

**IMPLEMENTATION OF EU
DIRECTIVE 2008/122/EC ON
TIMESHARE, LONG-TERM
HOLIDAY PRODUCTS,
RESALE AND EXCHANGE
CONTRACTS**

Government Response to Consultation and
Final Impact Assessment

DECEMBER 2010

**GOVERNMENT RESPONSE TO CONSULTATION ON IMPLEMENTATION OF EU
DIRECTIVE 2008/122/EC ON TIMESHARE, LONG-TERM HOLIDAY PRODUCTS, RESALE
AND EXCHANGE CONTRACTS**

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Foreword

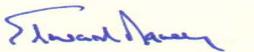
On 9 July 2010, BIS published a formal consultation seeking the views of business, consumers, enforcement bodies and other interested parties on a set of draft regulations which the Government proposed should implement the Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC (the Directive) in the UK.

Implementation of this Directive comes at a very appropriate time given the new long term holiday products and services related to timeshare ownership, that have come onto the market in recent years. Some of these are not covered by existing laws, and some unscrupulous businesses have taken advantage of this.

I am grateful for the interest shown in the Consultation. The quality of the responses received has helped the Government to ensure that our approach to implementing the Directive is the right one. The proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Regulations) will improve consumer protection in a way that is workable and practical for business, helping to protect legitimate business by squeezing out rogue traders and creating the conditions to foster the growth of new business across the EU.

Tourism plays an increasingly important role in the economies of Member States. By setting the conditions for fair trading by introducing common rules across the Community, once transposed, the Directive will provide for important new protections for UK citizens when they are on holiday abroad. It should also encourage greater growth in timeshare and related services which can only benefit from increased consumer confidence.

Thank you to all those who took the time to respond to the Consultation.



EDWARD DAVEY – MINISTER FOR CONSUMER AFFAIRS

Executive Summary

The Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC (the Directive) was adopted in February 2009. The Directive is designed to contribute to the important objectives of boosting consumer confidence in the timeshare industry and to eliminating the operations of rogue traders which bring legitimate traders into disrepute and cause considerable problems for consumers.

As a “maximum harmonisation” Directive, member States are obliged to implement its provisions in national law in a way that accurately reflects, does not exceed, or fall below the requirements in the areas it covers. Member States have until 23 February 2011 to introduce national legislation to comply with the Directive.

Our consultation, published on 9 July 2010, sought the views of businesses, consumers, enforcement authorities and other interested parties on a set of draft regulations, the proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Regulations) which will transpose the Directive into UK law. The formal consultation was conducted over 12 weeks closing on 1 October 2010.

The main issues on which we were most concerned to learn the views of those who responded were:

- Replacing the current regime in its entirety with completely new regulations (as opposed to amending the current regime);
- Our approach to introducing new criminal sanctions only where we believed existing provisions of other legislation were not adequate and the future application of civil sanctions to this area;
- Our estimates of costs and benefits as presented in the draft Impact Assessment.

The Government is grateful for the interest shown in this consultation and for the quality of the well-considered responses we received.

Main Conclusions

We have continued with our strategy to **replace entirely the current regime in the UK** by repealing the Timeshare Act and revoking the current Timeshare Regulations. Respondents were clear in their support for this proposal. It was generally considered that complete replacement would make the legal position for consumers, enforcers and traders much easier to understand. The majority of respondents expressed the view that the limited coverage of the current legislation in respect of **business to business transactions should not be retained**. Although respondents identified some theoretical examples where businesses might be at a disadvantage when purchasing a contract regulated by the new regime, we received no quantifiable evidence to that effect.

A number of respondents expressed the view that some of the drafting of Regulation 5 (holiday accommodation contracts to which the regulations apply) and Regulation 6 (excluded arrangements) was unclear. Regulation 5 covers among other things the complicated issue of which law should apply in particular circumstances (especially where attempts are made to make contracts subject to the law of countries outside of the EU. We have amended this regulation to try to clarify the circumstances in which the UK regulations will apply and their scope. For clarity, we have also specifically excluded from coverage insurance contracts which are already regulated under the Financial Services and Markets Act 2000.

The Government received strong representations from a number of business respondents that the **language requirements relating to pre-contractual information and contracts**, particularly with regard to timeshare exchange contracts, were unduly onerous, and that the translation costs would prove to be a deterrent to selling to non UK nationals. The Government is satisfied that the provisions in the Regulations with regard to language requirements reflect the requirements of the Directive. It is important, because of the often cross-border nature of the contracts involved, that the consumer is provided with key information, and their contract, in a language with which they are fully conversant. That is why the consumer has the choice of language. If a business intends to sell to consumers from other member States they are obliged to provide the documentation in, possibly, a number of languages. However, they are not obliged to hold stocks in all of the official languages of the EEA. We expect that businesses already have a very good idea of their prospective market and will be able to arrange for translations accordingly. In respect of most types of timeshare contracts, the language requirements are not new.

The two main timeshare exchange companies (both with their European operations based in the UK) drew our attention to a concern with the wording of the provision intended to provide that only a **single cooling-off period applies where an exchange contract is offered at the same time as a timeshare contract**. We have amended this provision accordingly.

The Government gave very careful consideration to possible **options for enforcement** and the most appropriate way of meeting our obligations under the Directive to have in place “adequate and effective means to ensure compliance by traders with this directive” (Article 13). In particular the Government does not wish to create or maintain criminal offences where alternative enforcement options would provide an effective deterrent, or where conduct is already an offence under alternative legislation already in place, or it is otherwise thought to be unjustified. We have considered at length the possible use of civil sanctions and certainly envisage their application to this area of activity in due course. However, these powers are not to be made available on an ad hoc basis in advance of the proper assessment of the results of the Government Pilot starting next year. They are not therefore a viable alternative at present. Where possible, we have chosen to rely on offences and penalties in existing consumer protection legislation, but where alternative regulation does not provide adequate cover we have concluded that we must include specific criminal offences in order for the enforcement bodies to be able to respond proportionately to rogue behaviour in this sector.

Responding to representations from an insurance bond company we have chosen to exclude from coverage of the regulations insurance products regulated under financial services regulations. This company’s product, which includes an element of timeshare which would otherwise bring the contract within this regime, is essentially a life insurance and investment product. We have no evidence of any consumer detriment or complaints about this product or any other similar products and believe it would be grossly unfair to now effectively prevent such a product from being marketed as an investment (one of the provisions of the new regime). The marketing of this product has been exempt from the current regime and is already subject to the marketing rules on insurance and investments.

Several respondents provided valuable additional information on **the likely costs of introducing these regulations**. This has enabled us to refine further our Impact Assessment.

Devolved Issues

We are satisfied that none of the issues raised in response to the consultation relate specifically to Northern Ireland, Scotland or Wales. We intend that new regulations will extend to the whole of the United Kingdom and will be made with the consent of the Northern Ireland Ministers. The formal Government response to the consultation has also been agreed with ministers in Scotland and Wales.

Introduction

1. On 9 July 2010, the Department for Business Innovation and Skills (BIS) published a formal consultation seeking the views of businesses, consumers, enforcement authorities and other interested parties on a set of draft regulations, the proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Regulations) which we intend will transpose the Directive into UK law. The formal consultation was conducted over 12 weeks closing on 1 October 2010. The formal consultation document asked 62 questions. A list of the questions is included at Annex A.
2. A broad range of methods were used to publicise the consultation. The formal consultation document was published on the BIS website; a link to the Consultation Document (URN 10/500) was sent to a range of trader and consumer representative groups who BIS felt might have a particular interest in the proposed legislation and to individual companies; and BIS issued a press notice directed at the national and trade press.

Content of the consultation

3. The main issues on which the consultation sought views were:
 - whether to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations in order to simplify the UK legislative regime for traders and consumers;
 - the most appropriate way of meeting the UK's obligation under the Directive to have in place 'adequate and effective means to ensure compliance by traders with this Directive' (Article 13);
 - the clarity of the requirements of the Regulations;
 - the impact on business;
 - the impact on the enforcement bodies;
 - the benefit to consumers

Background

4. The Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC (the Directive) was adopted in February 2009. The Directive addresses shortfalls in consumer protection in relation to timeshare, long term holiday products, resale and exchange contracts. Intervention at European level was necessary because of the cross-border nature of the sale of these products and the nature of the exposure to detriment which consumers face in this market. The Directive replaces Directive 94/47/EC.
5. Directive 94/47/EC provided for the protection of consumers in respect of the sale of timeshare in real property. Given the minimum harmonisation nature of the Directive, a number of States, including the UK, adopted national provisions that went beyond the level of consumer protection required by Directive 94/47/EC.
6. However, since then, the provision of timeshare has evolved and new long term holiday products requiring similar levels of cost and commitment by consumers have appeared on the market. These new holiday products and certain other services related to timeshare, such as resale contracts and exchange contracts are not currently regulated under EC law or domestic law. In addition some areas already covered were in need of updating and clarification to prevent the development of products aimed at circumventing the regulatory

regime. The existing regulatory gaps create appreciable distortions of competition and cause serious problems for consumers, hindering the smooth functioning of the internal market. A lack of confidence in the consistency and scope of the regulatory regime across the EU provides consumers with a disincentive to purchase timeshares and related products. This restricts the market for UK businesses engaged in domestic and cross border trade.

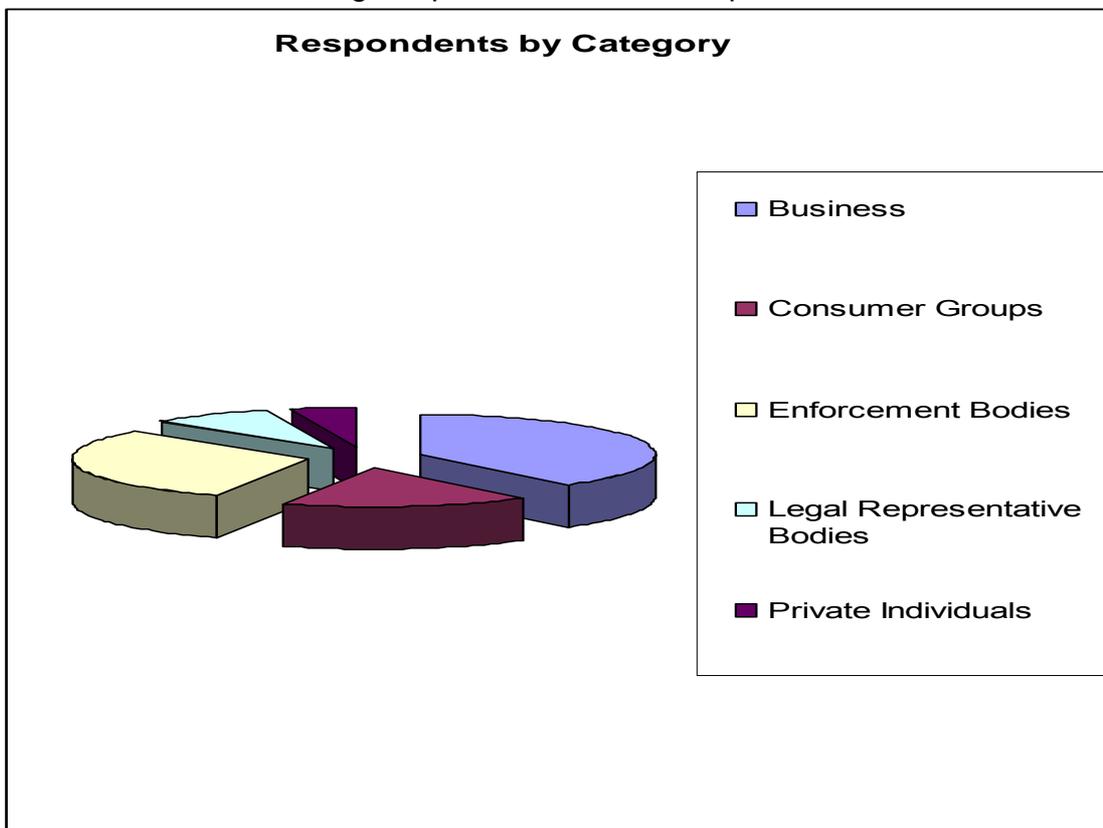
7. Member States have until 23 February 2011 to introduce national legislation to comply with the Directive. This Directive is a maximum harmonisation Directive which means that Member States are obliged to implement its provisions in national law in a way that accurately reflects, does not exceed, or fall below the requirements in relation to the areas covered by the Directive.

The consultation process

8. In the course of formulating the UK's views for the Commission as it carried out its research for the Directive, and during the negotiation of the new Directive BIS continued to meet with representatives of the timeshare industry in the UK, and two of the main timeshare exchange companies operating in Europe. BIS held informal discussions with the Resort Development Organisation (RDO) whose members include small firms as well as larger operators. BIS also had an ongoing dialogue with the Timeshare Association (TATOC) a non profit making organisation which represents the interests of timeshare owners in the UK.

Statistical analysis of responses

9. Overall, 23 responses were received. A list of respondents is included at Annex B. The respondents can be grouped into 5 broad categories: consumer groups; business; enforcement bodies; legal representative bodies; private individuals.



Summary of responses

10. The Government is grateful for all the consultation responses received. These have been analysed by BIS officials and have been considered carefully as we have continued to make adjustments to the regulations which will implement the Directive and to our Impact Assessment. The Government's response is detailed below. Some of the comments and observations made have been quoted in this document as representative of the thoughts and views expressed in responses to the consultation. This paper seeks to reflect the views expressed although it is not possible to describe all the responses in detail.

Views on our policy decision to repeal the Timeshare Act 1992, as amended

Question 1:

Do you agree with our policy decision to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations in order to simplify the UK legislative regime for traders and consumers? Please explain your reasons.

11. The overwhelming majority of respondents supported our policy decision to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations to simplify the UK legislative regime for traders and consumers.

Business

12. ABTA expressed support for any new implementing regulations that would simplify the UK legislative regime.

13. Diamond Resorts commented that to retain parts/revoke parts of the Timeshare Act 1992 would make comprehension of the legislation more difficult, particularly for consumers.

14. RCI Europe felt that the proposals would create a much clearer regime for business to operate under.

15. The Resort Development Organisation expressed full support for this proposal.

Consumers

16. The Timeshare Consumers Association commented that the existing Timeshare Act had been amended a number of times resulting in complex legislation. Any further amendment would not only make it incomprehensible to the layman but would also risk losing some of the clarity of the phrasing in the Directive. TATOC felt that the current legislative regime is complicated and would greatly benefit from a fresh start. Citizens Advice considered that amending the existing Act would make the legislation difficult to follow and could risk the UK failing to achieve the maximum harmonisation required.

Enforcers

17. The Association of Chief Trading Standards Officers (ACTSO) felt that further amendment of the current legislation would render the legislation more difficult to understand for consumers, business and enforcers. Local Government Regulation (LGR) supported the proposal and commented that simplification and harmonisation of the legislation would make the new provisions more understandable for all parties concerned. The Office of Fair Trading considered that the current regime was complicated due to amendments made over time.

Further amendment of the current legislation would make the current fragmented position worse. OFT felt that complete replacement would make the legal position for consumers, enforcers and traders much easier to understand. The Trading Standards Institute (TSI) supported the proposals.

Views on our policy decision not to retain the limited coverage of the current legislation in respect of business to business transactions.

Question 2:

Do you agree with our decision not to retain the limited coverage of the current legislation in respect of business to business transactions?

18. The vast majority of respondents expressed support for our policy decision not to retain the limited coverage of the current legislation in respect of business to business transactions.

Business

19. The RDO and RCI Europe felt that as the new Directive covered business to consumer transactions only the UK legislative regime should not be extended to cover business to business transactions. The RDO was only aware of a handful of cases where the Timeshare Act as amended would have applied to business to business transactions and believed that there was no need to retain this coverage.

20. Interval International expressed the view that any timeshare legislation to be enacted in implementation of the Directive should only address the protection of the offeree when acting as a consumer. Interval International did not see any significant value in retaining a regime that protected non-consumers purchasing timeshare interests.

21. Diamond Resorts identified 2 scenarios in which the current legislation in relation to business to business transactions might apply: (1) on relatively rare occasions where a limited entity wishes to buy a timeshare for leisure purposes for the benefit of its employees/directors; and (2) in the event that a timeshare business wishes to acquire timeshare weeks from another developer.

22. In relation to scenario (1) above, Diamond Resorts pointed out that it had a number of companies that owned small timeshare interests. However, Diamond Resorts felt that there was nothing to prevent a timeshare company from granting “consumer” rights to a business that wishes to purchase a timeshare interest. Diamond Resorts anticipated that it would continue to use its consumer documentation. The value of the transaction would not merit a re-draft of the documentation. However, Diamond Resorts saw no real reason why the UK Regulations could not be extended to protect businesses that were not operating in the timeshare industry from being afforded the same protection as a consumer.

23. In relation to scenario (2) above, Diamond Resorts felt that a timeshare business would make its own due diligence enquiries before committing to a purchase and would not seek to rely on the Timeshare Act which was very much directed towards protecting consumers.

Consumers

24. Citizens Advice had no evidence of any business to business transactions in this market. Citizens Advice considered that it was a fair argument that there was currently limited protection for business to business transactions and that the loss of this protection would not be significant.

25. TATOC was not aware of any circumstances that would justify retaining a reference to business to business transactions. The Directive was quite clear in its scope of trader-to-consumer transactions and one of the major objectives of the Directive was harmonisation.
26. Timeshare Consumers Association supported our policy decision not to retain the current legislation in relation to business to business transactions.

Enforcers

27. LGR, TSI and Windsor Trading Standards agreed that the provisions did not provide any added value. LGR were not aware of specific instances where businesses benefited from the current legislative regime. LGR believed that the protection afforded by the new legislation should apply across the board to anyone trading in timeshare/holiday products irrespective of their status. There was no need to make a distinction as to the status of the purchaser. LGR's concerns with making such a distinction were that rogue traders may use it to avoid liability (i.e. where a self-employed builder is classed as a business and not afforded the same protection as a consumer).
28. Wiltshire Trading Standards considered that there were possibilities for a small business to purchase timeshare to use in a non associated business activity, such as sport training, holistic practices etc and they could be exploited if the Regulations did not include business to business.
29. **Government's response:** *Although respondents identified some theoretical examples where small businesses might be at a disadvantage when buying the contracts covered by the new regime, we received no evidence to that effect. In one case, that of the builder buying timeshare, it is worth noting that unless that builder was buying the timeshare in the course of his business he would be considered a consumer under the new regime and would benefit from the protection. If we were to retain the very limited coverage under the old regime, this would mean that we would need to adopt the general approach of amending the old regime, rather than being able to produce new regulations. The overwhelming desire of respondents was for new stand-alone regulations because to amend the old regime would be to exacerbate an already confusing situation.*

Views on the scope of 'holiday accommodation' contracts to which the Regulations apply and views on the excluded arrangements.

Question 3:

Do you have any comments on the application of the Regulations as set out in regulations 5 & 6?

Business

30. Interval International expressed concerns regarding the proposed extra-territorial application of the Regulations and did not see the justification for regulation 5(3). Interval International felt that regulation 5(3) would mean that in a contract between a timeshare trader based in France and a UK consumer, which was entered into in France and had the object of a timeshare interest at a resort in France, the contract would be governed by the French timeshare law which would afford the UK consumer the same level of protection as the UK regulations. It would be burdensome and impractical to expect the French trader to also

comply with the UK regulations concerning a transaction which had taken place in his home territory concerning a product which is consistently regulated across the EU.

31. RDO felt that it was crucial to be clear in what circumstances the UK regulations would apply, including the accompanying key information requirements, and when the legislation would not apply, i.e. when purchasing abroad. Given the uniformity of consumer protection across the EU through the Directive's maximum harmonisation provisions, RDO saw no need to retain the UK's extra territorial conditions. Experience had shown that these have caused confusion for both traders and consumers and, since 1997 under the current Act, RDO has received a number of complaints from consumers who had purchased overseas thinking they were covered by the UK provisions but had later found that this was not the case. RDO recommended that these Regulations were not applied outside the UK".
32. ***Government's response:*** *The effect of regulation 5(3) is to ensure that there is no possibility of a consumer waiving their rights under the Directive by agreeing that the law of a third country (i.e. a country that is not an EEA state) should govern the contract. We have made a change to clarify this and to ensure that the regulations will not apply where the contract is governed by the law of another EEA state. We have added that 5(3) and 5(4) only applies where a holiday accommodation contract is governed by the law of a third country. As with other contracts, and as is the case now, the precise member State's law which applies any individual case will be determined on a case by case basis with reference to the contract and, where necessary, the relevant European treaties on applicable law.*
33. Diamond Resorts made a number of drafting suggestions with a view to improving the clarity of the Regulations:
- amend Regulation 5(3)(b) to read "the consumer is to any extent subject to the jurisdiction of a court in the United Kingdom in relation to the contract." Diamond Resorts felt that as currently drafted it would seem that both parties would need to have a nexus with the UK which could result in circumvention by unscrupulous traders. "
 - insert the following words at Regulation 5(3)(b) "or by any means directs such activities to consumers resident in the United Kingdom".
 - amend regulation 6(2) (excluded arrangements), we would suggest greater clarity by amending the draft to read "multiple reservations of accommodation to the extent that they do not imply rights and obligations beyond those arising from each separate reservation" "
 - amend regulation 6(4)(b) be amended to read "consideration payable by consumers for accommodation at hotels within the group is not payable [] for the purpose of obtaining discounts or other benefits in respect of future accommodation" "
34. ***Government's Response:*** *On 5(3)(b), we have kept the reference to "the parties". This is how this same provision is expressed in the old regime. Our understanding is that if either of the parties are to any extent subject to the jurisdiction of the UK court in relation to the contract then the parties will both be subject to that jurisdiction. This interpretation is strengthened by the phrase "to any extent" in the same provision.*
35. *The suggested addition to 5(3)(b), is not appropriate. The passage suggested is only included in 5(4)(c) because 5(4)(c) applies to contracts not directly related to immoveable property. 5(3) covers contracts which are directly related to immoveable property and it is sufficient to provide that the immoveable property must be in an EEA state. This is what is required by the Directive.*

36. *In 6(2) we have reproduced the formula used in Recital 6 to the Directive. We do not think the suggestion adds to how this provision would be normally understood.*
37. *On 6(4)(b) we do not believe anything is added to the meaning of the provision by including the word “future”.*
38. Diamond Resorts also expressed concern that regulation 6(5) as currently drafted concerns would seem to provide a loop hole. Diamond Resorts pointed out that arguably in certain situations cruises, holiday boats and caravans fall within the scope of the Package Tour Regulations. Diamond Resorts were unsure as to why the proposed UK Regulations legislature should deem such an arrangement an “excluded arrangement”. Unscrupulous traders could start to offer an “all inclusive flight” in the purchase price to avoid the legislation. Diamond Resorts felt that the Regulations should be read in conjunction with the Package Tour Regulations (to the extent that the Package Tour Regulations apply). Diamond Resorts considered that recital (8) of the EU Directive supported the analysis. ”.
39. **Government response:** *We agree that as originally drafted this did not reflect the intent of the directive and have replaced it with a new regulation so that it is clear that if a contract which is covered by these regulations also happens to fall with the definition of a package within the package travel regime, then both sets of regulations apply.*
40. HPB Management Limited suggested that the definition of an ‘excluded arrangement’ be expanded to include holiday property bonds (which HPB outlined was a life assurance product) by adding a new regulation 6(6), ‘This paragraph applies to any rights arising under a policy of insurance’”.
41. **Government’s response:** *We think that the purpose of the Directive is to ensure that timeshare contracts are regulated and to prevent timeshare contracts from being marketed as investment products, which they are not. However, the life assurance product is an investment product and is subject to stringent regulation under the Financial Services and Markets Act 2000. We do not consider that insurance products are covered by the Timeshare Directive and have clarified this by specifically excluding insurance products regulated under the Financial Services and Markets Act from the coverage of the Regulations.*
42. TATOC suggested a reorganisation of Regulation 5 with a view to clarification. TATOC also suggested that there may be a need to make reference to the location of the movable property in order to be consistent with paragraph 5(3)(a) for immovable property. i.e. to regulate that the movable property is based in an EEA State; and that there may be a need to include a requirement for paragraph 5(5)(a) that would be consistent with paragraph 5(3) (b) for immovable properties.
43. **Government’s response:** *Regulations 5(3) and 5(4) relate to the situation where the applicable law would otherwise be that of a third country, and we have clarified the regulations to this effect. Regulation 5(3) deals with immovable property and regulation 5(4) deals with contracts that do not relate to immovable property. It is therefore appropriate for 5(3) and 5(4) to be drafted differently. This reflects the directive. The directive specifies that consumers should not be deprived of their rights if any of the immovable property is situated in a member State. If the contract is not related to immovable property, it is not appropriate*

to refer to location and the Directive provides for where the trader pursues commercial activities in or directs activities to a member State.

