

**dti**

**DOORSTEP SELLING AND  
COLD CALLING**

Consultation on proposals to  
improve consumer protection  
when purchasing goods or  
services in their home.

July 2004

**URN 04/1331**

**dti**

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

## **Doorstep selling and cold calling**

This consultation document seeks your views on a number of legislative options for improving the protection of consumers purchasing goods or services in their homes.

These options and the problems they address have been identified by a study of doorstep selling conducted by the Office of Fair Trading (OFT) and recommended for consideration and consultation in the market study report.

In response to the OFT's recommendations, the Department is seeking views from stakeholders on the legislative options identified by the market study in order to inform consideration of how to proceed.

**Issued:** 14 July 2004

**Respond by:** 15 November 2004

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## **FOREWORD BY GERRY SUTCLIFFE, MINISTER FOR EMPLOYMENT RELATIONS, COMPETITION AND CONSUMERS**

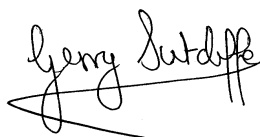
I am inviting views from a wide range of stakeholders on a number of proposals aimed at improving the protection of consumers when purchasing goods or services in their homes.

There is disturbing evidence that, despite existing legislation<sup>1</sup>, consumers are suffering detriment and even distress when purchasing goods or services “at the door”. Concern is increased by the fact that consumers within the vulnerable categories appear to be the most frequent victims or even the direct targets of unscrupulous traders. This is clearly unacceptable.

Of course there are a large number of legitimate traders who conduct business by means of cold calling and doorstep selling. There is no wish to inhibit these traders or burden them with additional regulation. But unscrupulous traders represent unfair competition to legitimate business. It seems clear that the effectiveness of existing protections should be reviewed and new measures to tackle unscrupulous practices considered in the interests of both consumers and legitimate businesses.

The Office of Fair Trading (OFT) have published a report<sup>2</sup> on their market study of doorstep selling and identified a number of options for improving consumer protection for consideration. I welcome the report and I agree that the legislative options put forward by the OFT for improving consumer protection should be seriously considered and the subject of thorough consultation of stakeholders.

This consultation document describes the identified options, adding relevant background where necessary and provides the opportunity for stakeholders to submit their views. I urge all stakeholders to make sure that their views are presented during this consultation to inform the Government’s consideration of how to proceed.



GERRY SUTCLIFFE

<sup>1</sup>Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, as amended by the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1988 and the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1998.

<sup>2</sup> Doorstep Selling – A report on the market study (May 2004)  
<http://www.of.gov.uk/News/Press+releases/2004/83-04.htm>

## 1. EXECUTIVE SUMMARY

1.1 This consultation document seeks views on options for improving the protection of consumers purchasing goods or services in their homes. There is evidence that, despite existing protections, consumers are suffering detriment as a result of the activities of some traders.

1.2 In November 2002, OFT announced that they would investigate doorstep selling in response to a supercomplaint within the terms of the Enterprise Act 2002. The OFT have now published their report on their market study and their recommendations for improving consumer protection. The Government welcomes the report and has agreed to consult on options identified as a result of the study.

1.3 Views are invited on the following options:

- Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders.
- Removing or amending regulation 7(2)(iv) of the Doorstep Selling Regulations 1987, which enables a trader to recover costs of fitting or installing goods if a contract is cancelled, so that this protection for traders applies only in cases where a customer asks for work to commence as soon as possible and is aware of the effect on cancellation rights.
- Prohibition on goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed in the case of unsolicited visits.
- Prohibition on money being paid or taken before the seven day cooling-off period has elapsed.
- A ban on cold calling to offer property services with possible necessary exceptions
- Requiring cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost.
- Firms trading via doorstep selling to provide consumers with greater transparency on prices for their products and demonstrating greater willingness to provide written quotes.

1.4 If supported by the response to the consultation, some of these options could possibly be taken forwards by secondary legislation amending the Doorstep Selling Regulations, although this would obviously depend on the way in which they were taken forward. Possible candidates for secondary legislation are:

- removing and amending Regulation 7(2)(iv);
- prohibiting the delivery of goods or work being carried out within the cooling-off period; or prohibiting money being paid or taken within the cooling-off period;

- requiring cancellation notices to be more prominently and clearly displayed in the contract.

It is less clear that extending the cooling-off period to solicited visits would come within this category. A ban on cold calling to offer property services would not and would require primary legislation. The more prominent display of cancellation notices and greater transparency on prices might be addressed without legislation (e.g. by means of codes of practice.)

## 2. HOW TO REPLY

2.1 This consultation document seeks views on a series of options for improving the protection of consumers purchasing goods or services in their homes.

2.2 We invite comments by **Monday 15 November 2004** at the latest. Earlier responses would be very welcome.

2.3 Responses should be sent – by email if possible – to the address below. An electronic version of the response form can be found at <http://www.dti.gov.uk/ccp/consultations.htm>

2.4 Responding to this consultation:

by Email: [Doorstep.Selling@dti.gsi.gov.uk](mailto:Doorstep.Selling@dti.gsi.gov.uk)

by post: David Swepson  
Consumer and Competition Policy Directorate  
Department of Trade and Industry  
Room V 426  
1 Victoria Street  
London, SW1H 0ET

2.5 Questions and a response form are at Annex A. The response form and Partial Regulatory Impact Assessment are available electronically at <http://www.dti.gov.uk/ccp/consultations.htm> .

2.6 When responding please state whether you are responding as an individual or representing the views of an organisation or representative group. If responding on behalf of an organisation or representative group please make it clear whom the organisation represents and, where applicable, how the views of members were assembled.

2.6 Your response may be made public by the DTI. If you do not wish all or part of your response (including your identity) to be made public, please state this in your response. Any confidentiality disclaimer that may be generated by an organisation's IT system or included as a general statement in a fax cover sheet will be taken only to apply to information in the response for which confidentiality has been requested.

2.7 We will handle any personal data provided appropriately in accordance with the Data Protection Act 1998.

2.8 This consultation document is available electronically at <http://www.dti.gov.uk/ccp/consultations.htm>. It may be photocopied without prior permission. Additional copies can be obtained by calling 020 7215 0387.

2.9 A list of those being directly consulted is at Annex B. We would welcome suggestions of others who may wish to be included in this consultation process.

### Help With Queries

2.10 If you have questions about the issues raised in this consultation or require any further information, please contact David Swepson (Email: [david.swepson@dti.gsi.gov.uk](mailto:david.swepson@dti.gsi.gov.uk) Tel: 020 7215 3805).

2.11 If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Nick Van Benschoten  
Consultation Co-ordinator,  
Department of Trade and Industry  
Room 723  
1 Victoria Street  
London SW1H 0ET  
Email: [Nick.van\\_Benschoten@dti.gov.uk](mailto:Nick.van_Benschoten@dti.gov.uk)

2.12 A copy of the Code of Practice on Consultation is at Annex C.

### **What Happens Next?**

2.13 We aim to publish the results of this consultation by January 2005.

### **3. Background**

3.1 Protection for consumers purchasing goods or services in the home are currently provided by:

The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, as amended by  
The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1988 and  
The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) (Amendment) Regulations 1998.

3.2 Collectively, the Regulations, which implement the Doorstep Selling Directive (85/577/EEC) in the UK, give consumers the right to a seven day cooling-off period during which they may cancel an agreement to buy goods or services worth more than £35 from a trader whose visit was unsolicited. The Regulations also provide that consumers who agree to a visit following an unsolicited doorstep approach or telephone retain their right to a seven day cooling-off period.

3.3 In addition, traders who fail to inform consumers in writing of their right to a cooling-off period will be committing a criminal offence. Door-to-door sellers must provide a notice setting out cancellation rights when any agreement is made. Failure to do so makes the agreement unenforceable, whether a deposit is paid or not.

3.4 There is evidence that, despite existing protections, consumers are suffering detriment as a result of the activities of some traders. The causes of detriment include misleading or inadequate information, aggressive selling techniques, high prices or substandard goods or services. It is also apparent that detriment may arise and complaints may not be made because consumers do not have sufficient knowledge or understanding of their rights when making purchases in their home.

3.5 A particular area of concern is that of bogus trading. This is where consumers (often, but not exclusively, the elderly or vulnerable) are cold called and tricked or pressurised into paying large sums for very shoddy goods or services. There are other examples of bogus trading (e.g. van sales of food unfit for consumption) but property maintenance (e.g. roofing or tarmacking) covers a high proportion of cases and these are almost always high value cases. The consumer detriment in individual cases is high and, if victims are vulnerable people, the result is often considerable distress as well as financial loss.

