

CIVIL ENFORCEMENT REMEDIES

Extending the range of remedies
available to public enforcers of
consumer law - Impact
assessment

NOVEMBER 2012

Contents

Summary: Intervention and Options	2
Summary: Analysis & Evidence Policy Option A.....	4
Summary: Analysis & Evidence Policy Option B.....	5
Summary: Analysis & Evidence Policy Option C	6
Evidence Base (for summary sheets).....	7
A. Overview	7
B. The issue.....	7
C. Objectives	8
D. Options identification	9
E. Options analysis.....	9
Option 0: maintain the current arrangements	9
Option A: Introduce civil sanctions available only through agreement or following direction by a Court (Preferred Option)	10
Option B: Encourage an informal approach to a wide range of sanctions and provide guidance	15
Option C: Implement the administrative sanctions in the RES Act.....	16
Preferred Option.....	19
F. Recommendation	19
G. Implementation	19
H. Monitoring and evaluation.....	19
I. One in, one out.....	19
Annex 1: Post Implementation Review (PIR) Plan.....	20
Annex 2 – Specific Impact Tests	21
Competition Assessment	21
Small Firms Impact Test	21
Equalities impact tests	21
Other specific impact tests.....	21
Annex 3 – The Consumer Law Reform Programme	22

Title: Civil Enforcement Remedies : extending the range of remedies available to public enforcers of consumer law IA No: BIS0392 Lead department or agency: Department for Business, Innovation and Skills	Impact Assessment (IA)
	Date: 04/09/2012
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: John Madill john.madill@bis.gsi.gov.uk
Summary: Intervention and Options	RPC Opinion: AMBER

Cost of Preferred (or more likely) Option
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Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?	Measure qualifies as
£m	£m	£m	Yes	IN

What is the problem under consideration? Why is government intervention necessary?

If consumers are to play their part in driving growth they need competitive markets, a strong but simple framework of consumer law and effective enforcement of that law. This IA concerns this third precondition.

When a business breaches consumer law, enforcers (principally Trading Standards Services and the Office of Fair Trading) have a limited range of options available to them if the issue cannot be resolved informally. They can take a criminal prosecution or civil case which if successful can result in criminal sanctions (a fine or imprisonment) or Enforcement Orders and undertakings. While these tools can punish the business for the breach and stop it from continuing the infringing practice, they do not provide for positive action, for example, redress for affected consumers or encouragement of consumers to seek out the most reputable businesses. Individual consumers have the option of privately taking action against a business, but there appears to be a gap in the remedies that enforcers are able to secure on their behalf. Government intervention will rebalance enforcement of consumer law towards addressing these issues.

What are the policy objectives and the intended effects?

The policy objective is to provide improved remedies aimed at achieving one or more of the following outcomes:

- increased business compliance with the law;
- improved redress for consumers affected by the breach of consumer law; and
- more confident consumers who are more empowered to exercise greater consumer choice.

Combined together these outcomes will increase consumer welfare and favour well-run, reputable businesses which will in turn contribute to positive economic growth. A further side benefit of the proposal will be to meet the Government's aim of reducing reliance on criminal prosecution for relatively minor offences.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Four policy options have been considered:

Option 0: 'do nothing'. This would cause no disruption but equally would have no impact on meeting our objective.

Option A (preferred option): introduce civil enforcement remedies available only following direction by a court or through agreement between traders and either enforcers or the court by amending Part 8 of the Enterprise Act 2002. The Government believes this offers the best balance between effectiveness and fairness.

Option B (alternative to regulation): encourage an informal approach to a wide range of remedies and guidance. The effectiveness of this would be limited without additional regulatory incentive.

Option C: implement the administrative sanctions in the Regulatory Enforcement and Sanctions Act 2008. This would impose the lowest costs but there is a perception that it would not provide businesses with a fair hearing *before* sanctions are imposed.

Will the policy be reviewed? It will **be reviewed**. If applicable, set review date: 12/2016

Does implementation go beyond minimum EU requirements?	N/A
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Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date:

Summary: Analysis & Evidence

Policy Option A

Description: Introduce civil enforcement remedies available only through agreement or following direction by a Court by amending Part 8 of the Enterprise Act 2002 (**preferred option**)

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

For enforcers: up to £25,000 training per LATSS, though this is likely to be considerably less as we anticipate that training would be centrally provided on a national or regional scale.

Other key non-monetised costs by 'main affected groups'

For enforcers: unquantified case costs. We will seek information on the costs associated with undertakings as part of our consultation in order to better quantify this.

For compliant businesses: familiarisation costs.

For other businesses: unquantified case costs plus additional costs attached to remedies (some remedies have been costed but no quantification of case numbers). We will seek further information on these costs as part of our consultation.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

For enforcers: up to £320,000 saving if guilty pleas switch from the criminal to the civil route.

For businesses: to £320,000 saving if guilty pleas switch from the criminal to the civil route.

Such cost savings would be offset against costs associated with the civil process (currently unquantified).

Other key non-monetised benefits by 'main affected groups'

For consumers: greater availability and payout of redress; some future loss avoided due to more compliance with the law; improved tools to activate greater consumer choice; better empowered consumers.

As remedies will be determined on a case-by-case basis we have been unable to quantify these broad benefits but anticipate that they will significantly outweigh administrative costs involved. We will seek information on anticipated benefits as part of our consultation.

For businesses: unquantified benefit for compliant traders if consumers switch to them.

Key assumptions/sensitivities/risks

Discount rate (%)

Costs do not include compensation payments as this is money received due to illegal behaviour.

Enforcers may still prefer criminal sanctions over civil process.

No guarantee that businesses will enter or comply with undertakings.

BUSINESS ASSESSMENT (Option A)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	IN

Summary: Analysis & Evidence

Policy Option B

Description: Encourage an informal approach to a wide range of remedies and provide guidance

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Nil – we would not anticipate this being a significant change from the 'do nothing' option.

Other key non-monetised costs by 'main affected groups'

For enforcers: provision of guidance and training.

For compliant businesses: familiarisation costs.

For other businesses: unquantified costs attached to remedies (some remedies have been costed but no quantification of case numbers).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Nil – we have been unable to quantify the benefits of this approach but would expect the impact to be minimal given its proximity to the 'do nothing' option.

Other key non-monetised benefits by 'main affected groups'

For consumers: some future loss avoided due to more compliance with the law.

For enforcers: unquantified cost savings from avoided court cases (likely to be minimal).

For businesses: unquantified cost savings from avoided court cases (likely to be minimal).

Key assumptions/sensitivities/risks

Discount rate (%)

Additional take-up of this option is likely to be low.

Minimal incentive for traders who had broken the law to engage in remedial action any more than they do now.

True rogues may 'game' the system.

Enforcers may choose to prosecute anyway.