44. RDO and RCI Europe considered that it was important to clarify which holiday accommodation contracts were included within the Directive and which were excluded. However, RDO felt it should be noted that by creating detailed definitions, there was a risk that loopholes may be found by those who set out to defraud consumers. RDO stressed that LTHPs (Long Term Holiday Products) as defined were not timeshare contracts nor in any way related to timeshare. RDO and RCI Europe also emphasised the importance of an exchange contract being seen as discrete from a timeshare contract within the scope of the Regulations. ”
45. **Government’s response:** *We believe the definitions clearly differentiate between the four contract types covered and that they are cast wide enough to ensure that holiday related products which involve significant outlay over long periods of time will be caught.*
46. RDO observed that the Regulations would now captured timeshare-trial-memberships that allowed consumers to ‘test drive’ the timeshare holiday concept prior to purchasing it in full. RDO felt that this test product would most likely abandoned by the industry, at least in its current form, simply for reasons of compliance costs and price for the consumer. RDO considered that in many ways this was very unfortunate but was unavoidable due to the requirements of the Directive. ”.
47. Rocksure expressed concern that its property investment fund may fall within the scope of the definition of a regulated timeshare contract.
48. **Government’s response:** *We have examined this product from the details provided by Rocksure and we do not consider that it falls within the scope of the directive or our proposed regulations. This is based on our assessment that any sharing of time in property is not the subject of a trader to consumer transaction, but is the product, or bi-product, of the shareholder’s purchase of investment properties for themselves.*

Consumers

49. Citizens Advice commented that article 2 of the Directive made no reference to ‘immovable property’ but regulation 5(3)(a) did. Citizens Advice requested assurance from BIS that there was no loophole in the Regulations which would mean that boats might be excluded.
50. LGR and TSI sought confirmation that boats etc were included in the regulations. LGR considered that this should be clearly stated so that there was no loophole in the legislation.
51. **Government’s response:** *The reference to ‘immoveable property, now in regulation 5(3)(b) is part of our implementation of Article 12(2) (which does mention immoveable properties). The definition of timeshare covers timeshare in any overnight accommodation. This would include boats.*
52. Citizens Advice also felt that the exclusion at Regulation 6(2) appeared to cover a product reported by a bureau as having been sold at a timeshare presentation, as a mini-break

facility and where the purchaser had since been the subject of pressure to agree to a mini-break under the contract.

53. **Government's response:** *From the details provided it appears that the consumer had signed a contract some five years ago to the effect that she would in future be offered "trips" at a reduced price, and that she was obliged to take these trips. We consider that this would fall within the definition of a Long-term Holiday Product and would now be covered. The apparent pressure selling techniques employed by the sales people in this case would already appear to be subject to the Consumer Protection from Unfair Practices Regulations.*
54. TATOC – made a number of drafting suggestions to include the clarity of regulations 5:
- regulation 5 seemed a little disjointed, with paragraph 4 separating paragraph 5 from paragraphs 2 and 3 (with the definition of 'relevant accommodation');
 - in regulation 5(5) the two items (a) and (b) did not seem to be in any way related to each other and would be better separated as items 5a and 6a;
 - regulation 5(5)(a) sought to cover canal boats, yachts, motor homes, etc. It made reference to accommodation "not directly related to immovable property".
55. RDO felt that this was an unnecessary 'double-negative' and that a positive statement would remove any ambiguity. For example: 'accommodation in a movable property such as a motor vehicle, boat etc.'; regulation 5(5)(a) seem more appropriate immediately after regulation 5(3).
56. **Government's response:** *It will be noted from the comments above that we have clarified the coverage of regulation 5. Although we did not consider it necessary to recast in the way suggested, we do need to ensure that we properly implement the jurisdiction elements of the directive accurately. This regulation does not affect the types of products covered but sets rules to ensure that transactions fall within the law in the UK where appropriate, irrespective of whether the consumer is persuaded to agree otherwise.*

Enforcers

57. LGR, TSI and Windsor Trading Standards considered it extremely important that the regulations are enforceable in the UK if a business or their representative/agent was operating in the UK even whilst registered or claiming to be based overseas. LGR was aware that consumers were on occasion invited to transfer their timeshares into long term holiday club membership but because the businesses were registered abroad council trading standards services (CTSS) could not take enforcement action because of jurisdictional problems. LGR stressed the importance of closing this loophole in the legislation. Criminal enforcement should be available to CTSS, OFT and any other agency irrespective of where the directing mind of the business claimed to be, or where in the world the timeshare property, or holiday club entitlements may be.
58. **Government's response:** *Where regulation 5 applies, the contract will be covered by these regulations irrespective of the place of registration of the sales company. This will include any sales in the UK of the contract types covered in the regulations.*
59. LGR and TSI also sought confirmation as to whether regulation 5(5)(a) would cover buying shares in a holiday accommodation company.

60. **Government's response:** *It is not clear precisely what the responders had in mind here. It is not the intention of these regulations to regulate investment in holiday or other property. The purpose of shares as an investment would therefore not be within scope, but the selling of investments is covered by other regulations. Consumers should always be alert to the pitfalls of investing in property abroad and should seek independent expert advice before embarking on such a course.*
61. OFT felt that the application of regulations 5 and 6 was suitable and supported the extension of scope to increase protection for consumers by covering the sale of a range of holiday accommodation contracts.
62. Wiltshire Trading Standards felt that 14 days was insufficient for cancellation rights when many people were still on holiday for a good part of that time having signed up whilst abroad.
63. **Government response:** *We have no option but to set the cooling off period at 14 days as we cannot go beyond what the Directive sets. However, in conjunction with the clear ban on taking any payments by any means within the 14 days and the much clear and comprehensive information provisions we believe that this combination represents the correct balance between ensuring consumers have a proper chance to be informed and to consider their decision to purchase, and the burden on business.*

Views on whether all current timeshare models would fall within the scope of the definitions included at regulation 7

Question 4:

Do you agree that all current timeshare models would be caught by the definition included at regulation 7? Please provide examples of timeshare types where you have doubts that they would be covered.

Business

64. Diamond Resorts and Interval International felt that the definition adequately covers all types of timeshare contracts. RDO held the view that all current timeshare models, including fractional accommodation, points and canal boats would be covered by the definition included in Regulation 7.

Consumers

65. Citizens Advice considered that all current models of timeshare appeared to be covered in regulation 7. Further (subject to comments in response to question 3 about immovable property) the definitions of the products in regulations 7 to 10 appeared to cover problems reported by bureaux, i.e. timeshares that were not previously covered, such as those on boats, holiday clubs, sales described as investments, re-sales and maintenance fees. Citizens advice welcomed the fact that the Directive covered a timeshare or long-term holiday product with an initial term of less than 12 months that could be renewed or extended. Citizens Advice expressed a concern, however, that a product might be designed that covered a period of less than 12 months, to avoid the new legislation.

66. **Government's response:** *The intention of the directive is to regulate the sale of products which require significant and generally long term financial commitments by consumers on the promise of service delivery for considerable periods in the future. Contracts of the type that would, except for the fact that they last less than one year, be covered by the definitions would in practice appear to amount little more than ordinary bookings for holiday accommodation etc. Where a contract purports to be for less than one year but it can be extended then it will fall within these regulations.*
67. TATOC felt that, for clarity, the words "one or more" overnight accommodation that were present in the Directive should be added to Regulation 7. For clarity we feel they should be in.
68. TATOC also considered that regulation 7 should include a reference to moveable property such as canal boats etc and that a regulation 7(3) should be added as follows: 'The reference to "accommodation" in paragraph 1 includes accommodation that is immovable or movable'.
69. **Government's response:** *Regulation 7 defines timeshare. It is not the intention of the directive to regulate a single booking for accommodation. It is the fundamental nature of timeshare that it provides continued access to accommodation for more than one period of occupation whether those periods are set weeks in set resorts, or are provided by more flexible systems. Our drafting makes it clear that single bookings are not covered. Regulation 7(2) makes it clear that rights in relation to a pool of accommodation are included in the definition.*
70. *We do not consider it necessary to list all of the types of accommodation covered. The phrase "overnight accommodation" is intentionally wide and unspecified so as to cover any accommodation in any circumstances which is occupied overnight under the contracts covered.*

Enforcers

71. The Association of Chief Trading Standards Officers felt that all current timeshare models appeared to be covered by the definition included in regulation 7.
72. LGR, TSI and Windsor Trading Standards were concerned that timeshare re-sale may not be adequately covered. It seemed from the proposals that a consumer buying into the holiday club would be covered as a long term holiday product contract, but it appeared that the linked sale of the original timeshare being sold to the third party company would not be covered. Council trading standards services had experienced problems with this type of contract, where the trader contracted to take over ownership of the (worthless) timeshare product from a consumer (and the timeshare taken in is given a very low value), promising to resell it, and persuading the consumer to buy into a new expensive holiday/club product. The timeshare ownership is not transferred, and the consumer is left with a timeshare and a new holiday club membership. Furthermore, maintenance fees due under the timeshare were not covered, so the original consumer remained liable for those liabilities even where they have handed their deeds over to the purchasing business.
73. LGR, TSI and Windsor Trading Standards also had concerns about contracts for the transfer of timeshare for exchange, for partial or full payment into another contract. LGR were aware that this was starting to happen with one company who were a new incarnation of a

company under investigation by the OFT and CTSS. In that particular case consumers were transferring their timeshare ownership to become franchised holiday companies. It was not always clear to the consumers what they were signing up to. LGR asked:

- Would a sale of a timeshare, from a consumer to a third party company, be covered under a resale contract?
- Could the trader assist the consumer in buying or selling rights under a timeshare contract if the trader simply takes the timeshare off the owner's hands, for consideration, or just buys/takes from the consumer the timeshare?
- Or, is this meant to cover only the marketing of a timeshare or finding a buyer for a timeshare?

74. **Government's response:** *The sale of any long-term holiday product would be covered irrespective of how it might be presented to the consumer or whether as part of a promise to buy a consumer's timeshare. If as part of any process to sell a long-term holiday product the trader also purports to assist the consumer in selling their timeshare then that element of the arrangement would also be appear to be covered by the regulations as a resale contract. The Regulations would therefore bite twice in those circumstances. In respect of the resale element the trader is banned from taking any payment in advance of the sale or when the contract is otherwise terminated. Any sale of timeshare, whatever the form of consideration being asked, will be covered by the regulations. A resale contract covers any promise to assist the consumer to sell or buy a timeshare. If a trader or any other person buys a timeshare, that would not be a resale contract. Timeshare resale is the service of assisting a timeshare owner or consumer to sell or buy a timeshare.*

75. LGR felt that a timeshare points system would not be covered by the new definitions in regulation 7.

76. **Government response:** *We disagree. The means of providing the contracted service is not limited in the definition of timeshare. If the consumer acquires the right to use accommodation as set out in regulation 7, then it will be a timeshare contract. It does not matter what mechanism is then used to deliver those rights.*

77. LGR urged BIS to bring all operators within the scope of the legislation.

78. OFT felt that the definitions included at regulation 7 would cover all existing timeshare models. OFT expresses that view that reducing the timeframes from a 3 year minimum to 'more than one year' and not limiting the definition to fixed properties would effectively ensure that 'timeshare like' products, such as timeshare in canal boats are covered. OFT supported the inclusion of definitions for different contract types (regulations 7 – 10) and that the regulations considered these together as 'regulated contracts'

79. The Timeshare Consumers Association felt that whilst every effort had been made in the drafting of the Directive to eliminate the possibility of "loopholes" the industry had a record of being able to identify and exploit weakness in laws. The only products that have so far surfaced as potential "loopholes" were:

- Property Investment combined with "fractional" ownership. An evolving product whereby consumers are invited to purchase a fraction of "real estate" that, as a secondary element, includes the right to use the accommodation (often in part only) for holiday purposes.

- Agency or franchise agreements to market membership of a holiday club. Consumers are invited to invest in an agency granting the right to sell membership of a holiday club and the right to sell the marketing right to others.

80. The Timeshare Consumers Association felt that both of the products (above) would fall outside the proposed regulations but should be effectively caught by the Consumer Protection Regulations.

81. **Government response:** *We agree in part. There may be some property investment models which do not fall within the definition of timeshare, but the model usually referred to as fractional ownership, which amounts to a timeshare arrangement but for longer periods of occupation than the usual one or two weeks, would be covered. Furthermore, the second of the examples might also fall within the Trading Schemes regime designed to bring transparency and provide protection against unfair exploitation in multi-level marketing schemes. In the former case, depending on the product, it might fall within the rules on selling financial investments. Of course the CPRs do not cover types of products per se, but the commercial practices adopted in selling them.*

Views on the need to include in regulation 7 the wording, ‘...the right to participate in arrangements under which a person may use accommodation’

Question 5:

Do you agree that, in regulation 7, we do not need to include *the right to participate in arrangements under which a person may use accommodation*? Please provide examples of arrangements for acquiring rights in timeshares where you have doubts that they would be covered unless this wording was added to the definition.

Business

82. Diamond Resorts expressed the view that “a person’s right to use” was not the same as “a right to participate in arrangements under which they may use accommodation”. The latter was a right conferred on a timeshare owner who became a member of an exchange company. Such an exchange member had no “right” per se to utilise accommodation. They simply had a right to participate in arrangements under which they may use accommodation if accommodation became available. However, Diamond Resorts believed that the wording in Regulation 7 was correct as drafted (as exchange contracts would be covered by Regulation 10).

83. Interval International felt that ‘the right to use accommodation’ included ‘the right to participate in arrangements under which a person may use accommodation’. Interval International did not see the need to preserve the original language as the new definition was broad enough and adequately covered all forms of timeshare.

84. RDO agreed that there was no need to include the phrase in Regulation 7.

Consumers

85. Citizens Advice considered that the term, ‘acquires the right to use overnight accommodation’, in regulation 7 appeared to say the same thing. Citizens Advice had no case examples provided by bureaux that appeared not to be covered if the new wording was used.

86. TATOC and the Timeshare Consumers Association agreed that the term ‘acquires the right to use overnight accommodation’; in regulation 7 did not need to be included.

Enforcers

87. LGR, TSI and Windsor Trading standards expressed concern at the reliance on the phrase “the right to”. LDR felt that this left the way open for an unscrupulous trader to use a form of wording whereby the consumer did not acquire the right to use the accommodation; instead the trader offered the consumer the “opportunity” to use it. The way for a rogue business to avoid the legislation would be to say that their product was not timeshare, instead people would be buying into a concierge club, i.e. a club where they can take services such as having their travel organised for them, having tickets for sporting events organised for them, or to take holidays in a wide portfolio of holiday homes. LGR felt that the definition has to be general so as to encompass all types of contracts. Rogue traders in this field would find ways of avoiding compliance with the legislation by redefining the use of accommodation. LGR strongly recommended retaining the definition “any form of right to participate in arrangements, etc” as it would be useful to catch the more imaginative points schemes used by rogues to avoid the legislation. LGR argued that it could even go further to extend to other leisure services, not just accommodation.

88. The Association of Chief Trading Standards Officers considered that there was no need to include the phrase in Regulation 7

89. OFT agreed that ‘acquires the right to use ‘ would suffice as a replacement for the ‘right to participate in arrangements under which a person may use accommodation’.

90. **Government’s response:** *We have not included the old wording. We believe the phrase “acquires the right to use” would cover any contractual rights, however expressed, which have the effect of providing the opportunity for the consumer to use overnight accommodation, whether or not the contract also included rights to other services or products. No matter how a contract which falls within this definition is presented to the consumer, that will not detract from the fact that it is a timeshare contract as defined and therefore subject to these regulations.*

Views on the clarity of the requirements relating to key information and language of the material included at regulation 12

Question 6:

Do you have any comments on the clarity of the requirements relating to key information and language of the material included at regulation 12?

Business

91. Diamond Resorts expressed concerns in relation to regulation 12(1) and article 4(1) of the Directive which referred to the provision of the pre-contractual information “in good time before the consumer is bound by any contract”. Diamond Resorts felt that this terminology was not helpful, not least due to the fact that a consumer was not “bound” until the expiry of the cancellation period.

92. Conversely, the proposed UK regulations stipulated that “before entering into a regulated contract, the trader must give the consumer the key information”. Again, Diamond Resorts felt that this was not helpful as the consumer could not be expected to read all of the key information before signing the agreement. According to Diamond Resorts, what was important was that all of the key information was provided on the day that the consumer signed the contract (thereby ensuring that the consumer had 14 days within which to peruse the key information at their leisure in the comfort of their own home/apartment and decide whether they wish to proceed or cancel.
93. Diamond Resorts expressed the same concern in relation to regulation 12(2), that use of the terminology “before entering into the contract” was not helpful.
94. **Government’s response:** *The intention of the regime is that consumers are provided with all of the required pre-contractual information before they sign a contract and that they are provided with enough time to understand precisely what they are being asked to sign up to. In the UK a contract is binding when it is concluded by being agreed by both parties. The fact that a consumer has the separate right to withdraw from the contract does not make the contract any less binding on the parties. We have therefore retained the requirement that the consumer be provided with this information in good time before the conclusion of the contract.*
95. Interval International felt that some of the information requirements prescribed in the Standard Information Forms were somewhat repetitive but they met the requirements of the Directive and were clear enough.
96. Interval International also expressed the view that the language requirements represent a hurdle for UK based timeshare businesses transacting with foreign consumers visiting the UK who were fluent in English language and able to understand information written in English. Interval International suggested the following addition to the proposed regulation 12(6): ‘unless the consumer has chosen that the information be provided in the language of the EEA State where the immovable property is situated’. Interval International felt that this would facilitate transactions for UK businesses without causing any consumer detriment in situations where for example, a Dutch national fluent in the English language, visited the UK and wished to purchase a timeshare interest at a UK resort. He/she may be perfectly happy to receive the information in English without the need for documents written in Dutch.
97. RDO and RCI Europe was concerned that the requirement for a trader to provide the key information in the language in which the consumer was resident or the language in which the consumer was a national would prove to be a deterrent to selling to non UK nationals due to the significant translation costs involved when compared with the low cost of the actual product being sold. RCI Europe believed that new entrants to the exchange market may be deterred due to the cost of this unduly onerous compliance requirement. RCI would instead favour a scheme whereby the consumer was given the choice as to whether a translation was provided so that in the case of a consumer speaking English fluently, this provision would not be mandatory.
98. **Government’s response:** *The language requirements reflect the requirements of the directive. We would not, in any case, wish to diminish the right of consumers to be provided with important information and contracts in a language with which they are fully familiar. This is the reason why the consumer has the choice of language. It is worth mentioning that in our view businesses are not required to hold stocks of information and contracts in all languages, just those languages of the consumers with whom they choose to trade.*

Consumers

99. Citizens Advice felt that the requirements at regulation 12 seemed to comprehensively reflect the Directive.
100. TATOC expressed concern that consumers may not be aware of their right to have the key information and contract in various languages of their choice as defined in the regulations. In general terms TATOC were concerned that a trader might not make this information available and then use the defence that the consumer didn't ask for it in an allowed language. TATOC recommended the use of an additional clause indicating that consumers **must** be made aware of their entitlement regarding possible languages.
101. **Government's response:** *We agree and have made amendments to make it clear that the trader must give the consumer the opportunity to nominate one of the possible languages they are entitled to.*

Enforcers

102. LGR, TSI, Windsor Trading Standards (and TATOC) pointed out that the Directive states key information **must** be given on paper or other durable medium, but the regulations only stated 'in writing'. LGR (and TATOC) believed that key information must be given in a durable form that the consumer can take away before a contract was signed. LGR considered that information shown on a computer screen during a 'consultation' would offer no benefit to consumers. A copy of the signed agreement must be provided, complete with all its terms. It was important that any ongoing liabilities such as annual membership fees or grounds maintenance charges were set out.
103. **Government's response:** *We consider that "in writing" is construed broadly to cover information held electronically where it is capable of being reproduced in a legible form. We do not consider that showing information on a computer screen during a consultation would comply with regulation 12. In particular 12(1)(a) requires the trader to **give** the consumer the key information. Showing a consumer information is not giving or providing information.*
104. LGR, TSI, Windsor Trading Standards (and TATOC) also sought clarification on what did 'in good time' mean. Was that at any time before the contract was signed or did there have to be a period of time before the contract was signed?
105. **Government's response:** *The phrase "in good time" reflects the wording of the directive. In our view this means that the consumer should have adequate opportunity to be able to familiarise themselves with the information so that a decision to purchase may be properly informed. Precisely what this amounts to we cannot say, but it may mean the exercise of some judgement on the part of the seller in individual cases, taking into account any obvious characteristics of a particular consumer which may mean that it would be appropriate to allow more time than usual.*
106. OFT made the comment that Article 4(2) of the Directive required that key information to be provided free of charge. This did not seem to be reflected in the regulations.

107. **Government's response:** *We have amended the proposed Regulations to remove any doubt about this.*

Views on the standard information forms

Question 7:

Do you think that the requirements with regard to use of the standard information forms are clear? (regulation 13). If not, please explain why.

Business

108. Interval International felt that the requirements with regard to use of the standard information forms were perfectly clear. RCI Europe and the RDO agreed that the standard information forms were clear and RDO did not recommend making any changes to them, particularly as all Member States would implement the standard information sheets.
109. Diamond Resorts felt that the requirements with regard to the use of the forms was clear but sought clarification on what was meant in Part 1 of the (Standard Information Form) by the words "Exact nature and content of the right(s)."
110. **Government's response:** *We think this is clear. The consumer must be made aware of precisely what the contract entitles them to, under what conditions, and also precisely what the contract binds them to in as much detail as is necessary to provide the consumer with a clear picture of these matters.*
111. Diamond Resorts also suggested that paragraph 1 of Part 2 of the Standard Information Form should be amended to read, "The consumer has the right to withdraw from this contract without giving any reason within 14 days starting on the date of execution of the contract by the consumer or the date on which the consumer receives a copy of the executed contract from the trader (whichever is the later)."
112. **Government's response:** *We think the phase "conclusion of the contract" is sufficiently clear. A contract is concluded when both parties have agreed the contract. This is the intent of the directive and our regulations.*
113. Diamond Resorts queried whether there was any merit in stipulating in the standard information that the timeshare product should not be marketed or sold as an investment (Article 3 (4) of the EU Directive refers).
114. **Government's response:** *There is no requirement in the directive that the standard information includes this line and we have therefore not included it. The ban on marketing or selling as an investment is an obligation placed directly on the trader.*
115. Diamond Resorts also felt that where the consumer entered into a timeshare agreement (and as a corollary to that acquired exchange rights) it was not clear if the consumer was to

be provided with Schedule 1 information only or if the consumer was to be provided with the Schedule 4 information as well.