3.6 Bogus trading and its perpetrators have also been linked to crimes such as distraction burglary although such crimes are also linked to cold callers claiming to represent a range of commercial and public concerns, including utility companies, health and social services and market research organisations.

3.7 In March 2002, Age Concern issued a report – “Sharp Selling Practices in the sale of assistive products to older people”<sup>3</sup> based on research conducted - by Ricability. The report drew on cases from the files of Age Concern and others to highlight complaints about selling methods used by some traders in the assistive products sector. The report recommended a range of measures to deal with unacceptable selling practices.

3.8 In September 2002, NACAB (now Citizen's Advice) published a report on doorstep selling - "Door to Door"<sup>4</sup> - containing experience of CAB clients across a range of goods and services. NACAB submitted the report to the Office of Fair Trading (OFT) as a "supercomplaint" within the terms of the Enterprise Act 2002. In November 2002, OFT announced that they would accept the supercomplaint for investigation. The investigation has included looking at practice in other EU Member States and particular problems of bogus and exploitative trading.

3.9 When OFT announced that they would investigate the doorstep selling market in response to the supercomplaint, they made it clear that they did not see doorstep selling as intrinsically wrong and believed that it could even be very useful, for example to the housebound.

3.10 In April 2003, the Trading Standards Institute (TSI) published a report – "Door to Door Cold Calling of Property Repairs, Maintenance and Improvements – Long Overdue for Statutory Control"<sup>5</sup>. The TSI report was based on a national survey launched during the TSI's National Consumer Week in November 2002.

3.11 The TSI concluded from the results of the survey that there was clear evidence to demonstrate significant consumer detriment in relation to cold calling for property services. In addition, the TSI concluded that this sector attracts criminal elements willing to take advantage of consumers or else engaged in more direct criminal activity (e.g. distraction burglary). TSI's recommendations included a statutory prohibition of salesmen offering home improvements calling on householders unannounced.

3.12 The OFT have now published their report on their market study and their recommended options for improving consumer protection. In summary, the options for consideration and consultation by DTI are<sup>6</sup>:

- Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders.
- Removing or amending Regulation 7(2)(iv) of the Doorstep Selling Regulations 1987, which enables a trader to recover costs of fitting or installing goods if a contract is cancelled, so that this protection for traders applies only in cases where a customer asks for work to commence as soon as possible and is aware of the effect on cancellation rights.

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<sup>3</sup> March 2002. 41pp. ISBN 1-903629-13-. Price £10

<sup>4</sup> September 2002. 69pp. ISBN 0 906072 59 X. Price £7

<sup>5</sup> April 2003. 40pp. Website: <http://broadcast.tradingstandards.gov.uk/docimages/140962/property.pdf>

<sup>6</sup>The OFT report also recommended that, subject to the consultation on Fraud Law Reform to be conducted by the Home Office, the Government should proceed with legislation on a proposed new fraud offence as proposed in Law Commission Report 276 and a fraudulent trading offence as proposed in Law Commission Report 277. The Home Office consultation was launched on 17 May website: <http://www.homeoffice.gov.uk/docs3/fraudlawreform.html>

- Prohibition on goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed in the case of unsolicited visits.
- Prohibition on money being paid or taken before the seven day cooling-off period has elapsed.
- A ban on cold calling to offer property services with possible necessary exceptions.
- Requiring cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost.
- Firms trading via doorstep selling to provide consumers with greater transparency on prices for their products and demonstrating greater willingness to provide written quotes.

All these options are described more fully in the sections which follow.

## **4. EXTENDING CANCELLATION RIGHTS TO SOLICITED VISITS**

### **Proposal**

4.1 At present, under the Doorstep Selling Regulations consumers have up to seven days in which to cancel contracts agreed following an unsolicited (cold called) visit or a visit following an unsolicited doorstep or telephone approach. However where a contract is the result of a solicited (consumer initiated) visit, the consumer has no legal right to a seven day cooling-off period.

4.2 The proposal, therefore, is that the same cooling-off period and cancellation rights be extended to include solicited visits.

### **What is the case for change?**

4.3 The majority of complaints received by Trading Standards, evidence of complaints collected by Citizens Advice and cases referred to the OFT relate to high value sales (above £500).

4.4 62% of high-value sales are solicited. Under the Doorstep Selling Regulations there is no legal right to cancel if the visit has been solicited. As this area also generates the highest proportion of complaints this would indicate that consumers are in a potentially vulnerable position despite inviting the salespersons to call and having the opportunity to prepare for the visit in advance. The conclusion seems to be that consumers who have solicited home visits may still not be fully prepared for them, the sales tactics to be used or the resulting contract.

4.5 The Doorstep Selling Regulations are based on the assumption that consumers are in a position to be better prepared for solicited visits (e.g. by comparing prices, by ensuring that they are not alone) and therefore do not need the additional protection of cancellation rights. However, the psychological study of in-home selling conducted by the OFT as part of their market study questions this assumption. Consumers are often unaware that by responding to advertisements or leaflet drops supposedly just offering information they may in fact be soliciting a sales visit. Even if they are aware, the use of particular sales techniques appears, nonetheless, to put them at a disadvantage.

### **What is being consulted on?**

4.6 Views are invited from consultees on extending the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders to solicited visits.

### **Who will this proposal affect?**

4.7 This change to existing legislation would provide additional protection to consumers. But it is also acknowledged that extending the cooling-off period to solicited calls would have a direct impact on traders. For example, it could increase the number of contracts cancelled by consumers. For that reason, we particularly want to hear the views of traders on this proposal.

## **What would be the financial impact?**

4.8 Estimates of any financial impact on traders and enforcement agencies would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

## **What are your views?**

### **Question 1**

Would extending to solicited visits the cooling-off period and cancellations rights which currently apply to unsolicited visits be effective in reducing instances of consumer detriment?

### **Question 2**

Is it possible to quantify the likely impact on traders if solicited and unsolicited visits were treated in the same way?

### **Question 3**

Is it possible to quantify the likely impact on enforcement agencies if solicited and unsolicited visits were treated in the same way?

### **Question 4**

Could extending the cooling-off period to solicited visits create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

### **Question 5**

Are there practical alternatives (e.g. increased awareness, codes of practice) to legislative change?

4.9 Please provide your views and comments using the response form shown at Annex A.

## **5. Amending Regulation 7(2)(iv) of the 1987 Regulations**

### **Proposal**

5.1 Regulation 7(2)(iv) of the 1987 Regulations requires that, where a consumer cancels a contract, the consumer is under a duty to pay in accordance with the contract for the supply of goods, and for the provision of any services in connection with the supply of goods, where the goods “had become incorporated in the land” (i.e. fitted or installed) before the cancellation.

5.2 There are sound reasons for this provision. It provides protection to legitimate traders from having to bear unreasonable costs as a result of a contract being cancelled. However, it can operate as a loophole by which an unscrupulous trader can undermine a consumer’s cancellation rights and lock the consumer into a contract. It is proposed that amending this provision could remove that loophole.

### **What is the case for change?**

5.3 OFT research found that there are cases where installation work has taken place or goods have been delivered before the seven day cancellation period elapsed and in these cases the consumer was effectively unable to cancel the contract. Goods and services particularly likely to be associated with this behaviour include repairs to the home, fire and burglar alarms, and phone or telecommunications systems.

5.4 This enables unscrupulous traders to undermine a consumer's cancellation rights following an unsolicited visit if the consumer is pressurised into signing a contract to incorporate products into the fabric of the home within the seven day cooling-off period.

5.5 A further problem resulting from this part of the Regulations is that there is no requirement in them for the salesperson to explain the effect of early installation on cancellation rights to the consumer. As a result, consumers who agree to work being carried out during the cooling-off period may not realise that they are effectively losing the right to cancel the contract once the goods are installed.

### **What is being consulted on?**

5.6 Views are invited from consultees on the amendment of Regulation 7(2)(iv) of the Doorstep Selling Regulations 1987, so that it applies only in cases where a customer asks for work to commence as soon as possible *and* confirms that they are aware of the effect on cancellation rights.

5.7 This proposal is an *alternative* to the proposal described in section 6.

### **Who will this proposal affect?**

5.8. This change to existing legislation would improve protection for consumers by addressing the present loophole. However, it would not prevent unscrupulous traders from using other ploys not reliant on that provision.

5.9 The existing provision is intended to protect legitimate traders from bearing unreasonable costs and it is acknowledged that any change needs to retain that protection as far as possible.