BUSINESS ASSESSMENT (Option B)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	IN

Summary: Analysis & Evidence

Policy Option C

Description: Implement the administrative sanctions in the RES Act.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

For enforcers: up to £25,000 training per LATSS (this is based on estimated costs to run a pilot with 10 LATSS; likely to be economies of scale if rolled out widely); £145,000 start-up cost for appeals; ongoing costs of lost appeals (£3,860 average per appeal – no quantification of appeal numbers).

Other key non-monetised costs by 'main affected groups'

For compliant businesses: familiarisation costs.

For other businesses: unquantified costs according to sanctions imposed; ongoing costs of lost appeals (£3,860 average per appeal – no quantification of appeal numbers).

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

For enforcers: £325,000 per year in court cost savings.

For businesses: £325,000 per year in court cost savings.

Other key non-monetised benefits by 'main affected groups'

For consumers: some future loss avoided due to more compliance with the law and some compensation.

Key assumptions/sensitivities/risks

Discount rate (%)

Concerns that administrative sanctions are by nature unfair, as they do not provide a trader with an automatic chance to defend themselves in court.

Enforcers prove reluctant to adopt civil sanctions, because it requires additional consideration and judgment to be applied in each case.

BUSINESS ASSESSMENT (Option C)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	IN

Evidence Base (for summary sheets)

A. Overview

1. The proposal would extend the range of civil enforcement remedies available to address breaches of consumer law. It would not create a completely new procedure. There are a number of desired outcomes attached to the proposal, including increasing consumer redress when breaches of consumer law are discovered, as this will address a gap in the UK's consumer regime where consumers often do not get redress or compensation for harm suffered; seeking to secure greater business compliance with the law, a key aim of any enforcement proposal; and encouraging consumers to seek out the most reputable businesses. A side benefit of the proposal would be to direct more enforcement cases down the civil rather than criminal route.
2. The proposals set out in this Impact Assessment form part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. The proposals would require primary legislation to be implemented, which we propose to do via a Consumer Bill of Rights. There is further information about the Consumer Law Reform programme in Annex 3.

B. The issue

3. Successful transactions for goods and services depend heavily on consumer confidence in the trader, and in the quality of goods and services provided. Usually such issues are not in question but when things do go wrong, for example, when goods or services are not up to standard, or when a consumer is subject to mis-selling, the consumer will expect some sort of remedial action, be that a replacement, refund or some further form of remedy.
4. The best traders will be keen to help consumers. They will ensure that the consumer's own position is not adversely affected by the problem, and that obligations under consumer law are fully met thereby safeguarding their own reputation as lawful traders.
5. Where traders fail to comply with consumer law and fail to satisfactorily meet consumer expectations with regard to remedies, they may be subject to enforcement action. Enforcers (primarily Local Authority Trading Standards Services (LATSS) and the Office of Fair Trading (OFT)) will usually, in the first instance, seek to work informally with the trader to secure remedial actions to amend its behaviour. Examples of such remedial actions may include introducing employee training, improved record-keeping, collecting (and acting on) customer feedback or signing up to an Alternative Dispute Resolution (ADR) scheme. Where this fails to satisfactorily address the issues, more formal action may be taken. Formal enforcement action, be it criminal or civil, does not usually include any remedies that benefit individual consumers:
 - When a criminal prosecution takes place, the courts tend to issue a fine punishing past behaviour and/or a prison sentence. There is no scope to secure commitments from the business not to break the law again and compensation is rarely awarded.¹
 - The civil system – Enforcement Orders and Undertakings under Part 8 of the Enterprise Act 2002 – provides for injunctive relief against certain infringements of consumer protection legislation. It can be used to stop a business behaving in a particular way. However, it cannot generally be used to require a business to take particular remedial action to address the broader issues.
6. Research completed by the Lincoln Law School (2008)² has shown that consumers generally benefit from public enforcement through prevention of the spread of malpractice, but consumers seldom obtain compensation. The report highlights that consumers wanting to obtain redress are obliged to pursue separate action through the civil courts but they often do not do so, due to the perceived complexity, risk or cost of the process. Legal fees are often seen as high, and legal advisors often cannot give clear advice that a consumer is likely to win a case, when losing would put them at a risk of being liable for the other party's costs. Behavioural thinking shows that many people actively try and minimise the risk of losses rather than seek gain, which encourages them not to act. Additionally, the low

¹ For example, according to the OFT's Annual Report for 2011/12, LATSS made 1860 prosecutions under consumer law in 2011/12 which resulted in just under £1million fines and just under £100,000 compensation.

² University of Lincoln, Lincoln Law School (2008): Representative Actions and Restorative Justice
www.bis.gov.uk/files/file51559.pdf

individual value of some losses (although in aggregate, consumer detriment can be great) deters court action.

7. Furthermore, in 2008 the University of East Anglia published a comparative analysis of the UK consumer regime as compared to a group of other leading countries.³ On the whole the UK regime was found to be reasonably well-performing but one of the three relative weaknesses identified was that it is somewhat difficult for consumers to seek and obtain redress for breach of consumer law.

8. The Government and others, including the European Commission, have considered a number of mechanisms relating to redress, including both ADR and collective redress, where a named or unnamed group of consumers can join their claims together into a single case. Work in this area is ongoing and other elements of the Consumer Bill of Rights will help address this issue, for example, by providing easier access to redress for individual consumers in relation to misleading and aggressive practices.

9. In summary, the key issue that needs to be addressed is the lack of remedies available under the current public enforcement regime. While public enforcement can stop a trader behaving in a particular way it cannot currently be used to direct traders to take positive action.

C. Objectives

10. The Government's policy objective is to provide improved remedies aimed at achieving one or more of the following outcomes:

- increased business compliance with the law: forward-looking measures to ensure the same or a similar breach does not reoccur;
- improved redress for consumers affected by the breach of consumer law: providing schemes aimed at securing redress for consumers; and
- more confident consumers who are empowered to exercise greater consumer choice: measures to improve the ability of new and existing customers to make a free and informed choice.

11. Business compliance with the law is an important element of any enforcement regime as it helps to ensure that consumers do not continue to suffer from breach of the law. Part 8 of the Enterprise Act 2002 already allows enforcers to respond to this imperative, but in practice, enforcers have expressed concerns as to its effectiveness.

12. As highlighted above redress for consumers affected by a breach of the law is currently difficult to obtain and while this proposal would not replace the right of an individual consumers to seek compensation privately, it would go some way to improving the current position.

13. Finally, for many consumers, a key element of a purchasing decision is the past performance of a business.⁴ Promoting greater consumer choice by better informing them of breaches of consumer law and encouraging switching behaviour is therefore important.

14. Taken together, these outcomes would, if secured, increase deterrence whilst making markets work better and reducing consumer detriment.