116. **Government's response:** *If both a timeshare contract and an exchange contract are being sold then both sets of information must be provided. Similarly, if a single contract happens to fall within both definitions, then all of the information in schedules 1 and 4 must be provided.*

Consumers

117. TATOC and The Timeshare Consumers Association felt that the requirements were clear.

Enforcers

118. The Association of Chief Trading Standards Officers, Citizens Advice and OFT considered that the requirements were clear and would be difficult to misinterpret.
119. LGR and the TSI suggested that 'given the way that timeshare/holiday club products had evolved' that it would be valuable to have a provision that if the contract did not exactly fit the scenario in the schedule then the most appropriate form should be used.
120. **Government's response:** *The regulations apply only to specific types of contract which we believe are clearly defined and to which the relevant information requirements are designed to apply. If a contract does not fall within any of defined contracts then it will not be subject to the regulations. If a contract falls into more than one definition, the information requirements for both types of contract should be provided.*

Views on whether contravention of regulation 12 (i.e. failure to meet the requirements with regard to the provision of key information) should be the subject of a criminal offence

Question 8:

Do you consider that contravention of regulation 12 (i.e. failure to meet the requirements with regard to the provision of key information) should be the subject of a criminal offence? If not, please suggest any alternative effective means of ensuring compliance and providing a sufficient deterrent.

Business

121. Diamond Resorts felt that the imposition of criminal sanctions was the best way to prevent unscrupulous traders flourishing in the market place.
122. Interval International considered that a minor omission in the level of information provided to a consumer by a trader should not carry a criminal penalty attached to it. Penalties should be proportionate to the breach and businesses should always be given a reasonable opportunity to put matters right before a serious penalty was imposed. An Administrative Notice by the enforcing authority should be issued when a trader has only partially dealt with the requirements. An administrative penalty system based on a sliding scale of financial administrative penalties (depending on the severity of non compliance) should be an

effective means of ensuring compliance. Criminal offences should be reserved for fraud, for repeated breaches or for those situations where a trader had blatantly disregarded the regulations and had caused significant detriment to the consumer.

123. RCI Europe and RDO were strongly of the belief that contravention of regulation 12 should not be considered a criminal offence. In RCI Europe's view the purchasing of membership to an exchange organisation was a relatively low cost and low risk product from a consumer perspective. Consumers paid an initial annual fee and then choose whether they wished to renew thereafter. They could also exit during their annual membership and receive a pro-rated refund. Consumers were therefore under very little obligation and were not tied into an expensive or long-lasting contract. RCI Europe considered that for there to be criminal sanctions imposed for not providing certain key information prior to entering into an exchange contract appeared unduly onerous and, totally disproportionate to the potential risk that could be suffered by a consumer.
124. **Government's response:** *We agree that enforcement action should be tempered and appropriate to the particular offence. This is the approach adopted by UK enforcers, with prosecution generally being the last resort for the most serious or persistent of offenders. However, in our view the consequences of mis-selling the contracts covered by regulations can have a very serious and debilitating effect on consumers who find themselves bound by long-term and expensive contracts about which they were not clear or properly informed. This potential damage justifies, in our view the application of a criminal offence to this provision.*
125. *We accept the points made by RCI and Interval International, two exchange companies, in relation to consumer's apparent exposure to damage under a stand alone exchange contract, but this does not take into account that the exchange contract can often be the element of the timeshare sales process which persuades the consumer to commit. If, for example, the exchange opportunities are inflated or not as described, the consumer has in effect committed to an unwanted timeshare on the strength of the promises, now not fulfilled, in relation to the mis-sold exchange contract. Furthermore, the exchange contract is often sold in these circumstances not by the exchange company themselves, but by agents which they are selling timeshare. It is important in our view that those agents are subject to an effective level of deterrent from potentially misrepresenting, during the sales process, what the exchange contract provides. It is also important, in our view, that exchange companies are encouraged to exert adequate control over the sales of their contracts.*
126. RCI Europe and RDO were not aware that any other European Member States were considering introducing criminal penalties and, if the UK bowed to pressure from those supporting such penalties, this would put the UK out of line with the rest of Europe.
127. RCI Europe and RDO considered that the greatest deterrent to traders would be an understanding that the Directive would be stringently enforced and that enforcement agencies such as the OFT and Trading Standards would take swift and appropriate action against infringements. Business and consumer awareness should be raised to the fact that UK enforcers would work closely with their counter-parts overseas, exchanging information on fraudulent operators.
128. RCI Europe and RDO believed that the introduction of civil sanctions would be a more appropriate course of action than criminal prosecutions. Civil sanctions tended to be less costly and swifter to conclude and a successful case would benefit not only the consumer but also the vast majority of traders who acted within the law. The UK Law Commission is consulting on its paper "Criminal Liability in Regulatory Contexts" where it is examining a

wholesale shift from criminal to civil liabilities in statutes. RCI Europe felt that, fraud was fraud, and could, therefore, already be properly dealt with from a penal point of view.

129. **Government's response:** *All member States are required under the directive to provide for appropriate penalties which shall be effective, proportionate and dissuasive. The Government has considered at length whether effective alternatives are currently available to enforcers which would enable us to meet this requirement by other means. We have concluded not, but that in due course the option of providing civil sanctions when they become more widely available would be our intent. In some cases we have chosen to rely on penalties in existing broader regulation, but for the most part criminal penalties of the level to be included in the regulation are considered appropriate in relation to the potential for damage to consumers this sector has shown in the past. They are in line with other consumer protection measures. See the responses to question 27, 28 and 29 for further discussion on sanctions.*

Consumers

130. Citizens Advice believed that it was important for a criminal offence to be created to recognise the importance of the information requirements. The requirements of the Directive had been specifically designed to require traders to provide the key information that had been lacking in those contracts where consumers had suffered detriment.
131. Andrew Walker felt that contravention of regulation 12 should be a criminal offence
132. TATOC felt that one of the greatest problems and failures in the past had been the woefully inadequate enforcement of existing legislation. The wording of the Directive captured exactly what was needed, and what TATOC wanted to see come out of the new legislation. There was an obvious need that penalties for breaching the regulations were broadly similar to those for offences in other areas of consumer marketing contracts outside of the timeshare/holiday product sector. In addition it was important that the transposition by other Member States created a regulatory environment and enforcement strategy that was, as near as possible, harmonised. If this was not the case there would be no level playing field for traders, and it was likely that less scrupulous traders would seek to operate within those Member States whose enforcement was least rigorous and least punitive. TATOC's principle requirement and motivation was for a fast, effective enforcement process with punitive 'teeth' to act as a deterrent.
133. The Timeshare Consumers Association felt that contravention of regulation 12 should be the subject of a criminal offence.

Enforcers

134. The Association of Chief Trading Standards Officers (ACTSO) noted the Government statement that it did not wish to create criminal offences "where the conduct is already an offence under alternative legislation". The Association of Chief Trading Standards Officers considered that failure to provide the key information would constitute a breach of Regulation 6 (Misleading omissions) of the Consumer Protection from Unfair Trading Regulations (CPRs) 2008 (by virtue of Reg. 6(3)(b) and possibly 6(4)(g)), and would thereby be a criminal offence under Regulation 10). ACTSO added that for such a breach to occur under the CPR's, the 'transactional decision' test must be satisfied; this could create difficulties, and should be considered in any assessment of the strength of the equivalent CPRs offence.

135. ACTSO considered that criminal offences were necessary to deter and to deal effectively and appropriately with rogue traders. They also created a means to separate rogue traders from their proceeds of crime in certain circumstances.
136. ACTSO felt that the Enterprise Act could offer a means of preventing future breaches (whether available through the route of the proposed Regulations or the CPRs).
137. ACTSO also recommended that explicit provision be made in the legislation to render the contract unenforceable where key information was not provided to the consumer. This would act as a further means of securing compliance and providing a deterrent. ACTSO felt that the provision in 15(1) of the proposed Regulations (where the contract itself, including the withdrawal form, is deficient) should be extended to cover the non-provision of other key information.
138. LGR, TSI, and Windsor Trading Standards expressed the view that contravention of regulation 12 must be a criminal offence so that traders recognised the importance of information requirements. This would make regulation 12 easily enforceable, bring it under the Consumer Protection from Unfair Trading Regulations (CPRs) 2008, and ensure greater levels of trader compliance and accountability. Legitimate businesses would have no cause for concern. Regulation 12 should also render the contract unenforceable if the key information was not provided.
139. **Government's response:** *We understand that the provision that the key information must be set out in the contract has the effect that if all of that information is not provided then the contract becomes unenforceable against the consumer. We do not, therefore, think a provision along the lines of that described above is necessary. Failure to provide the precontractual information as required is subject to a criminal offence.*
140. LGR felt that civil remedies such as those available under the Enterprise Act and/or a fixed penalty notice under Regulatory Enforcement and Sanctions Act were important and had their place in some instances but due to the financial losses that consumers might suffer LGR strongly believed that criminal sanctions are essential. The application of civil remedies only would not deter unscrupulous traders from breaching the legislation and leaving many consumers out of pocket. Criminal sanctions also permitted the use of the Proceeds of Crime Act, which is a much greater deterrent than giving an undertaking not to breach the legislation in future.

Legal

141. The Law Society of Scotland felt that in view of there having been significant abuse and consumer prejudice in this sector, criminal sanctions are probably appropriate.
142. **Government response:** *These comments by enforcers and consumers are covered by the responses above under Question 8 (para 129).*

Views on the requirements of the advertising and marketing rules

Question 9:

Do you have any comments on the requirements of the advertising and marketing rules as set out in regulation 14?

Business

143. Diamond Resorts suggested that regulation 14(a) should be amended to read, "...contains a reference to the availability of the key information " .
144. **Government's response:** *We agree that this provision could be clearer and have amended and simplified regulation 14(1).*
145. Diamond Resorts felt that regulation 14(2)(b) seemed to introduce a rather onerous and unnecessary obligation and saw no reason why key information should be provided to a consumer at a marketing or sales event unless (a) the said consumer expressed an interest in entering the timeshare contract or (b) the consumer specifically requests it. Diamond Resorts suggested that the regulation 14(2)(b) be amended to read "the key information in relation to the proposed regulated contract is made available to the consumer if the consumer so requests it during the event". Diamond Resorts felt that was what Article 3 (3) of the Directive envisaged by the use of the terminology "the information referred to in Article 4(1) shall be made available to the consumer at any time during the event." .
146. **Government's response:** *The Comments in relation to Question 6 (para 94) cover our response. The directive requires that the consumer must be provided with the information in good time before the conclusion of the contract.*
147. HPB Management Limited expressed concern that its 'insurance' product may be in scope of regulation 14.
148. **Government's response:** *Covered under Question 3 (para 41).*
149. Interval International was supportive of a legal framework which was conducive towards enhancing the opportunity by consumers to better understand the products and services offered to them. The provisions set out in regulation 14 appeared to be reasonable. The words 'if the proposed contract would be a regulated contract' would appear to be superfluous in regulation 14(3)
150. **Government's response:** *The words "if the proposed contract would be a regulated contract" are needed to ensure that excluded contracts under regulation 6 are not covered by this provision.*
151. The Newspaper Society put forward the view that the language of regulation 14 should be revised so as to make it expressly clear that the 'trader' for the purposes of the advertising and marketing rules was the advertiser alone and not any other party, involved only in the publication or dissemination of the advertisement.
152. **Government's response:** *There is no offence specified in these regulations relating to the requirements of regulations 14(1) and (2) because we considered the requirements would*

be covered by offences under the Consumer Protection from Unfair Trading Regulations 2008. The relevant offence in those regulations contains the “Innocent publication of advertisement defence” at regulation 18.

153. RCI Europe and RDO supported the advertising and marketing requirements as set out in regulation 14. They also supported the requirement for traders to be transparent about what it was they were selling.
154. Rocksure expressed concern that their property investment fund may fall within the scope of regulation 14.
155. **Government’s response:** *This is covered under Question 3 (para 48).*

Consumers

156. Citizens Advice welcomed these provisions. In the past, many consumers had attended presentations to collect a prize without realizing that the event’s actual purpose was to sell a holiday club or timeshare. The misleading advertising and promotional stages of the sales process in this market had frequently led directly to consumer detriment, including the loss of thousands of pounds by each consumer affected. Many had paid for holidays that had not been available using the product they bought.
157. Citizens Advice felt that the ban on marketing and selling timeshares and long term holiday products as an investment, at Regulation 14(3), was also welcome and should stop another of the deceptions that had been used to justify high prices being charged for little in terms of the holiday product. Citizens Advice had also seen cases where consumers who had bought products sold as an investment had been targeted by scams offering to resell that investment.

Enforcers

158. The Association of Chief Trading Standards Officers supported the requirements as sensible consumer protection measures.
159. LGR, TSI and Windsor Trading Standards welcomed the requirements but considered that the regulations should include a requirement for a trader to declare its identity or purpose at the beginning of any communication or contact with a consumer. There was a requirement to provide this information pre-contractually but not prior to this stage being reached. LGR were aware that consumers had attended presentations without realising that the event’s actual purpose was to sell a holiday club or timeshare, where they have been subject to pressure selling tactics. The trader’s identity and purpose should be immediately apparent to the consumer. LGR added that innovative marketing schemes had been used in the past, and regulation 14 should be sufficiently robust to act as a catch-all.
160. **Government’s response:** *The requirement in regulation 14 applies to any advertisement or invitation. We believe it is sufficient at that stage that any invitation must indicate the commercial purpose and nature of the event. In our view this means that the subject of the event must be disclosed.*
161. OFT felt that the wording in regulation 14 was narrower than that used in the Directive. OFT suggested that the wording of 14(1) should be amended to read, ‘A trader must not

advertise in relation to regulated contracts unless the advertisement...'. OFT had taken a number of cases in this area, where consumers had, for example, been led to attend events on the basis that they would receive a free holiday by attending – in fact the 'free holiday' was subject to administration fees being paid.

162. **Government's response:** *We agree and have amended and simplified Regulation 14 to this effect.*
163. TATOC expressed concern that regulation 14(2)(b) which referred to key information being 'made available' to consumers could be interpreted to be acceptable if the information was 'on a desk somewhere in a corner of the room'. TATOC suggested that 14(2)(b) be amended to read, 'the consumer is specifically informed that there is key information relating to the proposed regulated contract, that this is available to them at the event and may be viewed at any time during the discussion'. TATOC also recommended that the consumer should have to sign to this effect as they did with Regulation 16(3).
164. **Government's response:** *Regulation 14 covers only the advertising aspects of the trader's contact with the consumer and requires that the consumer is informed, at that stage of the existence of the key information and where it can be obtained. In the case of a presentation event reference to availability at the event would suffice. This does not affect the requirements of regulations 12. Irrespective of how access is described in advertising the trader is obliged under regulation 12 to provide all of the key information in good time before the conclusion of the contract.*
165. TATOC also suggested that 14(4) was superfluous since 'key information' was already defined in regulation 12 (3)–(8).
166. **Government's response:** *"Key information" is not a defined phrase in the regulations. Regulation 14(4) ensures there is no ambiguity as to what is intended, i.e. all of those matters referred to in regulation 12.*

Views on whether contravention of regulations 14(1) to 14 (3) (advertising and marketing) should be the subject of a criminal offence

Question 10:

We would welcome your views on whether a trader who contravenes regulations 14(1) to 14(3) should be guilty of a criminal offence? If not, please suggest what alternatives to a criminal offence might provide a sufficient deterrent.

Business

167. Diamond Resorts felt that criminal sanctions were not appropriate for non compliance with regulation 14(2)(b) (unless 14(2)(b) was amended as per response to question 9). Diamond Resorts felt that a trader could be in some difficulty in proving that the prescribed documentation had been given. In Diamond resorts view, a non-purchasing consumer was unlikely to want to sign a document confirming receipt of various documents. At some of the events (e.g. trade shows), a non-purchasing consumer was unlikely to want to receive the

prescribed documentation. The cost of providing documentation to a non-purchasing consumer (unless they specifically requested a copy) would be an unnecessary and unfair expense for the trader to bear.

168. Interval International did not believe that there should be any criminal sanctions. Criminal offences should be reserved for those situations where a trader engages in unfair practices such as deliberately misinforming a consumer in order to seek his attendance to a sales presentation or where a trader materially distorts the economic behaviour of the consumer. Any penalties to be introduced by the regulations should be consistent with the penalty regime under the Unfair Commercial Practices Regulations. To the extent that a trader might have committed an offence under Unfair Commercial Practices Regulations, a criminal penalty might be an appropriate penalty.
169. The Newspaper Society did not consider that creation of a new criminal offence was necessary given the provisions of the Consumer Protection from Unfair Trading Regulations 2008 the rights of withdrawal which seemed adequate to protect the consumer's interests.
170. RCI Europe and RDO referred to their response to question 8, and reiterated their view that an exchange product is a relatively low cost and low risk product from a consumer point of view and to have criminal sanctions for not providing the key information was unduly onerous and disproportionate.

Consumers

171. Andrew Walker felt that it should be a criminal offence and should include a requirement to compensate the victim.
172. Citizens Advice considered that if contravention of regulation 14(1) to (3) was not made a criminal offence, the importance attached to the requirements would not be fully recognized by businesses in the sector. Citizens Advice strongly believed that criminal sanctions should be available to enforce the regulations to achieve the required deterrent effect, if the prospects for consumer confidence in this market were to improve. The civil threat seemed very unlikely to deter rogue traders.
173. TATOC referred to the response to question 8.
174. The Timeshare Consumers Association considered that all the key elements of protection provided by the proposed regulations should be the subject of a criminal offence.

Enforcers

175. The Association of Chief Trading Standards Officers felt that as misleading marketing could lead to significant consumer detriment, particularly in the case of vulnerable consumers, a specific criminal offence should exist as a deterrent against such malpractice. The offence should apply to anyone acting on behalf of a trader, as well as the trader itself (as such representations may be made by a salesperson acting outside of direct instructions by the business).
176. LGR and TSI believed it was critical that regulations 14(1) to 14(3) were regarded as criminal offences. There was no alternative that would provide a sufficient deterrent. The application of civil remedies only would not deter unscrupulous traders that breached the legislation and left many consumers out of pocket. Civil remedies did not provide an actual penalty for the profits made from breaching the legislation; a trader only had to give an undertaking not to breach the legislation in future if the civil remedies were applied. There was no reference in the regulations to the giving of misleading information. LGR believed that this omission needed to be rectified and such an additional offence should be included.

177. Windsor Trading Standards considered it critical that non compliance with regulations 14(1) to 14(3) should be regarded as criminal offences
178. **Government's response:** *We have concluded that a specific new criminal offence is not necessary in respect of regulations 14 (1) and (2). We are satisfied that the provisions and offences in the Consumer Protection from Unfair Trading Regulations 2008 adequately cover non-compliance. For a fuller analysis please see the Government's response to Questions 27 and 28. However in respect of regulation 14(3) (ban on marketing or selling timeshare or long-term holiday product contracts as investments) we have concluded that the CPRs would not provide adequate coverage to ensure that the clear ban in the directive can be properly and consistently enforced. We have therefore applied a criminal offence to this provision and included an "innocent publication" defence (Regulation 31).*

Views on whether the defence (as outlined on page 14 of the consultation document) should be available as a reasonable balance to an offence for non compliance with regulation 14(1)

Question 11:

Do you agree that if we conclude that a criminal offence is proportionate in relation to non-compliance with regulation 14(1) the defence outlined above should be available as a reasonable balance? If not, please explain why.

Business

179. Diamond Resorts expressed the view that in the event that the Government concluded that a criminal offence was proportionate in relation to non-compliance with regulation 14(1), then a defence (the same as that at regulation 30) was essential firstly, to protect innocent officers of the company where they had instructed subordinates to ensure compliance and secondly, to impose criminal liability on any such subordinates who may be prepared to circumvent the law for their own financial gain.
180. Interval International felt that the defence introduced some balance, but strongly recommended that no penalties be introduced unless in the context of an unfair commercial practice.
181. The Newspaper Society expressed that view that if a criminal offence was included (and even if regulation 14 was amended to clearly exclude publishers from liability) an 'innocent publication' defence should be included and should be worded so as to ensure as an additional safeguard that publishers and other parties who were uninvolved in the creation of the advertisement should have a full and clear defence.
182. RCI Europe believed very strongly that if criminal sanctions were to be introduced, at the very least, there should be a *de minimis* defence which would remove the exchange contract from the sanctions.
183. RDO felt that making non-compliance with what in essence was a private law matter a criminal offence would only be proportionate in very rare cases, and in almost all such cases one would be looking at intentional fraudulent behaviour.

Consumers

184. Andrew Walker felt that the defence provided a reasonable balance.
185. Citizens Advice considered it important that raising a defence also required the trader accused of the offence to provide details about the due diligence they undertook to avoid the contravention, together with the identity of whomever they claimed to have relied on in making that defence. The offence should attract the provisions on due diligence at regulation 30. Without this enforcers would not be able to readily pursue the right person when dealing with a contravention.
186. TATOC expressed the view that allowing a defence in this area for the benefit of leaflet distributors (for example) could offer the same defence opportunity to parties who truly should have known better. The main hurdle to marketing campaigns was to get the consumer into a presentation, where persuasive marketing techniques could be brought into play. TATOC recognised the point that a naïve leaflet distributor should not be subject to criminal proceedings where they were ignorant of their obligations. However, timeshare and long-term holiday products were not simple products. They were complex, carefully planned and carefully prepared before marketing took place. If there were to be such a defence for uninformed front-line people TATOC were greatly concerned that it would provide an opportunity for unscrupulous traders to deliberately utilise such people to get consumers 'through the door' which was their hardest battle. If such a defence was allowed TATOC would want to see provision for a suitable penalty in line with those for 14(2) and 14(3) to apply to the people who employed them in the task – people who certainly would be aware of the regulatory requirements applying to the product. Somewhere in the chain of command someone should be responsible for ensuring that front-line advertising techniques were carried out in line with legislation, and not allowed the opportunity to abdicate their liability to potentially innocent front-line people who had a ready-made defence against sanction.
187. The Timeshare Consumers Association felt that the defence provided a reasonable balance regarded it as essential that any defence of due diligence be fully demonstrated.

