types of mischief of estate agents that was the target of the policy proposal will now be caught under the Unfair Commercial Practices Directive and the Fraud Bill (together with common law in Scotland relating to fraud offences). It is also considered that it is no longer necessary to address flyboarding abuses as these would also fall under the Unfair Commercial Practices Directive. Regarding the recommendation to consider redefining what constitutes acting as an estate agent, the OFT has taken steps to address the two problems which were the source of its concern at the time of report. In December 2005 the OFT issued guidance on internet property retailers setting out the types of activities carried out by them and when they are covered by the definition of 'estate agency work' contained in the EEA, which has provided some clarity on this issue. In May 2006 the OFT took action against the main practitioners of Options Contracts, obtaining statutory undertakings from him not to mislead home sellers about the service offered. These actions have helped to clarify the scope of the EEA and have sought to provide protection to consumers when dealing with new types of estate agency businesses. Therefore we have no plans to change the definition of 'estate agency work' in the EEA at present.

Devolution

- 3.22 As estate agency is a reserved matter, changes to legislation will impact agents practising in Scotland and Northern Ireland, as well as England and Wales.

Business Sectors Affected

- 3.23 The impact of costs resulting from legislative changes will fall on estate agents. According to the OFT, there are around 12,000³⁶ estate agency offices in the UK. Some of these are members of large chains or affinity groups but the majority are small businesses, typically employing around 5 people³⁷. It is estimated that around 60% of estate agents are small independent firms³⁸.

Assumptions

- 3.24 Some of the proposed new requirements, in particular the keeping of records of individual transactions, should already be commonplace within the industry; both the OEA code and that of the National Association of Estate Agents require estate agents to keep a written or computerised record of all offers they receive (including the date and time of such offers) and the client's response. So at least 60% of the industry is already likely to be complying with these requirements.

³⁶ OFT estimate – page 28, paragraph 3.43 of the OFT report

³⁷ OFT report pg 30

³⁸ Council of Mortgage Lender research quoted on page 121 of Annex C of OFT's report: Estate agency market in England and Wales - international comparisons

- 3.25 The benefits for each of the options depends on how effective each is in terms of reducing grounds for consumer complaints and making it easier (less costly) for consumers to gain redress when their cause for complaint is justified.
- 3.26 Benefits arising from implementing OFT's regulatory recommendations and ensuring all estate agents belong to redress schemes include the benefits gained from reducing the causes for complaint in the industry and making it cheaper and more effective for consumers to gain redress. Given the high level of complaints and grounds for complaint in the industry the benefits to be gained could be significant.
- 3.27 There may be significant losses in a minority of cases, particularly where sellers' homes are sold for considerably less than their real value, which could result from failures to pass on offers or declare a personal interest. We estimate there could be around 180 cases a year (a conservative estimate that only 0.01% of transactions involve significant detriment) where individual consumers lose sums of £10,000 or more: this accumulates to a total of £1.8m per annum.
- 3.28 In addition to these serious complaints we also estimate that in a market with 1.8m residential property transactions with around 22% of customers having grounds for complaint, and an average value of complaint of £50³⁹ there are maximum benefits of £20m⁴⁰ to be gained from reducing these general complaints or providing a more effective redress mechanism.
- 3.29 Overall consumer detriment totals about £21.5m per annum.
- 3.30 However, at present, roughly 16%⁴¹ of complaints yield 'satisfactory'⁴² outcomes meaning that only around £3.5m of the £21.5m consumer detriment is retrieved – leaving net detriment from unsolved complaints of approximately £18m.
- 3.31 In addition to this detriment there is also cost to consumers in terms of the time and 'stress factor' associated with obtaining redress. In a market of 1.8m property transactions, where around 22% of customers have grounds for

³⁹ £50 is a conservative estimate which disregards the minority of more serious losses and reflects that the majority of complaints are likely to be minor e.g (OFT report p63) and that most complaints were made direct to estate agents. Of the 123 cases of alleged breaches of the EAA investigated in 2002 only around 10% merited serious consideration as to the fitness of the agent (OFT report p63). A similar figure can be deduced from awards data in the 2005 OEA Annual Report (available online at: <http://www.oea.co.uk/report/report.htm>). In 2005 the OEA paid out £176,050 in awards (using medium figures based on banded information). Dividing this by the number of complaints in scope (2334) gives a figure of about £75, but this ignores complaints settled by estate agents before referral to the scheme, which would bring the figure closer to our £50 estimate.

⁴⁰ $1.8m * 22% * £50 = £19.8m$

⁴¹ Based on OFT report figures on p60 and p61 of the main report. Assumed 63% of customers (71% of sellers and 55% of buyers) who have grounds for complaint actually did so and 25% of the complaints result in consumers gaining adequate redress (an estimate based on the number of buyers' complaints handled 'satisfactorily').

⁴² These may be outcomes that the consumer is happy with rather than the 'correct outcome'. If this is the case we may be overstating consumer detriment here.

complaint and around 63%⁴³ actually do so, these costs are likely to total £2.5m if we assume the cost of complaining is £10. Making it easier to complain will reduce this.

- 3.32 Overall detriment (from consumers failing to get redress and the time they spend trying to do so) therefore totals £20.5m per annum.

Benefits

3.33 Option 1 – do nothing

- 3.34 This would leave the market unchanged and leave consumers exposed to the risk that standards will not improve and consequent potential financial detriment. It is possible that more estate agents signing up to voluntary codes would bring about improvements in standards but these will not go as far in ensuring this outcome as the other options. The overall detriment to consumers is likely to remain at approximately £21m per annum.

3.35 Option 2 – implement the OFT’s regulatory recommendations

- 3.36 The OFT recommendations we intend to implement centre on improvements in estate agents record keeping (to improve audit trails), by requiring them to keep records of individual transactions; giving enforcement agencies more powers to investigate complaints by enhancing their powers of inspection; and expand the circumstances in which the OFT can consider the fitness of estate agents and whether to take regulatory action against them, making it is easier to ban rogue agents.

