

Timeshare sales

CONSULTATION ON A PROPOSAL
TO AMEND THE TIMESHARE
ACT 1992 IN RELATION TO THE
PROVISION OF INFORMATION
ABOUT THE RIGHT TO CANCEL

No: CCP 007/02

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Department of Trade and Industry
Consumer and Competition Policy Directorate

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1. INTRODUCTION

PURPOSE

- 1.1 This consultation document seeks your views on:
- (i) amendments to the Timeshare Act 1992; and
 - (ii) the proposed new Timeshare (Cancellation Information) Order.
- 1.2 The above-mentioned changes are principally concerned with the arrangements for the cancellation of timeshare agreements and timeshare credit agreements.

RESPONSES

- 1.3 The consultation document is available from the address below or on the website at <http://www.dti.gov.uk/ccp/consultations.htm>
- 1.4 All responses and any queries should be sent to:

Mr Aftab Hanif
Department of Trade and Industry
Consumer and Competition Policy Directorate
Bay 423, 1 Victoria Street, London SW1H 0ET
Tel: 0207 215 5683; Fax: 0207 215 0315; Email: aftab.hanif@dti.gsi.gov.uk

CLOSING DATE

- 1.5 Responses must be received by 31 January 2003.

OUTCOME

1.6 After the analysis of the responses to this consultation, the Regulations and the Order will be laid before Parliament at the earliest opportunity. Guidance for business on the new Order and Regulations will be issued at this time. The Order and the Regulations will become law three months thereafter.

CONFIDENTIALITY

1.7 Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not

requested, responses may be made available to enquirers, including enquirers outside the UK, or published by any means, including on the Internet.

CONSULTEES

1.8 We are sending this document to the people listed at **Annex E**.

HELP WITH QUERIES

1.9 If you would like any help with queries or further information about this consultation please contact Aftab Hanif at the address given above.

LEGISLATION

i) The Timeshare Act 1992:

http://www.legislation.hmso.gov.uk/acts/acts1992/Ukpga_19920035_en_1.htm

(Please note that this page does not incorporate the amendments made to the Act by the Timeshare Regulations 1997.)

ii) The Timeshare (Cancellation Notices) Order 1992:

http://www.legislation.hmso.gov.uk/si/si1992/Uksi_19921942_en_1.htm

iii) The Timeshare (Repayment of Credit on Cancellation) Order 1992

http://www.legislation.hmso.gov.uk/si/si1992/Uksi_19921943_en_1.htm

iv) The EU Timeshare Directive 94/47/EC.

http://europa.eu.int/comm/consumers/policy/developments/time_shar/time01_en.html

v) The Timeshare Regulations 1997:

http://www.legislation.hmso.gov.uk/acts/acts1992/Ukpga_19920035_en_1.htm

2. SUMMARY

2.1 The Government has consulted previously on the provision of separate notices and forms to consumers purchasing timeshares in August 1998 and April 2000. In its summary of responses to the 2000 consultation, the Government stated that it was minded to abolish the requirement to provide separate notices and forms and instead require this information to be contained in the contract.

2.2 This consultation sets out the Government's proposal to replace the requirement to provide separate cancellation notices and forms with a requirement to include information on cancellation rights and a cancellation coupon within the relevant contract. The Timeshare (Cancellation Notices) Order 1992 will be repealed and the relevant requirements will be set out in the new Timeshare (Cancellation Information) Order. These changes will ensure that consumers receive clear notice of their right to cancel at the time of signing the contract and will reduce unnecessary burdens on business.

2.3 In addition, the Government also proposes to clarify the jurisdiction of UK courts where the contract attempts to apply the law of a non Member State.

3. BACKGROUND

3.1 The timeshare sector in the UK is regulated by the Timeshare Act 1992. The Timeshare Act was amended by the Timeshare Regulations 1997 in order to implement the requirements of the EU Timeshare Directive 1994.

3.2 Under the Timeshare Act, timeshare sellers are required to give consumers separate written notice of their right to cancel the contract and a blank cancellation form. A separate notice and form is also required to enable consumers to cancel their timeshare credit agreement. The format of the notices and cancellation forms for both timeshare agreements and timeshare credit agreements is set out in the Timeshare (Cancellation Notices) Order 1992. The form for requesting repayment of credit is set out in the Timeshare (Repayment of Credit on Cancellation) Order 1992.