Enforcers

188. LGR expressed that view that it would not be proportionate or in the public interest for Trading Standards to prosecute a junior employee handing out leaflets to publicise an event, so LGR were not convinced that there was a need to try and provide a defence for that example given. The danger with having a defence that allowed for ignorance is that it went against strict liability principles in criminal legislation, where ignorance of the law is no defence. A due diligence defence in line with the Trade Descriptions Act and associated case law would be preferable, creating a semi-strict liability situation, and preventing any miscarriage of justice. LGR noted that regulation 30 of the proposed regulations differed from other legislation i.e. 30(1) of the proposed regulations stated 'in proceedings against a person for an offence under [the preceding provisions] of these Regulations it is a defence for the person to show that all reasonable steps were taken and all due diligence exercised to avoid committing the offence'. Whereas, according to LGR, all other legislation required that the defendant, '...show that he took all reasonable steps....' .
189. LGR felt that the difference may lead to defendants trying to show that the steps were or were not taken by someone else but they were now no longer identifiable. Regulation 30(3) onwards required that a third party be identified; LGR believed that this may be somewhat difficult. In view of the type of defendant who may be subject to proceedings under the Regulations, LGR felt that the onus on showing that reasonable steps were taken should be put quite firmly on the defendant. .

190. TSI and Windsor Trading Standards recommended the inclusion of a due diligence defence in line with the Trade Descriptions Act and associated case law, creating a semi-strict liability situation, and preventing any miscarriage of justice. .
191. **Government's response:** *We have concluded that we do not need to apply a new offence in relation to regulations 14(1) and (2). The defences available in respect of applicable offences in the Consumer Protection from Unfair Trading Regulations 2008 will apply, including the defence of innocent publication. The offence in relation to 14(3) would be subject to the due diligence defence and the "innocent publication" defence in the Regulations. For a fuller analysis on the case for criminal sanctions please see the Government's response to Questions 27 and 28.*

Views on whether the wording of the requirements in regulation 15 (form of the contract) is sufficiently clear

Question 12:

Do you think that the wording of the requirements in regulation 15 is sufficiently clear? If not, please explain why.

Business

192. Interval International felt that the requirements were clear enough.
193. RDO and RCI Europe considered that the wording in relation to the form of contract was clear and did not recommend making any changes to it.
194. Diamond Resorts - Regulation 15 would in our view benefit from greater clarification.
195. Firstly, it would be helpful if Regulation 15(2) were amended to make it clear that the contract may be provided in any durable medium including digital and electronic formats.
196. The Regulation could be amended to read "The contract must be in writing and may be provided in any durable medium including paper, digital and electronic formats SAVE THAT if the consumer requests the contract in a paper format, the trader shall be required to provide the contract in that format." Certainly Article 4 (2) of the EU Directive envisages that paper or "another durable medium" (provided it is easily accessible to the consumer) would be acceptable.
197. The information currently given to consumers at point of sale is extensive and bulky. Some consumers (particularly those who are buying additional timeshare interests whilst on holiday) do not want to have to carry a weighty bundle of materials back home with them in their suit case. However we are currently required to insist that they take the documentation.
198. Apart from the obvious issue of costs savings that could be achieved by the Trader (which cost savings could be passed onto the consumer), the ability to provide the consumer with [say] a DVD would be far more environmentally friendly and would encourage/assist traders to provide updated materials to existing members.
199. (2) Secondly, we feel that Regulation 15(2)(b) and 15(5) in so far as they refer to the "conclusion" of the contract could give rise to confusion. We feel that the wording in

Regulation 15(2)(b) should be amended to read “the place of execution of the contract by each of the parties”.

200. As regards Regulation 15(5) we find the wording quite confusing. Article 4(1) of the EU Directive refers to the pre-contractual information being provided “in good time before the consumer is bound by any contract”. A consumer is not bound by the contract until the 14 day cooling off period has expired. It therefore seems to us that the said pre contractual information can be provided to the consumer when they sign the contract (unless of course the consumer requests it at an earlier stage). If we are correct in that assumption, is it proposed that a “Permitted change” be permitted before the consumer is bound OR only permitted before the contract is executed by the consumer? From time to time, consumers review the contract and before the cooling off period has expired, contact us and ask for the contract to be varied (e.g. by way of a price reduction or in order to give e.g. home week priority at a resort) failing which they will cancel the purchase. In our view, it would be sensible to permit such variations post execution and pre conclusion PROVIDED the variation is in writing. If our submissions are deemed sensible, Regulation 15(5) should be amended to read “Permitted changes” means changes to the key information which were communicated to the consumer in writing before the expiry of the right of withdrawal and which – “ etc.

201. **Government’s response:** *The intention of the directive is that the pre-contractual “key information” which must have been provided in good time before the conclusion of the contract must form a part of the contract at the point of its conclusion (agreement by both parties). As the pre-contractual information will have influenced the consumer’s decision to enter into a contract that information should not subsequently be changed before the contract is made without the consumer’s express agreement. So, any changes which render the key information inaccurate before the conclusion of the contract must be expressly agreed with the consumer or are only permissible in the circumstance described in regulation 15(1). Once a contract is concluded, whether or not the consumer has the right in legislation to then withdraw from the contract for a period, it remains open to either party to seek to renegotiate terms in the way described. Nothing in these regulations will change that.*

202. *We consider that “in writing” is construed broadly to cover information held electronically where it is capable of being reproduced in a legible form.*

Consumers

203. Andrew Walker suggested that regulation 15 should include the requirement to attach to the contract all of the handwritten pages used in the sales process.

204. **Government’s response:** *This would go beyond the requirements of the directive. In any case the contract must contain what has been provided by way of key information. Changes prior to conclusion are only permitted in strict circumstances or at the express agreement of the consumer.*

Enforcers

205. The Association of Chief Trading Standards Officers felt that the requirements of regulation 15 were clear.

206. Citizens Advice – Yes, although we have one query. At 15(3) there is a requirement for the contract to set out the information required under regulation 12, the pre-contract key information. 15(3) cites this information as that information which: ‘was’ provided at the earlier stage. If the trader failed to comply with regulation 12, so that the correct information was not provided, might they evade this again on the grounds of only being required to provide what ‘was’ given before. We suggest the ‘was’ in regulation 15(3) is replaced by: ‘must be’, to link to the pre-contractual requirements, rather than what actually happened.
207. LGR (LACORS) – LG Regulation believes the provisions are sufficiently clear except for one point.
208. Regulation 15(3) requires the contract to set out the information required under regulation 12 i.e. the pre-contract information. LG Regulation asks:
- What if the trader failed to comply with regulation 12 and the correct information was not provided?
 - Could the trader evade regulation 15(3) on the basis that they only have to provide the information already provided?
209. LGR suggested that ‘which was provided...’ is changed to ‘must be provided...’ so that it links to the requirements of regulation 12.
210. ***Government’s response:*** *We agree that there is the potential for confusion and have amended the provision so that it refers to the key information “which is required under regulation 12” (failure to incorporate all of the information renders the contract unenforceable against the consumer and would be an offence).*
211. Law Society of Scotland - Yes, it is sufficiently clear
212. TATOC – Yes. Clear.
213. Timeshare Consumers Association – Yes.
214. Trading Standards Institute -TSI believed the provisions were sufficiently clear.
215. Windsor Trading Standards – agreed that the provisions were clear.

Views on whether contravention of regulation 15 (form of contract) should be the subject of a criminal offence

Question 13:

Aside from the effect of non compliance rendering the contract unenforceable against the consumer, do you think that failure to comply with the requirements as to the form of the contract should be the subject of a criminal offence? If not, please suggest any alternative means of deterring a trader from not providing contracts as required.

Business

216. Diamond Resorts saw no reason why, subject to the regulation 30 defence, non-compliance should not be subject to criminal sanctions.

217. Interval International considered that failure by a trader to comply with the contract requirements should invalidate the contract and allow the consumer to seek civil redress. Exposure by the trader to be sued for a refund of the amounts paid plus damages would deter most traders from disregarding the contract formalities.
218. RDO and RCI Europe referred to their response to question 8. Making contracts voidable on the basis of not adhering to the prescribed form of the contract would in itself provide a very high-level deterrent against traders that had a long-term interest in the industry. Any transgression would simply lead to high costs related to void contracts, and therefore would be addressed immediately. Any company or individual that consistently failed to comply and tried to avoid paying back any monies once the contract had been cancelled would simply be exposed as fraudulent, which could effectively lead to criminal sanctions.

Consumers

219. Andrew Walker felt that non compliance with the requirements as to the form of the contract should be a criminal offence.
220. Citizens Advice welcomed the fact that failure to comply with regulation 15(1) would make the contract unenforceable against the consumer but it did not trigger enforcement to stop the same thing happening again. If a consumer was not given the correct information and paperwork, they would not have been made aware of their rights, including the right to withdraw and the ban on payments made in advance of the 14 day withdrawal period. Compliance with regulation 15 was therefore crucial to the success of the Directive. Further, the Directive had very specific requirements for information and paperwork, including standard forms. Citizens Advice did not believe that the same level of importance would be given to the requirements in the UK if contravening them were not a criminal offence.
221. The Timeshare Consumers Association felt that failure to comply with the requirements relating to form of contract should be the subject of a criminal offence otherwise a trader would be likely to continue to repeat the offence leaving a large number of consumers unaware of the non-compliance and their rights.

Enforcers

222. The Association of Chief Trading Standards Officers considered that this would already be an offence under the Consumer Protection from Unfair Trading Regulations 2008 but would welcome published clarification on this point.
223. LGR and TSI considered that the sanction of making the contract unenforceable (Regulation 15(8)) would be quite effective in some instances, however, it would not be effective if the consumer was unaware of their rights that the contract was unenforceable. Thus it may not prevent a rogue trader from using the same tactics again. LGR believed that introducing a criminal offence would provide an extra tool to make traders comply. LGR suggested that BIS consider including a compensation provision also.
224. Windsor Trading Standards – agreed with the proposals, but would like to see the breach made a criminal offence, because they may wish to take action irrespective of whether the consumer was happy with the outcome.
225. Wiltshire Trading Standards expressed the view that making something unenforceable was fine but often left a consumer worried about their credit rating etc and if traders had no real deterrent they would continue to flout the rules as they always had.

226. **Government's response:** *We have concluded that existing regulations such as the Consumer Protection from Unfair Trading Regulations 2008 do not provide an applicable regulatory backstop to the provisions of regulation 15. This is further discussed in the Government's response to questions 27 and 28 below.*

Views on whether contravention of regulation 16 (obligations of trader in respect of contract) should be the subject of a criminal offence

Question 14:

Do you think that failure to comply with the requirements as these actions should be the subject of a criminal offence? If not, please suggest any alternative means of deterring a trader from not providing contracts as required.

Business

227. Diamond Resorts suggested that the reference to, "at the time the contract is concluded" at Regulation 16(4) should be amended to read "at the time the contract is executed by all parties."
228. **Government's response:** *The intention is to ensure that the contract is provided to the consumer at the time it is concluded (agreed). We believed the drafting is clear in this respect.*
229. Diamond Resorts also suggested that regulation 16(5) should be amended to read "Unless and until a trader complies with any of paragraphs (2) to (4) the contract is unenforceable against the consumer". In Diamond Resorts' view this would then correlate in with Regulation 21 (extended rights of cancellation).
230. **Government's response:** *As mentioned above, the consumer's right to withdraw from the contract is not a condition of the contract it is a separate right. Regulation 16(5) provides for an offence where the contract is not provided or the trader does not comply with the requirement to draw the consumer's attention to specific elements etc. The application of a criminal offence in these circumstances is discussed further in the Government's response to questions 27 and 28 below. Regulation 21 simply sets the withdrawal period in the circumstances covered by that regulation.*
231. Interval International considered that failure to provide withdrawal information should render the contract invalid and unenforceable. Criminal offences should be reserved for situations which amount to an unfair commercial practice which amounted to a criminal offence under the Commercial Practices Regulations or for those traders who systematically failed to provide withdrawal information following receipt of a notice by the enforcing authority or who breached undertakings previously given to the enforcing authority.
232. RCI Europe and RDO referred to their response to question 8.

Consumers

233. Citizens Advice commented that ensuring that consumers' attention had been drawn to their rights, under regulated contracts, provided reinforcement to the provisions for information and paperwork. The provisions worked together, to ensure an informed whole. LGR believed that each crucial element needed to be the subject of a criminal offence and that failing to do so would devalue that provision.

234. TATOC referred to their response to question 8.

235. The Timeshare Consumers Association considered that failure to comply with the regulations should be the subject of a criminal offence.

Enforcers

236. The Association of Chief Trading Standards Officers believed that this would already be an offence under the Consumer Protection from Unfair Trading Regulations 2008 but would welcome published clarification.

237. LGR and TSI felt that if the failure to comply with the requirements would make the contract unenforceable, this would be a reasonable sanction against offending traders. However, any additional criminal sanctions would give regulatory bodies the means to report to the court repeated offenders who continually failed to comply with these requirements. LGR believed that ensuring that a consumer's attention has been drawn to their rights under regulated contracts reinforced the need to provide information and paperwork. LGR expressed the view that each stage of the requirements should be subject to criminal sanctions to ensure consumers were fully informed throughout.

238. Windsor Trading Standards would welcome a criminal offence.

Legal

239. The Law Society of Scotland felt that failure to comply with the regulations should be the subject of a criminal offence.

240. **Government's response:** *We have concluded that existing regulations such as the Consumer Protection from Unfair Trading Regulations 2008 do not provide an applicable regulatory backstop to the provisions of regulation 16. This is further discussed in the Government's response to questions 27 and 28 below.*

Views on our implementation of regulation 17 (language of the contract)

Question 15:

Do you agree with our implementation of the options in relation to Regulation 17? Do you consider the benefit to consumers outweighs the burden on traders? Please provide reasons for your answer.

Business

241. Diamond Resorts sought clarification as to why the regulations referred:

- to the language of an EEA state as opposed to an EU state; and
- only to the language of an EEA state where the consumer was a national.

242. Diamond Resorts also commented that the draft Regulations were silent as to the language that the contract should be in if the consumer was not a national of an EEA state, and recommended that this be rectified.
243. **Government's response:** *The Directive falls within the European Economic Area agreement which means that the Directive also applies to the non EU members of the EEA (Iceland, Liechtenstein and Norway). It is therefore right to refer to the EEA states rather than EU states. .*
244. *The Directive requires that if a consumer is resident in or a national of a member state, the trader must provide the contract in one of the official languages of that member state, at the choice of the consumer. If a UK trader enters into a contract with a consumer who is not resident in or a national of an EEA the trader will need to consider whether a language other than English is also required. The trader should of course take into account his duties under the Consumer Protection Regulations and any other relevant requirements.*
245. Interval International referred to its response to question 6. In the context of a timeshare contract, if the consumer had the knowledge of the language of the country where the property was situated, the consumer should be given the opportunity to release the trader from the obligation to provide information in the language of the country where the consumer was a resident or a national.
246. **Government's response:** *We are not able to provide for latitude in this area if we are to implement the directive. One of the main thrusts of the directive is to seek to ensure transparency in transactions in this sector. Allowing the language requirements to be the subject of negotiation would provide for opportunities for rogue traders to circumvent an essential objective of the directive.*
247. RDO and RCI Europe referred to their response to question 6. The burden caused by the obligation for an exchange company, which was essentially selling a low risk and low cost product, to provide the key information in the language in which the consumer was resident or the language of which the consumer was a national was absolutely disproportionate to the perceived benefit for consumers. Such an onerous obligation would prove to be a deterrent to selling to non UK nationals due to the significant translation costs involved and may deprive some consumers of the benefits of being a member of an exchange organisation.
248. **Government's response:** *Please see the response to Question 8 (para 125).*

Consumers

249. Citizens Advice expressed the view that regulation 17 would ensure that there would always be a contract in the language a consumer would need in order to:
- understand the contract;
 - be able to obtain advice about the contract; and
 - have the translation that might be needed to prove contractual rights in the country where a specified timeshare is situated, without the delay and expense of obtaining translation services.

250. Citizens Advice considered that as the majority of this paperwork would be the same for a number of the trader's customers, the cost would be spread across many contracts and should therefore not be prohibitive.
251. The Timeshare Consumers Association considered it is essential that consumers fully understood the terms of what they had bought. As most traders dealt with a relatively small number of nationalities/languages the cost implications would be modest.
252. TATOC felt that Article 5(1)(b) of the Directive had not been transposed into regulation 17 ("in the case of a timeshare contract concerning one specific immovable property, the trader provide the consumer with a certified translation of the contract in the language or one of the languages of the Member State in which the property is situated, provided it is an official language of the Community.") TATOC sought clarification as to how Article 5(1)(b) the Directive would be transposed in the case of a pool of accommodation.
253. ***Government's response:*** *Article 5.1(b) relates to timeshare contracts which provide rights "concerning one specific immovable" and we have amended Regulation 18 to clarify this. In the case of points systems adopted in respect of some timeshare contracts, these provide for timeshare in a number of properties which may be situated in a number of member States or third countries.*
254. TATOC also expressed concern that there was no obligation on the trader to make consumers aware of their entitlement to have the contract provided in certain languages of their choice.
255. ***Government's response:*** *We agree that this provision will work more effectively if it is clear that the trader should offer the consumer a choice. We have therefore added to regulation 17 that the trader is obliged to give the consumer the opportunity to nominate their language of choice.*

Enforcement

256. The Association of Chief Trading Standards Officers felt that the proposed implementation of regulation 17 was proportionate given the imbalance in relationship that could be created between consumer and trader if language complications were not adequately addressed.
257. LGR commented that as the contracts could be multi-national the language provisions were particularly important. The information provided to the consumer must be in a language that the consumer understood irrespective of where the consumer was because the "spirit" of the proposed legislation was the protection of consumers and giving consumers the opportunity to enter into contracts while well informed of the details and implications of such contracts.
258. The burden to the trader may be less than the detriment that some consumers may suffer.
259. OFT agreed that the contract should always be supplied in English (in addition to any other language in which it is drawn up) where the consumer is resident in the UK or the trader carried out sales activities in the UK. OFT believed that this would be useful for consumers who may need to seek advice from a UK advisory agency, and should assist in the processes within a UK court should there be a dispute.

260. Wiltshire Trading Standards commented that whatever the burden on business, consumers must be protected from the sharp practice that abounds in the timeshare/holiday industry. Consumers were often caught unawares by these schemes.

Views on whether contravention of regulation 17 and/or 18 (i.e. failure to provide the contract in the required language(s) be subject to a criminal offence

Question 16:

Should contravention of regulation 17 and/or 18 (i.e. failure to provide the contract in the required language(s) be subject to a criminal offence? If not, please suggest any alternatives which might provide a sufficient deterrent to non-compliance.

Business

261. Diamond Resorts saw no reason why non-compliance should not be subject to criminal sanctions (subject to the provision of a suitable defence similar to that provided by regulation 30).
262. Interval International expressed the view that failure to comply with these regulations should not carry criminal penalties unless the actions constituted an unfair practice which amounted to a criminal offence under the Unfair Commercial Practices regulations.
263. RDO considered it highly likely that RDO members in the UK would simply not offer any timeshare contract to foreign nationals if they did not have translations of contracts and materials available. This meant that it was highly unlikely that a resident from Estonia, for example, would be able to purchase a holiday home on a timeshare basis in the UK, simply because it was too costly to cater for the translation requirements as per the Directive/proposed Regulations. This was not something RDO members would have wished for, and it clashed with the current government's drive to increase (durable) tourism in the UK. The many small and medium sized companies trading in the timeshare industry in the UK simply did not have the resources to translate into 24 languages all their contracts/accompanying documents. If such language requirements were accompanied by criminal sanctions in the case of non-compliance it was very clear that not one single company would even entertain potential foreign residents wishing to purchase a timeshare apartment in the UK.
264. RCI Europe believed that criminal sanctions for failing to translate an exchange contract into the required language were totally disproportionate to the relevant objective. The burden, both financial and administrative, of translating documentation into 24 different languages was in no way related to the potential risk that a consumer may face if they did not have the choice of having the exchange contract in their national language or the language of their country of residence. As an exchange contract was a low risk and low cost product, to have to undertake these translations would act as a deterrent to exchange companies to provide such documentation and if there was the added dimension of criminal sanctions this would act as a barrier to trading in the exchange market and may deprive consumers of the benefit of the exchange product.
265. RDO and RCI Europe both felt that there was also a fundamental legal issue that arose from the requirement to provide translations of contracts and materials available. If, for example, a Spanish national signed the contract in his language, in the event of a dispute, the governing contract would be the Spanish version. However as there were not always exact translations of certain legal terms (for example a 'trust' may not be a recognisable legal concept in Spain, to continue with our example, and would therefore be translated in quite a different manner into Spanish). UK courts would have a virtually impossible task of interpretation.

266. **Government's response:** *The language requirements reflect the requirements of the directive. We would not, in any case, wish to diminish the right of consumers to be provided with important information and contracts in a language with which they are fully familiar. This is the reason why the consumer has the choice of language. It is worth mentioning that businesses are not required to hold stocks of information and contracts in all languages, just those languages of the consumers with whom they choose to trade.*
267. *We do not understand fully the point made in relation to RDO's example of the Spanish translation. It is the case that under the current regime there might be different language versions of timeshare contracts. We have no doubt that the UK courts could arrive at decisions in these circumstances.*

Consumers

268. Citizens Advice expressed the view that there would be little point in having requirements for paperwork if consumers could not access them in a language they understood and, where they needed advice, be able to provide documentation in a language the adviser or solicitor understood. The language requirements of the Directive were crucial for these products because they were often purchased outside the consumer's own Member State. The requirements would need to be subject to a criminal offence if they were to fit with the provisions for enforcing other requirements in the regulations.
269. The Timeshare Consumers Association expressed the view that contravention of regulations 17 and /or 18 should be a criminal offence.
270. TATOC referred to their answer to question 8.

Enforcement

271. The Association of Chief Trading Standards Officers referred to its response to question 8 regarding possible offences created under the Consumer Protection from Unfair Trading Regulations 2008. Specific provisions rendering the contract unenforceable would provide a sufficient deterrent to non-compliance.
272. LGR and TSI shared the view that contravention of regulations 17 and 18 should be subject to a criminal offence. LGR also considered that the contract should be unenforceable. LGR felt that there was little point in having requirements for paperwork if consumers could not access them in a language that they understood. The language requirements of the Directive were crucial because these products were often bought outside the consumer's Member State. Criminal sanctions for contravention of these regulations fitted with the other requirements in these regulations.

Legal

273. Law Society of Scotland felt that contravention of regulations 17 and /or 18 should be a criminal offence.
274. **Government's response:** *We have concluded that the Consumer Protection from Unfair Trading Regulations 2008 covers non-compliance with regulation 17(1) to (3) and that unenforceability of contract is a sufficient penalty for 17(4).. However, regulation 18 relates to an obligation that is separate from the sales process and would not in our view be covered by the CPRs. We have therefore introduced a separate offence for non-compliance with regulation 18. This is discussed further in the Government's response to questions 27 and 28 below.*

Views on the additional cost to business of complying with regulations

Question 17:

If you are a trade association, or another organisation that represents the interests of business, or a business engaged in the markets regulated under this regime, please provide an estimate of the likely additional administrative cost to UK business or your business of complying with the requirements of proposed regulations 12, 15, and 17 (over and above what might otherwise be considered normal business practice under the current regime). If possible, please provide a breakdown of the quantified costs.