15. A further side benefit of the proposal will be to meet the Government's aim of reducing reliance on criminal prosecution for relatively minor offences. Remedies would be attached to the civil rather than criminal regime. At present LATSS (who take the vast majority of consumer enforcement in terms of caseload) often opt to use the criminal rather than civil process to address breaches of consumer law (the OFT on the other hand takes more civil than criminal action). By attaching remedies to the existing civil enforcement process this proposal would direct more enforcement down the civil route.⁵ The

³ University of East Anglia, ESRC Centre for Competition Policy (2008): Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries www.bis.gov.uk/files/file50027.pdf

⁴ Office of Fair Trading (2008): Consumer detriment: Assessing the frequency and impact of consumer problems with goods and services www.offt.gov.uk/shared_offt/reports/consumer_protection/oft992.pdf

⁵ Proposals elsewhere in the Consumer Bill of Rights should also assist with this move towards civil rather than criminal enforcement. At present, LATSS in England and Wales can present criminal cases in Magistrates' Courts, but cannot present civil cases in County Courts. LATSS often need to hire external lawyers to present civil cases, meaning that the cost of civil enforcement is often higher than it needs to be for local authorities. The proposal is to introduce civil rights of audience for LATSS so they can present cases in County Courts. This will remove the need for the local authority to hire external lawyers for simple civil cases enabling them to reduce their costs if the civil route is pursued, as appropriate.

availability to enforcers of civil remedies should also increase the general incentive towards compliance by all traders, leading to a reduced need for any form of formal enforcement action.

Overall benefits and costs

16. Overall benefits and costs of implementation of any changes to achieve these objectives are not quantified at this stage.

17. This Impact Assessment does not cover the costs which fall on rogue traders involved in paying greater compensation payments as a result of illegal behaviour, as they represent the unjust enrichment of the business. Obviously such costs for rogue traders result directly in gains for those consumers which have suffered loss as a result of the illegal behaviour.

18. Greater consumer confidence in the marketplace may lead to an increase in the number of transactions. For businesses, there would be some 'winners and losers' with the potential for compliant businesses to pick up market share and profit at the expense of non-compliant traders. While the benefits from more confident consumers contributing to better working markets have been comprehensively set out in economic literature,⁶ the value of any switching behaviour is difficult to quantify, as consumer choice is dependant on a wide range of dynamic factors of which trader behaviour is a subset.

19. The options below do not repeat these policy costs and benefits, but rather focus on how effectively the objectives will be achieved. The options highlight the additional costs and benefits of the implementation of different mechanisms to achieve the objectives.

D. Options identification

20. The options are:

Option 0: Do nothing.

Option A (preferred option): Introduce civil enforcement remedies available only through agreement or following direction by a Court by amending Part 8 of the Enterprise Act 2002.

Option B: Encourage an informal approach to a wide range of remedies and provide guidance.

Option C: Implement the administrative sanctions in the Regulatory Enforcement and Sanctions Act 2008 (the 'RES Act').

E. Options analysis

Option 0: maintain the current arrangements

21. Option 0 maintains the status quo – the 'do nothing' option. This would cause no disruption, and would not cause any change to the way in which businesses operate in the market, or the way in which consumer law is enforced. Enforcers would continue to rely primarily on the criminal regime with a lack of remedies attached.

22. For individual consumers who have suffered detriment as a result of a business breaching consumer law, compensation would usually need to be pursued through individual action in the civil courts, although options for ADR also exist in some cases. For business, enforcement would, primarily, continue to mean prosecution, with the attendant time and costs burden for business and enforcers alike. The problem of lack of proportionate remedies would remain. Costs for both business and enforcers would therefore remain higher than needed.

Baseline – case numbers and costs

23. According to data from the OFT⁷ the number of civil and criminal cases taken by LATSS over the past five years was as follows:

⁶ See for example BIS (2011): Better Choices: Better Deals, Consumers Powering Growth www.bis.gov.uk/assets/biscore/consumer-issues/docs/b/11-749-better-choices-better-deals-consumers-powering-growth.pdf

⁷ Notified to the OFT or recorded on the OFT's Consumer Regulations Website (CRW).

Financial year	Criminal prosecutions	Enforcement Orders	Enforcement Undertakings
2011/12	1866	7	99
2010/11	1695	5	125
2009/10	2450	8	175
2008/09	1872	4	144
2007/08	1887	3	131

24. This equates to an average of 1954 criminal prosecutions, 5 Enforcement Orders and 135 undertakings each year.

25. Data from Surrey Trading Standards indicated the average cost of a criminal enforcement case to be £1,270 for each party where a 'guilty' plea is made or £3,860 when the case is contested. Surrey Trading Standards also indicated that between 2009 and 2012, 72 out of 96 defendants (75 per cent) pleaded guilty to one or more offences. The similarity in costs for both enforcers and traders is based on the cost of procuring legal advice (although the parallel proposals to allow LATSS officers a right to appear in the High Court will reduce costs on enforcers these figures are taken without that saving).

26. It has proved difficult to determine the average cost of civil cases, though a couple of LATSS have indicated example case costs, involving the civil courts:

- Brent - £3,375 (which it estimates would reduce to £2,250 if the proposal for rights of audience for LATSS were to come in under the Consumer Bill of Rights – see footnote 3 for details).⁸
- Essex - £3,567 (which it estimates would reduce to £1,482).

27. Baseline costs for LATSS can therefore be cautiously estimated at c£3.75m spent on criminal prosecution each year, as well as £10,000 on Enforcement Orders. These costs are for illustrative purposes only and should not be relied on. We have not been able to determine any costs associated with undertakings agreed between the enforcer and business at this stage but hope to add to this evidence in the final IA.

Option A: Introduce civil sanctions available only through agreement or following direction by a Court (Preferred Option)

28. Part 8 of the Enterprise Act 2002 allows certain enforcers (primarily LATSS and the OFT) to seek injunctive relief in respect of certain infringements of certain consumer protection legislation. It can be used to stop a business behaving in a particular way. However, it cannot be used to require a business to take particular remedial action to address the broader issues. Under Option A, Part 8 of the Enterprise Act 2002 would be amended to allow a court to require remedies aimed at securing the outcomes of business compliance with the law and redress for consumers, which in turn would lead to more confident consumers who are empowered to exercise greater consumer choice.

29. This proposal would particularly apply to breaches of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the General Product Safety Regulations 2005 (GPSRs). It would apply also to other consumer law, but the CPRs and GPSRs would be expected to give rise to the greatest number of enforcement actions to which remedies could be attached.

Background to the current civil enforcement regime

30. The Enterprise Act 2002 allows enforcers to apply to the court for an Enforcement Order. An enforcer may not usually apply for an Enforcement Order without first consulting the person or business against whom the Enforcement Order would be made. At this stage the enforcer may opt to accept undertakings from the business that it will not continue or repeat the infringing action. If, however, the business will not give undertakings, or it is a matter of urgency, the enforcer can apply to the court for an Enforcement Order.

31. A court can only make an Enforcement Order where it finds that the business named in the application has engaged, or in some cases, is likely to engage, in conduct that constitutes an infringement. In an Enforcement Order a court will require the business to stop the infringing action. It can also order that the business publish the order as well as a corrective statement. Alternatively the court can accept undertakings from the business. As part of the undertaking to the court the business

⁸ Brent TSS has brought just one civil case so this figure should be treated with caution.

may be required to publish the terms of the undertaking and a corrective statement. Finally, the court may pass the case back to the enforcer to attempt further action to seek an undertaking.