3.3 The DTI launched a consultation in April 2000 to seek views on whether aspects of the timeshare legislation needed updating. The consultation also asked for views on amendments to the cancellation notices and forms. The majority of those who responded thought the detailed specifications for the notices and forms were too long, complex and confusing and should therefore either be simplified or abolished. In addition, the industry response also pointed out that the provision in the Timeshare Act requiring separate notices and forms were not required in the Timeshare Directive and consequently put UK timeshare companies at a competitive disadvantage with their European counterparts.

3.4 In its response to the consultation 2000, the Government stated that it was intending to abolish the requirement for notices and forms and instead require the information to be incorporated prominently within the contract where it is more likely to be seen by the consumer.¹ The proposed changes are intended to improve consumer awareness of their rights while reducing unnecessary bureaucracy for business.

¹ The Government's response to the consultation can be found at <http://www.dti.gov.uk/CACP/ca/tsbulletin.htm>

4. PROPOSAL

4.1 The Government intends to amend the Timeshare Act using the draft Regulations at **Annex A** (“the Regulations”) and to make a new Timeshare (Cancellation Information) Order (“the Order”) at **Annex B**.

Cancellation Information

Regulations: Schedule, paragraphs 3, 4 and 5. .

Order: Articles 3(1)-(3) and 4, Schedules 1-3.

4.2 The draft Regulations replace the requirement to provide a separate notice of the rights provided by the Act with a requirement to include information on such rights in the relevant agreement itself. The Timeshare (Cancellation Notices) Order 1992 is replaced by a Timeshare (Cancellation Information) Order, which sets out the form in which such information is to be included. The Order requires a timeshare agreement and a timeshare credit agreement to include a notice alerting the consumer to his basic right to cancel. There is also a requirement for more detailed information on cancellation rights to be set out at the end of the agreement. This more detailed information will vary according to the type of timeshare involved and/or according to whether there is a related timeshare credit agreement.

4.3 The notice, which must contain the words required by article 3(6) of the Order, must be placed immediately above, below or adjacent to the place of signature of the offeree. The more detailed information on the applicable cancellation rights must be set out at the end of the agreement.

4.4 In timeshare agreements, the detailed information must take the form set out in either Part I, II or III of Schedule 1 to the Order, depending on the nature of the agreement:

- (i) If the timeshare purchaser is not an individual (e.g. a company) or if none of the timeshare accommodation subject to the agreement is not located in a building, the Part I format is to be used.
- (ii) If the timeshare purchaser is an individual *and* any of the timeshare accommodation subject to the agreement is located in a building, the Part II format is to be used *unless* there is a related timeshare credit agreement, in which case the Part III format is to be used.

4.5 If a timeshare agreement itself includes provision for credit then it must include the information set out in Schedule 2 to the Order, as well as the relevant Part of Schedule 1.

4.6 Timeshare credit agreements must include cancellation information in the format set out in either Part I or Part II of Schedule 3 to the Order, depending on the nature of the agreement:

- (i) If the timeshare purchaser is not an individual (e.g. a company) or if none of the timeshare accommodation subject to the agreement is not located in

a building, the Part I format is to be used.

- (ii) If the timeshare purchaser is an individual *and* any of the timeshare accommodation subject to the agreement is located in a building, the Part II format is to be used.

4.7 The lettering of the notices must be easily legible and of a colour which is easily distinguishable from the colour on the background on which they appear. The lettering must also be in the form set out in the Schedule, with the top two lines larger than any other lettering.

Question 1 : Do you have any comments on the format, content and location of the cancellation notice?

Cancellation reply form

Regulations: Schedule, paragraph 5
Order: Articles 3(4) and 4(1), Schedule 4

4.8 The draft regulations will also remove the requirement to provide a separate cancellation form. Instead, timeshare agreements and credit agreements will need to include a cancellation reply form at the end of the agreement, together with the information on cancellation rights discussed above. . This will ensure that the consumer has quick access to a means of cancellation which is less likely to be mislaid than a separate cancellation form. The inclusion of the form within the contract should also reduce the amount of bureaucracy for the timeshare company. For a timeshare agreement, the reply form must take the format in Part I of Schedule 4 to the Order and for a timeshare credit agreement, the reply form must take the format in Part II of that Schedule.

4.9 Section 6A of the Timeshare Act will continue to apply so that, in certain cases, credit agreements which are related to the timeshare agreement will still be automatically cancelled on cancellation of the timeshare agreement. However, by virtue of section 6 the consumer is also able to cancel the credit agreement without cancelling the timeshare agreement.

Question 2 : Do you have any comments on the format and location of the cancellation reply form?