- 3.37 Implementing Option 2 will lead to a number of benefits for consumers. New record keeping requirements will lead to increased transparency in property transactions and increase consumer confidence in their integrity. The establishing of clear audit trails will benefit estate agents in that it will be easier for them to defend themselves against unjustified complaints. This will also help enforcers in that it will be easier to investigate complaints. Increasing enforcement powers will make the investigation of complaints more effective and make it easier for appropriate action, including banning orders, to be taken against rogue agents.

- 3.38 It should also be easier for consumers to obtain redress. Strengthening the existing “negative” licensing scheme should reduce the number of people with grounds for complaint as, with new record keeping requirements and evidence seeking powers, it will be easier for the OFT to identify unscrupulous estate agents and ban them from practicing. If we assume that this option reduces the number of people with grounds for complaint by 10%, it should produce net benefits of about £2m per annum.

3.39 Option 3 – implement the OFT’s regulatory recommendations and encourage subscription to industry redress schemes

⁴³ Average of buyers (55%) and sellers (71%)

- 3.40 This would have the same benefits as option 2 but would also bring additional benefits in terms of increased take-up of codes of practice, reducing causes of complaints in the industry; and making it cheaper and more effective for consumers to gain redress.
- 3.41 The benefits of this option depend critically on the number of estate agents that sign up to the voluntary scheme. The decision by the NAEA to require member firms' principals, partners and directors to belong to the OEA scheme, has increased the number of estate agents in the scheme to about 60%. This, however, leaves little scope for further upward movement. Even if RICS was to require its estate agent members to join the OEA, or roll out its ombudsman scheme to the whole of the UK, redress scheme membership would be unlikely to go much above 70%, leaving a sizable minority of estate agents not signed up. But if we assume that sufficient estate agents sign up to the scheme such that the number of people with grounds for complaint fall by another 10% (compared to option 2) those with grounds who actually complain increase by 20%, the number of complaints resulting in a successful outcome increases by 40% and the costs of complaining falls (as more agents are in a redress scheme) from £10 to £8. In this case net benefit is approx. £5.8m per annum.
- 3.42 **Option 4 - implement the OFT's regulatory recommendations and introduce a mandatory requirement for estate agents to belong to schemes that offer independent redress**
- 3.43 The key difference between this option and option 3 is that all agencies are now part of a redress mechanism. If we assume that all estate agents sign up to the scheme such that the number of people with grounds for complaint fall by 40%, that 82% of consumers who have grounds for complaint actually do so, and around 88% of them obtain a successful outcome, this leads to £15.7m per annum in benefits.
- 3.44 This option integrates enforcement of the requirement to belong to a redress mechanism with the OFT's existing negative licensing enforcement powers as we would expect approved redress schemes to share information about abuses with the OFT . There is no need to introduce a new statutory regulator, or a positive licensing system with associated compliance costs, which would be burdensome and a barrier to market entry. It should also provide an incentive for agents to improve service standards and have the cumulative effect over time of making it easier for regulators to identify and weed out rogue agents.
- 3.45 The requirement to market residential properties with HIPs potentially makes the role of estate agents in the house buying process more important. It is anticipated that in practice estate agents will compile the packs on the sellers' behalf and this potentially could mean that the estate agents' role will be enhanced in that they will be expected to give advice on the implications of pack information, particularly in terms of its marketable value or what remedial actions may be necessary to increase this value. The possibility that their

advice may be deficient in some way could make it even more important that sellers (and buyers) have access to independent redress. So this option also has the advantage of being forward looking in that it anticipates the potentially enhanced role of estate agents. The HIP also provides an opportunity to give consumers information about legislative requirements and redress arrangements.

3.46 Option 5 – introduce a new “positive” licensing system and/or require estate agents to belong to approved codes of practice

3.47 In this final option almost all consumer detriment is recovered yielding net benefit to consumers of around £18.3m. This is based on the assumptions that grounds for complaints halve (since all agencies have ‘minimum standards’) and number of complaints and those that are successful reach 90%. The addition of a statutory Ombudsman is assumed to reduce complaints cost from £10 to £3 per complaint. It is important to note that the exact amount of the benefit will depend on how stringent these minimum standards are – with very heavy licensing rules very close to all consumer detriment would be recovered but the costs would be much higher.

3.48 In addition, for all options that include expanding access to redress, additional costs savings will arise for cases that would otherwise have gone to the small claims court.

Costs

3.49 Option 1 – do nothing

3.50 This option imposes no new burdens so it should not lead to increased costs.

3.51 Option 2 – implement the OFT’s regulatory recommendations

3.52 In their report, the OFT comments that these changes will not be onerous to business. We consider that this will be the case with the recommendations we plan to implement.

3.53 Requiring agents to make and keep records, including records of offer letters, will incur additional costs for some estate agents, but these are likely to be small as many estate agents already meet these recommendations as they reflect elements of trading bodies’ codes of practice. For example the OEA Code of Practice requires member agents to keep a written or computerised record of all offers you receive (including the date and time of such offers) and the client’s response. This means that at least 60% of estate agents are subject to formal record keeping requirements. In addition those estate agents that take contract and pre-contract deposits from clients must have systems for recording transactions as required by the Estate Agents (Accounts) Regulations 1981, and all estate agents are subject to record keeping requirements under the Money Laundering Regulations 2003. Following the implementation of the Third Money Laundering Directive, estate agents will also be subject to checks to ensure compliance.

