

## THE ENTERPRISE ACT 2002

### CONSUMER PROTECTION - REGULATORY IMPACT ASSESSMENT

#### 1. INTRODUCTION

1.1 In 1999 the Government published the consumer White Paper (*Modern Markets: Confident Consumers*) making clear that a fair deal for consumers and prosperity go hand in hand. The objective of Government policy is to reinforce a virtuous circle of strong consumers and strong businesses. Confident, demanding consumers are good for business. They promote innovation and stimulate better value and in return they get better products at lower prices.

1.2 Since then, the Government has implemented much of the consumer White Paper agenda. But some elements of the White Paper agenda required primary legislation. These will be given effect through the Enterprise Act 2002. The consumer measures in the Act will:

- Give OFT, trading standards departments and other designated enforcement bodies wider powers to obtain court orders (similar to injunctions) to stop traders engaging in unlawful conduct that is harmful to the collective interests of consumer. These enforcement provisions (contained in Part 8 of the Enterprise Act) will replace the existing parallel regimes in Part III of Fair Trading Act 1973 and the Stop Now Orders (EC Directive) Regulations 2001 ('the SNORs').
- Repeal of Part II of the Fair Trading Act 1973 (with savings for the two existing Orders made under this Part which continue to provide valuable protection for consumers). These provisions are no longer necessary because there is now a far more comprehensive framework of consumer protection legislation than existed in 1973.
- Enable the OFT to introduce a new regime for approving business to consumer Codes of Practice. Codes of Practice. This will help consumers identify reputable traders.
- Require the OFT to respond in a set timescale to 'super-complaints' from designated consumers bodies, thereby strengthening the voice of consumers.
- Give the OFT a function to explain and promote the importance of competition to consumers and businesses. In addition, the OFT will have a power to produce educational material for consumers, thereby helping consumers become better informed.
- Replace the DGFT with a Statutory Authority (the OFT) which will have a Chairman (and eventually a separate Chief Executive) and at least four other members. We expect there will be a majority of non-executive members. Members of the OFT will be appointed as individuals not representatives. We will be looking to appoint a strong and strategic OFT with a balance of skills, expertise and abilities. As part of this we will be looking for at least some candidates to have wide-ranging and in-depth experience of competition and consumer issues. But experience of wider issues, particularly in relation to strategic management, will be very valuable to the OFT too.

- Create a power to fund activities which benefit consumers, for example as a means of redress in markets where consumers have been harmed

1.3 Two of the above consumer protection measures have required full assessments of the regulatory impact. These were giving enforcement bodies wider powers to obtain court orders traders to stop traders engaging in unlawful conduct that is detrimental to consumers and the establishment of OFT approved business to consumer Codes Of Practice. Other measures were estimated to impose negligible additional costs to business (or charities and voluntary organisations).

## **2. ISSUES AND OBJECTIVES**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

2.1 Part III of the Fair Trading Act 1973 (FTA) was intended to provide a means of dealing with traders who, ignoring the constraints imposed by civil or criminal law, operate their business in a way that is detrimental to the interests of consumers. Under Part III of the FTA the DGFT can apply for an order that the trader refrain from continuing a course of conduct that is unlawful and detrimental to consumers. There is, however, widespread agreement amongst stakeholders – enforcement authorities; business organisations; and consumer groups – that the existing Part III powers have proved ineffective at controlling or deterring those small number of unscrupulous traders who are determined to cheat consumers.

2.2 Part III of the FTA had already been partially reformed. On 1<sup>st</sup> June 2001, the Government implemented the EC Injunctions Directive (98/27/EC) by way of the Stop Now Orders (E.C. Directive) Regulations 2001. The purpose of the Injunctions Directive is similar to that of Part III: it permits consumer protection bodies (‘qualified entities’) designated by the Member States to apply to the courts or competent administrative authorities for orders to require traders to cease conduct that constitutes a breach of any of the consumer protection directives listed in the annex to the Directive and that harm the collective interests of consumers. Qualified entities can bring proceedings in their own Member State and in another Member State if an infringement there has effects on consumers in the qualified entity’s home State.