Electronic contracts

4.10 The Regulations and Order also allow for electronic timeshare agreements or timeshare credit agreements, provided these otherwise comply with the requirement of the Order.

Question 3 : Do you have any comments on the requirements for electronic contracts?

Additional information in the contract

Schedule, paragraphs 3 and 4

4.11 The Regulations amend sections 2 and 3 of the Timeshare Act, so that those sections require all the necessary information on cancellation rights to be contained in the contract. As the cancellation rights vary according to the circumstances (see paragraphs 4.3 to 4.6 above), so the specific information requirements vary according to the agreement. The Order prescribes a variety of formats to meet the requirements of the amended sections 2 and 3. As is currently the case, contravention of section 2 of the Timeshare Act will remain a criminal offence.

Question 4 : Do you have any comments on the additional information to be contained within the contract?

Jurisdiction of UK courts over disputes related to timeshare

Schedule, paragraph 1 (3)

4.12 The draft regulations also amend the Timeshare Act to clarify the jurisdiction of the UK courts where a contract may contain a clause which seeks to apply the law of another country or to give jurisdiction to the courts of another country. The amendment clarifies that the Timeshare Act shall apply and the UK courts will have jurisdiction where a consumer brings proceedings in a UK court, in line with the requirements of Article 9 of the Timeshare Directive .

Question 5 : Do you have any comments on the amendment to the Act to clarify the jurisdiction of the UK courts?

5. INITIAL REGULATORY IMPACT ASSESSMENT

Proposed amendments to the Timeshare Act 1992 and replacement of the Timeshare (Cancellation Notices) Order 1992 with the Timeshare (Cancellation Information) Order 2003.

1. Issue:

Under the Timeshare Act 1992 ("the Act"), timeshare sellers must give consumers a separate notice of their right to cancel and a blank cancellation form. The format of the notices and forms is set out in the Timeshare (Cancellation Notices) Order 1992. The Act also prescribes how repayment of credit on cancellation should be requested, as set out in the Timeshare (Repayment of Credit Cancellation) Order 1992.

In April 2000, the Government consulted on four options for amending the Orders with the objective of making them easier to understand for consumers, simplifying the requirements for business, and bringing them fully into line with the EU Timeshare Directive 1994. The majority of those who responded to the 2000 consultation thought the detailed specifications for the notices and forms were too long and confusing and should be simplified or abolished. Many UK companies also made the point that the provision of notices and forms was not required in the Directive and put them at a competitive disadvantage with their European competitors.

As timeshare agreements increasingly relate to properties in different member states, it is also proposed that the Act is amended to ensure that it provides protection for consumers where agreements are located in another member state, and where a contract may attempt to apply the law of a non member state.

2. Objective:

The Government proposes to replace the requirement to provide separate cancellation notices and forms with a notice box and a detachable cancellation coupon within the contract. The Timeshare (Cancellation Notices) Order 1992 will be replaced by a new Timeshare (Cancellation Information) Order. These changes will ensure that consumers receive clear notice of their right to cancel at the time of signing the contract and will reduce unnecessary burdens on business.

The Government also proposes to clarify the jurisdiction of UK courts where the contract attempts to apply the law of a non Member State.

3. Risk assessment

The proposal to abolish separate notices and cancellation forms create the potential risk that consumer protection will be undermined. However, the Government believes that the proposed measures will in fact strengthen consumer protection. The current requirement for detailed information to be provided separate to the contract could be confusing for consumers and could mean that information is easily lost.

Providing succinct information next to the point of signature, together with more detailed information, specific to the particular type of agreement, prominently within the contract, will ensure that consumers are more likely to be aware of their rights.

4. Options

This consultation paper invites comments on the implementation of the proposed changes, the proposed draft Regulations and the proposed draft Order.

5. Benefits

The benefits of the proposed changes are:

- Improved protection for consumers who buy timeshare through simplified and less confusing contracts.
- Abolition of the need for separate notices and forms will also reduce recurring contract stationery costs for business.
- Businesses who are selling or seeking to sell timeshare in different member states will benefit through the reduction of regulatory differences with other member states.
- Contracts containing clear and accurate information about cancellation rights may also improve consumer confidence in the sector with knock on benefits for business.