32. Both Enforcement Orders and undertakings require the business in question not to engage in conduct that involves an infringement; and court undertakings can require steps to be taken to do this. Beyond this, there is very little or no scope for a civil court to make an award or direction that requires a business to take positive measures, for example, to provide redress to affected consumers.

Proposal

33. Under Option A, Part 8 of the Enterprise Act 2002 would be amended to allow an Enforcement Order or undertakings to require a wider range of actions aimed at securing the outcomes of business compliance with the law and redress for consumers, as well as leading to more confident consumers who are more empowered to exercise greater consumer choice.

34. Any remedy would need to be aimed at addressing the breach and be proportionate, appropriate and achievable. The most suitable remedy (or remedies) would be determined on a case-by-case basis.

35. Where an enforcer accepts an undertaking from a business, the remedies to be attached would be agreed between the parties. Where there is a dispute over remedies, the case would proceed to court.

36. Where an enforcer applies to the court for an Enforcement Order, they would propose remedies but the ultimate decision as to what remedies are required would lie with the court.

Remedies

37. Possible remedies to secure greater compliance with the law could include one or more of:

- signing up to a Primary Authority scheme;⁹
- appointing a compliance officer;
- providing training/preparing guidance;
- undertaking internal spot checks (and maintaining records of these);
- improving record-keeping;
- collecting (and acting on) customer feedback;
- introducing a robust customer complaints-handling scheme; or
- signing up to an ADR scheme for future complaints and committing to be bound by decisions of an independent ADR provider.

38. Redress for consumers could be secured by the business putting in place schemes aimed at providing redress to collective consumers where a generic breach of consumer law arises (individual consumer issues would continue to be addressed via individual court action or other mechanisms, such as ADR schemes). The mechanisms of the scheme would vary depending on whether the affected consumers could be identified. For example, where individual consumers could be identified, such schemes should seek to provide redress directly to those individuals, for instance by contacting all affected consumers and paying an agreed sum.¹⁰ Where individual consumers could not be identified, however, alternative measures would be appropriate, such as advertising that consumers (who could prove they were affected by the issue) could claim an agreed sum of money or providing discounts to all future consumers for a fixed period of time to mitigate against any financial gain arising from the breach.¹¹

39. For many consumers, a key element of a purchasing decision is the past performance of a business. Greater consumer empowerment, enabling enhanced consumer choice, could therefore be encouraged via remedies such as:

- businesses signing up to customer review/feedback sites;
- breaches being flagged on some form of 'naming and shaming' database of non-compliant businesses;

⁹ Primary Authority schemes enable businesses operating across the boundaries of two or more local authorities to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance.

¹⁰ The Government has concerns about setting a total compensation amount to be provided as redress (as in a collective action), as this would require an assessment of cumulative harm and carries a high administrative burden. The aim, therefore, is to determine an individual amount to be paid to each consumer.

¹¹ In such circumstance it would be important to ensure that any such measure does not 'tie' consumers into a further purchase of the offending business's goods or services.

- businesses being required to inform existing customers (either directly or through publicity) of the breach and any remedial action taken; or
- allowing the termination of ongoing consumer contracts.

40. These are examples only and the Government is consulting on what remedies are appropriate and how best they should be applied – either by a detailed, exhaustive list or by general non-exclusive guidance.

41. The remedies themselves would be based around mechanistic schemes to deliver particular outcomes rather than the outcomes themselves. For example, if the court was required to make judgement on outcomes or effectiveness based on harm suffered, there would potentially be a huge evidence burden. A court could, for example, give a view on the reasonableness of an offer of redress to be made under a scheme but would not mandate a particular redress amount for each individual that had suffered loss. Performance would therefore be based on the technical requirements of the individual schemes.

Benefits and Costs

Benefits

42. Option A would most effectively meet the policy objective and related outcomes of greater business compliance with the law and greater consumer redress, leading to more confident consumers who are better empowered to exercise greater consumer choice. We have been unable to quantify these benefits at this stage and will be seeking to develop our evidence for the final IA.

43. The possible level of consumer redress is particularly difficult to quantify as this is in part determined on a case-by-case basis according to the loss consumers’ have experienced and in part determined by an estimate of consumer detriment overall. It is also difficult to quantify the success rates of interventions other than formal third-party action as this information is often private to parties involved. However, given the findings in the Lincoln Law School research, there is clearly potential scope for the benefit to consumers to significantly outweigh the administrative costs involved.

44. As well as the use of formal remedies to secure greater compliance with the law, there would also be a potential benefit of increased voluntary compliance with the law if businesses think they may be subjected to harsher penalties if they do not comply and formal enforcement action is taken against them.

45. As already noted, another benefit of the proposal would be the encouragement of cases down the civil route as the inclusion of remedies in this process would give enforcers greater incentive to seek undertakings or an Enforcement Order in place of a prosecution. It is difficult to determine how many cases would switch from the criminal to the civil route with a number of assumptions needing to be made.

46. As outlined in the baseline, data from Surrey Trading Standards shows that between 2009 and 2012, 75 per cent of defendants pleaded guilty to one or more criminal offences. If it is assumed that a business pleading guilty is more likely than a business that contests a case to offer an undertaking, it could be determined that up to 75 per cent of cases currently going down the criminal route could switch to the civil route under this proposal. Of course, not all these cases would, however, transfer – some would need to be subject to criminal proceedings. Nevertheless, as the use of undertakings would often be predicated on a suitable offer from business, it is possible that take-up could be high as businesses choose to ‘do the right thing’ while also avoiding court action.

47. As previously noted, it is intended that this proposal will particularly apply to breaches of the CPRs and GPSRs. According to data from the OFT the number of LATSS prosecutions under each of these pieces of legislation over the past two years was as follows:¹²

Financial year	CPRs	GPSRs
2011/12	342	6
2010/11	308	22

48. Therefore, if we assume that up to 75 per cent of these could switch to the civil route under these proposals it could be estimated that approximately 250 cases could transfer each year, thereby saving

¹² This data has been limited to the past two years to allow for CPRs familiarisation.

both enforcers and businesses in the region of £320,000 each year (based on the baseline cost of £1270 per criminal case where a guilty plea is made). It should be noted that costs awarded are often partial rather than full so this should be considered an underestimate of the benefit. Likewise, although the proposal would particularly apply to breaches of the CPRs and GPSRs it would not be limited to such cases and so the benefits are likely to be greater. Finally, the cost saving of switching from the criminal to the civil route would need to be offset against any costs associated with the civil process (see below).

49. This option would also strike the best balance between allowing a business a fair hearing where a case goes to court and an over-reliance on criminal law.