Business

275. ABTA expressed the view that the cost of having to translate documentation into 24 languages was disproportionate and would act as a deterrent to selling to non-UK nationals. ABTA did not provide any quantifiable evidence of costs.
276. Diamond Resorts considered that the costs likely to be incurred by business related primarily to the legal analysis of what was required and the creation of a UK pro forma contract that met the legislative requirements. Translation obligations and the printing cost of collateral in different languages would give rise to a significant expense, but this expense existed already under the current regime.
277. Interval International anticipated that the costs were likely to exceed £35,000 (Interval International's costs) due to the need to take legal advice, the production of materials, translations and reprogramming systems.
278. RDO estimated that the cost to timeshare developers, exchange companies and resale companies of complying with regulations 12, 15 and 17 would be in excess of £750,000. This was made up of the following services: translation, printing, solicitor fees, executive time, reprogramming computer systems and retraining staff. By far the highest cost was obtaining certified translations and, to provide in 24 languages, was prohibitive for the average developer. As a result, the majority may have to turn away potential clients.
279. **Government's response:** *We have taken into account the information provided by respondents of the likely additional cost to business of complying with the proposed Regulations. On the basis of the information provided, we have revised our estimate of the transitional cost to business to £441k (see Impact Assessment included at Annex C). In relation to the translation costs it is our view that businesses will not need to hold stocks of pre-contractual information or contracts in all languages of the EEA, but only those of consumers with whom the businesses intend to transact. As always, who a business trades with is a commercial decision for that business. In the UK we would expect businesses in this sector to be aware of the likely nationalities that they will be dealing with from previous experience.*

Views on the rights of withdrawal

Question 18:

Do you have any comments on the rights of withdrawal? (regulations 20 and 21)

Business

280. Diamond Resorts were firmly of the opinion that there should be greater clarity as to when the cancellation period commenced. Regulation 21(2) defined the “start date” as being the later of “the date of conclusion of the contract and the date on which the consumer receives a copy of the contract”. Diamond Resorts suggested that this should be amended to read:

“The start date is the later of-

- (a) the date of execution of the contract by the consumer, and
- (b) the date on which the consumer receives a copy of the executed contract from the trader.”

281. **Government’s response:** *As mentioned previously, the start of the withdrawal period is dictated either by the point at which the contract is agreed by both parties (concluded) or when the agreed contract is provided to the consumer, whichever is later. We believe this is clear.*

282. Diamond Resorts expressed the view that timeshare exchange rights did not automatically give other persons access to benefits under the consumer’s timeshare contract. Such rights were only conferred if the said consumer exchanged their rights. Diamond Resorts proposed an amendment to Regulation 21(10) to read “...if the exchange contract may give other persons access to benefits under the timeshare contract...”.

283. **Government’s response:** *We agree and have amended regulation 21(10) so that it refers to “... if the exchange contract allows the consumer to give rights to other persons...”.*

284. ABTA, Interval International, RCI Europe and RDO all expressed a serious concern regarding regulations 21(8) and (9). They considered that if the language of the proposed Regulations was finally adopted it would produce the effect of requiring the exchange trader to offer a subsequent withdrawal period after the withdrawal period applicable to the timeshare contract had expired. This would be in conflict with the intention of BIS - as reflected in the last paragraph of page 17 of the consultation document – to avoid a consecutive withdrawal period. Their concern arose from the fact that, in practice, the timeshare contract and the exchange contract, while offered to the purchaser at the same time, were not entered into at the same time. Timeshare contracts were routinely entered into at point of sale with the timeshare trader and the consumer both being present. The exchange trader was not present at that time but the timeshare trader would provide the consumer with an exchange contract for his/her review and signature. The exchange contract would be remitted to the exchange trader by the timeshare trader once the withdrawal period associated with the timeshare purchase had expired. The timeshare trader would want to ascertain that the consumer had not withdrawn from the timeshare contract before remitting the exchange contract to the exchange trader for execution by the exchange trader. Therefore, the exchange contract would be entered into by the exchange trader at a later date and not at the same time as the timeshare contract. ABTA, Interval International, RCI Europe and RDO all strongly recommended that consideration be given to rewording regulation 21(8) and (9) in order to avoid undesired consequences for exchange traders and consumers alike. A legal framework which produced the effect of two withdrawal periods which did not run concurrently would create confusion, would complicate the membership enrolment procedures and would delay commencement of service by the exchange trader to the consumer with consequential detriment to the consumer. ABTA, Interval International, RCI Europe and RDO felt that if the proposed language regarding the rights of withdrawal

were adopted in the proposed Regulations it would produce the effect of requiring the exchange trader to offer a subsequent cooling off period after the withdrawal period applicable to the timeshare contract had expired. However, the timeshare contract and the exchange contract were not entered into at the same time.

285. **Government's response:** *We agree. The intent of the directive is to only allow a single withdrawal period where timeshare and exchange contracts are linked during the same sales process. We have amended regulation 21(8) so that it applies when both contracts are offered at the same time.*

286. RDO felt that as the industry in the UK had been required to give a 14 calendar day cooling off period, during which time payments could not be taken, the impact of Regulations 20 and 21 would be minimal to businesses.

Consumers

287. Andrew Walker considered that the proposed legislation was not clear about whether the consumers' the right to withdraw from contracts applied to the ongoing holiday ownership contract or only to the purchasing contract. Andrew Walker suggested that the wording of the legislation should explicitly state that the right to withdraw was applicable at the time of original purchase and at the time of the annual maintenance demand.

288. **Government's response:** *The directive, in respect of timeshare, exchange, and resale contracts, allows a withdrawal period only in relation to the original contract. In respect of maintenance charges for timeshare there are specific provisions in the information requirements which should provide greater clarity for consumers at the time of agreeing the contract (which must contain the provisions described in the required information), for example the basis on which maintenance charges are to be calculated and the conditions under which the contract may be terminated.*

289. Citizens Advice felt that 15 days on which to cancel, including the day on which the rights began reflected the usual pattern for cancellation rights starting on the day after the contract had been made. Citizens Advice, noted, however, that the wording in the Schedule V cancellation form said: 'within 14 days' whereas regulation 21(1)(b) said: 'ends on the date which is 14 days after the start date'. Citizens Advice felt that this may need clarification in any guidance about the new regulations.

290. **Government's response:** *We will include this in guidance.*

291. TATOC suggested that regulation 21(10) was replaced with the words, "For the purpose of paragraph 8 an exchange contract is as defined in Regulation 10 paragraphs 1-2" .

292. **Government's response:** *We do not believe this is necessary as use of "exchange contract" is defined in the regulations.*

Enforcers

293. The Association of Chief Trading Standards Officers expressed the view that significant changes to ancillary contracts (e.g. increases in fees or charges) could lead to problems with

the main timeshare contract. The right to withdrawal should exist where such changes occurred. This current situation represented a potential loophole and created a potential for consumer detriment.

294. LGR, TSI and Windsor Trading Standards welcomed the withdrawal facility available for consumers. However, LGR believed that many issues with timeshare or similar contracts arose because of subsequent significant increases in the cost of maintenance. It was at that point that the consumer would seek to withdraw from the contract. LGR therefore would like to see more emphasis on the status of ancillary contracts and the introduction of a right of withdrawal in the event of significant changes to the terms of an ancillary contract.
295. **Government's response:** *Any right to levy maintenance charges and the basis on which they are to be calculated must be included in the contract under the regulations. They therefore form part of the contract and failing to adhere to the contractual terms may amount to a breach of contract. The conditions under which contracts can be terminated should also be included in the contract and we will seek to ensure that there is specific advice to consumers on this aspect in guidance to be produced in conjunction with the OFT. We cannot introduce a new right of withdrawal as that would be going beyond what the directive requires.*
296. OFT suggested that the term, the 'conclusion of the contract' should be defined in the UK regulations. The term was not defined in the Directive and therefore different member states may adopt different interpretations. The term could be confusing to both traders and consumers. OFT assumed that the 'conclusion of the contract' was when it became binding rather than when it had been fully performed but this needed to be clarified.
297. **Government's response:** *We believe that it is sufficiently clear that the phrase "conclusion of the contract" means the point at which the agreement is made and is binding on both parties, not when the contract has been or is being performed. We will explain this in guidance.*
298. OFT added that it should also be made clear that all time periods refer to calendar days (rather than business days) as outlined in article 6(1) of the Directive. At present this was only specified in the withdrawal forms but it should be stated in the Regulations.
299. **Government's response:** *References to "days" will be read as calendar days unless there is express provision that it should be "working days". We shall cover this in guidance.*

Legal

300. Law Society of Scotland considered it important that the right to withdraw was afforded a high degree of prominence in the agreement

Views on the provisions for exercising the right of withdrawal

Question 19:

Do you have any comments on the provisions for exercising the right of withdrawal? (regulation 20)

Business

301. Diamond Resorts felt that the way in which notice of cancellation could be served and the date on which it was deemed served should be specified.
302. This should be as per the current regime, namely: "If the consumer posts the notice in a properly addressed and fully pre-paid envelope, the notice will be treated as given at the time of posting".
303. **Government's response:** *Regulation 20 has been amended so that withdrawal is effected by the consumer "...giving the trader written notice of withdrawal...". This leaves it open to the consumer to choose how this might be achieved. If there is a dispute then the consumer may need to show evidence that they had given written notice, for example, using a method which recorded or retained a record of the giving of notice.*
304. Diamond Resorts were also concerned by the way in which this Regulation 24(2) has been drafted and suggested that the following wording would be more appropriate, "The consumer may terminate the contract by giving notice of termination to the trader at any time [] provided that the notice is given no later than 14 days after the date on which the consumer receives a request for payment of an instalment under Regulation 26(4)(the date of delivery counting as day one) and such notice shall have the effect of terminating the contract with effect from the due date of the next instalment."
305. **Government's response:** *The suggestion would go wider than the directive. In our view it is not unreasonable that a consumer should be bound by the contract for a duration of one year at a time. The important element is that when asked for their next instalment of payment the consumer has the chance to assess the value of continuing with the contract and to terminate it if they wish.*
306. Interval International believed that it should be stated that if the consumer chose not to use the standard withdrawal form, the consumer should send written notice of withdrawal. As currently drafted, the regulation could be construed as if verbal notice of withdrawal could suffice.
307. **Government's response:** *We do not agree that verbal notice would have been sufficient under the original draft but we have amended regulation 20 to avoid any doubt .*
308. RDO expressed support for the provisions for withdrawal as outlined in regulation 20.

Consumers

309. Andrew Walker suggest amendment to regulation 26(4) (related to his comments in response to question 18) - 'The trader must send a request for payment in writing at least 14 days before a payment of an instalment or other annual payment becomes due.'
310. **Government's response:** *Regulation 26 relates only to the system of staggered payments by instalment for long-term holiday product contracts.*

311. TATOC was satisfied that the provisions met consumer needs.

Enforcers

312. OFT commented that Article 7 of the Directive required the consumer to notify the trader of their decision to withdraw 'on paper or on another durable medium'. The wording of regulation 20 was narrower and did not adequately reflect the requirements of the Directive. The current wording could cause confusion as to what the consumer actually had to do. For example, it was not clear whether an email would be acceptable under the provision.

313. **Government's response:** We have amended regulation 20 to refer to a written notice. We consider that this can be construed broadly to cover emails.

Views on the consequences of exercising the right of withdrawal

Question 20:

Do you have any comments on the consequences of exercising the right of withdrawal?
(regulation 22)

Business

314. Diamond Resorts suggested that Regulation 22(5) should be amended to read "The reference to costs and charges in paragraph (4) includes any costs or charges corresponding to services provided in respect of or in connection with such a contract before withdrawal."

315. **Government's response:** *The regulations have been amended to refer to the correct paragraph (4).*

Consumers

316. Andrew Walker felt that it is not clear under 22(3) whether there was any ongoing commitment on the consumer, beyond costs already incurred.

317. **Government's response:** *Any obligations to pay any costs should be included in the contract and they will be terminated on withdrawal. Regulation 22(3) merely clarifies that for long term holiday products this would also cover obligations to pay a penalty or further instalments. It does not detract from the general provision in 22(2).*

318. TATOC was satisfied that the provisions met consumer needs.

319. The Timeshare Consumers Association had received reports of traders who had claimed not to have received a cancellation notice which was posted by ordinary mail. The Timeshare Consumers Association recommended that the regulation included advice that the cancellation notice should only be sent by means which provided proof of posting.

320. **Government's response:** *Advice is not appropriate for inclusion in the regulations, but we will ensure that guidance for consumers covers this.*

Enforcers

321. LGR considered it vital that the wording was clear on exactly when cancellation rights commenced and expired. An anticipated consequence was to ensure proper restitution occurred at the point of withdrawal, i.e. any deeds handed over, titles, points, other entitlements or monies paid were given back. Ideally LGR would want to see a provision for such things to be held by the consumer until the withdrawal period had elapsed, so that traders could not request deeds, or demand a deposit or transference of points at the time that the contract was initially formed.

322. **Government's response:** *The regulations ban any form of payment in advance of the ending of the withdrawal period, this would, in our view, include any requirement to transfer points. At the point of withdrawal the consumer should not have paid anything.*

323. RDO was supportive of the requirement that the consumer was not liable for any costs or charges save those which may be incurred for services provided before the consumer cancelled the contract. RDO also believed it was important that ancillary contracts were cancelled automatically.

324. **Government's response:** *We do not agree that the consumer will be liable for costs for services already provided. The consumer is not liable for any costs in the event that they withdraw. They should not have been asked to pay any costs related to the contract during the withdrawal period as this would amount to an offence. Services provided by the trader before the end of the withdrawal period are, in other words, provided at their own risk.*

Views on the automatic cancellation of related credit agreements

Question 21:

Do you have any comments in relation to automatic cancellation of related credit agreements? (regulation 23)

Business

325. RDO and RCI Europe believed it was important that credit agreements were cancelled automatically or, if the trader was not the creditor under the related credit agreement, these should be the responsibility of the trader. This would ensure that the consumer was not responsible for any cancellation other than the agreement with the trader.

326. **Government's response:** *The effect of the regulation is that any ancillary credit contracts are automatically terminated whether provided by the trader or a third party via an arrangement between the trader and the third party.*

Consumers

327. Citizens Advice felt that cancellation forms were a valuable consumer protection measure and made it easy for consumers to cancel, as well as ensuring that they had the correct details to exercise their rights. However, the cancellation form did not make any specific reference to any linked credit agreement or to the requirement at regulation 23(3) for the trader to inform the creditor. Consumers may not know that the trader had a duty to terminate the credit agreement, unless this had been detailed in the information on termination in part 3 of the information forms. Citizens Advice suggested that guidance notes made clear that traders must include information on their obligation to inform creditors in part 3 of the information forms.
328. **Government's response:** *Adding to the forms would be to go beyond the requirements of the directive, which we cannot do. However, we will ensure that guidance to consumers covers this.*
329. TATOC sought clarification of what circumstances would apply in the case of a credit agreement made privately by a consumer when done so giving correct indication that it was credit for a contract regulated under the Timeshare Regulations. Should such a credit agreement also be cancelled without penalty when the credit provider was aware of what the credit was for and had shared liability under the Consumer Credit Act?
330. **Government's response:** *We understand the reference to "shared liability" may be a reference to section 75 of the Consumer Credit Act, which makes some creditors jointly and severally liable with suppliers. However, that provision only applies where there is an arrangement between the creditor and the supplier – it is not of itself sufficient for the creditor to know what the loaned credit will be used for. In any event it is a matter of choice for the consumer if they want to enter into a credit agreement with a third party (i.e. not via the timeshare trader). This directive does not seek to regulate those arrangements.*
331. The Timeshare Consumers Association had received reports of traders accepting cancellation of the purchase but failing to advise a linked lender of the cancellation. This had caused problems and distress for consumers until the matter had been resolved. The Timeshare Consumers Association recommended that the Regulations be amended to advise consumers to separately cancel any linked loan directly with the lender.
332. **Government's response:** *The regulations oblige the trader to inform the linked credit provider of any withdrawal. We cannot include advice for consumers in the regulations, but will cover some advice about linked credit agreements in our advice on the regulations. In particular that consumers should seek confirmation from the credit provider that the agreement has been cancelled.*

Enforcers

333. The Association of Chief Trading Standards Officers agreed with the provision.
334. LGR, TSI and Windsor Trading Standards welcomed provision for the automatic cancellation of the credit agreement as a 'linked transaction'.

335. OFT pointed out that Article 11 of the Directive was consistent with Article 15 of the Consumer Credit Directive which provided that where the consumer had exercised the right of withdrawal based on Community law, concerning a contract for the supply of goods or services, he should no longer be bound by a linked credit agreement. The wording of Article 11 indicated that no interest or other credit charges may be payable by the consumer. OFT questioned whether regulation 23(2) was sufficient for these purposes. In OFT's view the Regulations should expressly provide for the reimbursement of any money paid by the consumer under the credit agreement. They should also provide for the repayment of any credit advanced to the consumer under the agreement.

336. **Government's response:** *As no payment is permitted before the end of the withdrawal period the consumer should not have made any payment to the creditor in a related credit agreement. It is the creditor's risk if they wish to advance the credit before the end of the withdrawal period. We believe the phrase "at no cost to the consumer" is clear enough to ensure that consumers are not liable for any charges at all.*

Legal

337. The Law Society of Scotland agreed that it was important that the consumer's position in relation to any related consumer credit agreement was protected.

Views on whether non compliance with regulation 23(3) (automatic termination of a credit agreement) should be subject to a criminal offence

Question 22:

Would applying a criminal offence in relation to non compliance with regulation 23(3) be appropriate? If not, please suggest any alternative means of deterring non-compliance

Business

338. Diamond Resorts felt that the imposition of criminal sanctions in such circumstances would be inappropriate.

339. Interval International expressed the view that a criminal offence appeared to be disproportionate in relation to the consumer's interest which the regulation attempted to safeguard.

Consumers

340. Citizens Advice considered that a failure on the part of the trader under regulation 23(3) to inform the creditor of a consumer's cancellation, would be likely to result in the creditor pursuing the consumer for non-payment. Consequently, Citizens Advice believed that a breach of this regulation was sufficiently detrimental to be a criminal offence. It would also provide clarity for traders if all breaches of the new regulations were to have criminal sanctions. If, however, this was not made a criminal offence, Citizens Advice suggested, as a minimum, that the trader be required to prove that they did notify the creditor as required. This would protect the consumer, who was not in a position to prove what the trader did or did not tell the creditor, against claims for non-payment of credit under a cancelled agreement.

341. **Government's response:** *The essential right is that the consumer should bear no cost in the circumstances. We will include clear advice to this effect in guidance.*

Enforcers

342. The Association of Chief Trading Standards Officers felt that a criminal offence seemed excessive. Non-compliance could be deterred through the existence of civil injunctive means (Enterprise Act). The Consumer Credit licensing regime may also offer a deterrent effect in such cases.

343. LGR and TSI considered that without such a criminal sanction consumers could find themselves in the unenviable position of having a credit agreement that they did not need continuing unnecessarily because of the trader's tardiness in notifying the creditor, with the possibility of the creditor pursuing them for non-payment. LGR considered that making all breaches of the new regulations a criminal offence would provide clarity for traders.

344. **Government's response:** *We have been very mindful of the need to keep new criminal offences to an absolute minimum and have considered carefully the alternatives available to us. We have decided in this case that none was necessary – a similar obligation exists in the UK consumer credit regime which doesn't attract a criminal sanction because it is accepted that it is in each party's interests to ensure that the information is transmitted and therefore the risk of non-compliance is low. Instead, non-compliance with regulation 23 will be a breach of statutory duty.*

Views on the clarity of the requirements set out in regulations 25 and 26 (advance consideration and the payment schedule for long-term holiday products)

Question 23:

Do you have any comments on the clarity of the requirements and prohibitions on payment set out in regulations 25 and 26?

Business

345. RCI Europe and RDO both considered that the requirements with regards to advance consideration in regulation 25 were clear. RCI Europe and RDO also felt that regulation 26 provided clear guidelines in respect of long term holiday products contracts, giving the consumer the opportunity to review the contract on a yearly basis and, if desired, cancel without penalty.

Consumers

346. Andrew Walker felt that the membership fee deserves its own clause. This was frequently escalated each year. If escalation was above RPI then this should be just cause for withdrawal.

347. **Government's response:** *Regulations 25 and 26 relate only the system of payment, in equal instalments, for long-term holiday product contracts.*

348. Citizens Advice felt that regulations 25 and 26 were very clear.
349. TATOC sought clarification of the reason for the use of the word 'consideration' rather than "payment".
350. **Government's response:** *The term "consideration" is wider than "payment" which might be taken to imply payment with a clear cash value. "Consideration" would cover any form of payment by any means, for example seeking to take timeshare points or rights in payment or a long-term holiday product contract. As set out in the regulation it would also include things like guarantees, reservations of money on account and acknowledgement of debts.*
351. TATOC also expressed concerned about how regulation 25(5)(b) might be interpreted. How could a resale trader take money from a consumer when the contract has been "otherwise terminated"? Under what circumstances could that apply? Could an unscrupulous resale trader decide to cancel the contract but then charge the consumer?
352. **Government's response:** *The conditions for terminating the contract in the event that it is not fully performed must be included in the contract. It is not unreasonable that the parties might agree, for example, that in the event that genuine attempts have been made to find a buyer for a timeshare but that no buyer has been found within a reasonable or specified period that they agree to terminate the contract. Termination of the contract relieves all the parties of any obligation under the contract, including obligations for payment in the event that the contract had been fully performed (by the sale of the timeshare). Of course it is possible that a resale contract may only have a defined time to run, irrespective of whether a sale results. In that case the consumer should be in possession of pre-contractual information and a contract which explains what the charge for that contract is and will be able to judge for themselves whether it represents good value for money, given that a sale might not result by the time it runs out. It would be for the trader to satisfy the consumer that they had made every effort to meet their obligations under the contract to show that it had been performed correctly. If not, they will have breached the contract. In any case the trader is not permitted to take any consideration in respect of the contract before it is either completed by a sale or it is otherwise terminated.*

Enforcers

353. LGR, TSI and Windsor Trading Standards welcomed the provisions but would have liked to have seen more emphasis on the status of ancillary contracts and the introduction of a right of withdrawal in the event of significant changes to the terms of an ancillary contract.
354. OFT felt that the requirements and prohibitions relating to payment were sufficiently clear.

Views on whether a trader who contravenes regulations 25(3) to 25(5) (i.e. fails to meet the requirements of the Regulations with regard to advance payments) should be subject to a criminal offence.

Question 24:

Should a trader who contravenes regulations 25(3) to 25(5) (i.e. fails to meet the requirements of the Regulations with regard to advance payments) be subject to a criminal offence? If not,

please suggest any alternatives to criminal sanctions which might provide a sufficient deterrent to non-compliance.

Business

355. Diamond Resorts saw no reason why non-compliance should not be subject to criminal sanctions (subject to the regulation 30 defence).
356. Interval International commented that consistent with their earlier responses to questions associated with criminal offences, their view was that a criminal offence should only arise in the event that the trader had a) acted or attempted to act fraudulently, or b) a trader had disregarded earlier notices by the enforcing authority or c) the trader had engaged in an Unfair Commercial Practice (as such term is defined in the Unfair Commercial Practices Regulations).

Consumers

357. Citizens Advice felt that a criminal offence should apply. The Directive stated, at Article 9, that Member States shall ensure that advance payments as defined are prohibited. Citizens Advice were convinced that the provisions that stopped advance payments were vital if consumers were to be protected from the potential to lose money if they decided to cancel. This was recognized in the original Timeshare Directive.
358. The Timeshare Consumers Association considered that this was a key element of the proposed Regulations and that criminal sanctions should apply.