2.3 The effect of the SNORs was to replace the grounds for an order under Part III of the FTA with that required by the Injunctions Directive and to correct other perceived defects with the Part III process, in so far as Part III applies to the UK legislation implementing the specified consumer protection directives. The SNORs:

- extended enforcement jurisdiction to trading standards officers and other designated bodies;
- limited the time during which voluntary compliance must be sought to two weeks, thereby limiting the ability of traders to delay proceedings; and
- replaced the difficult to satisfy “persisted in a course of conduct” test with a requirement that the enforcement authority demonstrate that the trader has, or is likely to, engaged in conduct that constitutes an infringement of one of the specific directives as implemented in the UK, where the infringement harms the collective interests of consumers.

2.4 The result was the creation of two separate enforcement regimes aimed at rectifying similar conduct by similar offenders. The SNORs, which were made under section 2(2) of

the European Communities Act 1972, could not have dealt with the perceived defects in Part III in respect of unlawful conduct detrimental to consumers outside the scope of the Injunctions Directive.

2.5 Part 8 of the Enterprise Act creates a single, unified enforcement regime across the consumer field. The remedies available to enforcing bodies and the procedures to obtain them are based on those presently provided for in the SNORs. However, this Part also enables a court order to be made to secure enforcement of domestic law requirements not covered by the SNORs but currently available under Part III of the FTA only to the DGFT – termed “domestic infringements”.

### **Codes of Practice**

2.6 The DGFT has a general duty under the FTA to encourage the preparation and dissemination of codes of practice and previously has given his support to codes developed by 42 trade associations in 24 sectors. However, the FTA does not give the DGFT powers to check if such codes are effective in operation and so supported codes have not been monitored. There are many more codes that do not have the support of the DGFT and whose effectiveness is open to question or unknown.

2.7 The Enterprise Act will give the OFT the power to approve voluntary industry codes of practice that are effective in promoting consumer interests, and which meet core criteria; and to withdraw this approval if a code does not prove effective in safeguarding and promoting consumer interests. The OFT will be able to signify its approval of a code as it sees fit, for example by creating a logo and authorising approved code members to display it. Codes will be monitored at two levels – code members will be monitored by code sponsors, and they in turn will be monitored by the OFT.

2.8 The main objective of this measure is, using self-regulation, through industry Codes of Practice endorsed by the Office of Fair Trading (OFT), to raise standards across industry sectors. This should result in consumers enjoying increased benefits that go beyond their rights under the law by:

- improving the quality of pre-contractual information to consumers to enable them to make informed choices between suppliers;
- ensuring that businesses provide an effective in-house complaint-handling system
- providing an independent, effective and low cost means of redress if in-house systems do not resolve the problem
- helping legitimate business to compete on the basis of quality and fairness.

### **3. RISK ASSESSMENT**

3.1 The latest OFT Annual Report shows that in the year to September 2001 there were a total of 873,434 complaints by consumers. The February 2000 OFT Report “Consumer Detriment” published research that estimated consumer detriment – defined as losses suffered as a result of defective goods, inadequate redress and poor information – to be running at £8.3 billion a year – equal to 1.5 per cent of annual household consumer spending; approximately £180 per year for every adult in the country; or approaching one per cent of GDP.

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

3.2 At present, some traders are not deterred by the prospect of individual consumers bringing civil proceedings for redress or by convictions resulting in low level fines in the magistrates court. Enforcement authorities are currently unable to intervene quickly and effectively against traders who breach legislation which is not covered by the Stop Now Orders Regulations. This causes consumer detriment and disadvantages those businesses that do comply with the law. More generally, businesses in sectors that are perceived to have a tradition of attracting traders who engage in unlawful conduct suffer from the resulting lack of consumer confidence in the sector as a whole. The new enforcement powers contained in Part 8 of the Act will reduce consumer detriment and ensure that honest businesses do not face unfair competition from traders who do not comply with their legal obligations to consumers.

### **Codes of Practice**

3.3 Non-compliance with codes, usually because of inadequate monitoring, is an important contributor to consumer detriment. Without reform this would have continued. It is not possible to tell how many cases of poor trading practice the new measures on codes will prevent. However, adherence to the core criteria<sup>1</sup> should ensure that such bad practice is avoided, but if something does go wrong consumers will know there is a way to put it right.

## ISSUES OF EQUITY OR FAIRNESS

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

3.4 The new enforcement powers in Part 8 of the Act are in the interests of both consumers and business. They will reduce the risks faced by consumers while also ensuring that honest traders are not subject to either additional burdens or to unfair competition from traders who ignore their legal obligations.