Costs

50. The main costs would fall on non-compliant businesses which would be subject to increased remedies. Such remedies would be determined on a case-by-case basis and so costs would vary accordingly. It should be noted that some of these costs may already be incurred by businesses seeking to comply with Enforcement Orders or undertakings and so would not necessarily be 'new' costs. We have been unable to determine full costs at this stage but some of the remedies might include:

- Appointment of a full-time compliance officer: up to £50,000 per annum;
- Provision of guidance or training (either internally or externally): from £130,000 for a mid-sized business up to £1.5 million for a large retailer;
- Contacting customers to offer redress: approximately £1 per customer per contact;
- Cost of creating a bespoke (or signing up to an independent) complaints-handling or ADR scheme.

51. Under this proposal, enforcers and businesses would be subjected to increased costs of taking more civil cases. As highlighted above, we have assumed that approximately 250 cases could switch from the criminal to the civil route. Additionally, we have assumed that one third of cases that currently go down the civil route could be eligible for the wider remedies if available, giving a total of c300 civil cases subject to remedies.

52. We would expect the majority of these cases to go down the undertakings route. We do not currently have any data relating to the costs associated with undertakings and so cannot quantify these costs, which would be offset against the cost saving highlighted above, at this stage but will be seeking further information on these costs as part of our consultation.

53. Additionally, there may also be a small increase in the costs to enforcers of assessing and proposing the most appropriate remedy, and for businesses of challenging this. The MoJ has informally indicated that this could increase costs by approximately 15 per cent, though we would be interested to hear other views as appropriate.

54. The final set of costs would be related to the transition from the existing to the new regime. Enforcers would incur costs associated with the provision of training and guidance, while businesses too would incur familiarisation costs. Under the civil sanctions pilot planned for the RES Act it was estimated that training costs would be in the region of £25,000 per LATSS. In the absence of any revised costs, we have assumed that similar costs could apply to these proposals though as training would most likely be centrally provided on a national or regional scale in reality the costs are likely to be less.

Summary of Benefits and Costs

Costs	Benefits
<p><i>For enforcers</i></p> <ul style="list-style-type: none"> • Unquantified case costs. • Up to £25,000 training per LATSS (likely to be considerably less as we anticipate that training would be centrally provided on a national or regional scale). <p><i>For businesses</i></p> <ul style="list-style-type: none"> • Compliant traders: Familiarisation costs.¹³ • Other traders: Unquantified case costs plus additional costs attached to remedies which will be determined on a case-by-case basis but could include: <ul style="list-style-type: none"> – up to £50,000 per year to appoint a compliance officer; – between £130,000 and £1.5 million to run a training scheme; – cost of joining and implementing an ADR scheme; – cost of operating a redress scheme including approximately £1 per consumer per contact; – cost of collecting customer feedback. <p>All costs would be offset against criminal penalties that might otherwise be imposed.</p>	<p><i>For consumers</i></p> <ul style="list-style-type: none"> • Greater availability of redress for generic breaches of consumer law; • Some future loss avoided due to greater compliance with the law; • Improved tools to activate consumer choice. <p><i>For enforcers</i></p> <ul style="list-style-type: none"> • Up to £320,000 saving if guilty pleas switch to the civil route. <p><i>For businesses</i></p> <ul style="list-style-type: none"> • Compliant traders: Unquantifiable benefit if consumers switch to them. • Other traders: Up to £320,000 saving if guilty pleas switch to the civil route.

Risks

55. A few risks have been identified with this option. First, enforcers may prove reluctant to adopt a civil approach over a criminal one. There are concerns over the difficulty in enforcing civil sanctions, and in the Lincoln Law School study, enforcers and regulators indicated that the payment of civil penalties and compliance with civil court judgements is relatively low and that little attention is paid to ensuring that businesses convicted at court and required to provide redress actually do so. However, under this proposal public enforcers, rather than only individual claimants, would be able to push for contempt of court orders against traders if they were flouting previous judgements against them and this was in the public interest.

56. Second, identifying the most effective remedy may require additional investigation of a very different type from simply establishing a breach of regulations. The enforcer may have to assess the likely impact of the remedy, including levels of loss, harm and damage caused to consumers. This could involve the use of additional experts to evaluate the remedy and to prepare evidence of this for subsequent court proceedings. Courts may not accept unsubstantiated evidence and the increased costs of providing sufficient evidence to convince a court could be a barrier in some circumstances. This risk can be mitigated by provision of central guidance on the type of evidence and assessment required for this type of case. Additionally, a number of the changes to Trading Standards powers already proposed will further encourage the use of civil cases across the board.

57. Finally, businesses may fail to take advantage of the opportunities to informally settle or mitigate financial costs or penalties by offering undertakings in appropriate cases. Businesses will need to be

¹³ In addition, compliant traders may be subject to case costs, in the same way as they are now, where they are falsely accused of a breach. These would not, however, be new costs and in any case, a compliant trader who proves in court that a prosecution or application for an Enforcement Order is unmerited is entitled to recover costs from the enforcer.

made aware of the opportunities for mitigation, and this will be part of both the consultation on enforcement policy and on sanctions guidance.

Option B: Encourage an informal approach to a wide range of sanctions and provide guidance

58. Option B would be very similar to Option 0 in that it would maintain the legislative status quo. As previously highlighted, enforcers will usually, in the first instance, seek to work informally to address a breach of the law. However, such an approach is ad hoc and dependent on the individual enforcer and the business in question. Option B would offer a light touch approach to further encourage business and enforcers to take informal steps to secure compliance and to provide consumer redress, as well as empowering consumers, enabling them to exercise greater consumer choice. Guidance would be prepared to provide examples of remedies that are regarded as particularly effective, and would be supplemented by a form of positive reinforcement – highlighting as good examples those businesses that choose to engage with remedial action.

59. As is currently the case, where businesses do not voluntarily take remedial action, formal enforcement would rely primarily on criminal sanctions with the wider outcomes attached to our policy objective not being achieved. Additionally, if an informal agreement was not complied with, enforcers would need to return to the original action, in order to take a formal case.

60. It is unlikely that this option would fully achieve the outcomes relating to redress or confident consumers exercising greater consumer choice. Traders may be unwilling to give up the value of monies already received or submit to a process aimed at directly favouring competitors, weighing up instead the risk and cost of potential prosecution and individual claims by consumers. The most likely objective to be achieved through this option is therefore compliance, where the administrative cost may be less than any criminal fines.

61. This option is not preferred because it is not clear that there would be significant additional take-up. As noted, enforcers already, in most cases, seek informal solutions to cases rather than proceeding straight to prosecution. For some years now compliance-oriented approaches to enforcement have been heavily promoted within LATSS and by the Local Better Regulation Office (LBRO) (now called the Better Regulation Delivery Office) and have been practiced by the OFT. These build on the principles proposed by Sir Philip Hampton's 2005 review.¹⁴ It is hard to see how much more could be done to encourage this approach. There would be no new incentives (whether positive or negative) and no additional safeguards.