Enforcers

359. The Association of Chief Trading Standards Officers considered that a criminal offence was appropriate. Failure to comply with these requirements would risk significant consumer detriment and would be a typical rogue-trading practice.
360. LGR, TSI and Windsor Trading Standards expressed the view that criminal offences should apply. Article 9 of the Directive stated that Member States shall ensure that advance payments as defined are prohibited. This suggested are criminal sanctions are required.
361. **Government's response:** *We have concluded that a criminal offence should apply in relation to this regulation. Please see the Government' response to questions 27 and 28 for more discussion.*

Views on whether a trader who contravenes regulations 26(1) to 26(4) (i.e. fails to meet the requirements with regard to the payment schedule for long term holiday product contracts) be subject to a criminal offence?

Question 25:

Should a trader who contravenes regulations 26(1) to 26(4) (i.e. fails to meet the requirements with regard to the payment schedule for long term holiday product contracts) be subject to a criminal offence? If not, please suggest any alternatives to criminal sanctions which might provide a sufficient deterrent to non-compliance.

Business

362. Diamond Resorts saw no reason why non-compliance should not be subject to criminal sanctions (subject to the regulation 30 defence).

363. Interval International referred to their response to question 24.

364. RDO referred to their response to question 8.

Consumers

365. Citizens Advice felt that criminal sanctions should apply. The requirements of the Directive on this issue, particularly the provisions for equal payments, meant that huge first payments were banned. Citizens Advice believed that the equal payments provision and the right to cancel at each annual notification of fees due for that year would make rogue practices in relation to holiday clubs, a less attractive prospect for traders. Traders would not be able to require a large payment at a point of sale. Consumers would be aware of what was available under the contract by the time the subsequent payments were required. If this sector of the market, which appeared to mirror timeshare whilst evading the Timeshare Directive, was to be tackled, this provision must attract the criminal sanction. Many cases reported by bureaux showed that consumers often lacked information about the cost of maintenance payments for long term holiday products and claims about future liability for these fees.

366. TATOC referred to their response to question 8.

367. The Timeshare Consumers Association felt that criminal sanctions should apply. This was another key element of the proposed Regulations which needed maximum stringency

Enforcers

368. The Association of Chief Trading Standards Officers expressed the view that criminal sanctions should apply. There must be a significant deterrent to non-compliance to prevent disproportionate sums being extracted from consumers at an early stage by unscrupulous traders (so preventing consumer exposure to potentially significant detriment).

369. LGR, TSI and Windsor Trading standards all expressed the view that failure to comply with regulation 26(4) should be a criminal offence. A civil remedy would also be useful, if a consumer could take it to a civil court and have the contract term ruled as an unfair contract term rendering it unenforceable. LGR felt that there should be some provision for consumers to cancel a contract and recover damages for such a breach.

370. **Government's response:** *We have concluded that a criminal offence should apply in relation to this regulation. Please see the Government's response to questions 27 and 28 for more discussion.*

Views on the likely cost to business of extending the ban on deposits to resale, timeshare exchange, and long term holiday products

Question 26:

If you are a trade association, or another organisation that represents the interests of business, or a business in the relevant market, please provide an estimate of the likely cost to UK business or your business of extending the ban on deposits to resale, timeshare exchange, and long term holiday products. Please provide quantifiable evidence to support your answer and a breakdown of costs, if possible.

Business

371. Interval International felt that the costs were likely to be significant but we are not in a position to quantifiable evidence to support that view. In the area of exchange, the prohibition of advance payment did not really offer any additional protection to consumers. The new prohibition would, however, require exchange companies to adapt systems and operational methodologies which had been established for many years.
372. **Government's response:** *We have referred earlier in this document to the fact that the flexibility offered by an exchange contract can be a significant factor which results in a consumer agreeing to buy a timeshare contract. Member States recognised that there is a danger, therefore, that a rogue trader, knowing that they are unable to seek payment for a timeshare contract might construct an exchange offer in order to be able to take payment from the consumer. Member states considered that this danger, given the record of rogue trading in this sector, needed to be addressed. While this might have some short term business costs for reputable exchange companies, it was necessary to avoid a possible loop hole given the way in which timeshare and exchange sales do tend to be associated.*
373. RDO commented that it had not been possible to provide an estimated cost to extend the ban on deposits to resale and timeshare exchange.

Views on whether, in general, we need to introduce and maintain criminal offences for breach of the regulatory proposals to tackle problems in this sector

Question 27:

In general, do you consider that we need to introduce and maintain criminal offences for breach of the regulatory proposals to tackle problems in this sector? Please provide reasons for your answer

Business

374. ABTA believed that in the light of the nature of the exchange product and the extremely low risk it posed to consumers, introduction of criminal sanctions would be inappropriate for exchange contracts and that civil sanctions would be more effective against the few potential cases of non-compliance.
375. The British Holiday & Home Parks Association suggested that, rather than criminal sanctions, Government should consider: extending the right to withdraw and demand the return of money paid; and there should be a periodic right to withdraw from long-term holiday contracts. These could be reinforced by a statement that until there was full compliance no monetary obligations could be enforced against the consumer.
376. Diamond Resorts felt that criminal sanctions should be maintained and introduced where necessary. If an informed consumer asserted their statutory rights, the trader could simply unwind the deal and refund the consumer. However not all consumers would complain. Nor for that matter would all consumers realise that the legislation has not been complied with. For those reasons, in the absence of criminal sanctions, a disreputable trader may form the view that there is nothing to lose (and everything to gain) by disregarding the law. It was

imperative that disreputable traders were eradicated from the market place. For this to happen, the Regulators must be able to take action where necessary.

377. RDO and RCI Europe were of the view that sanctions for failure to comply with any of the requirements of this new Directive should be similar to those imposed under other consumer protection contract laws. Comparable contracts should be treated in a similar way in order to ensure consistency. RDO and RCI Europe believed that the introduction of civil sanctions would be a more appropriate course of action than criminal prosecutions. Civil sanctions tended to be less costly and swifter to conclude and a successful case would benefit not only the consumer but also the vast majority of traders who acted within the law. Criminal sanctions should instead be reserved for traders attempting to act fraudulently and there should be a proportional approach in balancing simple mistakes on the one hand versus deliberate evasion of the law on the other.

378. Interval International referred to their response to question 24.

Consumers

379. Citizens Advice firmly supported the introduction of criminal offences for breaches of these regulations. The rogue practices in this sector had been occurring in the UK since before 1992, when the Timeshare Act was passed. When EU regulation for timeshares emerged, the rogues in this market created the holiday club which was specifically designed to evade the law. This product appeared to be a contract allowing consumers to apply for holiday accommodation, with no guarantee of that accommodation being available. Sometimes other holiday associated products had been offered with a claim that club members could obtain a cheaper deal for travel, but Citizens Advice were not aware of any evidence that any savings were actually made. These holiday clubs required initial payments of thousands of pounds and further payments should any accommodation be provided. During this period, timeshare has had its own consumer protection problems with re-sales frauds that demanded up-front payments on the promise of waiting buyers but failing to achieve any sale. In addition, consumers who had enjoyed their timeshare but now wanted to sell found they were required to continue to pay ever increasing maintenance fees which, in the case of CAB clients, they could no longer afford. Some traders in both timeshare and holiday club markets had used pressure selling to elicit a sale. Citizens Advice believed that a market that had proved so attractive to rogue traders would need the threat of criminal sanctions as an enforcement tool. The new Directive prescribed in some detail what was needed to end the history of consumer detriment in this market. This would not happen, however, if the law was not enforced. Criminal offences recognised the seriousness of the misdemeanour as well as how enforcers assess the potential for legislative breaches. This did not necessarily mean that criminal sanctions would be taken in all cases, as civil sanctions could also be applied where appropriate. However, without the possibility of criminal sanctions, Citizens Advice believed that the UK would both fail to provide effective enforcement to tackle the problem and fail to demonstrate that enforcers can act proportionately.

380. TATOC referred to their response to question 8

381. The Timeshare Consumers Association expressed the view that the level of dishonesty and anti-consumer practices in the timeshare industry were well documented. The rogues were unlikely to be influenced by civil proceedings alone and would only be encouraged to trade honestly as a result of effective criminal sanctions. The Timeshare Consumers Association was concerned that existing enforcement in the consumer arena was often weak, laborious slow and sometimes non-existent. The threat of a criminal action which may take years to materialise would not influence rogues to cease their practices until the action was launched - by which time tens of thousands of innocent consumers would have lost many thousands of pounds each. And the rogue may well have disappeared! The Timeshare Consumers Association believed that both civil and criminal processes should, where possible, be

applied at a very early stage – the civil processes would be effective on the more honest elements in the industry whilst the criminal process would be necessary for the incorrigible rogues.

Enforcers

382. The Association of Chief Trading Standards Officers believed (as previously stated) that certain provisions were already covered by offences under the CPRs. For other matters, such as the ban on accepting payments during the withdrawal period, the Association of Chief Trading Standards Officers stated that we are in favour of criminal sanctions. Criminal sanctions were necessary as a deterrent and in the worst cases as a means of dealing with non-compliance. There had historically been unscrupulous operators within this sector and, given the sums of money involved in such transactions, significant consumer detriment had resulted. It should be borne in mind that the application of criminal sanctions was subject to careful assessment by Trading Standards authorities. They must adhere to enforcement policies and guidelines laid down by central government when determining whether to proceed with a course of action such as prosecution
383. LGR, TSI and Windsor Trading Standards firmly believed that there was a need for criminal sanctions because criminal offences were the only way of ensuring compliance in this 'rogue' sector, and it also provided investigators with the powers and tools they need to bring actions when required. The Regulations would hopefully be covered by the Enterprise Act so the civil sanctions under Part 8 would be available as a civil law alternative to regulators, but predominantly this must be backed by criminal law. CTSS had much experience of the problems encountered by consumers with this sector. Binding legislation was the only way to prevent rogues ignoring any voluntary agreement. When abroad UK consumers were targeted by rogues who encouraged participation by transporting them to an isolated venue where they feel unable to 'escape'. Promised incentives to attend, very long presentations and misleading verbal indications of resale procedures would not be resolved by any voluntary agreement.
384. LGR believed that a failure to introduce binding legislation could lead to a two-tier system with the majority of operators complying with the voluntary agreement but a hard-core minority failing to comply. This would lead to uncertainty in the market place. The introduction of the Timeshare Act 1992 considerably reduced the complaints received by Trading Standards about this trade sector. Unfortunately certain operators, in particular, the resale market, those involved in the points business and those operators making boats available had operated outside the controls of the Act.
385. LGR expressed the view that it was vitally important that EC law provides uniform and consistent sanctions across the European Union particularly due to the number of transactions in this sector being cross border with the issues of different laws and languages. National legislation must reinforce these sanctions via an enforcement mechanism that dealt with non-compliance, linked to robust trade association measures, and provided adequate numbers of regulators to deal with advice and enforcement. Cross border disputes were unfortunately common place in this particular trade sector
386. OFT felt that it was vital to maintain (and where necessary, introduce) criminal offences as part of a range of tools. Having a range of possible responses to unfair business behaviour was essential in order for enforcers to respond proportionately to the detriment caused by such behaviour. It was therefore important that there was a range of sanctions available, not just a range of tools, as the deterrent will come from the possible sanction rather than whether criminal offences are available. In the majority of circumstances informal discussions should be sufficient to end problematic practices, but civil and criminal enforcement routes should be open to enforcers if and when formal action was needed. OFT believed that criminal sanctions were appropriate for the worst breaches of competition and

consumer protection law and should be available for use in respect of breaches of all the regulatory proposals that BIS suggested (regulations 12, 14(1)-(3), 15(8), 16, 17, 18, 23(3), 25(3)-(5), 26(1)-(4)).

387. OFT noted that the recent Law Commission consultation 'Criminal Liability in Regulatory Contexts' recommended a general principle that criminal sanctions should be reserved for wrongdoers who had engaged in 'seriously reprehensible conduct'. The Law Commission believed that the Regulatory Enforcement and Sanctions Act 2008 should be sufficient for the majority of offences, given that two step prohibitions could be implemented, that was the first step would be to issue a stop notice or civil penalty, with criminal offences only issued if there was a breach of the first step. However, OFT believed it was likely to be more expensive for the taxpayer to follow this proposed civil-criminal route, as the majority of local rogue traders were not effectively constrained by the injunctive regime and enforcers would, therefore, need to go to court twice to deal with the same offence. As a result there was likely to be higher enforcement costs, higher losses and detriment for consumers, and the penalisation of honest businesses by criminals who would undercut them. Although resources could be shifted into civil enforcement that did not remove the need for criminal prosecution in the very worst cases. OFT agreed with the desire to increase the use of civil sanctions and reduce reliance by enforcers on criminal prosecutions where appropriate. However, OFT recognised that some offences would require intervention via criminal enforcement (even for a first offence). Use of this option must be viable but chosen only when clearly appropriate. Strong arguments had previously been made for criminal sanctions to be a part of the regulatory toolkit by Macrory³ and also by the OFT when implementing the Unfair Commercial Practices Directive 2005. Such arguments should be considered under the proposed regulations as the sort of rogue traders found in this sector shared many characteristics with fraudsters and would not take civil penalties seriously. Criminal offences were required to act as a deterrent. The existence of criminal offences was also often essential to gain third party co-operation in ending unacceptable practices. For instance, a mailing business distributing material promoting illegal practices in the sector may be unwilling to cooperate purely to facilitate civil enforcement, but was more likely to cooperate with enforcers where an offence exists, partly because they may face liability but also because their own policies would prohibit their participation in crime. This was also true of third parties on the internet, such as service providers, who had been more responsive to enforcer requests where offences exist.
388. Given that criminal offences existed for issues and problems in other sectors and for a wide number of generic practices, as listed in the CPRs, OFT felt it would be sending the wrong signal not to provide for criminal offences in this sector. In the worst case, this might encourage more criminals to shift to the sector, which was the opposite intention to the legislative changes.
389. Ombudsman Services expressed the view that criminal sanctions were generally to provide a deterrent or, if not, to punish. Where legislation was clear and provided consumers with a readily available means of resolving any problem associated with a contract, criminal proceedings were not necessary or proportionate. An alternative would be to provide for banning of a trader who has been found regularly to have contravened the requirements.

Legal

390. The Law Society doubted that the introduction of criminal penalties would create a new era of greater compliance and dramatically reduce the problems consumers face in this sector. The Law Society considered that criminal penalties would not meet the three 'appropriate penalties' criteria set out in the Directive, as criminal sanctions would neither be effective, proportionate or dissuasive. What criminal offences would do was create yet more criminal offences which would sit on the statute book almost unused, reducing the credibility of the law.

391. The Law Society of Scotland felt that criminal sanctions were probably appropriate due to level of consumer detriment in the past – there had been significant abuse and consumer prejudice in this sector.

392. **Government's response:** *Please see response to question 28 below.*

Views on whether any of the specific activities to be regulated under the new regulations might already be covered under existing consumer protection legislation

Question 28:

Do you consider that any of the specific activities to be regulated under the new regulations might already be covered under existing consumer protection legislation? If so, please provide reasons for your answer and details of the existing consumer protection and where it applies.

Business

393. Diamond Resorts felt that The Consumer Protection from Unfair Trading Regulations 2008 contained similar provisions that were not contradictory in any way and for ease of reference by a consumer could be set out in full in these Regulations.
394. Interval International considered that the CPRs were the appropriate legal instrument for the imposition of criminal penalties for breaches of the proposed Regulations. There was no need to introduce new specific criminal sanctions in the proposed Regulations. The CPRs sought to ensure that traders act honestly and fairly towards consumers. They included a detailed list of practices which were banned and which gave rise to criminal offences. Failure by a timeshare trader to provide information on withdrawal period or to provide disclosure information in accordance with the timeshare regulations would amount to a misleading omission under the CPRs and this would make the trader guilty of an offence. Interval International did not see the need for duplication of offences across a variety of legal instruments. This would go against the principle of simplification and of better regulation.
395. RDO and RCI Europe felt that there was inevitably an overlap with other regulations including contract laws and regulations covering consumer credit agreements. There may also be an overlap with the Consumer Protection from Unfair Trading Regulations. RDO had favoured an overall encompassing approach in Brussels to the revision of the Consumer Acquis, in principle making sure that whatever could be regulated horizontally should have been done so, and only making sector specific legislation when needed. However, this was simply not the case and therefore RDO could only stress that in the UK in relation to sanctions, timeshare legislation should not include any specific sanctions as doing so could confuse consumers into believing that new sanctions would automatically lead to a higher level of consumer protection when the consumer was confronted with fraudulent activity. The level of protection for the consumer did not in principle stem from sanctions but from effective enforcement. Again, fraud was fraud and should be dealt with under other existing legislation.

Consumers

396. Citizens Advice expressed the view that the issue of whether the Unfair Commercial Practices Directive (UCPD) could fully tackle the problems of the timeshare and timeshare-like market was discussed during the formation of that Directive. Pressure selling of long-term holiday product contracts was then discussed in the EU and UK consultations that

preceded the drafting of the new timeshare and long-term holiday product Directive. The UCPD was initially designed to work with sector specific Directives, so that the banned practices at Annex 1 did not need to list sector specific practices. The EU wide decision to draft a new Directive for the timeshare and long-term holiday product market came after the UCPD, as the first piece of law that desperately needed to be reviewed under the consumer acquis project. Citizens Advice believed that the EU's intention was that requirements in the new Directive were best policed through sanctions that were sector specific. Without this, Citizens Advice could not see how the maximum harmonisation requirements of the Directive would be met. Citizens Advice agreed that many of the provisions in the CPRs, including the general duty to trade fairly, misleading omissions and aggressive practices, could be used to tackle unfairness in the wider timeshare and long-term holiday product market. However, this would not necessarily require the specific information and practices that were required under the new Directive to be met. In addition, the CPRs did not currently provide redress for consumers, whereas the ban on up front payments and cancellation rights in this Directive did. Citizens Advice therefore supported specific regulation for timeshare and long-term holiday products. Consequently, Citizens Advice did not believe that the timeshare and long-term holiday market deserved light touch regulation. Citizens Advice, however, believed that the CPRs could supplement the enforcement powers in the new Directive. The Directive would be reviewed in 2014, by which time it would be clear whether these new measures had succeeded in their objectives to eradicate causes of detriment in this market. In the interim the UCPD would be reviewed and how Member States had used that Directive would be clearer. By that time the requirements of the new Directive on timeshare and long-term holiday products should be common practice in this industry, so that the professional diligence required under the CPRs would match those provisions and the detailed rules would be a reasonable expectation.

397. TATOC imagined that there was some overlap with Unfair Commercial Practices legislation and in some circumstances with the transposition of the doorstep selling Directive.
398. The Timeshare Consumers Association expressed the view that a number of banned practices appeared to be also covered by the CPRs. However the more precise wording of the proposed Regulations made the enforcement of such practices easier with CPR providing a "backstop" in areas where loopholes may be found in the proposed Regulations.

Enforcers

399. The Association of Chief Trading Standards Officers referred to previous comments relating to misleading omissions under the Consumer Protection from Unfair Trading Regulations 2008. All of those were of course subject to the 'transactional decision' test. The Association of Chief Trading Standards Officers believed that the Fraud Act 2006 may also apply in certain cases, such as where it could be proved that a person had deliberately omitted to provide cancellation information (and required proof of dishonest intent).
400. LGR, TSI and Windsor Trading Standards considered that some breaches might be brought under the Consumer Protection from Unfair Trading Regulations 2008 (i.e. misleading statements as part of marketing/sales activities) but given the history of this trade sector, its innovative products and the complexity of the contracts involved LGR believed that specific criminal sanctions were necessary. Criminal sanctions would also have the added advantage of making Proceeds of Crime Act (POCA) actions much more available. LGR believed that anything less would encourage the trade to contravene the proposed legislation. The penalties, whether financial or of a custodial nature, should be high enough so as to dissuade unscrupulous traders from breaching the legislation.
401. OFT considered that overall the correct legislative approach was to provide overarching general principles (such as those included in the CPRs) and specific method of sale protections (such as those in the Doorstep Selling regulations), while also ensuring that

specific sectors (such as Timeshare) were subject to more detailed rules. Such legislation effectively replaced any relevant more general provisions. This was sometimes known as the principle of 'lex specialis' - that the specific law replaces the general if the two conflict.

402. As all these pieces of law emanated from European legislation, it seemed clear that the legislative intent was for them to complement one another in order to ensure adequate protection for consumers and fair-dealing businesses in this complex and problematic sector. OFT, therefore, believed the existence of potentially overlapping provisions in pre-existing Community law should not reduce the need for effective sectoral protections as provided for in the draft Regulations.

Legal

403. The Law Society of Scotland expressed the view that it was important any provisions which related to the related credit agreement harmonised with any relevant provisions under the Consumer Credit Act 1974.