### **Codes of Practice**

3.5 Key issues taken into account in developing the options were fairness to consumers (in terms of receiving adequate, reliable information about codes, and adequate complaints procedures and redress mechanisms); and to business (it is unfair to responsible businesses that fulfil the commitments of a code that other businesses can persist in flouting the code and thereby damage consumer confidence in that code).

## **4. OPTIONS CONSIDERED**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

4.1 Three options were considered:

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<sup>1</sup> The core criteria can be found in OFT's response to the consultation on the new codes regime published on 11 July 2001.

**Option 1:** leave the current provisions in Part III of the FTA unamended.

**Option 2:** amend Part III along the lines of the proposals set out in the 1999 Consumer White Paper (*Modern Markets; Confident Consumers*). Those proposals pre-dated the introduction of the Stop Now Orders Regulations. Like the Regulations, they sought to rectify the problems that had become apparent with the existing Part III regime in the areas of the enforcement base; the need to pursue voluntary assurances as to future conduct; and the need to establish a persistent course of conduct on the part of the trader, but did so in ways that differ from those settled on under the Stop Now Orders Regulations.

**Option 3:** replace the existing powers with more effective powers to tackle traders who engage in unlawful conduct based on the enforcement regime created under the Stop Now Orders Regulations – the procedure adopted in Part 8 of the Enterprise Act.

### **Codes of Practice**

4.2 Five possible options were considered:

**Option 1:** retain the current system without change.

**Option 2:** rely on the existing duty of the DGFT to encourage trade and professional associations to develop codes of practice, but to interpret that duty as empowering him also to approve, promote and monitor codes;

**Option 3:** (self regulation) extend the existing duty of the DGFT to encourage organisations to develop codes of practice by giving OFT specific powers to approve and withdraw approval from codes of practice. OFT would be given the power to give an identifiable logo to those codes that meet minimum core criteria and to promote its approval of codes of practice in any way it sees fit.

**Option 4:** give the Secretary of State new powers to impose a legislative requirement to join and comply with the terms of an approved code if carrying on trade in a particular problem sector. For example, it could be an offence to carry on trade or business in a specified problem sector unless the business is a member of an approved code.

**Option 5:** as 4 but across all sectors, thus effectively making membership of a code mandatory in order to carry out business with consumers in the UK.

## **5. BENEFITS OF EACH OPTION CONSIDERED**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

**Option 1:** (No change)

5.1 This would not have produced any benefits for either consumers or for business. It would have retained the two different enforcement regimes established by Part III of the FTA and the Stop Now Orders Regulations, covering the same type of behaviour, and providing for similar remedies, and offering different levels of protection to different consumers, depending on the nature of the infringements complained of. It would also have done nothing to reduce the detriment caused by traders who engage in unlawful conduct.

**Option 2:** (Reforming FTA Part III independent of the Stop Now Orders Regulations)

5.2 This would have allowed deficiencies in the existing regime to be addressed. It would have contributed to an overall reduction in the level of consumer detriment caused

by the activities of traders who engage in unlawful conduct; and a reduction in the level of unfair competition faced by legitimate businesses. But it would, however, have only served to entrench the status quo of two distinct enforcement regimes covering the same types of behaviour.

**Option 3:** (Replacing Part III of the FTA and the Stop Now Orders Regulations with an single coherent enforcement regime based on the procedures in SNORs)

5.3 The wider powers will enable the enforcement authorities to tackle more effectively and more quickly traders whose unlawful conduct causes consumer detriment. The new enforcement regime will also extend the enforcement base to Trading Standards Departments (and other designated enforcers) who will be able to apply for enforcement orders themselves, rather than referring cases to the OFT for action. This will result in a reduction in the number of cases of such detriment caused by such traders. The extent to which this occurs will depend in part on how effectively the new powers are used. Robust enforcement may in turn have a deterrent effect that further reduces the number of cases.

5.4 Honest traders therefore also stand to benefit from the re-directing to legitimate business of consumer resources currently attracted by traders who engage in unlawful conduct. There is also likely to be an increase in consumer confidence in sectors currently characterised by such traders, resulting in an overall increase in the economic activity, and therefore in sales and profits.