- 3.54 We consider that the number of estate agents not making and keeping records of transactions to be very small, perhaps less than 5%. Estate agents are already required to pass on offer letters promptly and in writing (unless the seller has specified he doesn't want to see them) and it is an undesirable practice not to do so. Photocopying and filing offer letters, or saving e-mails where sent, requires little effort on behalf of an agent. It is also in estate agents' best interest to do so, as they would want to contact other potential buyers when an offer is withdrawn.
- 3.55 According to HMRC there were 1.8 million residential property transactions in 2004⁷. Assuming there are 5 offers for every transaction, agents would have to send 9 million offers per annum. If 5% of agents do not have record keeping systems, 450,000 records need to be copied and filed. Assuming it costs 5p to photocopy a letter, this would come to £22,500 pa. This figure does not take account of offer letters sent electronically, so the actual costs is probably much less. We assume that all estate agents have photocopying equipment and that they would not have to purchase copiers and/or scanners to do this.
- 3.56 The enforcement changes proposed should make it easier for OFT and Trading Standards departments to enforce the EAA more effectively, which will increase the effectiveness of the time enforcement officers spend dealing with investigations and associated legal costs. Overall we think the changes will be cost neutral. It is up to Trading Standards in consultation with DTI to decide on its enforcement priorities given its resources.
- 3.57 **Option 3 – implement the OFT's regulatory recommendations and encourage subscription to industry redress schemes**
- 3.58 As well as the costs outlined for option 2 above, the costs of estate agents joining voluntary codes of practice and entering into schemes that provide redress will depend on the number of agents that choose to join such schemes. At present the costs of entering the Ombudsman for Estate Agents scheme is approx. £130 p.a.⁴⁴ per branch and 60% of estate agencies are part of the scheme. There are approximately 12,000 estate agencies in the UK so this equates to a cost of £936k. If a further 20% of estate agents join the Scheme annual membership costs would be £312k and one-off joining costs £56k. Depending on the number of agents joining, membership costs may actually fall as result of economies of scale. Costs also include those associated with advertising campaigns to raise consumer awareness of redress schemes and codes of practice. Publicity costs would be born by the schemes, but also by the OFT which recently publicised the Ombudsman for Estate Agents scheme after it obtained full code approval under its Consumer Codes Approval Scheme. That one-off campaign cost about £175,000, so we would expect a similar sum to be spent on a membership campaign, but more if it was ongoing. The OEA commented that persuading non-members to sign up would be expensive, but did not provide a cost estimate

⁴⁴ £129.25 per branch, including VAT, but excluding £23.50 joining fee.

- 3.59 **Option 4 - implement the OFT's regulatory recommendations and introduce a mandatory requirement for estate agents to belong to schemes that offer independent redress**
- 3.60 Assuming that the existing Ombudsman for Estate Agents scheme applies for and gets approval to run a mandatory redress scheme, costs would fall on the 40% of estate agents currently outside the scheme. Based on existing fees, annual membership costs would be £624k and one-off joining costs £113k. Should all estate agents join the Ombudsman Scheme, we would expect membership costs to fall somewhat as a result of economies of scale. A reduction in the membership fee of £10 would reduce costs for new members by £48k to £576k. There would also be savings for existing members of £72k, leaving a net cost of about £0.5m.
- 3.61 Some consumers may face higher charges since some agents might pass on the costs of scheme fees. Requirements to join schemes could also reduce the number of estate agents entering the market and therefore reduce competition.
- 3.62 There may be increased costs for regulators in dealing with estate agents who fail to sign up to approved schemes, but we think there would be few instances of this and the regulatory costs should be offset by other changes making it easier to enforce the EAA. There could also be possible additional costs in dealing with referrals from the redress schemes for regulatory action, but these would be cases where there is strong evidence that calls the agent's fitness into question and who may already be the subject of enforcement action.
- 3.63 **Option 5 - introduce a new "positive" licensing system and/or require estate agents to belong to approved codes of practice**
- 3.64 Costs for this final option depend on the exact nature of the 'minimum standards'. If these standards include basic commitments e.g. free redress and service standards of a certain level, costs are likely to be very similar to option 4 with potential licence fees as an addition. However, where minimum standards are much tougher and, for example, estate agents need to pass a professional qualification in order to practice, costs to estate agents will be significantly higher. The exact extent of these costs would need to be estimated through consultations with industry if specific measures were put forward.
- 3.65 However, if we use the analogy with consumer credit licensing⁴⁵ which imposes a positive licensing requirement on lenders and brokers, the cost of a licence could be around £200. If we assume that all 12,000 estate agency offices need to obtain such a licence, the initial costs to the sector could be

⁴⁵ Consumer credit licences currently cost £110 for sole traders and £275 for partnerships, limited companies and other organisations. The licences must be renewed after 5 years.

£2.4 million. If agents are individually licensed, this figure could be as much as £12 million.

- 3.66 The introduction of mandatory training costs will also impose costs on estate agents. If we assume that at each branch one agent needs higher level training at a cost of £2000 this will cost £24m (for 12,000 branches) and all agents need to pass basic level training at a cost of £300 (assume five agents at each branch) gives costs of £18m. Total training costs, therefore total £42m.
- 3.67 In addition to the direct training costs we also need to consider opportunity costs i.e. the costs to estate agencies of the lost earnings when agents are on training programmes. Assuming basic training lasts 5 days and advanced training lasts 20 days and salaries are £20k and £30k respectively, overall opportunity costs are £60m⁴⁶. Adding direct training and opportunity costs the costs of a detailed professional competency programme would be £102m. If training were a one-off requirement this cost could be amortised over several years (though training would also be needed for new agents entering the market), but if training was an ongoing requirement, as proposed by organisations such as *Which?*, this would be an annual spend requirement. Many estate agents have done training and obtained industry qualifications as members of trading bodies. If such qualifications were recognised by the licensing body, the number of estate agents required to training would be reduced.
- 3.68 This positive licensing arrangement also imposes additional costs as the standards act as a barrier to entry that have the potential of reducing competition. Where competition is reduced there is the risk that consumers will end up paying higher prices. This could be particularly significant in areas where there are few agents competing to begin with.