### **What would be the financial impact?**

5.10 Estimates of any financial impact on traders and enforcement agencies would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

### **What are your views?**

#### **Question 6**

Would amending Regulation 7(2)(iv) to apply only in cases where a customer asks for work to commence as soon as possible and confirms that they are aware of the effect on cancellation rights help reduce instances of consumer detriment?

#### **Question 7**

Is it possible to quantify the likely impact on legitimate traders of a more limited protection?

#### **Question 8**

Is it possible to quantify the likely impact on enforcement agencies of amending the legislation in this way?

#### **Question 9**

Can the amendment be made in such a way as to still provide effective protection for legitimate traders?

#### **Question 10**

Could amendment of Regulation 7(2)(iv) create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

#### **Question 11**

Are there practical alternatives (e.g. increased awareness, codes of practice) to legislative change?

5.11 Please provide your views and comments using the response form shown at Annex A.

## **6. NO GOODS TO BE DELIVERED OR WORK PERFORMED DURING THE COOLING-OFF PERIOD**

### **Proposal**

6.1 Regulation 7(2)(iv) of the 1987 Regulations requires that, where a consumer cancels a contract, the consumer is under a duty to pay in accordance with the contract for the supply of goods, and for the provision of any services in connection with the supply of goods, where the goods “had become incorporated in the land” (i.e. fitted or installed) before the cancellation.

6.2 In practice, this means that cancellation rights provided by the Regulations may fail to offer the intended protection if the consumer is rushed into performance of the contract without any time to consider the implications.

6.3 The proposal is that, in order for the cooling-off period to be effective, no goods could be delivered or work carried out before the 7 day cooling-off period has elapsed.

### **What is the case for change?**

6.4 OFT research found that there are cases where installation work has taken place or goods have been delivered before the seven day cancellation period elapsed and in these cases the consumer was effectively unable to cancel the contract. Goods and services particularly likely to be associated with this behaviour include repairs to the home, fire and burglar alarms, and phone or telecommunications systems.

6.5 This enables unscrupulous traders to undermine a consumer's cancellation rights following an unsolicited visit if the consumer is pressured into signing a contract to incorporate products into the fabric of the home within the seven day cooling-off period.

6.6 A further problem resulting from this part of the Regulations is that there is no requirement in them for the salesperson to explain the effect of early installation on cancellation rights to the consumer. As a result, consumers who agree to work being carried out during the cooling-off period may not realise that they are effectively losing the right to cancel the contract once the goods are installed.

### **What is being consulted on?**

6.7 Views are invited from consultees on prohibition of goods being delivered or work being carried under a contract before the seven day cooling-off period has elapsed in the case of unsolicited visits.

### **Who will this proposal affect?**

6.8 This change to existing legislation would provide additional protection to consumers. It is acknowledged, however, that it would inhibit consumers from having a contract commence as soon as possible even if that was what they genuinely wanted. It has been suggested that this would constrain consumers from having emergency work performed urgently but it seems highly unlikely in practice that this

would arise where a visit by a trader was unsolicited. It is possible that some provision would have to be made to allow a consumer to ask for the contract to commence as soon as possible, provided that they were fully aware of the effect of this decision on their rights and confirmed that they accepted this.

6.9 This proposal may provide more effective protection against a range of unscrupulous practices than amendment of Regulation 7(2)(iv) as described in Section 5.

6.10 It has also been suggested that this proposal could have an adverse effect on traders' cash flow by delaying the commencement of contracts. It could also increase the number of contracts cancelled by consumers. However, it seems likely that legitimate traders would not wish to undermine consumer's cancellation rights and that, in many cases, the sort of goods or services affected would be those requiring some degree of customisation before installation. Nevertheless we want to hear the views of traders on this proposal.

### **What would be the financial impact?**

6.11 Estimates of any financial impact on traders and enforcement agencies would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

### **What are your views?**

#### **Question 12**

Should there be a prohibition of goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed?

#### **Question 13**

If so, should this prohibition apply to unsolicited and solicited visits or only unsolicited visits?

#### **Question 14**

Is this approach preferable to amendment of Regulation 7(2)(iv) of the 1987 Regulations?

#### **Question 15**

If so, how should any exemptions be framed?

#### **Question 16**

What would be the likely impact of this prohibition on the activities of bogus traders?

#### **Question 17**

Is it possible to quantify the likely impact of this prohibition on enforcement agencies?

**Question 18**

Is it possible to quantify the likely impact on traders if deliveries or work could not take place during the cooling-off period?

**Question 19**

Could this prohibition create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 20**

Are there practical alternatives (e.g. increased awareness, codes of practice) to legislative change?

6.12 Please provide your views and comments using the response form shown at Annex A.

## **7. NO PAYMENT TO BE TAKEN DURING THE COOLING-OFF PERIOD**

### **Proposal**

7.1 The proposal addresses more than one potential sources of consumer detriment. It could help tackle the use of high pressure or coercive selling techniques and help to address the s7(2) loophole already described in Section 5. It could also help address those cases where consumers are persuaded by cold callers to either:

- accept substandard and/or overpriced goods or services (e.g. property repair or maintenance work) and pay for them, often in cash, on the spot or
- pay a deposit, again often in cash, for goods or services that are not delivered or performed.

7.2 The proposal, therefore, is that no payment for goods or services provided could be taken before the seven day cooling-off period had elapsed.

### **What is the case for change?**

7.3 There is evidence that, where consumers make payments (e.g. a deposit) during the cooling-off period but then decided to cancel the contract, they face difficulties in having their money returned. It is also possible that consumers who have made early payment feel bound by the contract and do not realise or feel that they still have a right to cancel it. Prohibiting the taking of payments during the cooling-off period would help ensure that the protection provided by the cooling-off period is not undermined.

7.4 There is also evidence that cold calling to offer property improvement and maintenance is a source of significant economic detriment to consumers. In addition, because the victims are often vulnerable people, sometimes even targeted because of their vulnerability, the detriment is often compounded by serious distress.

7.5 The best available estimate of the annual number of bogus property services cases reported to Trading Standards is 15,000. The number of similar cases reported to the police would increase this further but there is no reliable estimate available. (We are also mindful of the view among enforcement, advice and consumer bodies that many other cases go unreported, for a variety of reasons.) In samples taken from a number of areas, the average amount of money paid to bogus traders per transaction is well over £2,000 although caution is needed in treating this as an overall average. But even these tentative figures arrived at by reference to less than complete data demonstrate a serious cause for concern.

7.6 This proposal could remove the incentive for traders to use pressure selling techniques during unsolicited calls. At the same time it could help tackle the problem of cold callers demanding immediate payment for substandard goods or services or taking deposits for goods or services never delivered or performed.

### **Would this really impact on “bogus trading”?**

7.7 It is acknowledged that bogus traders – cold callers who trick or pressurise consumers into paying for overpriced and/or sub-standards goods or services - are likely to ignore existing legislation and there can be no guarantee that they will observe new legislation. The practices of bogus traders are unlikely to be tackled effectively by one measure. But a combination of measures, including this one, could make a difference.

7.8 This proposal would make it possible to send a simple message to consumers - that they don't have to pay for the work done if the cooling-off period is not observed. And it would enable local Trading Standards officers to easily identify cases in which the regulations had been breached.

7.9 The effect of additional measures to tackle bogus traders would be increased if combined with a stronger deterrent. At present the sanction is as for a level 4 offence (up to a maximum of £2,500) which, given the likely level of detriment to consumers (evidence suggests average financial detriment of £2,000 per case with individual cases reported of over £50,000+) does not seem a sufficient deterrent. It is possible to conclude that a bogus trader would consider this level of fine no more than operating expenses. (This issue is dealt with further in Section 8.)

### **Would this impact on other unfair doorstep selling practices?**

7.10 This proposal cannot be taken in isolation nor considered simply in relation to bogus trading. It needs to be considered in the context of other options and the wider issue of doorstep selling as a whole.

7.11 This proposal could address other doorstep selling problems, particularly if combined with a prohibition on any work being performed within the 7 day cooling-off period, as described in Section 6.

### **What is being consulted on?**

7.12 Views are invited from consultees on prohibition of money being paid or taken before the seven day cooling-off period has elapsed.

### **Who will this proposal affect?**

7.13 This change to existing legislation would provide additional protection to consumers. It is acknowledged that, like a prohibition of work being performed during the cooling-off period, it could inhibit consumers from having a contract commence as soon as possible even if that was what they genuinely wanted (See Section 6).

7.14 It has been suggested that this proposal by itself would place traders at a disadvantage by creating the risk that goods delivered or work performed during the cooling-off period, at the consumers' request, might not be paid for if the consumer then exercised their right to cancel the contract. It could also make traders unwilling to deliver goods or start work before the cooling-off period had elapsed in the absence of payment before then.