### **Codes of Practice**

**Option 1:** (No change)

5.5 This would not have delivered any improvements or benefits. In fact it could have been harmful as it would have continued to associate OFT's name with codes that it did not have the power to monitor even though DGFT withdrew his support on 31 December 2001.

**Option 2:** (reinterpretation of existing legislation)

5.6 This might have delivered some of the improvements sought with the added benefit of not needing new legislation. However, a change in long-standing interpretation of the legislation would have left the OFT without clear powers to implement the scheme. This could have left the OFT open to legal challenge. It was unlikely that OFT would wish to commit staff time and other resources to undertake work that could be considered as ultra vires.

**Option 3:** (OFT approved Codes of Practice)

5.7 This will:

- Strengthen support for responsible self-regulation that will help businesses to market goods and services.
- Help new businesses without an established reputation to start up and gain market share because the logo acts as a symbol of quality assurance.
- Give businesses that sign up to an approved code a marketing edge.
- Benefit all consumers through published clear information about codes, complaint handling and redress mechanisms, problem codes of practice and problem sectors. The net result might be that the best practice example of better codes could encourage greater uptake of codes by business. This would avoid the imposition of costly and inflexible regulation.

5.8 Although it is difficult to quantify specific benefits to consumers, effective codes of practice should offer consumers a better chance of avoiding poor trading practice. It is accepted that it will take a while for consumer and business confidence in the new system to build up, so the benefits are unlikely to be immediate. Ultimately the success of the policy will be dependent on the participation by industry, the extent to which industry and the OFT will be able to ensure that the codes are effective in operation and the extent to which consumers take notice. A publicity campaign will be mounted to promote the scheme to both business and consumers. OFT have announced priority sectors for the new regime. These are used cars, car repairs and servicing, credit, funerals, travel, estate agents and direct marketing.

5.9 Not all businesses will want to join a code and seek OFT approval. Personal recommendation and reputation works well for local companies or for famous names, and these companies may not want or need OFT approval. Although the Government intends to promote OFT's new regime, it is not intended to suggest that all businesses that do not belong to approved codes are not reputable.

**Option 4** (Mandatory Codes in problem sectors) and **Option 5** (Mandatory Codes across all sectors) can be evaluated together.

5.10 Both would in principle have delivered the same benefits as option 3 but would have replaced self-regulation with a legal obligation to join a code. But imposing mandatory codes might not have been as effective as the voluntary involvement of businesses in developing codes to improve their sector. There would not have been the same sense of ownership by business. These options would have been extremely resource intensive to monitor and enforce and would have placed a considerable burden on Government. Business groups indicated their opposition to this approach. They preferred option 3 as the decision to join a code is voluntary. These additional burdens might well have increased start-up costs and could be seen as a barrier to entry

## **Overall**

5.11 It is therefore not possible to provide a detailed breakdown of the specific benefits of the proposed measures consumers and business at this stage. However, the intention is that consumers should be the primary beneficiaries – traders who engage in unlawful conduct account for a substantial proportion of the estimated £8.3bn. in consumer detriment each year identified by the OFT. A reduction of even one per cent in that figure would consequently save consumers in the region of £80 million per year.

## **6. COSTS OF EACH OPTION CONSIDERED**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

#### **Option 1:** (No change)

6.1 There would have been no compliance costs for business. There would have been no policy or implementation costs for enforcement authorities.

#### **Option 2:** (Reforming FTA Part III independent of the Stop Now Orders Regulations) *Compliance costs:*

6.2 As with Option 3, compliance costs for responsible businesses would have been zero. That being said, there would have been confusion over which of the two injunctive regimes applied to which consumer protection legislation.

*Policy / implementation costs:*

6.3 There would have been an increase in the policy costs of enforcement, comparable to those anticipated in respect of Option 3, as more cases would have been taken to court. However, it was estimated that the implementation costs would be greater for Option 2 than for Option 3 as there would have been no consistency with the legal requirements and procedures under the Stop Now Orders Regulations. Enforcement authorities would have consequently accrued additional costs as a result of the need to train staff in the operation of two regulatory systems covering substantially the same type of behaviour that causes the same type of detriment.