Small Firms' Impact Test

- 3.69 It is estimated that around 60% of estate agencies are small businesses so we have identified these proposals as ones that will have an impact upon small firms. It is possible that more than 60% of the cost of the proposals would fall upon small firms if they have lower existing standards than larger firms and if they are at present disproportionately outside industry redress schemes.
- 3.70 We have contacted by phone a number of small, independent estate agencies throughout the UK. They were relaxed about the proposed changes which would impact on their business practices. For example many of them already comply with potential new record keeping requirements. Costs would increase, but they did not think these would be significant. Some agents expressed misgivings about being forced to belong to the existing Ombudsman scheme but these were because agents are not currently able to

⁴⁶ Based on there being 230 working days per year (ie 52 five day weeks minus 30 days annual leave and bank holidays).

appeal against its decisions, not because of the cost implications. However, as the OEA grew out of a scheme for corporate estate agents, we estimate that less than 60% of its current membership will consist of small independents. If we assume that only around 30% of small independents currently belong to the scheme, then the cost of another 5,000 offices signing up to redress schemes would be around £600k⁴⁷ per annum (inclusive of VAT) and one-off joining costs of £118k.

- 3.71 These proposals also need to be seen in the context of the Government's proposals to introduce HIPs, which to some extent they complement. Research carried out by the Department for Communities and Local Government on the likely impact of HIPs on small businesses found that HIPs were only part of a much more extensive change programme facing small estate agents, not least changes driven by developments in information technology such as electronic conveyancing. Estate agents will also be affected by changes to money laundering regulations and those that carry out letting by the introduction of the Tenancy Deposit Protection Scheme. The research found a strong belief among small estate agents that one of the ways they could best compete with larger corporate competitors was to concentrate on quality of service. Effective redress arrangements will help with this.

Competition Assessment

- 3.72 OFT's report considered competition in this market and found no obvious competition problems in terms of its structure. In developing our recommendations we have considered the impact of each option on competition within the market. In particular we have taken account of the fact that introduction of a positive licensing scheme (option 5) would increase barriers to market entry and hence has the potential to significantly reduce competition and ultimately result in higher prices for consumers. With this in mind we conclude that option 5 is not the most appropriate method to resolve the problems in the market identified by OFT.
- 3.73 However, we consider that options 2-4 are generally pro-competitive. For example, by improving enforcement and removing unscrupulous agents from the market 'fair' competition between agents should improve.
- 3.74 These proposals should not disproportionately affect any areas of the market, other than unscrupulous agents, and should not affect overall market size.

Compensatory Simplification Measures

- 3.75 On 15 December 2005 the Secretary of State revoked the Restriction on Agreements (Estate Agents) Order 1970. The order, which made unlawful agreements and arrangements between estate agents relating to charges, the advertising of charges and recommendation of charges, was introduced following an investigation by the Monopolies Commission that found that

⁴⁷ Assuming a membership fee of £120.

estate agents charged fees or commission at rates published by national societies or local associations, and that this restricted competition and was against the public interest. The OFT recommended revoking the order on the grounds that practices covered by the order were likely to be subject of the Competition Act 1998 and that fines for breaches of the Act are likely to be a sufficient deterrent against the use of past practices. The 2004 OFT report on estate agents in England and Wales found no structural competition problems in the market and no evidence that agreements of the type prohibited by the 1970 Order existed. While not directly linked to the redress membership or enforcement changes, the revocation of the order reduces regulation in the sector and saves estate agents (particularly those setting up) time and money in interpreting and complying with the regulation, thereby offsetting some of the additional costs associated with these changes.

Enforcement and Sanctions

- 3.76 The EAA is enforced by the OFT and local Trading Standards Departments, and this will continue to be the case.
- 3.77 Following the proposed changes the OFT will have greater scope to consider the fitness of estate agents and whether to issue banning and warning orders under sections 3 and 4 of the EAA. The OFT and Trading Standards will be able to inspect records of transactions such as offer letters and gain access to premises and demand on-site production of records when they have reasonable grounds to suspect that an agent has not complied with the EAA. Estate agents that refuse to join an approved redress scheme will face penalty charges and will ultimately be banned from engaging in estate agency work if they refuse to join one. We expect these changes to lead to more enforcement action, but targeted at agents who breach the law. As with the other proposals in the Bill, enforcement should be in line with the Hampton principles of regulatory enforcement, as set out in the Hampton Report.
- 3.78 The enforcement changes proposed should make it easier for OFT and Trading Standards departments to enforce the EAA more effectively enabling them to better spend time dealing with investigations. Consequently the effect on enforcers should be cost neutral. While there will be some one-off training costs as the OFT and Trading Standards train their staff in the new regulations, with suitable forward planning some, or all of this, can take place as part of routine staff training.

Compliance and Monitoring

- 3.79 All estate agents will be required to belong an authorised redress scheme and comply with the regulatory changes to the EAA.
- 3.80 Compliance of redress scheme membership is expected to be very high as failure to belong to a redress scheme could result in estate agents being banned from practising. We expect Trading Standards to monitor membership of redress schemes in conjunction with checks on HIPs usage.

3.81 We also expect compliance with the regulatory changes to be high as they are designed to make it easier for enforcers to identify rogue agents and drive them from the market.

Post Implementation Review

3.82 There is a risk that our proposed approach of updating the legislation and requiring estate agents to belong to redress mechanisms will not result in the desired reduction in consumers having grounds for complaint or improvements in estate agency practices. We therefore propose to review the impact of these changes in a few years and will be undertaking some work in the future to establish a baseline against which the effectiveness of the action plan can be measured.