Benefits and costs

Benefits

62. There may be some benefit to consumers in line with limited achievement of the policy objective and related outcomes, but this would not be substantial given the expected likely low additional take-up of informal options. As already highlighted, it is most likely that these informal remedies would be most appropriate in securing the first outcome of ensuring compliance rather than securing redress for consumers or enabling greater consumer choice.

63. A system aimed at delivering remedies via a more structured informal approach could create a cost saving that arises because the administration of informal agreements would be much less resource intensive to pursue than criminal court cases.

64. As set out in the baseline, the average cost of a criminal case varies according to whether the defendant pleads guilty or not guilty. Where a case is solved informally rather than via prosecution there is potential for such costs to be saved. However, this would need to be offset against staff time required by both business and enforcers to develop the content of any informal agreement. As noted above (and below) we would not expect many additional cases to be solved in this manner and so the cost savings would, in essence, be minimal.

¹⁴ Hampton (2005): Reducing administrative burdens: effective inspection and enforcement www.bis.gov.uk/files/file22988.pdf

Costs

65. There would be expected to be a one-off start-up and familiarisation cost for enforcers and the Trading Standards Institute of preparing further guidance and training enforcers in best practice on accepting informal agreements.

66. The costs to non-compliant businesses would apply on a case-by-case basis and would depend on what a trader was willing to offer in an informal agreement. In making this assessment, a trader would take into account all likely loss in revenue, including the amount payable through compensation or lost through reduction in trade or compliance with the law going forward. Nevertheless, as these 'costs' are entirely due to illegal behaviour and represent the unjust enrichment of the business, they are not considered in this IA.

67. As highlighted above it is likely that businesses will weigh up the costs of informal action against potential prosecution to determine their favoured approach. As a guide, appointing a full-time compliance officer may cost a business up to £50,000 per annum while we have been informed that providing general information, guidance or training (either internally or externally) would cost from £130,000 for a mid-sized business up to £1.5 million for a large retailer.

Summary of Benefits and Costs

Costs	Benefits
<p><i>For enforcers</i></p> <ul style="list-style-type: none"> Provision of training and guidance. <p><i>For businesses</i></p> <ul style="list-style-type: none"> Compliant traders: Familiarisation costs.¹⁵ Other traders: Unquantified costs which would be determined on a case-by-case basis but could include up to £50,000 per year to appoint a compliance officer; or between £130,000 and £1.5 million to run a training scheme. Such costs would be offset against criminal penalties that might otherwise be imposed. 	<p><i>For consumers</i></p> <ul style="list-style-type: none"> Some future loss avoided due to more compliance with the law. <p><i>For enforcers</i></p> <ul style="list-style-type: none"> Unquantified cost savings for avoided court cases (likely to be minimal). <p><i>For businesses</i></p> <ul style="list-style-type: none"> Unquantified cost savings for avoided court cases (likely to be minimal).

Risks

68. A couple of risks have been identified with this option. Firstly, it is doubtful that an informal approach would be particularly effective, given longstanding efforts already made to encourage informal resolution of disputes. There would be minimal incentive for enforcers or traders who had broken the law to engage in remedial action any more than they do now. True rogues may see making, and later renegeing on, a promise as a way to 'game' the system.

69. Secondly, enforcers may choose to prosecute anyway, concerned that an informal approach does not offer sufficient safeguards.

70. These risks, together with the reasoning outlined above, highlight that the effectiveness of this option would be limited and therefore is not preferred.

Option C: Implement the administrative sanctions in the RES Act

71. The Regulatory Enforcement and Sanctions Act 2008 (RES Act) provides a framework for regulators (enforcers) to be granted access to a range of civil sanctions, by the Secretary of State, as an alternative to criminal prosecution. The sanctions would be available under a range of legislation, and apply to breaches of the relevant law where criminal sanctions exist in relation to underlying criminal offences. The sanctions provide a wide, flexible and proportionate range of actions for enforcers to make

¹⁵ Compliant traders may be subject to case costs, in the same way as they are now, where they are falsely accused of a breach. These would not, however, be new costs and in any case, a compliant trader who proves in court that a prosecution or application for an Enforcement Order is unmerited is entitled to recover costs from the enforcer.

use of for breaches of the law, enabling action to be taken which more closely matches the offence and the harm suffered by victims of the breach than current enforcement.

72. The civil sanctions in the RES Act comprise:

- (a) Fixed Monetary Penalty notices, which enable a regulator to impose a monetary penalty of a fixed amount.
- (b) Discretionary requirements, which enable a regulator to impose one or more of the following, by giving a notice to the trader:
 - (i) a Variable Monetary Penalty determined by the regulator;
 - (ii) a requirement to take specified steps within a stated period to secure that an offence does not continue or recur (compliance notice); and
 - (iii) a requirement to take specified steps within a stated period to secure that the position is restored, so far as is possible, to what it would have been if no offence had been committed (restoration notice).
- (c) Stop notices, which will prevent a business from carrying on an activity described in the notice until it has taken steps to come back into compliance.
- (d) Enforcement undertakings, which will enable a business, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions set out in the undertaking.

73. Concerns have been raised that these sanctions may create a perverse incentive for a business to offer undertakings due to the threat of a penalty imposed by an enforcer rather than by a court following a fair hearing. Such an approach may lead to businesses that have been falsely accused being forced to enter agreements or face fines rather than prove their innocence.

74. The RES Act provides that the civil sanction powers should be granted only to those regulators who carry out their regulatory activities in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

75. Extending RES Act civil sanctions to all consumer law enforcers across the country, and making the sanctions apply to all areas of consumer law, would have the attraction of wide availability of civil sanctions, and the prospect of the most widespread benefits to consumers, business, and enforcers.

76. This option is not preferred due to the perception that the business is not subject to a fair hearing *before* sanctions are imposed.

Benefits and Costs

Benefits

77. A system implemented under the RES Act would create a cost saving that arises because administrative civil cases are much less resource intensive to pursue than criminal or civil court cases as they do not involve the payment of court fees or the appointment of lawyers.

78. Using our baseline case numbers for CPRs and GPSRs we can estimate that approximately 170 cases could be subject to civil sanctions each year (that is half of the total number of CPRs/GPSRs cases). Our estimated number of cases subject to civil sanctions differs from the number subject to civil remedies under Option A as it is enforcer rather than business led and it has been assumed that enforcers would continue to choose the criminal route for approximately half of the cases.¹⁶ Applying the case costs – and proportion of 75 per cent guilty pleas – implies a total saving of c£325,000 for each side.