**Option 3:** (Replacing Part III of the FTA and the Stop Now Orders Regulations with a single coherent enforcement based on the remedies provided for in the SNORs)

*Compliance costs:*

6.4 The new enforcement powers are specifically targeted at traders who engage in unlawful conduct and are not intended to impose any additional costs on businesses that comply with the law. Businesses are already under an obligation to comply with the law and an obligation to honour their contracts with consumers properly. The compliance impact on a business that meets its obligations will therefore be zero. Business organisations expressed support for measures that help to reduce the unfair competition posed by unscrupulous traders.

*Policy / implementation costs:*

6.5 There will be some increase in the policy costs of enforcement. Costs of individual cases cannot be estimated – they will be determined by a combination of the complexity of the issues and the identity of the court in which they are heard. Implementation costs will be lower than for Option 2 because the new powers reflect those introduced under the Stop Now Orders Regulations in 2001 and on which enforcement authorities have already received some training.

6.6 Local authority trading standards departments are expected to bear the brunt of the new enforcement responsibilities. DTI has already provided additional funding for local authorities through the New Burdens mechanism totalling £5 million over two years in respect of the Stop Now Orders Regulations which came into force on 1<sup>st</sup> June 2001. It is anticipated that a further New Burdens transfer to local authorities in the region of £10 million a year will be appropriate once Part 8 of the Enterprise Act is brought into force. It is anticipated, however, that these burdens will steadily fall over the medium to long term. Many infringements already carry criminal sanctions that TSDs have a duty to enforce, and – to the extent that the new powers are effective in reducing future breaches of this legislation – the long-term effect may be a small reduction in other enforcement costs. OFT has indicated that it will address any additional costs that it accrues as part of its wider budget negotiations with HM Treasury.

## **Codes of Practice**

### **Option 1 (no change):**

6.7 There would have been no new costs.

**Option 2:** (reinterpret legislation)

6.8 The costs would have been similar to option 3.

**Option 3:** (Extend legislation to establish OFT approved voluntary Codes)

6.9 This option does not impose any direct costs on individual businesses because the decision whether to join a code of practice and whether to seek OFT approval for the code will be voluntary. Any existing codes that already meet the required standard could probably receive approval without incurring significant costs. Trade associations are only likely to seek approval for a code where they judge the benefits will outweigh any costs to their members. Where trade associations decide to set up an approved code, either from scratch or by upgrading an existing code, businesses might be asked to pay increased membership fees to cover the costs of doing so. Areas where costs might be incurred are in establishing or upgrading redress, compliance and monitoring systems.

6.10 It is not possible to fully break down and separate policy and implementation costs at this time. This is because OFT is still developing its monitoring and reporting requirements and so it is not possible to show these administrative costs separately.

6.11 The potential new costs incurred by trade associations setting up codes where none already exist are set out below. They are split between one-off and recurring costs. Research suggests that these costs could be<sup>2</sup>:

<p><b><u>One-off</u></b> (policy) Setting up a new system compliant with OFT's core criteria where no codes exist</p>	<p>The cost of setting up mechanisms could range between £50 - £200 per business</p>
<p><b><u>Recurring</u></b> (implementation) Running a code system compliant with OFT's core criteria where no code exists</p>	<p>between £50 - £250 per trade association member per year</p>

6.12 For those businesses that are already signed up to voluntary codes of practice operated by trade associations, the total new start-up costs and recurring costs might be nil. However if there are additional costs to trade associations, they might be :

<p><b><u>One-off</u></b> (policy) Upgrading an existing code to comply with the core principles</p>	<p>Between £0 - £150 per business</p>
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<sup>2</sup> These figures were taken from the research carried out by the Trade Association Forum for its report on Consumer Codes of Practice published in March 2000.

<b>Recurring</b> (implementation) Additional costs of running new system for an existing code	Between £0 - £150 per trade association member per year
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6.13 The option will impose new costs on Government for additional Office of Fair Trading staff to administer the scheme and for publicising the new logo. OFT estimates that a minimum of £2.4 million per year, over the next four years, will be required to implement the codes of practice regime.

**Option 4:** (Mandatory Codes in problem sectors) and **Option 5:** (Mandatory Codes across sectors):

6.14 Compliance costs for business were expected to be higher than for option 3. It is likely these options would have been inflexible and costly to business and consumers with significant costs to the Government.