Summary and Recommendation

Option	Benefits and Potential to achieve objective	Costs and Risks
1. Do nothing	<p>Benefits: None</p> <p>Potential to achieve objective: The industry is already pursuing a number of initiatives, which should encourage agents to join suitable schemes. The OEA code of practice has received full approval under the OFT's Consumer Code Approvals Scheme and the RICS is piloting an ombudsman scheme of its own. The NAEA now requires member firms' principals, partners and directors to belong to the OEA. These have led to an increase in membership of schemes offering free and independent redress resulting in about 60% of all agents belonging to schemes.</p>	Costs: None
2. Implement the OFT's regulatory recommendations to	<p>Benefits: £2m p.a.</p> <p>Potential to achieve</p>	Costs: Up to £22,500 p.a.

<p>change the EAA but take no action on redress.</p>	<p>objective: Should make it easier for OFT and Trading Standards departments to enforce the EAA more effectively and lead to less complaints from consumers. Targets action on rogue agents.</p>	
<p>3. Implement the OFT's regulatory recommendations and encourage subscription to independent redress schemes.</p>	<p>Benefits: Up to £5.8m p.a.</p> <p>Potential to achieve objective: As above, but ancillary actions such as consumer education publicity campaign, changes in agents' marketing practices and role of trade bodies should encourage estate agents to sign up to codes of practice.</p>	<p>Costs: Up to £0.312m p.a.</p> <p>Risks: As above.</p>
<p>4. Implement the OFT's regulatory recommendations and introduce a mandatory requirement for estate agents to belong to schemes that offer independent redress.</p> <p>Powers in the Housing Act 2004 enable the Government to require estate agents in England and Wales to belong to redress schemes. But as these schemes can only consider complaints about HIPs, the Government will need to introduce additional legislation to extend their scope to all types of consumer complaints about the buying and selling of residential</p>	<p>Benefits: Up to £15.7m p.a</p> <p>Potential to achieve objective: As option 2, but will also ensure 100% of consumers have access to independent redress. This should also provide an incentive for estate agents to improve service standards, make it easier for regulators to identify poorer agents and take remedial action, including where appropriate banning unfit agents.</p> <p>This will also reflect the introduction of Home Information Packs (HIPs), which potentially make the role of the estate agent more</p>	<p>Costs: £0.5m p.a.</p>

property, and those in Scotland and Northern Ireland.	crucial and increase the importance of consumers having access to redress when things go wrong.	
<p>5. Introduce a new “positive” licensing system and/or require estate agents to belong to approved codes of practice.</p> <p><i>Which?</i> has called for a system that would feature a new regulator, licensing, a mandatory code of practice and competence requirements.</p>	<p>Benefits: Up to £18.3m p.a.</p> <p>Potential to achieve objective: As option 2, but upfront licensing tests may also prevent some unfit people from starting in business in the first place.</p> <p>Will ensure 100% of consumers have access to independent redress.</p>	<p>Costs: £2.4 - 12m p.a (where ongoing training is required these costs will increase by up to £102m p.a.)</p>

3.83 Option 4 is recommended because it provides a targeted, proportionate approach, which has the potential to improve standards considerably in this sector without imposing unnecessary costs on the industry, and also addresses potential changes in the role of estate agents as a result of the introduction of HIPs.

Contact

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DOORSTEP SELLING AND COLD CALLING

Purpose and Objectives

- 4.1 This section of the Regulatory Impact Assessment considers the options and the associated costs and benefits for extending consumers rights under the Doorstep Selling Regulations 1987 to solicited visits.
- 4.2 In September 2002, the National Association of Citizen Advice Bureaux (NACAB, now Citizens Advice) published a report, "Door to door" which looked at a wide range of goods and services sold at the door and problems reported to Citizen Advice Bureaux (CAB). They saw the main problems in doorstep selling transactions as being:
- lack of awareness about consumer rights;
 - consumers being misled and subjected to high pressure sales techniques;
 - cancellation rights and cooling off periods being limited to certain types of doorstep sales which can confuse consumers;
 - cancellation rights being ignored by salespersons; and
 - the goods sold to consumers being unsuitable for their needs or do not meet their requirements.
- 4.3 The report was submitted to the Office of Fair Trading (OFT) as a super-complaint within the terms of the Enterprise Act 2002 and the OFT confirmed in November 2002 that they would investigate the doorstep selling market.
- 4.4 The OFT published their doorstep selling market study report on 12 May 2004. In their report the OFT recommended consideration of and consultation on measures to improve protection for consumers purchasing goods or services at the door.
- 4.5 The Government responded by launching a public consultation on 14 July 2004, the purpose of which was to canvass as wide a range of views as possible from key stakeholders, including businesses engaged in doorstep selling.

- 4.6 On 7 September 2006, the Government announced what it intended to take forward following the consultation, taking into account relevant developments in the area, namely the Unfair Commercial Practices Directive (agreed by EU Member States in May 2005) and the Government's Consumer Strategy (published in June 2005). A full Regulatory Impact Assessment of the seven OFT recommendations was published alongside the Government's response to the public consultation on doorstep selling and cold calling.⁴⁸
- 4.7 The Government is now seeking to extend to solicited visits the cancellation rights and cooling-off period that consumers currently have following an unsolicited visit by a trader to their home. Primary legislation is needed to provide a power enabling us to bring forward this measure in revised regulations.

Background

- 4.8 The OFT study examined the practice of transactions concluded via doorstep selling and their analysis led them to make recommendations to better protect consumers in this area. Doorstep sales were conservatively estimated by OFT⁴⁹ to amount to some £2.4 billion every year in the UK. Of this double-glazing doorstep sales were estimated at £1.6 billion, conservatories at £250 million and mobility products (stairlifts, wheelchairs, powered scooters) at £80 million. During the consultation period representations suggested that replacement windows and doors alone could amount to around £2.5 billion, with conservatory sales amounting to a further £0.8 billion. Kitchens, driveways and insulation are other products typically sold in the home. The vast majority of sales (at least by value) therefore relate to home improvements or property services.
- 4.9 Doorstep selling can be a beneficial means of selling as it:
- avoids the need for consumers to travel, thereby helping those with mobility problems, often the elderly;
 - can allow more opportunity for discussion of the product and tailoring to the specific needs of the consumer; and
 - can present consumers with new options that they had not previously considered

⁴⁸ www.dti.gov.uk/consumers/buying-selling/Doorstep-selling/index.html

⁴⁹ Doorstep Selling: A Report on the Market Study, OFT 2004, excludes switching energy supplier.