Costs

79. The cost of a pilot scheme involving 10 LATSS has been estimated at around £250,000 for training of officers (£25,000 per Service). There is also a one-off start up cost of appeals, which is taken as £145,000. This start up cost would not be expected to increase proportionately if RES Act sanctions were rolled out nationally. No ongoing additional costs are envisaged for enforcers.¹⁷

¹⁶ BIS (2010): Civil sanctions pilot: a consultation on the pilot operation of civil sanction powers for consumer law enforcers www.bis.gov.uk/assets/biscore/corporate/docs/c/10-706-civil-sanctions-pilot

¹⁷ Ibid

80. There should be no costs for compliant traders, other than those associated with familiarisation, who would not be affected by this proposal. However, a number of commentators have expressed concerns that application of the RES Act may, in practice, cause a number of cases to go to appeal as there are concerns that different enforcers would apply the sanctions inconsistently. We assume the cost of such a case would be similar to the cost of a prosecution where the defendant pleads ‘not guilty’ – an average of £3,860. To fund an appeal, both trader and enforcer must fund this up-front, with the loser then being liable for the winner’s costs as well as their own. No quantification has been given to the number of cases that would be subject to appeal.

81. Notwithstanding appeals, other costs for business would be on a case-by-case basis in accordance with the sanctions imposed. Corrective actions would bear similar costs to those outlined under other options in this IA, for example, appointing a full-time compliance officer may cost a business up to £50,000 per annum while providing training could cost between £130,000 and £1.5 million.

82. Compliance and Restoration Notices may require a trader to contact customers individually, estimated to cost around £1 per customer per contact.

83. This IA does not look at fixed and variable monetary penalties as this is not the preferred option and these are outside the scope of the policy objective and outcomes.

Summary of Benefits and Costs

Costs	Benefits
<p><i>For enforcers</i></p> <ul style="list-style-type: none"> Up to £25,000 training per LATSS (economies of scale may be achieved if rolled out nationally). £145,000 start-up cost for appeals; ongoing costs of lost appeals (£3,860 per appeal). <p><i>For businesses</i></p> <ul style="list-style-type: none"> Compliant traders: Nil, subject to risk of having to finance up-front costs of successful appeals. Other traders: Unquantified costs according to sanctions imposed. Ongoing costs of lost appeals (£3,860 per appeal). <p>All costs would be offset against criminal penalties that might otherwise be imposed.</p>	<p><i>For consumers</i></p> <ul style="list-style-type: none"> Some future loss avoided due to more compliance with the law and some compensation. <p><i>For enforcers</i></p> <ul style="list-style-type: none"> £325,000 in court cost savings. <p><i>For businesses</i></p> <ul style="list-style-type: none"> £325,000 in court cost savings.

Risks

84. A number of risks have been identified with this option. First, a number of commentators have expressed concerns that administrative sanctions – in particular administrative penalties – are by nature unfair, as they do not provide a trader with an automatic chance to defend themselves in court. Operating Compliance Notices and Restoration Notices without penalties would carry the same risk, and may also prove ineffective as the system as a whole could be regarded as not having ‘teeth’ unless there is scope for variable monetary penalties to be imposed.

85. A second risk is that enforcers prove reluctant to adopt civil sanctions, because it requires additional consideration and judgment to be applied in each case. This risk would be mitigated by being fully ‘Hampton-compliant’, and therefore experienced in the application of proportionate enforcement.

86. Finally, enforcers impose a large number of fixed and variable penalties, and the civil sanctions fall into disrepute. In practice, the enforcers will have to produce and consult on Sanctions Guidance and Enforcement Policy. The circumstances in which any sanction will be imposed will be made clear in advance, and departure from the published guidance and policy will provide a ready avenue for appeal. Enforcers should, therefore, be keen to adopt practices in line with published guidance and policy.

Preferred Option

87. The Government's preferred approach using the consumer enforcement system to ensure compliance, redress, promote better choice and deter other illegal behaviour is through extending the scope of Enforcement Orders and undertakings available under Part 8 of the Enterprise Act 2002 – **Option A.**

88. Currently, if a person breaches an Enforcement Order or undertakings given to the court by repeating the infringement of the law, he or she is in contempt of the court and can be issued an unlimited fine and/or imprisoned for up to two years. If the breach is of undertakings to an enforcer, this would be drawn to the attention of the court which would have regard to this and any failure to comply with the undertaking, when determining whether to make an Enforcement Order. A similar process would apply to the terms of an Enforcement Order or undertaking where wider remedies were available.

F. Recommendation

89. Part 8 of the Enterprise Act 2002 should be amended to allow greater flexibility the remedies available through Enforcement Orders and undertakings.

G. Implementation

90. Any changes would require Primary Legislation. The Government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of mid-2014 (subject to the findings of consultations and the Parliamentary timetable).

H. Monitoring and evaluation

91. A post implementation review would be carried out within 3-5 years of Royal Assent of the planned Consumer Bill of Rights, as per the requirements for post legislative scrutiny.

I. One in, one out

92. For the purposes of calculating the impact of the preferred option on the Government's One-in, One-out policy, only the direct impacts on business will be included. At this point, it appears that only the familiarisation costs on all business (compliant and non-compliant) will be in scope of OIOO. The direct cost of paying greater compensation payments is not included as such cost fall only on non-compliant businesses.

93. As a result, the Government expects these proposed changes to result in a small net 'IN' for OIOO purposes, which would need to be offset by net 'OUTs' elsewhere in the Bill or other legislation. At this stage it is not possible to fully quantify the size of the 'IN'.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review:</p> <p>This Impact Assessment includes a commitment to review the proposed changes 3-5 years after implementation.</p>
<p>Review objective:</p> <p>To assess:</p> <ul style="list-style-type: none">• the level of take-up of new remedies• whether remedies are being applied proportionally and the balance between Enforcement Orders and undertakings• whether remedies are meeting policy objectives• whether policy objectives are in practice feeding through to increased consumer welfare.
<p>Review approach and rationale:</p> <p>The review would evaluate the effectiveness of the changes within this Impact Assessment. The review will incorporate stakeholders' views that will include consumer groups, business groups, LATSS, the Consumer and Markets Authority (CMA) and the Citizens Advice services.</p>
<p>Baseline:</p>
<p>Success criteria:</p> <p>Greater levels of compliance with the law; increased compensation for consumers; lower consumer detriment; fewer consumer complaints about rogue traders.</p>
<p>Monitoring information arrangements:</p> <p>Feedback from businesses, consumers groups, LATSS, the CMA and Citizens Advice will be achieved through regular engagement. The transition costs will be recorded during the implementation stage and Government will monitor the ongoing costs via annual reports and management information.</p> <p>More general information about the conditions facing consumers can be collected through surveys and the European Commission's Consumer Market Scoreboard, which is currently published bi-annually.</p>
<p>Reasons for not planning a review:</p> <p>N/A</p>

Annex 2 – Specific Impact Tests

Competition Assessment

A wider range of remedies should enhance competition by increasing consumer confidence in the market. The availability of proportionate remedies and the facilitation of compensation to consumers should make for fairer competition between businesses, and a better overall consumer experience. Encouraging switching away from companies who have broken the law should improve opportunities for compliant businesses to compete.

Small Firms Impact Test

The proposal will be neutral with regard to the size of business. Overall, it is likely that smaller businesses that operate locally will benefit most from the more flexible procedures, including opportunities to avoid criminal infractions by agreeing to enter undertakings because this can bolster or redeem business reputation.