## 7. SUMMARY OF COSTS AND BENEFITS OF OPTIONS

### Reform of FTA Part III

Option	Description	Costs	Benefits
1	Leave Part III FTA unamended.	No costs to <b>business</b>	None.
2	Amend Part III FTA along the lines of the proposals set out in the 1999 Consumer White Paper .	No additional burdens on legitimate <b>businesses</b> (although there would have been confusion over which injunctive regime applied to which consumer protection legislation).  Some increase costs to Government ( <b>enforcement authorities</b> ) but these were likely to have exceeded those associated with Option 3 as a result of operating two parallel enforcement regimes.	<b>Business</b> – reduction in unfair competition from traders who ignore their legal obligations; re-allocation of consumer spending to legitimate businesses.  Reduction in the overall level of <b>consumer</b> detriment in the economy.
3	Replace Part III FTA and the Stop Now Orders Regulations with a new regime based on the procedures in the SNORs Regulations.	No additional burdens on legitimate <b>businesses</b> .  Increased costs for Government ( <b>enforcement authorities</b> ) in the short to medium term as the activities of known problem traders are addressed (including £10 million a year for trading standards departments, and some additional costs for OFT). However, the long-term effect	<b>Business</b> – reduction in unfair competition from traders who ignore their legal obligations; re-allocation of consumer spending to legitimate businesses.  Reduction in overall level of <b>consumer</b> detriment in the economy (a reduction of one per would amount

		may be a small reduction in other enforcement costs.	to a reduction in detriment of around £80 million).
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## Codes of Practice

Option	Description	Costs	Benefits
1	Retain current system	None to <b>business</b> – but <b>consumers</b> would not have had the help of reliable Codes of Practice	None
2	Rely on existing powers but with a wider interpretation	Similar to option 3	Legislation not required
3	Extend OFT's power through legislation (OFT approved voluntary codes)	From £0 - £250 per business involved in scheme – but no costs directly <u>imposed on business</u>	Voluntary scheme that will benefit <b>business and consumers</b> .
4	Mandatory membership of codes in problem sectors	Higher than option 3. Cost burdens and regulatory burdens for <b>business</b> , also costs for consumers and Government.	All businesses in problem sectors would have had to belong to Codes, thereby <b>consumers</b> in those sectors would have benefited from Codes
5	Mandatory membership of codes in all sectors	Higher than option 3. Cost and regulatory burdens for <b>business</b> , consumers and Government.	All businesses would have had to belong to Codes thereby all <b>consumers</b> would have benefited from Codes

## 8. IMPACT ON SMALL BUSINESS

### Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)

8.1 The new enforcement regime will target only those traders who have failed, in some way, to meet their existing legal obligations, to the detriment of consumers. To that extent, it will impact equally on all business sectors, irrespective of the size of the companies involved. There are no aspects of the new regime that will affect only, or impact more significantly on, the small business sector. It imposes no new legal obligations on business, but merely creates a new enforcement mechanism for dealing with breaches of existing legal requirements.

## **Codes of Practice**

8.2 Representatives of small businesses generally welcomed the proposals, but expressed concerns about the cost implications and the administrative burdens that they felt the new system might impose. They were also worried that if the regime was too rigorous or inflexible it might be difficult to fulfil all the requirements. The Government has noted small business concerns. The definition of a code sponsor has been widened to ensure a number of entry points for small businesses, enabling them to choose the most suitable sponsor for their needs. However, experience shows that without a more rigorous approach than has previously been in place, the new scheme is unlikely to succeed.

## **9. RESULTS OF CONSULTATION**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

9.1 The development of proposals to reform or replace Part III of the FTA with a more effective enforcement regime was accompanied by consultation at all stages. They were considered by a special sub-group on regulation (made up of representatives of a variety of consumer and business organisations and trading standards professionals) during the preparation of the Consumer White paper, during the general consultation period following the publication of the White Paper; and ahead of proposed legislation being drafted. The proposals were broadly welcomed by all interested parties. Implementation of the EC Injunctions Directive was also accompanied by a public consultation exercise.