7.15 It is believed this proposal would be more effective if implemented in conjunction with a similar prohibition on goods being delivered or work performed during the cooling-off period (See Section 6).

### **What would be the financial impact?**

7.16 Estimates of any financial impact on traders and enforcement agencies would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

### **What are your views?**

#### **Question 21**

Should there be a prohibition on money being paid or taken before the seven day cooling-off period has elapsed?

#### **Question 22**

If so, should there be any exemptions?

#### **Question 23**

Should this prohibition apply to unsolicited and solicited visits or only unsolicited visits?

#### **Question 24**

Should this prohibition be introduced independently or in conjunction with a prohibition of goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed?

#### **Question 25**

What would be the likely impact of this prohibition on the activities of bogus traders?

#### **Question 26**

Is it possible to quantify the likely impact on legitimate traders if no money could be taken during the cooling-off period?

#### **Question 27**

Is it possible to quantify likely impact on enforcement agencies if no money could be taken during the cooling-off period?

#### **Question 28**

Could this prohibition create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 29**

Are there practical alternatives (e.g. increased awareness, code of practice) to legislative change?

7.17 Please provide your views and comments using the response form shown at Annex A.

## **8. BAN ON COLD CALLING TO OFFER PROPERTY SERVICES**

### **Proposal**

8.1 This proposal goes much further than those described in previous sections and is aimed directly at bogus traders operating in the property maintenance and improvement sector. It responds directly to the evidence that cold calling by bogus traders to offer property services is a source of significant economic detriment to consumers. It also reflects evidence that cold calling by bogus traders offering property services is associated with certain types of crime, such as distraction burglary or intimidation. A ban was also the subject of a Private Members Bill earlier in the year.<sup>7</sup>

8.2 The proposal, therefore, is that cold calling to offer property services should be prohibited, possibly subject to certain exceptions.<sup>8</sup>

### **What is the case for change?**

8.3 Although the data on the number of cases of consumer detriment and the level of detriment itself is tentative (See Section 7) it is sufficient to show that the consumer detriment in individual cases is both real and at a high level. This is compounded by the fact that victims are usually vulnerable people, probably targeted because of their vulnerability, and the result is often considerable distress as well as financial loss.

8.4 Both police and local Trading Standards find it hard to take enforcement action in more than a minority of cases. For the police, many bogus trading offences could be seen as possible deception offences under the Theft Act but the only cases which they can expect to bring to a reasonably straightforward prosecution are those where *no* work is done by the trader. In other cases, however substandard the services provided, quite complex evidence is needed to show deception and intent. A ban would have clear advantages for enforcement (for example, by not requiring complex evidence of intent).

### **Would this really impact on bogus trading?**

8.5 As in the case of options described in previous sections, there can be no guarantee that rogue traders will be deterred by new legislation. The practices of bogus traders may need to be tackled by a combination of measures. But this one has the potential to make a difference by making the cold calling itself an offence, although it is acknowledged that there may be practical difficulties in making such an offence enforceable and, at the same time, not inhibiting the business of legitimate traders.

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<sup>7</sup> Property Repairs (Prohibition of Cold Calling) Bill – Andrew Robathan MP

<sup>8</sup>The OFT report also recommended that, subject to the consultation on Fraud Law Reform to be conducted by the Home Office, the Government should proceed with legislation on a proposed new fraud offence as proposed in Law Commission Report 276 and a fraudulent trading offence as proposed in Law Commission Report 277. The Home Office consultation was launched on 17 May website: <http://www.homeoffice.gov.uk/docs3/fraudlawreform.html>

8.6 This proposal would make it possible to send a simple message to consumers - that cold calling to offer property services was against the law. And it would be easy to identify cases in which the law had been breached.

8.7 The effect of a ban is likely to be increased if combined with a stronger deterrent with regard to the level of offence and a penalty, such as a higher level of fine, commensurate with the level of possible detriment (see also Section 7). However, a question remains about whether such behaviour, essentially knocking on someone's door, is suitable to be dealt with by the criminal law. Combining a new offence with powers of arrest may also be difficult. Under the Police and Criminal Evidence Act 1984 (PACE) in England and Wales (in Scotland a crime under the common law or under the relevant statute; in Northern Ireland the Police and Criminal Evidence (NI) Order 1989), arrest without warrant can be made in relation to arrestable offences or in relation to non-arrestable offences in particular circumstances. In the context of the 1984 Act, the 1989 Order and Scots Law, it is open to question whether it would be possible to justify, by reference to the level of seriousness, making the act of cold calling (i.e. the means of contact with a consumer) by itself an arrestable offence or one attracting a custodial sentence. However, Home Office Ministers have indicated their intention under the Police Reform Act 2002 to conduct a public consultation on modernising police powers in England and Wales, which includes the intention to rationalise the powers of arrest.

### **What is being consulted on?**

8.8 Views are invited from consultees on a ban on cold calling to offer property services and possible necessary exceptions to avoid the ban applying to legitimate business.

### **Who will this proposal affect?**

8.9 This change to existing legislation would provide additional protection to consumers, particularly vulnerable consumers.

8.10 It has been suggested that legitimate traders providing property services are unlikely to want or need to practice cold calling to offer their services. But an unqualified ban and/or a broad definition of "property services", could impact on legitimate business such as window and carpet cleaning, gardening, double-glazing and assistive products.

### **What would be the financial impact?**

8.11 Estimates of financial impact on traders and enforcement authorities would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

### **What are your views?**

#### **Question 30**

Would a ban on cold calling to offer property services be effective in tackling the problem of bogus traders?

**Question 31**

If so, how should “cold calling” and “property services” be defined and would some exemptions be needed to avoid the ban applying to legitimate businesses?

**Question 32**

Would making the ban subject to certain exemptions undermine its effectiveness and the message sent to consumers (particularly vulnerable consumers)?

**Question 33**

Should cold calling (the means of contact with a consumer) by itself be treated as a criminal act?

**Question 34**

If so, what penalty (e.g. criminal or civil offence, custodial sentence or level of fine) should breach of a ban attract?

**Question 35**

Is it possible to quantify the impact of a ban on enforcement authorities?

**Question 36**

Would a power of arrest be important to the effective enforcement of a ban?

**Question 37**

Could a ban with exemptions create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 38**

Are there practical alternatives (e.g. increased awareness, codes of practice) to a statutory ban enforced by criminal sanctions?

8.12 Please provide your views and comments using the response form shown at Annex A.

## **9. HIGHLIGHTING THE CONSUMER'S CANCELLATION RIGHTS**

### **Proposal**

9.1 The proposal is that cancellation notices be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost.

### **What is the case for change?**

9.2 At present the Regulations state that, when providing notice of the right to cancel a contract, "the information should be easily legible and if incorporated in the contract or other document it shall be afforded no less prominence than that given to other information in the document apart from the heading of the document and the names of parties or any inserted handwriting."

9.3 However research conducted by the Office of Fair Trading showed that in many cases consumers are unaware of their cancellation rights, do not remember being informed of their rights or only remember being informed verbally.

9.4 Further research found that cancellation rights are often quite confusing and tend to get lost within the wording of the contract and so consumers may not fully comprehend or read their cancellation rights.

### **What is being consulted on?**

9.5 Views are invited from consultees on amending the Doorstep Selling Regulations to require cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost.

### **Who will this proposal affect?**

9.6 This change to existing legislation would help ensure that consumers are aware of their cancellation rights.

9.7 There would be some additional costs incurred by retailers complying with this change to the Regulations but, if notice of cancellation is already being provided in some form in compliance with the Regulations, the cost of providing a separate notice should be negligible. Any additional costs could be further mitigated if necessary by providing traders with assistance in the form of a suitable pro-forma.

### **What would be the financial impact?**

9.8 Estimates of any financial impact on traders and enforcement authorities would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

## What are your views?

### **Question 39**

Would consumers be more likely to invoke their cancellation rights if cancellation notices are more prominently and clearly displayed in the contract and provide a clear indication of the circumstances in which cancellation rights may be lost?

### **Question 40**

If so, how can this best be encouraged in practice? (For example, legislative or non-legislative options.)

### **Question 41**

Is it possible to quantify the likely impact on traders of providing more prominent cancellation notices?

### **Question 42**

Is it possible to quantify the likely impact on enforcement authorities of a requirement for traders to provide more prominence cancellation notices?

### **Question 43**

Could a requirement to provide more prominent cancellation notices create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

9.9 Please provide your views and comments using the response form shown at Annex A.

## **10. INCREASED PRICE TRANSPARENCY**

### **Proposal**

10.1 Price marking regulations already apply to shops, mail order and internet sales but not automatically to doorstep sales in high value sectors. It is proposed that, during a home sales visit, the trader be required to provide the consumer with a written, detailed quotation of price, giving a breakdown of costs.