Equalities impact tests

Initial screening on the potential equality impact of this new approach shows that it is likely to have a positive impact on all consumers, including minority groups. We anticipate that a system where businesses that have violated consumer law make amends or take other remedial action will, in the vast majority of cases, benefit consumers. However, there are challenges that we need to monitor carefully, and some of these challenges may disproportionately affect minority groups. In particular, we will need to ensure that real rogue traders do not slip through the net, and that those businesses that do take remedial action do so in a fair and just way. This is particularly important for more vulnerable minority groups, such as the elderly and ethnic minorities who may be more at risk of being taken advantage of by business. For example, the OFT in its Doorstep Selling report¹⁸ analysed evidence of complaints about doorstep selling for 2001 and 2002. This showed that a substantial proportion of complaints were made by minority groups such as the disabled (23 per cent or older people (49 per cent).

Other specific impact tests

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights and Rural Proofing.

After an initial screening, it has been concluded that no significant impact is anticipated in any specific cases above.

¹⁸ OFT (2004): Doorstep selling, A report on the market study
www.offt.gov.uk/shared_offt/reports/consumer_protection/offt716.pdf

Annex 3 – The Consumer Law Reform Programme

1. In response to the Retail Red Tape Challenge,¹⁹ the Secretary of State for Business announced a consumer law reform programme to clarify and simplify consumer rights. The consumer law reform programme aims to streamline and modernise rights currently found in 12 pieces of legislation and the investigatory powers of Trading Standards officers found scattered in around 60 pieces of legislation.
2. Consumer protection regulations have developed piecemeal over many decades, with confusing overlay of European legislation onto domestic legislation in recent years. Businesses complain that the complexity of the law imposes costs and uncertainty on them and consumer groups complain that consumers cannot understand their rights and so cannot enforce them. Even academics and lawyers comment that the law is too complex. The consumer law reform programme will overhaul this regime setting out a simpler framework in plain English that provides certainty where there is lack of clarity, removes overlaps and unnecessary rules, and updates the law where it is required.
3. The proposals for reform of consumer law will take forward the recommendations and conclusions of numerous academic research reports and public consultations over the last few years. The Davidson report in 2006 concluded that UK law on Sale of Goods was unnecessarily complex and this was reviewed by the Law Commission who made recommendations in 2009.²⁰ In 2005 the Law Commission recommended simplification of Unfair Contract Terms law.²¹ The University of East Anglia concluded in 2008 that the UK consumer protection regime had three key weaknesses – uneven enforcement, weak redress for consumers when things go wrong and excessively complex law.²² A review of this regime in 2008 led by the Better Regulation Executive concluded that much consumer legislation could be simplified and modernised so that consumers and those dealing with consumers are clearer about the framework surrounding their transactions.²³ This review revealed strong support across the board for consolidating the legislation, making it much clearer and more accessible. Two further pieces of academic research have more recently made recommendations relating to consumer law for digital content and how the law could be simplified for goods and services.²⁴
4. At the heart of the package of reform BIS will be bidding for a parliamentary slot for a Consumer Bill of Rights. The core of the Bill will overhaul core consumer rights in relation to faulty goods and poor services, and update the law to clarify rights for consumers when purchasing digital content.²⁵ The Bill will also provide, in one place, a generic set of Trading Standards investigatory powers,²⁶ measures to empower consumers to challenge anti-competitive practices,²⁷ wider civil court remedies for breaches of consumer law and provide more effective powers for Local Authorities to regulate street trading.²⁸
5. The Bill will be accompanied by a package of secondary legislation that is intended to come into force at the same time using similar language. This will include implementation of the Consumer Rights Directive (relating specifically to distance and off-premises transactions), updating and clarifying unfair contract terms legislation, and providing a clearer route for consumers to redress after misleading or aggressive practices.
6. We believe that the proposed Consumer Law Reform programme will reduce business compliance costs, for example by business spending less time on staff training in consumer law and reduced time and legal expense spent settling disputes with consumers. Retailers tell us they spend time dealing with consumers who are misinformed about their rights, often thinking that they have more rights than is the case, and that they tend to err on the side of caution when settling disputes where the law is unclear.

¹⁹ www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape

²⁰ Davidson Report 2006: www.bis.gov.uk/files/file44583.pdf; Law Commission Report: http://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf

²¹ http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf

²² Benchmarking the performance of the UK framework supporting consumer empowerment: www.bis.gov.uk/files/file50027.pdf

²³ www.bis.gov.uk/files/file52071.pdf

²⁴ www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products
www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1255-consolidation-simplification-uk-consumer-law

²⁵ The RPC has recently reviewed Impact Assessments and a consultation is ongoing (closing October 2012).

²⁶ The RPC has recently reviewed Impact Assessments and a consultation has recently closed (June 2012).

²⁷ The RPC has recently reviewed Impact Assessments and a consultation has recently closed (July 2012).

²⁸ Consultation due in the autumn.

7. We also believe that the new framework of consumer law will empower consumers to assert their rights. Empowered consumers should stimulate competition and innovation since well protected, well informed consumers are likely to be more open to new market entrants and innovative products. The proposed reforms will therefore contribute to growth as companies seek commercial success through innovation and targeting consumer needs, rather than by misleading them and/or fobbing them off with poor quality goods and services. A clear consumer protection framework helps create a level playing field; those businesses which fail to comply with the law can be tackled through enforcement (private and public), ensuring that honest businesses are competing on a level footing against each other and not against rogues.

8. Whilst we have a fairly robust body of evidence about failings in the existing law and about consumer experiences, behaviour and understanding of consumer law, we need to gather more evidence about business behaviour in order to make a more informed assessment of the impact of the consumer law reform programme as a whole. Government believes that the case for change is very strong, but that the impact of specific change options needs more work.

9. Alongside the formal consultation process, we are therefore planning to gather additional input from different sized retailers and service providers in several sectors in order to estimate better the current baseline and from there make meaningful estimates of likely impact of our proposals. From early discussions with business groups it will probably not be possible to collect all the evidence we would like in enough granularity, for example retailers tell us that they do not always record under which law or whether as a goodwill gesture they offer consumers a refund so they would find it difficult to relate their data back to the Sale of Goods Act. However, we are planning a pragmatic approach consisting of sampling, surveys and focus groups to gather, in particular, evidence of costs of implementing any change in consumer law (such as training and communication costs), current practice in resolving disputes, and estimates of the cost of legal advice.

10. We will also explore consumer understanding of the terminology used in consumer law and in the proposed new framework, so that we can adopt a plain English approach where possible.

11. The impact of the changes in the law will rely on consumers and those who deal with consumers knowing about and understanding the new framework of consumer law, and also on its effective enforcement. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice and the enforcement of consumer law through LATSS. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We are also engaging with LATSS and other enforcers to ensure that they are aware of the proposed changes and actively engaging in the policy development process. We will discuss awareness raising for businesses with a range of business representative bodies.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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