## **Codes of Practice**

9.2 Representatives from large and small business, consumer and business organisations and local authorities, were all consulted as part of the Consumer White Paper consultation exercise, which took place from July to October 1999. The same groups were consulted on the codes of practice policy paper in March and April 2000. As it would not have been practical to consult a small business from every sector, an alternative approach to assessing the impact of the policy on small business was needed. At the time of the original consultation, we approached a number of trade associations and the British Chambers of Commerce and Industry (BCCI), the Federation of Small Businesses (FSB) and the Union of Independent Companies as small business representatives to get their views on how the proposals would affect their smaller members. This enabled us to cover as many sectors as possible to get a better feel of the mood of small business. DTI also financed research by the Trade Association Forum into codes of practice. This was seen as an effective way of raising and discussing the issues with businesses of all sizes. Responses were supportive of option 3. Business stressed it was essential that the implementation of the new regime should not be over prescriptive. Consumer groups emphasised the importance of transparency in the new scheme. Since the original consultations, OFT have been taking forward the work on codes. This new approach does not represent a change to policy. OFT consulted on their new approach to codes of practice from February to May 2001. The consultation included FSB and BCCI as well as numerous trade associations. All of these organisations have small businesses amongst their membership. FSB were supportive of OFT's new approach. In their response to the consultation OFT said that the overall view from respondents was that their proposed regime was ambitious but worth pursuing and believe that the response gives them a sound basis to move forward.

## **10. DEVOLUTION**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

10.1 Consumer protection is a transferred matter in relation to Northern Ireland. However, Northern Ireland Ministers and Assembly agreed that the consumer protection measures in the Act (including the new enforcement regime in Part 8 of the Act) should apply throughout the United Kingdom.

#### **Codes of Practice**

10.2 We have consulted the Scottish Executive and their view and ours is that this is a reserved matter in relation to Scotland.

## **11. GUIDANCE, ENFORCEMENT AND EVALUATION**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

11.1 The Department will monitor the operation of the arrangements. The Office of Fair Trading is required to put in place, and monitor the operation of the co-ordination arrangements to minimise the risk of duplication of effort and the risk of multiple challenges to businesses. As with the Stop Now Regulations, the OFT is required to produce guidance explaining how it expects to new regime to operate.

#### **Codes of Practice**

11.2 Guidance has already been published on the core criteria for codes seeking approval. OFT are keen to roll out the scheme as quickly as possible after Commencement.

11.3 The new regime will be monitored and enforced at two levels: the code sponsors will be responsible for monitoring and enforcing the scheme with the code members and OFT will monitor the sponsors (see paragraph 3). The sanction taken against business and sponsors who fail to comply with the code will be the loss of the logo representing the OFT's approval and the subsequent publicity.

11.4 OFT will be able to take action to protect the logo from being used by businesses and code sponsors that are not entitled to do so. This should benefit both business and the consumer by increasing consumer confidence in the logo.

11.5 OFT reports annually to Parliament. Information on the operation of the new codes of practice regime will be contained within that report.

## **12. SUMMARY**

### **Enforcement of certain consumer legislation (Part 8 of the Enterprise Act)**

12.1 The Enterprise Act includes Option 3 – that the “Stop Now” enforcement regime created by the Stop Now Orders Regulations should be used for the new, consolidated enforcement regime.

12.2 The starting point for the legislative scope of the new regime are “Community infringements” within the meaning of the EC Injunctions Directive. The Secretary of State has a power to specify the legislation that give effect in UK law to the directives listed in the Annex to the Injunctions Directive. . The Secretary of State also has a power to specify the UK legislation and civil law obligations to which the definition of a “domestic infringement” will apply. As with the Injunctions Directive and the way the Office of Fair Trading has used its existing powers under Part III of FTA, the intention is that the list for domestic infringements should initially be limited to breaches of legislation whose main focus is to protect the economic interests of consumers, together with breaches of contract for the supply of goods or services and of the duty of care in negligence.

### **Codes of Practice**

12.3 The Enterprise Act takes forward Option 3 to extend the existing duty of DGFT in relation to codes of practice by introducing legislation to give OFT specific powers to approve and withdraw approval from codes. OFT will be able to denote its approval by use of an identifiable logo. The logo will make it easier for consumers to find better businesses. Businesses could benefit from the marketing edge approval will give them. It was recommended, therefore, that Option 3 be implemented.

### **Overall**

12.4 The Consumer measures in the Act empowers consumers by establishing more effective consumer protection. Strong consumer protection is good news for business, consumers and the economy.

## **13. DECLARATION**

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

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Parliamentary Under-Secretary of State for Consumers, Competition and Markets.

Date: November 2002

## **14. CONTACT POINT**

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