6. Compliance costs for business

(i) Business sectors affected:

Businesses affected are timeshare marketing companies, timeshare developers marketing their own product, and companies which supply credit for the purchase of timeshare. According to figures provided in an independent research report² there were in 2001 over 80,000 timeshare owners at 129 timeshare resorts (4,010 units) in the United Kingdom. Over three quarters of those owning at UK resorts are UK residents. The overall economic value of the industry is estimated at over £108 million per annum. In total there are over 440,000 UK owners, more than four fifths of whom own timeshare overseas. The research also highlighted proposed plans for the development of 11 new resorts in the UK by 2010 with an additional 1,360 units at new and existing resorts.

(ii) Compliance costs for a typical business:

Non-recurring costs

There will be a one-off cost for business in replacing existing contracts and printing new ones. However, this will be largely dependent on the length of the transitional period before the new regulations take effect. We envisage a minimum three month transitional period following the making of the Regulations which will allow time for the issue of Guidance to the Regulations. The Regulations will be laid shortly after

² The European Timeshare Industry in 2001. An independent research report prepared by TRI Hospitality Consulting.

the end of the consultation period. It may be the case that, by this time, existing stocks of contract stationery would have naturally run out and therefore would need to be reprinted anyway. Compliance costs of printing new contracts will, however, be minimal because we are reducing paperwork. Initial estimates from industry are that the costs to the sector as a whole would be **£4,200**.

In addition there may also be a small additional cost for translation and legal costs, for the 10% of resorts³ who translate contract documents into 5 other European languages. Initial estimates from industry are that the cost to the sector as a whole would be **£3,250**.

Question 6 : Do you agree with this assessment of non-recurring costs?

Question 7 : Are there any other costs that have not been taken into account?

Question 8 : Would costs be reduced further by allowing an implementation period and if so what period should that be (e.g. 3 months)

Long term costs

Any one-off costs that are incurred will be more than counter balanced by year on year savings from simplified procedures and increased consumer confidence in the product. Initial estimates provided by the Industry outline savings on printing costs as:-

£2000 for companies translating the Cancellation Notices into 5 other European languages. Total saving (13 x £2,000) **£26,000 per annum**.

£500 for Companies using English only. Total Saving (116 x £500) **£58,000 per annum**.

Question 9: Do you agree with this assessment of long term savings?

(iii) Total compliance costs

The year one estimated cost benefit for the industry will be £76,550, (calculated from the estimated cost saving of not having to provide separate notices and forms of £84,000 minus the estimated one off cost of £7,450). From thereon the estimated yearly cost saving will be £84,000. Any resulting improved consumer confidence in the Timeshare product and simplified sales procedures may also lead to, as yet unquantifiable, further savings.

Question 10: Do you agree with the assessment of total compliance costs?

iv) Consultation with small business: “the litmus test”

Small businesses have not yet provided figures for compliance costs. In principle, costs (and savings) for small businesses would in themselves be lower (but greater in

³ Estimate provided by the industry trade body the Organisation for Timeshare in Europe (OTE)

proportion to revenues). During the remainder of the consultation process, DTI will have discussions with small business to obtain first hand views on the costs and benefits of the proposal.

7. Impact on competition

We believe there will be no negative impact for competition. There could be a positive impact on competition through the reduction of regulatory differences for business' selling or seeking to sell timeshare in different member states.

8. Other costs

There are not expected to be any other costs.

9. Results of consultations

This Regulatory Appraisal has been prepared on the basis of the responses to the timeshare consultation April 2000.

10. Summary and Recommendations

The recommendation is that the proposed changes will improve consumers' knowledge of their rights and their ability to cancel their timeshare contract. The proposed changes will introduce one-off costs for business, depending on the transition period, but there are likely to be reduced costs for business over the longer term.

11. Enforcement, Sanctions, Monitoring and Review

The proposed Regulations will not make any changes to enforcement or its effectiveness. The Timeshare Act provides for the imposition of fines for failing to provide timeshare buyers with the appropriate cancellation notice and forms. It is intended to monitor the instances of offences, and of complaints from consumers about failure to inform them of cancellation rights and to review the situation after two years.

6. QUESTIONS

On the Proposal

Question 1 : Do you have any comments on the format and location of the cancellation notice?

Question 2 : Do you have any comments on the format and location of the cancellation reply form?

Question 3 : Do you have any comments on the requirements for electronic contracts?

Question 4 : Do you have any comments on the additional information to be contained within the contract?

Question 5 : Do you have any comments on the specific amendment to the Act to clarify the jurisdiction of the UK courts?

For Business and Trade Associations on the Regulatory Impact Assessment

Question 6 : Do you agree with this assessment of non-recurring costs?