10.2 It is also proposed that a trader be required to provide the consumer with a written price list prior to the visit or prior to any work being carried out. Where products are bespoke (i.e. made to the customers' specifications) this may not be possible but a detailed estimate should still be provided.

### **What is the case for change?**

10.3 Research by the Office of Fair Trading has shown that there is a lack of price transparency and variability in the doorstep selling market, particularly in the case of mobility products and double glazing. This is indicative of a flawed market that is not working well for consumers.

10.4 The area of bespoke products is one where the potential for high pressure or misselling is very high, and research shows that this term is not always applied accurately to products. Classifying goods as bespoke when they are not frustrates the consumers' ability to compare prices.

10.5 Guide prices or unit prices for low, medium and high specification goods (e.g. fitted kitchens) are provided by some retail stores so there is no obvious reason why they could not also be provided by doorstep traders.

### **What is being consulted on?**

10.6 Views are invited from consultees on the proposal that firms trading via doorstep selling should provide consumers with greater transparency on prices for their products and how this should be addressed.

### **Who will this proposal affect?**

10.7 This change to existing legislation would help ensure that consumers are in a better position to compare the prices of suppliers and shop around before making their choices.

10.8 It is acknowledged that customised products can present a problem but it does not seem to be insurmountable in the majority of cases. Investigation by the Office of Fair Trading suggested that many products categorised as bespoke were more accurately described as products that were upgraded with accessories. Approaches to some of the main dealers demonstrated that they were able to provide starting prices on the various models which would not have been possible if they were truly bespoke.

10.9 There may be some additional costs incurred by retailers complying with this change although it is not considered likely to be high.

### **What would be the financial impact?**

10.10 Estimates of any financial impact on traders and enforcement authorities would be particularly helpful in order to develop and refine the Regulatory Impact Assessment.

### **What are your views?**

#### **Question 44**

Should firms trading via doorstep selling be required to provide consumers with greater transparency on prices for their products?

#### **Question 45**

If so, how can this transparency best be encouraged in practice? (For example, legislative or non-legislative options.)

#### **Question 46**

Is it possible to quantify the likely impact on traders of providing greater transparency on prices (e.g. written price lists, detailed quotes, breakdowns of cost)?

#### **Question 47**

Is it possible to quantify the likely impact on enforcement authorities of a requirement for traders to provide greater transparency on prices?

#### **Question 48**

Could a requirement to provide greater price transparency create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

10.11 Please provide your views and comments using the response form shown at Annex A.

## **11. UNFAIR COMMERCIAL PRACTICES DIRECTIVE**

11.1 Many stakeholders will be aware that a new EU Directive is currently being discussed in Brussels which would introduce a “general duty not to trade unfairly” to the UK for the first time. The Directive is currently being negotiated is expected to be agreed in 2005, during the UK Presidency.

11.2 The Directive is specifically directed at aggressive and misleading sales practices and is likely to focus strongly on the protection of vulnerable consumers. It would create new powers to tackle rogue traders and could make a significant contribution to strengthening protection for consumers when transposed into UK law and, in particular, could be helpful in tackling consumer detriment in the area of doorstep selling.

11.3 It is appropriate to consider whether there are significant weaknesses in existing consumer protection legislation in the area of doorstep selling and cold calling in response to the OFT market study report. However, when considering any new legislative options following this consultation, it will also be necessary to monitor the progress of the Directive, to consider whether any deficiencies in existing legislation can be effectively addressed by the Directive and that any proposals for change to UK legislation are compatible with what is expected to be a maximum harmonisation measure.

11.4 In its latest form, the UCPD includes a six year derogation for national laws which implement existing "minimum harmonisation" Directives (such as the Doorstep Selling Directive). If such national laws can be shown to be essential and proportionate to the protection of consumers, they could be retained until 2013. Moreover, the draft UCPD will not affect contract law, including rules on the validity, formation or effect of a contract. However, it is still early days and the Directive may yet change in the course of further negotiations before final agreement.

11.5 Transposition of the Directive, when finally agreed, into UK law will of course be the subject of consultation.

## 12. PARTIAL REGULATORY IMPACT ASSESSMENT

An electronic version of this partial regulatory impact assessment can be found at <http://www.dti.gov.uk/ccp/consultations.htm>. (This will need to be saved as a Word document before being forwarded by Email)

### DOORSTEP SELLING AND COLD CALLING

#### Purpose and objectives

In their market study report on doorstep selling, the Office of Fair Trading (OFT) have recommended consideration of and consultation on measures to improve protection for consumers purchasing goods or services at the door and reducing unfair competition for legitimate business from rogue traders.

#### Background

Doorstep sales are estimated by OFT<sup>1</sup> to amount to some £2.4 billion every year in the UK. Of this double-glazing doorstep sales are estimated at £1.6 billion, conservatories at £250 million and mobility products (stairlifts, wheelchairs, powered scooters) at £80 million. The vast majority of sales (at least by value) therefore relate to home improvements or property services. Data is scarce on doorstep selling but these estimates of sales are considered to be conservative.

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
- can present consumers with new options that they had not previously considered

However, there is evidence 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 in 1988 and 1998. Consumers who purchase goods or service over the value of £35 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.

There is currently a proposal within the EC for an "Unfair Commercial Practices Directive", which is likely to give more protection for consumers as it is specifically directed at aggressive and misleading sales practices and is likely to focus strongly on the protection of vulnerable consumers. However, it is still in negotiation, and while consumers are currently suffering detriment as a result of some doorstep selling practices, there is scope for considering whether action is needed to protect

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<sup>1</sup> Doorstep Selling: A Report on the Market Study, OFT 2004, excludes switching energy supplier.

UK consumers in advance of the new EC Directive. But, when considering any new legislative options following this consultation, it will be necessary to monitor the progress of the Directive, to consider whether deficiencies in existing legislation can be effectively addressed by the Directive and that proposals for change to UK legislation are compatible with what is expected to be a maximum harmonisation measure.

## **Risk Assessment**

Whilst current regulations do afford consumers more protection when they purchase goods and services on their doorsteps, there are a number of reasons to believe that they are not working as well as they could.

Firstly, consumers are currently unaware of their rights. A survey carried out for OFT found that only 6% correctly identified that they had more rights when purchasing goods and services on the doorstep. Once they were told of their additional rights, 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.

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.

A consumer satisfaction survey carried out as part of OFT's market study found that 39% of adults have purchased from a door-to-door salesperson, whilst 61% had never done so. Over half of people who had made high value purchases on the doorstep (e.g. double glazing, property services) felt that specific sales techniques had been adopted. This does not necessarily mean they suffered consumer detriment. Indeed, three quarters of those who had bought goods or services were satisfied at least to some extent with those goods or services. This still leaves a significant minority who were not satisfied, but of those, only 25% complained, further evidence that complaints data would be underestimating the extent of the problem.

In a number of cases, companies undermined the seven day cooling-off period afforded to customers following unsolicited doorstep sales. Whilst this is not widespread, where it does happen it is often the same firms repeatedly acting in this way.

There are an estimated 15,000 reported cases of bogus 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 bogus traders is £2000, so it is possible that in excess of £30 million is handed over to bogus traders every year. Consumers do not get value for money, and legitimate businesses suffer, as they have to put increased resources into distinguishing themselves from dishonest traders.

**Questions for consultees:** (Enforcers)

Is it possible to estimate the number of on consumers suffering detriment

- as a result of not being aware of their rights;
- as a result of rights being undermined by traders.

## Options

The OFT report suggests a number of measures to reduce the existing consumer detriment associated with some doorstep selling practices. There are a number of options the Government could pursue:

**1. Do Nothing:** Doing nothing would leave the legislation unchanged and existing consumer protection in place, but fail to tackle known examples of consumer detriment. In this instance, “doing nothing” is likely to be temporary as action is expected to be necessary once the Unfair Commercial Practices Directive is agreed and transposed into UK Law.

**2. Non-Legislative Measures:** Non-legislative changes, such as measures to improve consumer awareness via an OFT campaign, the use of voluntary codes, self-regulation and increased price transparency may tackle at least some of the existing consumer detriment, by further empowering consumers to use their existing rights. The OFT is launching an awareness campaign in July 2004, which reminds consumers of their legal rights but also aims to raise awareness of the psychological tactics which may be used to persuade them to buy. The campaign will use a range of media to deliver its messages and OFT will be working with partners such as Age Concern, Help the Aged, Trading Standards Institute, LACORS, Citizen’s Advice and Energywatch.