- 4.10 However, there is evidence from the OFT study that in some cases consumers suffer detriment as a result of pressurised selling techniques and/or lack of knowledge of their rights. Consumers have additional rights when purchasing goods at the door, provided by the 'Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987' (as amended). Consumers who purchase goods or services over the value of £35⁵⁰ as a result of cold calling (i.e. they did not request the sales visit) have the right to cancel the contract within 7 days. The same cancellation right applies if the sales visit was the result of an unsolicited doorstep or telephone call.
- 4.11 Both the OFT study and our consultation paper recognised the potential significance of the Unfair Commercial Practices Directive (UCPD), which had yet to be agreed. The Directive was adopted in May 2005 and must be applied in the UK by the end of 2007. The UCPD prohibits unfair commercial practices that harm consumers' economic interests. It introduces a general prohibition on all unfair commercial practices known as a 'general duty not to trade unfairly'. The Directive's general duty is supplemented by additional provisions that prohibit practices that mislead (by action or omission) or are aggressive (by harassment, coercion or undue influence). This means that the Directive will address high-pressure sales and misleading information techniques used by rogue traders in the doorstep selling and cold calling sector. Background on the Unfair Commercial Practices Directive can be found at: www.dti.gov.uk/consumers/buying-selling/Unfair-Commercial-Practices/index.html

Rationale For Government Intervention

- 4.12 Whilst current regulations do afford consumers more protection when they purchase goods and services in their home, there are a number of reasons to believe that they are not working as well as they could.
- 4.13 Firstly, consumers are currently unaware of when they have rights. A survey carried out for OFT found that only 6% correctly identified that they had more rights when purchasing goods and services in the home. Of those only 7% correctly identified what those rights were. Evidence collected by Citizens Advice suggests many people try to cancel their contracts, but are told they cannot, often as a result of abuse of the current distinction made in the Regulations between unsolicited and solicited calls.
- 4.14 A survey carried out by LACORS, and included as an annex to the OFT report, obtained data from authorities that collectively represent 26% of the UK population. In an 18-month period there were over 5,500 doorstep selling complaints recorded. A large number of these complaints related to selling practices. Given the low level of awareness amongst consumers of their rights, this sort of level of complaints might be under-representing the scale of any problem.

⁵⁰ The £35 threshold is based on the Directive's threshold of €60

- 4.15 There are an estimated 15,000 reported cases of rogue trading (i.e. the sale of overpriced and/or substandard goods or services) every year. Many more go unreported. OFT estimate that the average amount of money paid to these rogue traders is £2,000, so it is possible that in excess of £30 million is handed over to rogue traders every year. Consumers lose out of the protection offered by the current regulations and legitimate businesses suffer, as they have to put increased resources into distinguishing themselves from dishonest traders.

Consultation

- 4.16 Following the publication of the OFT's report the Government's response undertook to consult publicly on the seven options for change they recommended. One of the options was:
- 4.17 Option 1: Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders.
- 4.18 The consultation closed on 15 November 2004. A Statistical Summary of the responses received and the Government's response to the consultation can be viewed on the DTI website at: www.dti.gov.uk/files/file25481.pdf
- 4.19 We received 2,866 responses to the consultation from the following groups: Academics 1; Business 49; Consumer bodies 20; Government 4; Private Individuals 161; Private Individuals responding to coupons and websites 2,573; and Regulatory bodies 58. Not all people who responded necessarily answered or gave an opinion on each and every option.
- 4.20 2,734 of responses were received from private individuals. 94% (2,573) of these were generated directly from newspaper campaigns and websites which raised only single issues, not all of the seven options put forward.
- 4.21 Extending consumers' rights to solicited visits received one of the next highest support from stakeholders across the board: those in support 343; those in opposition 7.

Options

- 4.22 The OFT report recommended extending consumers' rights, which they currently enjoy following unsolicited visits to their home, to solicited visits to their home to reduce the existing consumer detriment associated with some doorstep selling practices. There are two options the Government can pursue:
- 4.23 **Do Nothing.** This would leave the legislation unchanged and existing consumer protection in place, but fail to tackle known examples of consumer detriment. In this instance, regardless of changes made to domestic regulations, some of the problems identified may be addressed through the implementation of the Unfair Commercial Practices Directive (UCPD) into UK law in 2007.

- 4.24 **Extend to solicited visits the cancellation rights and cooling-off period which consumers currently have following an unsolicited visit by a trader to their home.** The rationale for existing consumer protection is that unsolicited calls may catch consumers unawares and make them more vulnerable to pressure selling techniques. But there is evidence from the OFT study that such techniques can have the same effect in both solicited and unsolicited calls. This would remove opportunities for traders to exploit the distinction between solicited and unsolicited visits.

Business Sectors Affected

- 4.25 All businesses that make sales on the doorstep would be affected by this change to the 'doorstep selling' regulations. By value, the most doorstep sales are achieved by double-glazing companies, for which more than 90% of sales are conducted on the doorstep. Other goods and services commonly sold on the doorstep include property services (such as kitchens, driveways, garden services, insulation, etc.), mobility products (for instance, stairlifts) and energy provision. A wide variety of businesses will therefore be affected by any change in the doorstep selling regulations.