Question 7 : Are there any other costs that have not been taken into account?

Question 8 : Would costs be reduced further by allowing an implementation period and if so what period should that be (e.g. 3 months)

Question 9 : Do you agree with this assessment of long term savings?

Question 10: Do you agree with the assessment of total compliance costs?

The views of small businesses would be particularly welcome and useful.

What will be the impact for your business or the business of your members of this proposal?

Will the proposed changes increase or reduce your costs? In either case it would be helpful to have an itemized list of the estimated costs.

When the changes have been implemented, views are sought on whether compliance and related costs could be reduced by giving a reasonable implementing period and what that period should be (e.g. 3 months).

(Annex A, B and C are on-line as separate documents)

ANNEX D

THE GOVERNMENT'S CODE OF CRITERIA FOR CONSULTATIONS

The Code applies to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation. The main criteria are:

1. Timing of consultation 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 the 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 reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.
8. The complete code is available on the Cabinet Office's web site at: www.cabinet-office.gov.uk/servicefirst/index/consultation.htm .

COMMENTS OR COMPLAINTS

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted these should be addressed to Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET. Tel: 0207 215 6206; Fax 0207 215 2816; E Mail: Philip.Martin@dti.gsi.gov.uk

ANNEX E

DISTRIBUTION LIST

INDUSTRY	
ABT International Ltd	Moness Country Club
Airtours Vacation Ownership	Odessa Wharf Limited
Allan Group	Osborne Club
Auchrannie	Pantglas
Barnham Broom	Paradise Group Ltd
Barnsdale Hall Hotel & Country Club	Passage House
Barratt International Resorts Limited	Perran View
Bowness Leisure PLC	Pine Lake Resort
Brantridge Park	Port Dinorwic
Burnside Park	Portsonachan
CLC Resort Developments Ltd	Prestige
Cameron House	Primeshare Int. Ltd
Canaltime	Quaysiders
Carvynick Country Club	RCI Europe
Cherry Orchard	Regency Villas
Cwm Chwefru Country Cottages	St. Davids Vacation Club
Clowance Estate Country Club	St. Ives Holiday Village
Clube Praia da Oura	St. Mellion
Court Barton	Scandinavian Village
Cromer Country Club	Seasons Holidays PLC
Croyde Bay Holidays Ltd	Stakis Timeshare
First National Bank plc	Stouts Hill
Freshwater Bay	Stratford Court
Graig Park	Summercourt
Grand Vacation Group Holdings	Sutton Hall Timeshare Club
Great Glen	TMSI Limited
Hartland Forest	TSS Marketing Partnership
Haven Court	Tattershall Park
Hilton	Thurnham Hall
Honicombe Manor	Timeshare Advertising Bureau
International Leisure Ltd	Timeshare Computer Link Ltd
Interval International	Timeshare Holidays (Thomas Cook)
Kenmore Club	Travel & Leisure Advis. Services Ltd
Keswick Timeshare Ltd	Tregenna
Lakelands	Trelowarren
Lakeview Country Club	Trenythton Manor
Langdale Leisure Limited	Tresco Estate
Manor Court	Trewince Manor
Marine Quay	Underscar
Marriott Vacation Club	Walton Hall
Melfort Pier and Harbour	Watertime at Bunbury
Menzies Hotels	Whitbarrow Village

Miskin Manor	Windermere Marina Village Limited (86)
TRADE ASSOCIATIONS	
ABTA	
Organisation for Timeshare in Europe	
TATOC	
Timeshare Consumers Association	(4)
ENFORCEMENT	
Glasgow City Council TSD	
Hampshire County Council	
Isle of Wight TSD	
LACORS	
Office of Fair Trading	
Reading Borough TSD	
Solihull TSD	
Stockport Metropolitan Borough TSD	
Trading Standards Institute	(9)
CONSUMER GROUPS	
Citizens Advice Scotland	
Consumers' Association	
Fed. Of Independent Advice Centres	
NACAB	
National Consumer Council	
National Federation of Consumer Groups	
Northern Ireland General Consumer Council	
Scottish Consumer Council	
Scottish Tourist Board	
The Welsh Consumer Council	(10)
SOLICITORS	
Andrew J Taylor - Solicitors	
Baker and McKenzie	
Faculty of Advocates	
Hodsons Solicitors	
The Law Society	
The Law Society of Northern Ireland	
The Law Society of Scotland	
Macfarlanes	
Miller Beckett and Jackson	
Rowe & Maw	(10)

End