**3. Change doorstep selling regulations to require clear display of cancellation rights in addition to some non-legislative changes:** If done in conjunction with the above non-legislative measures, this option would make consumers even more aware of their existing rights to cancel contracts. This may help further empower consumers when dealing with doorstep salespeople.

**4. Adopt the above and extend cancellation rights for unsolicited visits to solicited visits:** 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 that such techniques can have the same effect in both solicited and unsolicited calls. This would remove opportunities to exploit the distinction between the treatment of solicited and unsolicited visits. However, it would not necessarily address the problem of rogue or bogus traders.

**5. Adopt the above and amend Regulation 7(2)(iv) of the Doorstep Selling Regulations 1987 or prohibit work/delivery of goods and/or payment within the 7 day cooling-off period:** Regulation 7(2)(iv) is intended to protect legitimate traders from frivolous orders. Consumers have to pay if installation work (e.g. for a fitted kitchen) is done within seven days and then they decide to cancel the contract. However, there is evidence that some traders use this to undermine the

cooling-off period itself. Removing this regulation would close what is seen by some to be a loophole in existing protection although some protection for legitimate traders would need to be considered.

Prohibiting work or delivery of goods and/or prohibiting payment within 7 days would address the same problem and help prevent the cooling-off period being undermined. In addition, these measures combined with increased consumer awareness could help in dealing with bogus traders by enabling consumers to resist pressure for work to be performed or payment made quickly. Some types of emergency work would still have to be allowed within the cooling-off period.

#### **6. Adopt the above measures and ban cold calling for property services:**

This option would mean that in addition to the measures in options 2-5, firms would be prevented from cold calling (i.e. making unsolicited visits) for property services sales. This would address the problem of bogus traders more directly. It has been argued that a ban would send a clear message to consumers that cold calling to offer property services is against the law. In practice, some exceptions to a ban are likely to be necessary to avoid unduly inhibiting the activities of legitimate traders. It has also been suggested that enforcement of a ban would be simpler and cheaper than bringing prosecutions against bogus traders using existing legislation. This is a matter for further consultation.

The supercomplaint made by NACAB which triggered the OFT's market study recommended extending the cooling-off period to 14 days and establishing a "doorstep preference service" similar to the telephone preference service currently in existence. As a seven day cooling-off period is common throughout Europe, consistency will be achieved by retaining the same length of time in the UK. (Some companies/trade associations do offer a 14-day cooling-off period on a voluntary basis.)

The doorstep preference service suggestion was considered by OFT, but rejected because of the logistical difficulties and potential for being ignored by unscrupulous traders. The smaller the sales organisation the more difficult it would be to cross-check house numbers against a database, so it would have a disproportionate impact on small businesses.

## **Benefits**

- 1. Do Nothing:** there would be no additional benefits to consumers or businesses from maintaining the status quo, at least up to the time the Unfair Commercial Practices Directive is agreed and then transposed.
- 2. Non Legislative Measures:** by working to raise consumer awareness of rights, this option is likely to empower consumers to use their existing rights more effectively. In turn this will improve the competitive environment, as it will make it more difficult for dishonest practices to continue, thus helping legitimate business. The extent of the benefit arising from non-legislative measures depends on the success of consumer awareness campaigns, and the extent to which consumers exercise their rights and companies successfully self-regulate or follow their own voluntary codes of practice. There is a risk that, even though consumers may be

aware of their rights, they do not exercise them when a salesperson is in their home.

**Questions for consultees:**

How far would raised awareness help to reduce consumer detriment in the absence of legislative change?

How far would self-regulation help reduce consumer detriment in the absence of legislative change?

**3. Clearer display of cancellation rights:** By adding small legislative change to the above non-legislative measures, greater protection would be afforded to the consumer and consumer detriment may be further reduced. Regardless of their general awareness of rights, prominent display of cancellation rights may inform consumers and empower them to invoke this right.

**4. Extension of cancellation rights:** Removing the distinction between solicited and unsolicited visits should improve certainty for the consumer, business and enforcement agencies and remove opportunities to exploit the different treatment of solicited and unsolicited calls. The extent to which this option does reduce consumer detriment and improve the competitive environment depends in part on effective enforcement and also on informing the consumer of their rights. There is a risk that minimal benefits will result if changes to legislation are not understood by consumers or if Trading Standards departments are not able to deal with the resulting enforcement issues.

**Questions for consultees: (Enforcers)**

Is it possible to quantify how much this change would contribute to reducing consumer detriment?

**5. Amend Regulation 7(2)(iv) of the doorstep selling regulations or prohibit work/delivery of goods and/or payment within 7 days:** These options may further reduce consumer detriment over and above that achieved by the previous options and contribute to tackling bogus traders, at least to some extent. There is the potential for some environmental benefit as a result of this measure as it may reduce the incidence of poor quality workmanship on buildings.

As emergency work would need to be allowed within the 7-day period there is a risk that the benefits would be reduced by the potential for traders to get round the legislation.

**Questions for consultees: (Enforcers)**

Is it possible to offer estimates of how often the cooling-off period might be being undermined at present?

**6. A ban on cold calling for property services:** Banning cold calling for property services may create certainty for the consumer, business and enforcement bodies. A number of enforcement agencies currently devote considerable resource to dealing with doorstep sales complaints. Where enforcement agencies are engaged in this activity this option may reduce their enforcement costs in time, although the prosecution of bogus traders may increase costs while the problem persists. This measure would be most likely to tackle rogue or bogus trading, and would go some way to reducing the potential £30million consumer detriment caused by this every year.

Often, rogue or bogus traders are not only causing consumer detriment but are also avoiding VAT and income tax.

Altering the doorstep selling regulations according to the above options will improve competition in markets that utilise doorstep selling to differing degrees. This will benefit legitimate businesses, protecting them against unfair competition from unscrupulous traders and reducing the costs of distinguishing themselves from such traders. In this environment, the businesses that succeed will be those that give genuine value to their customers through greater choice, quality, and lower prices and thereby generate consumer trust and confidence. Empowered consumers reward innovative and efficient businesses, driving increased productivity and international competitiveness.

## **Business Sectors Affected**

All businesses that make sales on the doorstep will be affected. The market that relies most heavily on doorstep selling is double-glazing, for which 90% of sales are conducted on the doorstep. Other goods and services commonly sold on the doorstep include property services generally, mobility products (for instance stair lifts) and energy provision. A wide variety of businesses will therefore be affected by any change in the doorstep selling regulations.

## **Costs**

- 1. Minimum Change:** There would be no additional costs as a result of maintaining the status quo.
- 2. Non-Legislative Measures:** the cost of a consumer awareness campaign depends on the nature of campaign decided upon. Greater self-regulation and following voluntary codes would cause firms to incur costs in complying but by definition such costs would be voluntary and would assist legitimate firms in their quest to distinguish themselves from non-legitimate traders.
- 3. Clearer display of cancellation rights:** The cost of clearer display of cancellation rights will be negligible for business given that rights must already be displayed. The fact that such a change would allow solicited and unsolicited sales contracts to be the same further mitigates any small costs. Enforcement agencies would also not see a rise in costs because of the existing requirement to display cancellation rights (albeit that the use of small print is currently acceptable).

**Questions for consultees: (Business)**

Do you agree with this assessment of costs for clearer display of cancellation rights?

**4. Extension of cancellation rights:** There is evidence that 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 data available on how many companies engage in doorstep selling. A number of those traders that use cold calling may be rogue or bogus traders, adding further difficulty to getting accurate data.

Time spent by salespeople in people's homes can result in a sale, a sale that is later cancelled or no sale at all. Success rates vary across different types of doorstep selling. Cold calling yields roughly 1 in 10-12 sales, whilst professional salespersons with a pre-arranged appointment might achieve 1 in 2-3<sup>2</sup>. 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.

In the case of double glazing (which accounts for the majority of doorstep sales), around 4% of sales where there is a cancellation right result in cancellation. Of the annual doorstep sales of £1.6 billion, 40% are from cold calling and 60% from solicited visits. If it is assumed that £1.6 billion of sales translates to 400,000 individual sales, that would mean that currently around 6,400 cancellations happen. The extension of cancellation rights might mean that 2%-5% of total doorstep sales are cancelled. This would be an additional 2,600 – 13,600 visits where a sale is agreed then cancelled. As most double glazing salespeople work on a commission basis it is difficult to establish an average hourly wage, but if we assume £20 plus one third for non-wage labour costs and assume an hour on each visit, this might result in additional costs of £69,000 to £363,000 to double glazing companies.