404. **Government's Response:** *As mentioned in the Consultation Document, we have looked very closely at the need for new criminal offences to apply to each of the requirements contained in the regulations. Where we consider that existing general legislation, in particular the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) provide a criminal backstop to requirements in these Regulations we have decided not to introduce separate criminal offences.*

405. *Failure to comply with some of the substantive requirements in the regulations appears to give rise to an offence under the CPRs of a misleading omission or action. However there will only be an offence under the CPRs where the conduct will or is likely to have an effect on the consumer's transactional decision. Not only does this potentially leave a regulatory gap (i.e. where there is no effect on the decision) but there is also potential for traders to seek to avoid liability by challenging whether it has had such an effect. Given the sector with which we are dealing we think that these traders are more likely to try to exploit this opportunity. In addition there is little case law under the CPRs as they are still relatively new and enforcers are still testing how they operate. This does mean that there is an element of risk in agreeing not to create offences in relation to those areas where we feel there is overlap. If case law develops that throws into doubt whether there is such overlap we would need to revisit these. Nevertheless for the present, where there is a clear overlap with the CPRs we agree, in line with wider Government policy on new offences, it would not be acceptable to create additional new offences.*

No new criminal offences:

406. Regulations 12(1)-(4) and (6)-(8) - *Obligations to provide the consumer with specified pre-contractual information and to provide the information in the language required.*

407. *It is essential, given the nature of the regulated contracts, which are often high value and very long term and sold in pressured circumstances, that the consumer is provided with the necessary information, and given sufficient time to consider the information before making a decision to buy. The Directive is very specific on the pre-contractual information that must be provided. Failure to provide this key information or failure to provide it in the language required, or providing false information on these matters is, in our view, likely to impact on the consumer's transactional decision. For example, information about the consumer's rights to use the timeshare, the price and any additional costs, and the right to withdraw are key information that the consumer needs to take into account when entering into a contract or when deciding whether or not to withdraw from it.*

408. *In our view, therefore, failure to comply would give rise to an offence under the CPRs of misleading ‘omission’ or misleading ‘action’. Regulation 6(3) of the CPRs specifically provides that information required by Community obligations in relation to commercial communications is material and therefore on balance we consider that the CPRs do apply.*
409. Regulations 14(1) and (2) - *Obligations regarding the advertising and marketing of timeshare products.*
410. *Marketing and sales events provide rogue traders with an ideal opportunity to mislead and pressure consumers into entering contracts which they may subsequently regret. Given the nature of the contracts involved it is essential that consumers are protected against this type of behaviour. The Directive therefore includes detailed and specific provisions regarding marketing and sales events. In our view, failure to comply with the substantive requirements in relation to marketing and sales (14(1) and (2)) would give rise to an offence under the CPRs of misleading ‘omission’ or ‘action’. Regulation 6(3) of the CPRs specifically provides that information required by Community obligations in relation to commercial communications is material and therefore on balance we consider that the CPRs do apply.*
411. Regulations 17(1) to (4) - *Language of the contract.*
412. *This includes a requirement to provide the contract in the EEA language where the consumer is resident, and a requirement to draw the contract up in English if the consumer is resident in the UK or the trader carries out sales in the UK. A failure to provide the contract in a language the consumer understands may well be considered misleading information under the CPRs in that the language would be unintelligible to the consumer.*
413. *(Note – we do not think that the CPRs will also cover the requirement to provide the contract in English 17(4) - in such cases we believe that unenforceability would suffice).*

New criminal offences:

414. Regulation 12(5) - *Failure to provide the consumer with the pre-contractual information in the set format etc..*
415. *In order to ensure that the consumer has every opportunity to gain a clear understanding of the pre-contractual information and to then make an informed decision as to whether or not to enter into the contract, the Directive includes very specific requirements with regard to the format of the pre-contractual information provided. Failure to comply with these specific requirements with regard to format are unlikely to fall within the scope of offences under the CPRs, since it doesn’t necessarily follow that information that doesn’t comply with the format requirements will be unintelligible or ambiguous and therefore affect the transactional decision. The timeshare industry favours this prescriptive element of the Directive as it provides for consistency of approach across the EU and across the market. Effective enforcement and sanctions will ensure that in the UK these can be relied on.*
416. Regulation 14(3) – *ban on selling or marketing timeshare or long-term holiday product contracts as investments. A criminal offence is necessary here because to seek to apply the CPRs would require the enforcement authorities to prove that the product was not an investment. Despite the clear track record that timeshare rarely if ever has provided a positive return for consumers on resale, given the long-term nature of the contracts covered it would clearly be all but impossible for the enforcement authorities to provide proof that a particular contract was incapable of providing a positive return.*
417. Regulations 15(2) and 15(3) - *Obligation to provide details of the parties and place of conclusion of the contract (15(2)) and to set out specified information in the contract (15(3)).*

418. Regulation 15(4)(a) - Requirement to set the information out as terms of the contract.
419. Regulations 15(4)(b),(5),(6) - Restrictions on introducing changes to the pre-contractual information in the contract, and a requirement to mention any such changes in the contract (“permitted changes” provisions).
420. Regulation 15(7) - Failure to include the standard withdrawal form in the contract.
421. It is possible that regulation 15(3) could be covered by the CPRs since the information in the contract could affect the transactional decision of the consumer. However taking the regulation as a whole it is unlikely that failure to comply with the requirements of regulation 15 would fall within the scope of offences under the CPRs. The requirements of the Directive are very specific with regard to the form of contract. The CPRs do not require the information to be given in writing or for the information to be given in a specific document (i.e. the contract). Neither would the CPRs cover the ‘permitted changes’ aspect of the prohibition or the requirement for a standard withdrawal form. Contracts in this sector are complicated. The regulations seek to ensure that essential provisions are incorporated and that the provisions are clear. We take the view that criminal sanctions as a deterrent to non-compliance is an important and needed feature of this Regulation.
422. Regulation 16 - Obligations of trader in respect of drawing attention to certain requirements, obtaining the consumer’s signature in respect of certain provisions of the contract, and providing the consumer with a copy of the contract on its conclusion.
423. Regulation 16 goes beyond usual information requirements and reflects member States’ concerns about the level of prescription needed in this particular sector.
424. There is an argument that non-compliance with regulation 16 means that the trader has failed to make the consumer sufficiently aware of material information which point to CPR coverage. However, the Directive is quite specific about how the consumer must be made aware of these matters (e.g. obtaining the signature in relation to each section). A trader trying to avoid liability under the CPRs might try to argue that there are other ways to make consumers aware. For that reason we consider a specific offence to be necessary.
425. Regulation 18 – Requiring the trader to provide a translation of the timeshare contract which relates to a single property in the language of the EEA state in which the property is situated.
426. This relates to an obligation that is separate from the sales process. Since this is not about misleading the consumer we do not consider the CPRs to be relevant. We nevertheless consider an offence to be necessary – it is important for the consumer to have a copy of the contract in the local language to enable him more easily to evidence his rights, and possibly title, in relation to the property.
427. Regulation 25(3) and (5) - prohibiting the trader from receiving any payment in advance of the completion of the relevant period in which the consumer is entitled to withdraw from the contract or before either a sale is completed or the contract is otherwise terminated in the case of a resale contract.
428. Again these do not relate to the transactional decision. They are prohibited because down payments are recognised as a chief source of implied obligation on the consumer which can inhibit the process of withdrawal. They are recognised as a the source of detriment in respect of bogus resale contracts. Not only is it more difficult for a consumer to recover monies already paid out but once monies have been paid the consumer is more likely to proceed with the transaction. For this reason, as well as the general points raised above, we consider a specific offence to be necessary.

429. Regulation 26 - *Payment schedule: long term holiday product contracts.*

430. *This requires the trader to provide, for long-term holiday contracts, a staggered system of payment by equal instalments, with a right for the consumer to withdraw as each payment becomes due. This allows a consumer, dissatisfied with the service, to withdraw from it as they can for other continuing contracts for services. Effective enforcement with appropriate sanctions of this provision is essential to ensure that consumers are not exposed to large upfront payments for this service which amounts to generally unfounded promises as to the traders ability to provide the service for several (often many) years in advance.*

431. Regulation 33 - *Obstruction of authorised enforcement officers.*

432. *This makes it an offence to obstruct authorised investigating officers. Again non-compliance would not fall within the CPRs. We consider this is sufficiently serious behaviour to warrant a criminal offence, and the nature of the sector justifies its imposition. It is a “standard” provision in relation to enforcement of consumer protection legislation.*

Defences

433. *The offences are strict liability with a due diligence defence and a defence of “innocent publication” in respect of Regulation 14.*

Penalties

434. *Although the offences in the CPRs are triable either way and can lead to an unlimited fine or up to 2 years imprisonment, the new offences proposed in these Regulations do not provide for custodial sentences. The penalties are for a fine on summary conviction, currently up to £5,000, or to an unlimited fine on conviction on indictment. This is in line with other sector-specific consumer protection legislation, for example the Package Travel Regulations, and the current Timeshare Act.*

Views on whether the introduction of civil sanctions rather than criminal offences would provide a proportionate and effective deterrent.

Question 29:

Do you consider that the introduction of civil sanctions, (such as the ability to seek formal undertakings from business; to apply stop orders backed-up with possible criminal prosecution for non-compliance; and to ensure consumers are compensated by the trader for the effects of non-compliance) rather than criminal offences would provide a proportionate and effective deterrent? (civil sanctions would only become a viable option when and if there is an adequate framework of inspectors with sufficient powers). Please provide reasons for your answer.

Business

435. Diamond Resorts believed that the enforcement bodies should have a variety of sanctions open to them thereby enabling them to deal fairly with traders. In circumstances where the trader reasonably believed that they were complying with the legislation (e.g. in relation to the somewhat subjective test of “clear and comprehensive” at Regulation 12(4)(a)), there should be opportunity to enable the trader to remedy non-compliance. However if a trader thought that they could circumvent the law until they were “caught” and then be merely subjected to a stop order, Diamond Resorts feared that this would do nothing to deter the

fraudulent operators who gave the industry a bad name. Disreputable traders needed to be aware of the sanctions that they could face for non compliance.

436. As stated in the question itself, civil sanctions only become a viable option when and if there is an adequate framework of inspectors with sufficient powers. Due to recent Government cut backs, the role of the Trading Standards department was likely to be put under even greater pressure.
437. Interval International expressed the view that the use of civil sanctions was precisely what they have been advocating throughout their response to the consultation. The answer was undertakings, stop orders backed up with criminal prosecution for non-compliance and compensation to consumers.
438. RDO and RCI Europe believed that the introduction of civil sanctions would be a more appropriate course of action than criminal prosecutions. Civil sanctions tended to be less costly and swifter to conclude and a successful case would benefit not only the consumer but also the vast majority of traders who acted within the law. The OFT already had such powers and has used these in the past against individuals and organisations that were trading on the fringes of the timeshare industry. RDO advocated that, with having proportionality in mind, specific civil sanctions would be more effective against the few potential cases of non-compliance.

Consumers

439. Citizens Advice would welcome the introduction of civil sanctions for the timeshare regime, provided that criminal sanctions remained available.
440. Citizens Advice were keen to see the wider use of the provisions made available by the Regulation, Enforcement and Sanctions (RES) Act. In particular, Citizens Advice was keen to see a wide use of restorative justice as an element of the sanctions. Citizens Advice saw this as a potential option for the future, once enforcers had gained the RES Act powers, and suggested it was considered when the Directive is revisited in 2014.
441. TATOC felt that at some point civil sanctions would seem a good possibility but the very strongest of reassurances would have to be given about adequate numbers, training, powers, support structure and an ultimate deterrent to ensure such an approach was *“effective, proportionate and dissuasive”*

Enforcers

442. The Association of Chief Trading Standards Officers believed that there was a requirement for criminal sanctions both as a deterrent and as a means of dealing with wrong-doing in particular circumstances (involving rogue traders, for example). In extreme cases, proceeds of crime legislation can be applied alongside prosecution to deal with ‘lifestyle criminals’. However, there was clearly a place for civil sanctions, and the Association of Chief Trading Standards Officers looked forward to seeing the results of the pilot programme.
443. LGR, TSI, Windsor Trading Standards, and Wiltshire Trading Standards did not consider that the introduction of civil sanctions rather than criminal offences would provide a proportionate and effective deterrent. The fact that the EU had looked at the Timeshare Directive on several occasions in recent years and the EU/UK government had consulted proved that there was widespread concern about the effectiveness of the current law in this sector. Civil sanctions were not a useful enough tool for dealing with these types of criminal networks involved in the rogue timeshare sector. It could be useful as an additional tool to prevent individuals from phoenixing to get an injunction against an individual as well as a limited

company, so for that reason it would be useful if it can come under the Enterprise Act as well as having distinct criminal provisions in the new Timeshare Act.

444. OFT believed that civil sanctions, once tested in the proposed BIS Civil Sanctions Pilot, may prove to be an effective complement to criminal sanctions. OFT did not, however, currently support the introduction of civil sanctions as an alternative to criminal sanctions. As discussed in OFT's response to question 27, OFT believed that criminal sanctions should be available to deal with the worst offenders. As regards the ability to seek formal undertakings or injunctive relief by way of an enforcement order, enforcers could use Part 8 of the Enterprise Act 2002. However, there was no scope for seeking compensation on behalf of consumers within the Enterprise Act. The Civil Sanctions Pilot, however, includes a number of options and OFT believes that the proposed enforcement undertakings route was likely to be most effective if it is introduced alongside other civil sanctions, such as the wide package of measures included in the proposed discretionary requirements. Discretionary requirements included the power to order restitution to consumers, which OFT believed would act as a deterrent to businesses considering whether or not to break the law. Without this, enforcers would have no ability to order restitution, only to request it, which may not have the desired effect.
445. Following the recent Law Commission consultation 'Criminal Liability in Regulatory Contexts' OFT envisaged a likely move away from routine use of criminal procedures in the regulatory sector. OFT suggested that it may be appropriate for BIS to consider introducing standard criminal penalties as an interim solution at this stage, with a duty to review after a suitable period to allow for completion of the civil sanctions pilot, and an order making power to replace and/or supplement these penalties with civil sanctions at that point.
446. ***Government's response:*** *We envisage that civil sanctions will apply to this area of activity in due course. However, it is Government policy not to apply these powers on an ad hoc basis in advance of the proper assessment of the results of a Government pilot starting next year. Government needs to ensure that enforcers, in applying the sanctions, act in accordance with principles of better regulation and are Hampton compliant. We cannot guarantee this will be the case until the Pilot is complete and any lessons learned.*
447. *Part 8 of the Enterprise Act 2002 implements the Injunctions Directive and enables enforcers to seek undertakings and issue enforcement notices. These are important tools for enforcers which will be available in respect on non-compliance with the regulations, but we do not consider they provide sufficient coverage on their own for two reasons. First, whereas criminal offences enable enforcement for individual breaches, Part 8 is more likely to be used where a pattern of misconduct can be demonstrated – this does not offer the same level of protection for the individual consumer. Second, unlike "normal" enforcement notices, those issued under Part 8 do not have the backing of a criminal offence for failure to comply. The ultimate sanction for failing to comply with any court order would be contempt of court.*

Views on whether culpability as set out in Regulations 28 and 29 are appropriate given the nature of the regulated contracts and the sales practices associated with them

Question 30:

Do you agree that culpability as set out in Regulations 28 and 29 are appropriate given the nature of the regulated contracts and the sales practices associated with them? Please explain your reasons.

448. Diamond Resorts supported the provisions (subject to the response at question 31). It would be far too easy for a Director of a Company to knowingly breach the Regulations and yet walk away unaffected, leaving the regulators / consumers with a remedy against a company with little or no assets.
449. Interval International advocated that the Regulations should carry no criminal offences, so they recommended removing these provisions.
450. RDO expresses the view that to uphold standards, traders must accept that their officers must comply with the new Regulations and RDO believed that the culpability as set out in regulations 28 and 29 was appropriate.

Consumers

451. Citizens Advice supported the requirements of regulations 28 and 29. In light of the number of rogue traders that had been involved in this market, Citizens Advice believed that it would be vital to ensure that any person in a position of power and influence in the business could be subject to enforcement proceedings.
452. Andrew Walker felt that 28(3)(c) may present difficulties. There were bodies that were purported to be membership bodies but where the “founders” were in the majority. 28(3)(c) may deter “real” members from trying to exercise their rights. Andrew Walker did not suggest a solution but felt that as many timeshares were held in trust by a trust company it might be helpful if they could be encouraged to involve owners more realistically.
453. TATOC and the Timeshare Consumers Association both supported the provisions of regulations 28 and 29.

Enforcers

454. The Association of Chief Trading Standards Officers agreed with the provisions of regulations 28 and 29.
455. LGR, TSI and Windsor Trading Standards agreed with the proposal because they felt it was a useful provision, especially where there was blame shifting, or attempts to make out that responsibilities lay elsewhere (i.e. outside of the UK).
456. OFT agreed that the culpability set out in regulations 28 and 29 was appropriate and welcomed the attempts to make this issue clearer than it was in the current statutory regime.

Legal

457. The Law Society of Scotland expressed the view that it was important to attach culpability to the effective controllers of the businesses involved.

Views on the availability of the defence set out in regulation 30

Question 31:

Do you agree that the availability of the defence set out in regulation 30 is appropriate to the offences included in the Regulations (and to any offences that may subsequently be included in the Regulations)? If not please explain why.

Business

458. Diamond Resorts felt that the due diligence defence was imperative and supported the inclusion of the defence at regulation 30.
459. Interval International expressed the view that in the event that criminal offences were to be introduced, the due diligence defence should be preserved.
460. RDO and RCI Europe agreed that the culpability as set out in Regulations 28 and 29 was appropriate, it was important that a company officer was given the opportunity to prove that he/she had taken all reasonable steps to avoid committing an offence. It was, therefore, important that the due diligence defence as set out in Regulation 30 was retained.

Consumers

461. Citizens Advice agreed with the provision. The due diligence defence allowed a defence for someone who had taken reasonable steps to act within the law but breached the law because of another person. As this defence required that the culprit be identified, it should help enforcers.
462. TATOC recognised the appropriate inclusion of due diligence defence but were, at the same time, concerned that officers of less reputable companies could hide behind this defence while, behind the scenes, applying pressure to employees that may encourage an approach that was 'economical' in a full application of the requirements of the legislation.
463. The Timeshare Consumers Association felt that the due diligence defence allowed a defence for someone who had taken reasonable steps to act within the law but breached the law because of another person. As this defence requires that the culprit be identified, it should help enforcers.

Enforcers

464. The Association of Chief Trading Standards Officers supported the inclusion of the defence at regulation 30.
465. LGR and TSI agreed with the inclusion of the defence at regulation 30.
466. OFT agreed that the availability of the defence set out in regulation 30 was appropriate to the offences included in the Regulations.

Legal

467. The Law Society of Scotland supported the inclusion of the defence at regulation 30.

Views on the powers included at regulation 32

Question 32:

Do you consider the powers included at regulation 32 are appropriate and proportionate in relation to the enforcement of any subsequent criminal offences which might apply in these Regulations?

Business

468. Diamond Resorts agreed that the powers included at regulation 32 were appropriate and proportionate.
469. Interval International felt that if criminal offences were to be introduced, the powers appeared to be reasonable and necessary so that officers may effectively perform their duties
470. RDO and RCI Europe expressed the view that enforcers must be given appropriate powers to take action against companies that they believe are in breach of laws. If they were not given these powers, fraudulent operators would continue to flout regulations they were bound by, believing that no action would be taken against them. RDO fully supported the Powers of Officers as laid out in Regulations 32. Besides the described powers it was important that resources were made available to ensure that those powers could be effectively used when necessary. Also, coordination with industry trade bodies such as RDO was of crucial importance to ensure that enforcement officers were aware of what was happening in the industry, but especially on the fringes of it.

Consumers

471. Citizens Advice agreed that the standard provisions for powers for enforcement officers to gather evidence and to challenge obstruction were appropriate and proportionate. If enforcement was to eradicate consumer detriment in this market, enforcers would need to obtain the evidence they needed. Citizens Advice would be very concerned if a warrant were to be required for entering premises and demanding evidence, as had sometimes been discussed in other contexts. It was important for fair businesses and for consumers that enforcers were not delayed in or prevented from carrying out their work in a market known for its consumer detriment.
472. TATOC commented that the Regulation in this area should be fully adequate to achieve the requirements of Articles 13 and 15 of Directive 2008/122/EC. The powers should be comparable with the powers of officers in similar areas within UK law. TATOC considered that it was not the body best equipped to judge if Regulation 32 lay within these criteria.
473. The Timeshare Consumers Association considered the powers to be appropriate and proportionate.

Enforcers

474. The Association of Chief Trading Standards Officers supported the provision but noted that no mention was made of the power to enter premises nor the obtaining of warrants. This caused the Association of Chief Trading Standards Officers concern in relation to the gathering of evidence for prosecution purposes.
475. OFT considered the powers to be appropriate and proportionate.
476. LGR considered that it was more consistent for the powers under the Trade Descriptions Act to be used. It could be useful also to have the power of entry whether or not there was any cause to suspect an offence. A power to obtain a warrant and access premises related to the business should be considered where entry may be denied

477. **Government's response:** *The regulation essentially reproduce the powers contained in the current Timeshare Act. We received no evidence to suggest that these are not sufficient.*

Views on the provision of the offence at regulation 33 (obstruction of authorised officers)

Question 33:

Do you consider the provision of the offence at Regulation 33 is reasonable? If not, please provide reasons.

Business

478. Diamond Resorts expressed the view that provision of the offence at regulation 33 was reasonable.

479. Interval International was supportive of effective enforcement by the enforcing authorities. In order to achieve the objective of effectively enforcing the legislation, it was not unreasonable to expect traders to not intentionally obstruct an officer during an investigation.

480. RDO and RCI Europe believed that if a person deliberately obstructed an authorised enforcement officer, action should be taken against them. The provision of the offence in Regulation 33 was supported by RDO and RCI Europe..

Consumers

481. TATOC considered that the provisions should be sufficient to enable enforcement officers to do their job efficiently and effectively, and should be comparable with similar areas within UK law. TATOC felt that it was not the body best equipped to judge if regulation 33 lied within these criteria.

482. The Timeshare Consumers Association considered that the provision was essential if enforcement action is to be effective.

Enforcers

483. The Association of Chief Trading Standards Officers felt that provision of the offence at regulation 33 was reasonable and necessary for the enforcement of the Regulations.

484. LGR, TSI and Windsor Trading Standards agreed that the provision at regulation 33 was reasonable and consistent with other legislation enforced by Trading Standards.

485. OFT felt that the provision seemed reasonable

486. **Government's Response:** *We are satisfied that the provision of the offence at regulation 33 is reasonable, and necessary for the effective enforcement of the Regulations.*

Views on the impact on enforcers if the proposed offences were introduced.

Question 34:

For enforcers: What would be the impact on you of the proposed Regulations if applicable criminal offences were identified or introduced at the points where they are discussed above? Where possible, please provide supporting evidence including:

- estimates of any additional costs and benefits associated with familiarisation with the proposed Regulations;
- any increase/decrease in workload resulting from the increased scope of the proposed Regulations, for example ease of prosecution or other enforcement activity under the new regime as compared to possible activity under other statutes;
- benefits from replacing the old complicated Act and Regulations with a single set of regulations;
- and, any increase/decrease in the overall annual cost of enforcement (taking into account the level of enforcement in the UK).

487. The Association of Chief Trading Standards Officers did not consider that there would be any significant additional costs accruing to Trading Standards. The wider coverage of the Regulations would not necessarily bring increased costs; streamlined and more effective legislation should encourage compliance and enable authorities to deal more effectively with malpractice when it occurred.
488. LGR expressed the view that the undoubted benefit would be increased consumer protection and more effective enforcement. The proposed criminal offences would make it quicker, easier and more efficient for Trading Standards to enforce and prevent rogue trading. Trading Standards could gain greater consistency of enforcement by having a single, simplified regime locally, nationally, and, hopefully, within the wider EU. LGR believed the costs of enforcement would remain the same or slightly reduce as it was an area of work that Trading Standards were already undertaking, albeit hindered by ineffective legislation.
489. LGR added that from a Scottish perspective, if the main enforcement of the proposed legislation was the civil injunction regime, then there would be a cost to Trading Standards in Scotland as they did not have a right of audience and every time they wished to seek an order they would have to ask a solicitor to take up the case at a cost. Furthermore, if the court found against the Trading Standards service, they would have to pay for costs. In this financial climate that may be difficult and may deter some councils in taking action using civil remedies under the proposed legislation.
490. OFT did not believe that the introduction of criminal offences would be a burden to its enforcement work. OFT already had some experience of using criminal sanctions and believed that any additional powers coming from these regulations would add strength to its existing toolkit, including powers under the Enterprise Act 2002 and the CPRs. OFT prioritised enforcement cases according to consumer detriment and so would take cases under the regulations when they met OFT's prioritisation criteria.
491. OFT felt that there would be some costs involved in familiarising themselves with the regulations but the OFT believed the benefits of having an appropriate toolkit would far outweigh those costs.
492. TSI and Windsor Trading Standards felt that the proposed criminal offences would make it quicker, easier and more efficient for Trading Standards to enforce and prevent rogue

trading. Trading standards could gain greater consistency of enforcement by having a single, simplified regime locally, nationally, and, hopefully, within the wider EU.

493. Wiltshire Trading Standards considered that the speed with which a matter could be dealt with was important. Straightforward regulations with specific criminal offences were easier to interpret, work with and to impart to the trade. It was likely there would be a reduction in consumer detriment as a result of the implementation of the regulations if they were enacted as proposed and contained some criminal sanctions

494. **Government's Response:** *We are satisfied that our decision to replace entirely the current regime in the UK by repealing the Timeshare Act and revoking the current Timeshare Regulations will result in simpler and more effective legislation which should encourage compliance and enable the enforcement bodies to deal more effectively with malpractice when it occurs. We also believe that our proposals for criminal offences will provide an effective deterrent to malpractice and make it quicker, easier and more efficient for the enforcement bodies to enforce the regulations and deal with rogue traders where necessary.*

Views on whether the provisions in regulation 34 relating to civil proceedings are clear.

