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**Repeal of Trading
Stamps Act 1964**

**Summary of
Responses**

November 2003

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REPEAL OF THE TRADING STAMPS ACT 1964

Summary of consultation feedback and Government response

Introduction

The Government welcomes the positive feedback received from respondents to the consultation document "Public consultation on a proposal to repeal the Trading Stamps Act 1964 and amend associated provisions by means of a regulatory reform order" that the DTI published in May 2003. In the light of that response, which is analysed below, the Government intends to take the proposal forward.

Background

As part of its commitment to simplifying and reforming burdensome and outdated legislation, the Government proposes to repeal the Trading Stamps Act 1964 ("the 1964 Act") which should give rise to significant legal and administrative savings for businesses operating relevant promotional schemes. The repeal is to be brought about by means of a Regulatory Reform Order ("RRO") under the Regulatory Reform Act 2001. Some changes are required to other legislation as a result of the repeal, to carry forward necessary protection for consumers and to delete certain obsolete statutory references to trading stamps.

The public consultation ran from 21 May to 20 August 2003, and was brought to the attention of over 230 addressees including retail and other businesses and trade associations, consumer organisations such as local authority trading standards and consumer protection offices and the Office of Fair Trading. Comments were received from a similar spread of organisations, several on behalf of a large constituency of associated organisations including businesses and local authorities, to whom the proposals were relayed by the parent bodies. The consultation document can be found at <http://www.dti.gov.uk/consultations/> and lists of consultees and respondents are annexed.

Summary of responses to consultation

Consultees were invited to answer detailed questions in terms of the Regulatory Reform Act. Two-thirds of the responses were in similar detail, the remainder being in general terms. All the responses supported the proposals, with no significant expressions of concern.

Details of responses

GROUP A: The following respondents expressed approval of the proposals without further comment:-

Co-operative Group (CWS) Limited
Debenhams PLC
Dixons Group plc
Office of Fair Trading
Safeway Stores plc
SPAR (UK) LTD.

GROUP B: The following respondents made further comments (which are analysed below):-

Advertising Association
Boots Group PLC
Esso Petroleum Company, Limited
Institute of Sales Promotion
Local Authorities Coordinating Body on Food and Trading Standards (LACORS)
Loyalty Management UK Ltd
Manchester City Council Trading Standards Service
Oldrids & Co Ltd
J Sainsbury plc
Tesco Stores Limited
Trading Standards Institute.

Analysis of further comments from Group B respondents

The specific questions asked in the consultation document are set out below, with an analysis of the comments received and a statement of the Government's response.

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?
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Responses: All of the Group B respondents but one (LACORS) gave a direct, affirmative answer, several stating that legislation introduced since the 1964 Act took effect was sufficient for consumer protection. The Institute of Sales Promotion was aware that some requests had been made for cash in respect of devices that technically constituted trading stamps, but this form of protection was thought to have been undermined by the freedom of businesses to allocate cash values having no relationship to the value of the stamp when used for its intended purpose. Loyalty Management UK Ltd considered this protection to be illusory for the same reason. LACORS felt that thought should be given as to how some useful consumer protection elements in the 1964 Act could be transferred to the types of loyalty schemes that are common nowadays. In particular, some local authorities felt there was "merit in giving consumers protection against schemes devaluing the value of accrued points at their discretion". They also suggested certain amendments to the Supply of Goods and Services Act 1982 ("the 1982 Act") as well as measures to maintain the application of that Act to Northern Ireland until such time as the Trading Stamps (Northern Ireland) Act 1965 was repealed.

Government's response: LACORS was informed that the 1964 Act did not in practice prevent promoters devaluing accrued points, so that the repeal of the Act

would not give rise to any increase in the risk of detriment and their proposals for further regulation in this area therefore fell outside the scope of the proposed RRO. The consequential amendments suggested by LACORS were agreed, however, and other comments were accepted.

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

Responses: Seven respondents commented, all considering that this would not occur.

Government's response: Accepted.

c) As regards the burdens described in paragraphs 4.34 to 4.52, do you consider that the tests of proportionality, fair balance and desirability are satisfied, as explained in Paragraph 1.5?

Responses: Five respondents commented, all considering that the tests were fully met.

Government's response: Accepted.

d) To what extent are samples provided of goods exchanged for trading stamps? (see paragraph 4.28)

Responses: Five respondents commented, all considering that this occurred either not at all, or very little.

Government's response: Accepted.

e) Consultees are invited to provide examples of any promotional schemes involving vouchers or coupons stating whether or not they are currently considered to fall within the definition of "trading stamp" in the 1964 Act. Please also indicate how many retail outlets and how many consumers participate in each scheme. (see paragraph 4.29)

Responses: All but two (LACORS and Oldrids & Co) of the Group B respondents commented. There was a wide divergence of opinions. Manchester Trading Standards Department indicated that no schemes fell within the definition. J Sainsbury plc considered that trading stamps as such were little used, but that certain vouchers and electronic points could fall within the 1964 Act's definition of trading stamp. The Trading Standards Institute felt that there was a wide range of loyalty schemes, none of which was regulated by the 1964 Act, and it was unlikely that a scheme would be promoted that fell within its regulation. Most respondents considered that some or many vouchers and money-off tokens fell within the ambit of the Act, and Boots, Esso and Tesco said that they took steps to ensure compliance with the Act. Over half of Tesco's 1500 UK stores, as well as affiliated business outlets, gave Clubcard points which were converted to discount vouchers issued to over 10m Tesco customers. These vouchers were treated as trading stamps. Boots

operated approximately 1,460 stores in the UK and Ireland, with 10.5 million active Advantage Card holders (excluding Ireland, where the scheme did not operate). A promotion the previous Christmas had supplied over two million soft toys to participating customers. On the other hand, Loyalty Management UK Ltd considered that the Nectar scheme fell outside the Act's ambit.