Ultimately, however, 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.

**Questions for Consultees: (Business)**

What is the typical take up of the cancellation right for your business?

How much would a typical cancellation cost you in terms of time spent on the sale and after-sales arrangement (i.e. not the value of the lost sale itself)?

**5. Amend Regulation 7(2)(iv) of the doorstep selling regulations or prohibit work/delivery of goods and/or payment within 7 days:** Views are being

<sup>2</sup> Doorstep Selling: A Report on the Market Study, OFT 2004, excludes switching energy supplier.

sought from enforcement agencies on the implications of such measures for enforcement. This is likely to depend on how exemptions are made for emergency work to be done within the 7-day period because, if traders were able to exploit them, enforcement would be more difficult.

There may be an additional cost in time required for personnel to re-visit a customer's home in order to collect money, although invoices could be sent out or the money collected at the same time as work is carried out to mitigate such costs.

If work is allowed to be conducted within the 7-day cooling-off period but payment is not allowed this could increase risk for businesses. Any combination of the measures could affect business planning.

**Questions for consultees: (Business)**

How would these measures affect your business planning?

Would there be significant cash-flow implications?

**6. A ban on cold calling to offer property services:** Firms that relied upon cold calling for sales would be most affected by this measure. 40% of double-glazing sales are made by cold calling, usually an unsolicited telephone call followed by a visit. It is therefore double-glazing sales that would be expected to be most affected in the absence of exceptions for legitimate businesses and firms would need to sell via other routes which might be more expensive. It is unclear how much cold calling is relied upon for other areas, but there is a perception that most sectors, legitimate businesses do not engage in cold calling.

Whilst this may reduce costs for those Trading Standards Departments (TSDs) that currently put a lot of resource into dealing with bogus traders, it is unclear as to the likely overall effect on TSDs and this is a matter for further investigation and consultation.

There may be unintended consequences as a result of banning cold calling. The criminal element may divert to alternative forms of criminal activity. Traders might make a call to offer services not covered by the ban, in order to secure a sale of a property service.

**Questions for consultees: (Business)**

What proportion of your company's sales is achieved by cold calling?

Is it possible to quantify how much would it cost you to switch to an alternative sales method?

## **Equity and Fairness**

Vulnerable groups such as the elderly may be particularly at risk from rogue traders and selling practices and they feature prominently in evidence of consumer detriment and doorstep crime. However, it needs to be borne 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**

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.

During the full consultation we propose to solicit views from a much greater cross-section of small businesses through focus groups as well as specific questions in the consultation document. This information will be used to make a full assessment of costs to small business.

## **Competition Assessment**

The proposals for change will affect all markets where any sales of goods or services are made on the doorstep. The majority of doorstep sales are made up of double-glazing, conservatories, other property services, mobility aids and hearing aids. None of the options are likely 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.

Those firms making sales on the doorstep would be affected by the proposed changes, whilst other firms would remain unaffected. However, regulation is already different where sales are made on the doorstep, and the additional burden involved in the options is minimal. In double-glazing, over 90% of sales are made on the doorstep, so within this market the majority of firms will be affected in the same way.

Some affected markets are more concentrated than others, for example the five-firm concentration ratio for double-glazing is roughly 50%, other markets have many firms. The proposed changes are 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.

The majority of markets where sales are made on the doorstep are not characterised by rapid technological change. If a ban on cold calling for property services were introduced this would restrict firms involved in these activities from one form of sales method, but the other options will not affect firms’ choices of price, quality and location.

**Questions for consultees:**

Do you agree with this competition assessment?

**Enforcement and sanctions**

Any proposed regulation would be enforced by Trading Standards as with the current Doorstep Selling Regulations in co-operation with other authorities such as the police. The issue of sanctions to be applied in certain circumstances is a matter for consultation. Some additional costs on enforcement authorities are therefore likely and DTI welcome costed estimates.

**Monitoring, Evaluation and Review**

DTI will welcome any future representations on the working of the proposed action taken, and will review its functioning at a reasonable juncture and in light of the proposed Unfair Commercial Practices Directive.

**Consultation**

The consultation document details lists consultees. The consultation will take place from July to November 2004.

**Summary and Recommendation**

The different options for legislative change would reduce consumer detriment caused by some doorstep selling practices to different degrees. The extent to which consumers benefit depends on the effectiveness of awareness raising and enforcement, but these measures could also improve the competitive environment as rogue or bogus traders will find it more difficult to operate. The costs of these measures will fall on businesses and enforcement agencies. We are seeking further information on the costs to Trading Standards and businesses but current information suggests additional costs would be minimal.

**Contact:** Amy Newland, Consumer and Competition Policy, DTI

Tel:020 7215 6714

E-Mail: amy.newland@dti.gsi.gov.uk

## RESPONSE FORM

An electronic version of this response form can be found at <http://www.dti.gov.uk/ccp/consultations.htm>. **(This will need to be saved as a Word document before being forwarded by Email)**

Please note that there are additional questions contained in the Partial Regulatory Impact Assessment, an electronic version of which can also be found at <http://www.dti.gov.uk/ccp/consultations.htm>

Respondent Details	Please return by 15 November 2004
Name:  Organisation:  Address:   Postcode:  Telephone:  Fax:  Email:  Date: 2004	David Swepson Department of Trade and Industry Consumer & Competition Policy Room V 426 1 Victoria Street London SW1H 0ET  By Email: Doorstep.Selling@dti.gsi.gov.uk  Tel: 020 7215 3805 Fax: 020 7215 0357 Minicom: 020 7215 6740

When responding please state whether you are responding as an individual or representing the views of an organisation or representative group.

If responding on behalf of an organisation or representative group, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

If you are replying on behalf of a representative group please summarise the people or organisations your group represents:

<b>Tick this box if you are requesting non-disclosure of your response</b>	
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Consultees are encouraged to expand on their answers to the set questions under "additional comments" where appropriate.

**Question 1**

Would extending to solicited visits the cooling-off period and cancellations rights which currently apply to unsolicited visits be effective in reducing instances of consumer detriment?

**Yes/No**

**Question 2**

Is it possible to quantify the likely impact on traders if solicited and unsolicited visits were treated in the same way?

**Question 3**

Is it possible to quantify the likely impact on enforcement agencies if solicited and unsolicited visits were treated in the same way?

**Question 4**

Could extending the cooling-off period to solicited visits create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 5**

Are there practical alternatives (e.g. increased awareness, code of practice) to legislative change?

**Additional Comments**

**Question 6**

Would amending Regulation 7(2)(iv) to apply only in cases where a customer asks for work to commence as soon as possible and confirms that they are aware of the effect on cancellation rights help reduce instances of consumer detriment?

**Yes/No**

**Question 7**

Is it possible to quantify the likely impact on legitimate traders of a more limited protection?

**Question 8**

Is it possible to quantify the likely impact on enforcement agencies of amending the legislation in this way?

**Question 9**

Can the amendment be made in such a way as to still provide effective protection for legitimate traders?

**Question 10**

Could amendment of Regulation 7(2)(iv) create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 11**

Are there practical alternatives (e.g. increased awareness, code of practice) to legislative change?

**Additional Comments****Question 12**

Should there be a prohibition of goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed?

**Yes/No**

**Question 13**

If so, should this prohibition apply to unsolicited and solicited visits or only unsolicited visits?

**Question 14**

Is this approach preferable to amendment of Regulation 7(2)(iv) of the 1987 Regulations?

**Question 15**

If so, how should any exemptions be framed?

**Question 16**

What would be the likely impact of this prohibition on the activities of bogus traders?

**Question 17**

Is it possible to quantify the likely impact of this prohibition on enforcement agencies?

**Question 18**

Is it possible to quantify the likely impact on traders if deliveries or work could not take place during the cooling-off period?

**Question 19**

Could this prohibition create new loopholes to be exploited by rogue traders (or other negative consequences for consumers)?

**Question 20**

Are there practical alternatives (e.g. increased awareness, code of practice) to legislative change?

**Additional Comments**

**Question 21**

Should there be a prohibition of money being paid or taken before the seven day cooling-off period has elapsed?

**Yes/No**

**Question 22**

If so, should there be any exemptions?

**Question 23**

Should this prohibition apply to unsolicited and solicited visits or only unsolicited visits?

**Question 24**

Should this prohibition be introduced independently or in conjunction with a prohibition of goods being delivered or work being carried out under a contract before the seven day cooling-off period has elapsed?

**Question 25**

What would be the likely impact of this prohibition on the activities of bogus traders?

**Question 26**

Is it possible to quantify the likely impact on legitimate traders if no money could be taken during the cooling-off period?