Do Nothing

- 4.26 The Unfair Commercial Practices Directive (UCPD) is due to be transposed into UK law in 2007. This Directive addresses high-pressure sales and misleading information techniques which can be used in this sector. Articles 6 & 7 prohibit misleading commercial practices by actions or omissions. Articles 8 & 9 prohibit aggressive unfair commercial practices, which by "harassment, coercion or undue influence" could significantly impair a consumer's freedom of choice, all of which could cause a consumer to take a transactional decision which they would not have otherwise taken. Although not offering a cooling-off period, this means that the Directive will improve protection for consumers from pressure selling and misleading information suffered when buying in the home. This will occur even if no other changes are made to existing UK 'doorstep selling' regulations.

Extend to solicited visits the cancellation rights and cooling-off period which consumers currently have following an unsolicited visit to their home

- 4.27 Removing the distinction between solicited and unsolicited would make the law simpler and clearer for the consumer, business and enforcement agencies.
- 4.28 Businesses will be able to work with one contract for both solicited and unsolicited visits, reducing ongoing costs in production of contracts and training of sales staff. The simpler rules will ensure that businesses do not need to spend time establishing whether their sales visit is solicited or unsolicited. Also, consumers who, at present, avoid doorstep selling due to being uncomfortable with the situation may now participate in this market, as

they will be given the confidence by the ability to cancel purchases; a benefit to business by possibly expanding the number of potential customers.

- 4.29 Enforcers will not have to use valuable resources on determining whether a visit was solicited or not as the same rules will apply, making it easier to follow up complaints and enforce the regulations.
- 4.30 Consumers will be at less risk from traders exploiting the difference between solicited and unsolicited visits. The following benefits can be identified:
- In the event that consumers are subject to high pressure selling and talked into a purchase that was not appropriate for them they would be able to cancel the agreement, regardless of who instigated the visit;
 - Existing purchasers as a result of solicited visits would benefit from the cooling off period; and
 - New consumers may now have the confidence to buy on the doorstep due to their greater ability to cancel purchases and will benefit by having this extended choice of supplier.
- 4.31 The UCPD will also act to protect consumers against high pressure selling following its implementation in late 2007.

Costs

Do Nothing

- 4.32 There would be no additional costs as a result of maintaining the current regime. However, existing levels of consumer detriment and frustration identified by the OFT study would remain until the UCPD is implemented into UK law. Though even then the UCPD will not provide a specific cooling-off period.

Extend to solicited visits the cancellation rights and cooling-off period which consumers currently have following an unsolicited visit to their home

- 4.33 There is evidence that some customers currently try unsuccessfully to cancel their contracts, with the distinction between solicited and unsolicited visits being unclear. An increase in cancellations after doorstep sales would be expected. Assessing the impact on the businesses engaging in doorstep selling is difficult because there is no reliable data available on how many companies engage in doorstep selling. Also, there is no accurate, consistent data collected which shows the number of complaints in relation to 'doorstep selling' or the '1987 Regulations'. Different terms may be used by different enforcement agencies to describe the actions of rogue or bogus doorstep traders such as '*doorstep complaints*', '*home complaints*', '*illigitimate traders*', '*misleading selling*' and so on.
- 4.34 The costs involved in adopting this measure are:

- Re-printing contracts to include cancellation notices;
 - Informing/training salespeople of the cooling-off period; and
 - Potential additional cancellations
- 4.35 At the current time, doorstep salespeople may use different contracts depending on whether their visit was solicited or unsolicited. This measure would allow salespeople to use the same contracts. Costs involved are likely to be negligible for this reason and probably outweighed by the ongoing benefits of using the same contracts.
- 4.36 Doorstep salespeople will need to be informed about the changes to procedures, but as the procedure will not be new to them, this will again be negligible.
- 4.37 The major impact on firms of introducing a cooling-off period for solicited sales visits would be in time spent on sales subsequently cancelled, for example the salesperson's time, administration time, potential work undertaken by designers/technicians – time that the business could have spent on pursuing other sales leads.
- 4.38 Time spent by salespeople in people's homes can result in a sale, no sale at all or a sale that is later cancelled within 7 days. Success rates vary across different types of doorstep selling. The OFT report found that cold calling yields roughly 1 in 10-12 sales, whilst professional salespersons with a pre-arranged appointment might achieve 1 in 2-3⁵¹. Extending cancellation rights therefore might have the effect of slightly reducing the success rate of doorstep sales. As a result, additional sales and administration time may be spent on achieving the same number of sales.
- 4.39 In the case of double-glazing (which accounts for the majority value of doorstep sales), information from stakeholders suggests that around 4% of unsolicited doorstep sales currently result in cancellation (this figure is quite variable, and often cancellation can result due to failure for consumer's to qualify for credit facilities). The extension of this right to solicited visits might be expected to result in a similar or lower percentage of cancellations. An estimate for what this might cost business is between £2.9 - £11 million⁵² per year. However, there are many reasons to believe that the costs will not be so high. Often, work on the customer's order will not commence in the seven-

⁵¹ Doorstep Selling: A Report on the Market Study, OFT 2004, excludes switching energy supplier.

⁵² This is based on sales of £1.85bn (estimate of annual value of double glazing and conservatory doorstep sales from OFT report), an average purchase price of £4,000, which suggests 462,500 sales visits concluding in a sale. OFT report estimates that 62% of high value doorstep sales result from solicited visits, suggesting 286,750 successful solicited sales visits. The industry indicates that 4% of unsolicited sales are currently cancelled, but this is highly uncertain, hence we continue this estimate using an assumption of 2-8% additional cancellations. This leads to between 5,500 and 23,000 additional cancelled visits, taking a generous assumption of each unsuccessful visit costing £500 leads to a range of additional costs in double glazing and conservatory sales of £2.9 - £11.5 million.

day cooling-off period, in which case costs incurred are just the salesperson's time and potential foregone sales. In addition, many companies in this area already offer cancellation rights following solicited visits, so for them there would be no additional costs, further limiting the impact this measure on them.