Government's response: The Government agrees with most respondents' assessment that a range of current money-off vouchers and tokens issued for promotional purposes fall within the 1964 Act's definition of trading stamp. The Government takes the view, however, that electronic points accrued under a promotional scheme do not constitute trading stamps within the meaning of the Act.

f) Would Government policy officials and others please comment on the need for consequential or incidental amendments to other legislation? (see paragraph 4.53)

Responses: LACORS responded as outlined at question a. above. Loyalty Management UK Ltd thought that the 1982 Act would apply in any case to the supplier of rewards to a trading stamp scheme.

Government's response: As a result of discussion with a range of Departments and other bodies, certain obsolete statutory references have been identified and dealt with in the draft RRO, including those suggested by LACORS. The Government intends, as before, to amend the 1982 Act to make it clear that it will apply to trading stamp schemes.

g) Do you have any views on the costs and savings as addressed in the Partial Regulatory Impact Assessment attached at Annex E? Would businesses please provide a detailed breakdown of the expense to loyalty scheme promoters/retailers of compliance with the 1964 Act, distinguishing between legal and administrative costs? (see paragraph 3.8)

Responses: Little additional information was provided by the seven respondents who commented. The Advertising Association and Tesco were content with the assessment in the consultation document, Tesco adding that costs were difficult to assess. Esso described significant costs of obtaining legal advice whenever a fresh promotion was planned, which reached £15,000 to £20,000 per annum. Boots agreed that the costs were mostly legal, but said that much administrative time was also spent deciding how to draft advertising and promotional material to comply with the requirements of the 1964 Act, and producing unnecessary in-store notices as provided by section 7. The cumulative total of the company's administrative costs arising from the Act was estimated at between £75,000 and £100,000. Other respondents agreed that the Act imposed significant costs on business. While Sainsburys regarded the costs of compliance itself as extremely low, however, the Institute of Sales Promotion said that the physical difficulty of meeting the Act's informational requirements was not easily overcome.

Government's response: The Government considers that the proposed RRO would achieve worthwhile savings in both administrative and legal costs for business. While the potential savings are not dramatic, businesses engaged in relevant

promotional activities would in future need only have regard to mainstream consumer legislation. The cumulative effect of these and other deregulatory proposals would increase business efficiency in the long term.

h) Are there any other benefits that would be gained from these proposals? Do you have any other comments?

Responses: Boots considered that any additional burden from imposing an alternative regulatory regime on scheme promoters would be compensated for because they would have only one set of regulatory requirements to consider. Consumers generally benefited from customer service guidelines which exceeded the law's requirements in any case. It was also in the company's own interests to ensure that schemes were transparent. It was not therefore thought that the repeal of the 1964 Act would have any detrimental effect on the rights of consumers or lead to any reduction in the standard of goods supplied under promotional schemes.

Tesco considered that the changes to accountability in law for goods supplied under loyalty schemes made sense. It would be made clear that the person who actually supplied the goods to consumers was liable to the consumer for any defects under normal contract law. This was good for consumers and, because of the legal certainty, it was good for businesses too. There was general agreement that more recent consumer legislation had superseded the 1964 Act, which no longer served any useful purpose and simply imposed unnecessary costs on business. The Trading Standards Institute felt that there were now other, better regulatory tools available to enforcers than in 1964, and that these had more general application than the specific provisions of the 1964 Act. The Enterprise Act in particular provided an adequate remedy for future schemes with the potential for customer concern. Esso thought that the removal of businesses' present dead costs of compliance with the 1964 Act could only be advantageous to consumers.

Government response: We accept the overall conclusion that the 1964 Act has been overtaken by developments in business practice. While some promotional schemes could be regarded as falling within the ambit of the Act, there is no risk of consumer detriment that cannot be addressed by more recent legislation. Some of the Act's requirements have never proved to be effective in any case. In terms of transparency of information as well as consumer protection, the Act provides no added value for today's consumers. Businesses will be able to operate more efficiently within the proposed legislative framework.

Further steps

Subject to Parliamentary approval, the proposed repeal and consequential amendments will be made as soon as practicable, with a further period of 13 weeks before the changes take effect to allow businesses time to assimilate the changes into their activities.

List of respondents to the public consultation

Advertising Association
Boots Group PLC
Co-operative Group (CWS) Limited
Debenhams PLC
Dixons Group plc
Esso Petroleum Company, Limited
Institute of Sales Promotion
Local Authorities Coordinating Body on Food and Trading Standards
Loyalty Management UK Ltd
Manchester City Council Trading Standards Service
Office of Fair Trading
Oldrids & Co Ltd
Safeway Stores plc
J Sainsbury plc
SPAR (UK) LTD
Tesco Stores Limited
Trading Standards Institute

Additionally, a number of Government Departments, related bodies and the devolved administrations were consulted. Five further respondents wrote to say that they would not be commenting, and they are not listed.