**Question 27**

Is it possible to quantify likely impact on enforcement agencies if no money could be taken during the cooling-off period?

**Question 28**

Could this prohibition create new loopholes to be exploited by rogue traders (or other negative consequences for consumers)?

**Question 29**

Are there practical alternatives (e.g. increased awareness, code of practice) to legislative change?

**Additional Comments**

**Question 30**

Would a ban on cold calling to offer property services be effective in tackling the problem of bogus traders? **Yes/No**

**Question 31**

If so, how should “cold calling” and “property services” be defined and would some exemptions be needed to avoid the ban applying to legitimate businesses?

**Question 32**

Would making the ban subject to certain exemptions undermine its effectiveness and the message to be sent to consumers?

**Question 33**

Should cold calling (the means of contact with a consumer) by itself be treated as a criminal act? **Yes/No**

**Question 34**

If so, what penalty (e.g. criminal or civil offence, custodial sentence or level of fine) should breach of a ban attract?

**Question 35**

Is it possible to quantify the impact of a ban on enforcement authorities?

**Question 36**

Would a power of arrest be important to the effective enforcement of a ban?

**Question 37**

Could a ban with exemptions create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Question 38**

Are there practical alternatives (e.g. increased awareness, code of practice) to a statutory ban enforced by criminal sanctions?

**Additional Comments**

**Question 39**

Would consumers be more likely to invoke their cancellation rights if cancellation notices are more prominently and clearly displayed in the contract and provide a clear indication of the circumstances in which cancellation rights may be lost? **Yes/No**

**Question 40**

If so, how can this best be encouraged in practice? (For example, legislative or non-legislative options.)

**Question 41**

Is it possible to quantify the likely impact on traders of providing more prominent cancellation notices?

**Question 42**

Is it possible to quantify the likely impact on enforcement authorities of a requirement for traders to provide more prominence cancellation notices?

**Question 43**

Could a requirement to provide more prominent cancellation notices create any negative consequences for consumers (e.g. loopholes to be exploited by rogue traders)?

**Additional Comments****Question 44**

Should firms trading via doorstep selling be required to provide consumers with greater transparency on prices for their products?

**Yes/No**

**Question 45**

If so, how can this transparency best be encouraged in practice? (For example, legislative or non-legislative options.)

**Question 46**

Is it possible to quantify the likely impact on traders of providing greater transparency on prices (e.g. written price lists, detailed quotes, breakdowns of cost)?

**Question 47**

Is it possible to quantify the likely impact on enforcement authorities of a requirement for traders to provide greater transparency on prices?

**Question 48**

Could a requirement to provide greater price transparency create new loopholes to be exploited by rogue traders (or other negative consequences for consumers)?

**Additional Comments**

**Question 49**

Do you have any other comments at all on any of the issues raised in this Consultation Document?

**LIST OF CONSULTEES**

**Business Organisations**

Anchor Housing Trust  
 Anglian Windows  
 Association of Energy Suppliers  
 BAC (Windows)  
 Bowater Windows Ltd  
 British Cambers of Commerce  
 British Healthcare Trades Association  
 British Retail Consortium  
 British Wood Preserving and Damp  
 Proofing Association  
 CBI  
 CBI Northern Ireland  
 CBI Scotland  
 CBI Wales  
 Churchill Stairlifts  
 Companion Stairlifts  
 Crystal Windows  
 Direct Marketing Association  
 Direct Selling Association  
 Everest (Windows)  
 Federation of Master Builders  
 Federation of Small Businesses (NI)  
 Finance and Leasing Association  
 Foundations  
 Funeral Planning Authority  
 Glass and Glazing Federation  
 Institute of Plumbing and Heating  
 Engineering  
 Lift and Escalator Industry Association  
 Mosaic ERP Systems  
 National Federation of Glaziers  
 National Federation of Roofing  
 Contractors  
 Northern Ireland Chamber of Commerce  
 and Industry  
 Rural Shops Alliance  
 Stannah Lift Services  
 Weatherseal Holdings Ltd

**Consumers Bodies**

Age Concern England  
 Age Concern Cymru  
 Age Concern Northern Ireland  
 Age Concern Scotland  
 Better Government for Older People  
 Citizens Advice England  
 Citizens Advice Northern Ireland  
 Citizens Advice Scotland  
 Citizens Advice Wales

**Academic Group**

Prof Hugh Beale  
 Law Commission  
  
 Mr Roy Bison  
 National Consumer Federation. Brunel  
 University  
  
 Mr Robert Bradgate  
 University of Sheffield  
  
 Mr Richard Bragg  
 Manchester University  
  
 Mr Peter Cartwright  
 University of Nottingham  
  
 Professor Hugh Collins  
 London School of Economics and Political  
 Science  
  
 Mr Cowan Ervine  
 University of Dundee  
  
 Christopher J S Hodges  
 CMS Cameron McKenna  
  
 Professor Geraint Howells  
 University of Sheffield  
  
 Professor David Oughton  
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 University of Hull  
  
 Mr Colin Scott  
 London School of Economics and Political  
 Science  
  
 Mr Christian Twigg-Flesner  
 University of Sheffield  
 Department of Law  
  
 Dr Alan Walker  
 University of Sheffield  
  
 Prof Stephen Wetherall  
 Somerville College  
 University of Oxford

### **Consumers Bodies (Contd)**

Consumers' Association  
Counsel and Care  
Disability Action (NI)  
EnergyWatch  
General Consumer Council for  
Northern Ireland  
Hearing Aid Council  
Help the Aged  
MENCAP England  
MENCAP Cymru  
MENCAP NI  
National Consumer Council  
National Consumers Federation  
National Federation of Consumer Groups  
National Federation of Women's Institutes  
National Pensioners' Convention  
Northern Ireland Council of Voluntary  
Action  
Policy Research Institute on Ageing and  
Ethnicity  
Ricability  
RNIB  
RNID  
Scottish Consumer Council  
Welsh Consumer Council

### **Regulatory Bodies**

Association of Chief Police Officers  
Association of Chief Police Officers  
Scotland  
Association of Local Authorities in Northern  
Ireland  
Cheshire Constabulary  
Cleveland Police (Operation Strongbow)  
Convention of Scottish Local Authorities  
Devon and Cornwall Police + SW Region  
(Operation Litotes)  
East of England Trading Standards Group  
Derbyshire Constabulary (Operation  
Liberate)  
Local Authorities Coordinators of  
Regulatory Services (LACORS)  
Local Government Association  
South East of England Trading Standards  
Group  
Trading Standards Institute  
Trading Standards (North Yorkshire, West  
Yorkshire, Kent, Bromley, Coventry,  
Cardiff, Surrey, Warrington and  
Wrexham and Northumberland)

### **Government Agencies**

Cabinet Office

### **Academic Group (Contd)**

Mr Simon Whittaker  
St John's College  
University of Oxford

Chris Willet  
De Montfort University

Prof Geoffrey Woodroffe  
Department of Law

### **Other**

The Abbeyfield Society  
Chalmers Communications  
The Gypsy Council  
National Travellers' Action Group

Mr Wayne Green  
Global Affairs

Mr Bruce Grieg  
RedJacks Ltd

Mr Clyde Scothern  
Fascia Mania Ltd

Cllr The Hon Joan Taylor  
Nottinghamshire County Council

Mr Jonathan Webb  
Webb Aviation

Commission for Racial Equality  
Department of Constitutional Affairs  
Department of Enterprise, Trade and  
Investment, Northern Ireland

Department of Food and Rural Affairs  
Department of Health  
Department of Work and Pensions  
Disability Rights Commission  
Home Office  
National Co-ordinating Body for Home  
Improvement Agencies  
Northern Ireland Office  
Ofgem  
Office of the Deputy Prime Minister  
Scotland Office  
Scottish Executive  
Small Business Service (DTI)  
Treasury  
Welsh Assembly  
Welsh Office

### THE CONSULTATION CODE OF PRACTICE CRITERIA

The criteria in the code apply to all UK national consultations on the basis of a document in electronic or printed form.

1. Timing of consultations should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose..
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with th fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.

The complete code is available on the Cabinet Office web site, address <http://www.cabinet-office.gov.uk/regulation/consultation/index.asp>

## **Comments or Complaints**

*If you wish to comment on the conduct of this consultation or make a complaints about the way this consultation has been conducted, please write to Nick Van Benschoten, DTI consultation Co-ordinator, Room 723, 1 Victoria Street, London SW1H 0ET or Telephone on 020 7215 6206 or email [Nick.van\\_Benschoten@dti.gov.uk](mailto:Nick.van_Benschoten@dti.gov.uk)*

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