- 4.40 Ultimately, it is often the case that where customers cancel a contract they still want the product but decide to go with a different supplier. Alternatively they will be deciding to cancel following high pressure selling techniques. Arguably, the risk of greater costs from cancellation could be an incentive to companies selling in the home to resist pressure selling and ensure the customer really wants their product. However, there will always be a minority of consumers who will genuinely just change their minds.
- 4.41 The measure will not impose costs on enforcement agencies beyond informing officers of the changes. Although there may potentially be more offences under the regulations, this is offset against enforcement agencies not having to use resources to prove whether a visit was unsolicited or not.

Equity and Fairness

- 4.42 Vulnerable groups such as the elderly may be particularly at risk from rogue traders and bogus selling practices and they feature prominently in evidence of consumer detriment and doorstep crime. However, it needs to be kept in mind that a range of consumers, of varying ages and backgrounds might be described as "vulnerable" at certain times and in particular circumstances. As a general principle, and acknowledging that certain consumers may benefit from additional protection, no consumer should be put at a disadvantage when purchasing goods or services in their own home.

Consultation with Small Business: the Small Firms' Impact Test

- 4.43 During initial consultation we contacted a number of small firms in the building and double-glazing sectors. All the firms contacted said that they did not undertake unsolicited visits and instead relied upon their local reputation and private recommendations to obtain business. This has made it difficult to identify additional costs to small business.
- 4.44 Small Business Service (DTI/SBS) responded to our original consultation and we have liaised further with them. Their view is that many legitimate small businesses in relevant sectors could face increased costs and some loss of business, and that the proposed measure may have limited impact on the real rogues. However, they accept that this measure is more proportionate than the alternatives, which we are not proposing to take forward (such as a ban on cold calling to offer property services).
- 4.45 A short questionnaire on the impacts on small business of the preferred option was sent to small businesses that conclude at least some of their business on the doorstep. The replies we received suggested that extending consumers rights to solicited visits was a positive move. However, it was raised that in some cases there could be some cost implications such as handling charges when returning goods to the supplier and associated administrative costs.
- 4.46 It is understood that there could be some loss of business in the future, however we believe this loss will be because consumers did not really want the products in the first place. We believe our proposal gives significant new protection to consumers without placing a disproportionate burden on business.

Competition Assessment

- 4.47 The proposal for change will affect the majority of contracts, which are concluded or agreed in a consumer's home, that of another consumer, or during an excursion organised by the trader. A high majority of contracts concluded in the home are made up of double-glazing, conservatories, other property services, mobility aids and hearing aids. Another high majority of contracts concluded in the home are by electricians, plumbers, carpenters and similar trade persons. This option is unlikely to have a detrimental impact on competition. 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.
- 4.48 Some affected markets are more concentrated than others, for example the five-firm concentration ratio for double-glazing is roughly 50%, and other markets have many firms. The proposed change is likely to have a similar effect on all types of firms within markets, be they small, large, new or old, so the structure of markets is likely to remain unaffected.

- 4.49 The majority of markets where sales are made on the doorstep are not characterised by rapid technological change. This option will not affect firms' choices of price, quality and location.

Enforcement, Sanctions and Monitoring

- 4.50 This proposed regulation would be enforced by Trading Standards as with the current 'doorstep selling' Regulations.⁵³
- 4.51 The effectiveness of this change to the Regulations can be monitored via the Office of Fair Trading who collate statistics of consumer complaints about unscrupulous traders via local Trading Standards Departments and Consumer Direct.

Post Implementation Review

- 4.52 The European Commission is reviewing the eight consumer Directives, including the 'doorstep selling' Directive, that make up the consumer acquis in the EU. This review will evaluate the extent to which the Directives, as a whole and individually, meet the Commission's consumer protection and internal market goals, including looking at how they are applied in different countries. The aim is to modernise the Directives, and where possible to simplify and harmonise them. The review is being carried out in parallel to a wider review of contract law in general.
- 4.53 To enable the DTI to feed into the Review it commissioned research from a consortium of academics to look at the law implementing the eight Directives in the UK. The aims of this research were to: (i) consider where the UK law goes further than required by the corresponding EU Directive and, (ii) provide a detailed analysis of the extent to which the Directives might be simplified and rationalised. In addition, the research identifies which of these additional measures identified in (i) fall within the scope of the Unfair Commercial Practices Directive. The DTI has published this research and sought views on its findings.
- 4.54 The outcome of the Review of the consumer acquis may have implications for our 'doorstep selling' Regulations.
- 4.55 Background about the consumer acquis can be found at: www.dti.gov.uk/consumers/policy/eu/review/index.html

Summary and Recommendation

- 4.56 As explained in the Statistical Summary and Government Response to the doorstep selling and cold calling consultation, the implementation of the Unfair Commercial Practices Directive (UCPD) into UK law should help address

⁵³ Failure to provide the consumer with a written notice of cancellation (one of the consumers' rights), which contains all the relevant information requirements, makes the contract unenforceable. A trader guilty of the offence of failing to provide the consumer with a notice of cancellation is liable on summary conviction to a fine not exceeding level 4 (£2,500) on the standard scale

some of the existing problems associated with doorstep selling. It is recommended that to complement the additional protections introduced by the UCPD the option discussed in this paper is taken forward. Ensuring that cancellation rights are the same for solicited and unsolicited sales will make the law clearer and simpler for consumers, businesses and enforcers. We believe our proposal gives significant new protection to consumers without placing a disproportionate burden on business.

Summary Table of Costs and Benefits

Option	Benefits	Costs
1. Do nothing	UCPD will address some consumer detriment	No additional costs
2. Extend cancellation rights to solicited visits	Simpler procedures for business Enforcement and sales made easier by not having to determine whether visit was solicited or unsolicited Consumers protected against pressure selling by the right to cancel the contract	Re-printing contracts and informing salespeople (negligible) Additional cancellations impose costs (under £11 million per year)

Contact

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DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

*Ian McCartney, Minister of State for Trade, Investment and Foreign Affairs,
Department of Trade and Industry*

End
DTI
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