Question 35:

Are the provisions in Regulation 34, relating to civil proceedings clear? If not, please provide reasons.

Business

495. Interval International considered that the provisions were clear.

496. LGR expressed the view that the provisions, for the purposes of the regulations were clear enough, but for consumers and traders guidance explaining the provisions would give clarity.

497. RDO and RCI Europe felt that the provisions in Regulation 34 regarding civil proceedings were clear.

Consumers

498. Citizens Advice felt that the provisions of regulation 34 were clear. The consumer redress available in the listed regulations was, in most cases, that the agreement was unenforceable against the consumer. Regulation 19 adds that contract terms inconsistent with the requirements of the regulations are void. Regulation 23(3) requires the trader to tell the creditor when a consumer used their cancellation rights where a credit agreement had been arranged. All these were important provisions for consumers but they did not empower consumers to take any action; rather they provided a defence should consumers be challenged by traders. Regulation 34(4) says that contravention of the trader's obligations is 'actionable accordingly'. It may not be clear to consumers what this meant. Citizens Advice suggested that the wording be changed to: 'gives the consumer the right to..' or that the provision was carefully explained in any guidance or education materials that followed transposition.

499. TATOC felt that the obligations on the trader were clear enough but "actioned accordingly" in the event of contravention in paragraph (5) seemed pretty woolly and suggested that this should be clarified.

500. Timeshare Consumers Association felt that the provisions in Regulation 34 regarding civil proceedings were clear.

Enforcers

501. The Association of Chief Trading Standards Officers felt that the provisions in regulation 34 were clear, although clarificatory guidance for consumers and businesses would be required on the meaning of the provisions.

502. OFT considered that it was not clear from regulation 34 that consumers had the right to take private civil action for breach of the regulations. Given that regulation 34 is aimed at consumers, we think that the scope of the regulation needs to be made clearer so that consumers will understand its application.

503. **Government's response:** *The provision allows the affected parties to sue for breach of statutory duty. We have used the phrase "actionable accordingly" because in para (1) it's a prospective consumer, in para (2) it's an actual consumer and in para (3) it's a creditor. We will cover the right to private civil action in guidance.*

Views on the amendments relating to enforcement and saving of the implementing regulations.

Question 36:

Do you agree with the amendments relating to enforcement and saving of the implementing Regulations? If not, please explain.

Business

504. Diamond Resorts considered that the revocation of the following regulations appeared to have been overlooked in both draft regulation 35 and Schedule 8:

- The Timeshare (Cancellation Notices) Order 1992 – SI 1992 No 1942
- The Timeshare (Repayment of Credit on Cancellation) Order 1992 – SI 1992 No 1943
- The Timeshare (Cancellation Information) Order 2003 – SI 2003 No 2579

However paragraph 5 of the Introduction to the Consultation (on page 3) appears to make it clear that they are intended to be revoked and a revised withdrawal form is detailed in Schedule 5.

505. **Government response:** *The regulations mentioned above are all made under the Timeshare Act. They will automatically lapse when we repeal the Act.*

506. Diamond Resorts suggested that Schedule 5 needed to incorporate;

- a provision making it clear that cancellation of a linked consumer credit agreement does not automatically cancel a timeshare agreement/ any ancillary contract other than the credit; and
- the content of a cancellation notice where a consumer wishes to cancel the credit but not the timeshare agreement.

507. **Government's response:** *Cancellation of the credit agreement alone is dealt with in the Consumer Credit Act. If you withdraw from a credit agreement, contracts that are ancillary to the credit agreement automatically terminate, but that applies only to services like repayment insurance, not the goods or services for which the loaned funds are being used. Where the consumer chooses to cancelled a credit agreement without, in these circumstances, withdrawing from the contract regulated under these regulations the consumer will have to repay the credit. They should only withdraw from such an agreement if they have the means to pay.*

508. RDO and RCI Europe agreed the amendments relating to enforcement and saving of the implementing Regulations.

509. Interval International supported the approach proposed by BIS.

Consumers

510. Citizens Advice agreed with the amendments relating to enforcement and saving of the implementing Regulations

511. TATOC and The Timeshare Consumers Association had no concern with the amendments.

Enforcement

512. The Association of Chief Trading Standards Officers agreed with the amendments relating to enforcement and saving of the implementing Regulations .

513. LGR and TSI agreed the amendments relating to enforcement and saving of the implementing Regulations.

514. OFT agreed that the implementing regulations should be covered by the Enterprise Act 2002 and the existing statutory regime should be saved so that action could be taken for offences committed up to the date that the new law came into force.

Views on how the draft Regulations might be improved so that they are least burdensome on business whilst still implementing the Directive

Question 37:

Do you have any suggestions as to how the draft Regulations might be improved so that they are least burdensome to business while still including provisions which implement all of the requirements in Directive 2008/122/EC (Annex C)? If so please, provide details

Business

515. Interval International, RDO and RCI Europe felt that the drafting concerning right to withdraw affecting exchange needed to be addressed to ensure that the obligation to provide a consecutive withdrawal period did not arise once the withdrawal period for the timeshare purchase had expired. Regulations 21(8) and (9) needed to be reworded (as previously stated).

516. **Government's response:** *We agree. The intent of the Directive is to only allow a single withdrawal period where timeshare and exchange contracts are linked during the same sales process. We have amended regulation 21(8) so that it applies when both contracts are offered at the same time.*
517. RDO and RCI Europe also expressed the view that (as previously stated) the language requirements and sanctions for non-compliance might be improved.
518. **Government's response:** *as previously stated, the language requirements reflect the requirements of the Directive. We would not, in any case, wish to diminish the right of consumers to be provided with important information and contracts in a language with which they may not be fully familiar. This is the reason why the consumer has the choice of language. It is worth mentioning that businesses are not required to hold stocks of information and contracts in all languages, just those languages of the consumers with whom they choose to trade. As regards sanctions for non-compliance we believe that our proposals for criminal offences will provide an effective deterrent to malpractice and make it quicker easier and more efficient for the enforcement bodies to enforce the regulations and to deal with rogue traders where appropriate .*

Consumers

519. TATOC recognised that the Directive placed an additional burden on businesses. However, both the timeshare industry and timeshare consumers had suffered for many years from problems caused by unscrupulous traders and practices either operating fraudulently or by targeting loopholes present in current legislation. The new Directive set out to address these problems. It was essential, both for consumers and for reputable industry businesses, that this Directive was successful in this task. TATOC would not wish timeshare businesses to suffer any *unnecessary* burden, but if individual businesses and the timeshare industry at large did not embrace the full detail and spirit of the new legislation they would miss the opportunity it provided. If this happened the cost to those businesses, and the damage to the long-term future of timeshare, would be far greater than the cost of enthusiastic implementation.

Enforcers

520. OFT considered that all definitions should be included at the outset. This would make it simpler to navigate as readers currently had to switch between three regulations before finding a definition. Where possible the definitions should also be consistent with those used elsewhere.

Further comments on the draft Regulations

Question 38:

Do you have any further comments on the draft Regulations?

Business

RDO and RCI Europe expressed the view that given the uniformity of consumer protection across the EU through the Directive's maximum harmonisation provisions, they saw no need to

retain the UK's extra territorial conditions. Experience had shown that these have caused confusion for both traders and consumers and, since 1997, RDO had received a number of complaints from consumers who had purchased overseas thinking they were covered by the UK provisions but had later found that this is not the case. RDO recommended therefore that these Regulations were not applied outside the UK.

Interval International felt that the territorial scope of the regulations should be limited to the UK. Other EU member states would have similar regulations offering the same level of consumer protection to UK purchasers acquiring their timeshare interests in other EU Member States.

Government response: *Regulation 5 has been amended to make clear the circumstances in which the UK Regulations will apply.*

Consumers

521. Citizens Advice considered that the new Directive had clearly been carefully designed to tackle known problems. However, because traders in the timeshare market had already successfully evaded the current timeshare legislation, Citizens Advice had one remaining concern. Timeshare products might be developed to last for less than the 12 months that would trigger the consumer protection in the new Directive, although there was provision to capture short-term products that could be extended. As reducing this minimum contract length would make it extremely difficult to define the products in this market, Citizens Advice considered that the Unfair Commercial Practices Directive (UCPD) should be used in conjunction with this Directive to tackle any new products emerge that evade the timeshare and long-term holiday products rules.
522. Citizens Advice raised two issues:
523. Regulation 31 detailed the enforcement authorities for the regulations but did not include the OFT. The OFT had taken action in the timeshare-like market against businesses in other EU Member States where UK consumers had suffered detriment. Under the Consumer Protection Co-Operation Regulations the OFT led on enforcement action requested by another Member State when EU consumer protection laws are breached in that state by a UK business. Citizens Advice believed that the OFT's role in relation to timeshare and long-term holiday products was vital to the success of the regulations and were disturbed that they are not included as enforcers. Citizens Advice sought clarification as to why this was the case as it seems to be unjustified.
524. **Government response:** *We are amending the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 to remove the reference to the old Directive and add the new Directive. The amendment has the effect that OFT will retain the enforcement powers that they currently have and have been able to utilise in relation to timeshare. No further amendment is necessary to maintain the status quo. We do not believe it is necessary, therefore, to include the OFT as an enforcer on the face of the regulations.*
525. Citizens Advice noted that the third paragraph in the cancellation notice detailed in the Directive had not been included in the transposed version at Schedule 5. This seemed to fail the maximum harmonisation requirements of the Directive.

526. **Government response:** *We are grateful to Citizens Advice for bringing this matter to our attention. Schedule 5 has been amended to include the third paragraph in the cancellation notice detailed in the Directive.*
527. The Timeshare Consumers Association felt that whilst proposed Regulation 12, (4), (a) referred to contracts being “clear, comprehensible and accurate” there was a risk that rogue traders would use the “small print” practice to mislead consumers. They may argue that the requirement only referred to the phraseology and not to the font size. The Timeshare Consumers Association suggested that the wording of the regulation should be amended by the addition of a minimum print size requirement – perhaps 10 pts.
528. **Government response:** *We consider that amending the proposed Regulations to include a requirement for a minimum font size would be overly prescriptive and would go beyond the provisions of the Directive. In the event of a dispute, a decision as to whether the information provided by the trader was ‘clear, comprehensible and accurate’ would ultimately be a matter for the Court.*

Enforcers

529. The OFT was not currently listed as an enforcer in the regulations. This was of great concern to OFT as they are an existing enforcer under the current regime, as well as holding an enforcement role under the CPRs and been involved in the civil sanctions pilot, both of which had links to the draft regulations.
530. **Government response:** *We are amending the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 to remove the reference to the old Directive and add the new Directive. The amendment has the effect that OFT will retain the enforcement powers that they currently have in relation to timeshare and no further amendment is necessary.*
531. The OFT was committed to working with BIS on improving standards in the industry by working with code owners in this field. OFT wanted to continue to engage with BIS and the industry on compliance and how best to deliver what Article 14 required.
532. **Government response:** *BIS will be keen to continue to engage with business, consumer representatives and the enforcement authorities to ensure compliance and to deliver the requirements of the Directive.*

Request for quantifiable evidence on current number of consumer complaints and associated losses/detriment.

Question 39:

If you are an enforcement agency or an organisation that compiles statistics relating to UK consumer complaints, please provide any quantifiable evidence that shows the current number of UK consumer complaints and the associated losses/detriment with regard to the purchase of:

- (a) Timeshare sales
- (b) Long term holiday products
- (c) Resale
- (d) Timeshare exchange

Consumers

533. TATOC explained that its helpline received around 700 telephone/e-mail enquiries/complaints each month. TATOC had a huge amount of information on the nature of the consumer contacts it received. TATOC confirmed that it would be very happy to share this information with BIS or any other government agency. TATOC held the view that the complaints if received was only the tip of the iceberg and other bodies (such as Consumer Direct) received a large number of calls also

Enforcers

534. OFT provided the following statistics, taken from the Consumer Direct database for the calendar year 2009, related to consumer complaints/enquiries for Great Britain. Please note that complaints to Consumer Direct are unverified and all enquiries are classified alongside complaints.

- Timeshare sales: 1222 complaints
- Timeshare resale: 1706 complaints
- Holiday Clubs: 1665 complaints

535. Although the complaints related to a variety of different issues, verbal misrepresentation accounted for the highest number of complaints in each category. Other issues receiving a large number of complaints across all categories were substandard services, unfair business practice and customer service.

536. **Government's response:** *We are grateful for the views and statistical data provided by respondents to the consultation. The information provided has been used to inform the revised impact assessment included at Annex C.*

Views on the likely reduction in the number of complaints and associated losses/detriment

Question 40:

If you are an enforcement agency or an organisation that compiles statistics relating to UK consumer complaints, please provide your view of the likely reduction in the number of UK consumer complaints and the associated losses/detriment likely to result from businesses' compliance with our proposals with regard to:

- (a) Timeshare sales
- (b) Long term holiday products
- (c) Resale
- (d) Timeshare exchange

Business

537. RDO said that in 2009, only 50 complaints were made about RDO members throughout Europe. Of those complaints, just 4 related to companies or resorts based in the UK. This was an indication not only of the effectiveness of the current timeshare Regulations but also the RDO code of conduct.
538. RDO reported that complaints had been falling year on year and anticipated that complaints about members for 2011 would continue to be at a very low level. RDO did not anticipate any significant loss or detriment as a result of compliance with the proposals.

Consumers

539. TATOC received very few complaints against reputable timeshare companies. It was unlikely that the Regulations would have any significant effect on the numbers received. The one impact may be the removal of deposits taken by third parties. TATOC had never been a fan of non-timeshare Long Term Holiday Products. The main impact of the Regulations would be where companies cold-call timeshare owners inviting them to a meeting under some false pretexts and then sell them membership of a holiday club. This should fall considerably if Regulation 14 is enforced. If resale companies complied with the Regulations this will have a massive effect on this sector. However, there had always been companies willing to break the law and this is where rapid and rigorous enforcement will be essential. Timeshare Exchange represented a very small percentage of the enquiries/complaints TATOC receive. TATOC had never perceived a problem regarding the marketing of timeshare exchange contracts

Enforcers

540. LGR considered that the number of complaints and associated losses/detriment would be considerably reduced.
541. OFT explained that consumer complaints in this area have been a longstanding issue for the OFT, particularly given developments in the industry. As the new regulations went beyond existing legislation and cover holiday clubs, timeshare resale and exchange as well as traditional timeshare products.
542. OFT would expect the number of complaints to decrease, provided there was adequate business compliance

543. Trading Standards Institute considered that the number of complaints would be considerably reduced
544. Windsor Trading Standards considered that the number of complaints would dramatically reduce to almost zero.
545. **Government's response:** *We are grateful for the views and statistical data provided by respondents to the consultation. The information provided has been used to inform the revised impact assessment included at Annex C.*

Views on the size of the UK timeshare market in terms of the number of UK based businesses selling new timeshares and the number of UK Consumers purchasing new timeshares from UK based businesses

Question 41:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide any additional information on the estimate of the size of the UK timeshare market in terms of the:

- (a) number of UK based businesses selling new timeshares
- (b) the size of those businesses (in terms of number of employees)
- (c) total value of new timeshares sold by UK based businesses
- (d) number of UK consumers that purchase new timeshares from UK based businesses
- (e) total value of new timeshares purchased by UK consumers from UK based businesses

546. The RDO stated that the figures that the RDO supplied to BIS at the end of 2009 were compiled on the organisation's behalf by the Christel DeHaan Tourism and Travel Research Institute at the University of Nottingham. Although the statistics had not been updated since then, there had been few changes to the market and the figures could, therefore, be accepted as an accurate reflection of the current UK timeshare market.
547. **Government's response:** *We are grateful for the figures provided by the RDO which have been used to inform the revised impact assessment included at Annex C.*

Views on the size of the UK long-term holiday product market in terms of the number of UK based businesses selling long-term holiday products and the number of UK Consumers purchasing new long-term holiday products from UK based businesses

Question 42:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide any additional information on the estimate of the size of the UK long term holiday product market in terms of the:

- (a) number of UK businesses selling long term holiday products
- (b) the size of those businesses (in terms of number of employees)
- (c) type of long term holiday products sold e.g. holiday discount clubs
- (d) total value of long term holiday products sold by UK based businesses

- (e) number of UK consumers that purchase long term holiday products from UK based businesses
- (f) total value of long term holiday products purchased by UK consumers from UK based businesses

548. Respondents were unable to provide any quantifiable evidence.

Views on the size of the UK timeshare resale market in terms of the number of UK based businesses involved in timeshare resales and the number of UK Consumers selling their timeshare through a UK based businesses

Question 43:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide an estimate of the size of the UK timeshare resale market in terms of the:

- (a) number of UK businesses involved in resales
- (b) the size of those businesses (in terms of number of employees)
- (c) total value of resale contracts entered into by UK based businesses
- (d) number of UK consumers that enter into a contract with a UK based business to purchase a timeshare or long term holiday product through a resale
- (e) total value of purchases where a UK consumer has entered into a contract with a UK based business to purchase a timeshare or a long term holiday product through resale
- (f) percentage of total timeshare purchases purchased through resale by UK consumers

549. The RDO advised that whilst in a position to provide figures relating to the number and size of businesses – see below - it has not been possible to obtain figures for the value and number of resale contracts and registrations.

Estimated number of UK businesses: 8

Estimated number of employees: 100

550. **Government's response:** *we are grateful for the figures provided by the RDO which have been used to inform the revised impact assessment included at Annex C.*

Views on the size of the UK timeshare exchange market in terms of the number of UK based businesses involved in timeshare exchange and the number of UK Consumers exchanging their timeshare through a UK based businesses

Question 44:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide an estimate of the timeshare exchange market in terms of the:

- (a) number of UK businesses involved in exchange
- (b) the size of those businesses in terms of number of employees
- (c) total value of exchange contracts entered into by UK based businesses
- (d) number of UK consumers that enter into a contract with a UK based business to facilitate a timeshare exchange
- (e) total value of timeshare exchanges where a UK consumer has entered into a contract with a UK based business to facilitate a timeshare exchange

551. The RDO advised that the two significant exchange companies trading in the UK were RDO members Interval International and RCI. Both would provide individual responses, together with relevant data, to this consultation.

Views on whether the proposed Regulations are likely to affect the number of businesses involved in the sector.

Question 45:

Do you think that the proposed Regulations are likely to directly or indirectly limit the number of traders involved in the sale of timeshare, long term holiday products, timeshare resale or timeshare exchange? (e.g. by providing a barrier to entry into the market) If so, please explain your reasons and where possible, provide supporting evidence.

Business

552. Diamond Resorts felt that the proposed Regulations would hopefully limit the number of disreputable traders in the industry that are shut down by the Authorities, only to open up again under a different company name.

553. Interval International expressed the view that timeshare was a product which usually had international elements as it was often purchased outside of the Member State of the consumer's residence. The proposed Regulations required documentation to be provided in the language of the consumer and that would give rise to significant costs for new entrants to the industry. The complexity of the disclosure requirements combined with a punitive ban on the taking of advance payments would be likely to deter new entrants into the business.

554. RCI Europe believed that the Regulations for exchange traders and exchange contracts were generally appropriate and these would not have a major impact on businesses. However, the proposed language requirements would place an undue burden on timeshare exchange companies and may be a barrier to entry for some businesses into the timeshare exchange market. Furthermore, the proposed wording at Regulation 21 (8) and 21(9) would introduce a subsequent withdrawal period and this would negatively impact on the exchange industry.

555. RDO expressed the view that Timeshare developers in the UK were currently subject to the Timeshare Act as amended which provided for a 14 day cooling off period and a ban on advance payments. RDO, therefore, anticipated that the new Directive was unlikely to limit new entries to the market.
556. RDO had, however, argued throughout the entire consultation phase that a ban on deposits was likely to deter overseas businesses from trading in Europe. In the US, cooling off periods were shorter and there was no ban on advance payments, except for a small number of States where resale agents were prohibited from taking upfront fees. Timeshare worked well under this regime, consumer confidence was high and US businesses had indicated that they may be reluctant to operate under laws which were considerably more stringent and which would have a negative impact on their cash flow.
557. In terms of resale, resale agents would not be negatively affected by the cooling off period as RDO member companies which made up the majority of the resale market in the UK already worked with a cooling off period under the RDO Code of Conduct and predating Codes. The ban on advance payments, which included getting reimbursed for advertising costs before an actual sale had taken place, would most certainly have an adverse effect on RDO resale members. Under the code of conduct, resale members were permitted to take a fee as it constitutes reimbursement of and costs related to a service rendered, such as advertising on their websites. They may not however take a fee for merely registering a client's week.
558. Under the new Regulations, a resale company may find that if they place an advertisement in the paper on behalf of a client, that client may then decide to take their business elsewhere. The company may well experience difficulties in recuperating what was due to them for the advertisement fees payable to the medium in which the advertisement took place, such as a newspaper, as the client may believe - quite wrongly - that they need not pay for this service.
559. Resale margins were extremely tight and RDO members could not afford to be at risk of not being reimbursed for directly attributable costs, nor for the costs made in providing the service. BIS is asked to consider whether an exception can be made for resale companies so that they can be reimbursed for the costs directly linked to performing the advertising service itself.
560. **Government's response:** *The government has no leeway under the directive to apply provisions as an alternative to those in the directive. As mentioned in relation to question 23 above, the conditions under which the contract may be terminated must be included in the contract. It is not unreasonable that the parties might agree, for example, that in the event that genuine attempts have been made to find a buyer for a timeshare but that no buyer has been found within a reasonable or specified period that they agree to terminate the contract. Termination of the contract relieves all the parties of any obligation under the contract, including obligations for payment in the event that the contract had been fully performed (by the sale of the timeshare). Of course it is possible that a resale contract may only have a defined time to run, irrespective of whether a sale results. In that case the consumer should be in possession of pre-contractual information and a contract which explains what the charge for that contract is and will be able to judge for themselves whether it represents good value for money, given that a sale might not result by the time it runs out. It would be for the trader to satisfy the consumer that they had made every effort to meet their obligations under the contract to show that it had been performed correctly. If not, they will have breached the contract. In any case the trader is not permitted to take any consideration in respect of the contract before it is either completed by a sale or it is otherwise terminated.*

561. RDO believed that the Regulations for long-term holiday products were appropriate and these would have major impact on businesses. RDO envisaged that the majority of traders would eventually close down.

Consumers

562. TATOC did not foresee any reduction in timeshare marketing companies, timeshare exchange companies or reputable timeshare resale companies. TATOC hoped the impact on Long-term Holiday Products would be significant.

563. The Timeshare Consumers Association commented that a very substantial number of complaints related to purchases of holiday club memberships. The Timeshare Consumers Association expected that many holiday clubs sales operations will cease when the new Regulations began to bite.

564. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations are likely to lead to an expansion of the number of UK businesses in the sector.

Question 46:

Do you think that the proposed Regulations are likely to lead to an expansion of the number of traders involved in the sale of timeshare, long term holiday products, and timeshare resale or timeshare exchange? If so, please explain your reasons and where possible, provide supporting evidence.

Businesses

565. Diamond Resorts did not think so. However the Regulations would hopefully improve the reputation of the industry and thereby enhance the business operations of the legitimate traders.

566. Interval International felt that while the Regulations may contribute to enhance consumer confidence in the product and thereby make timeshare a more attractive product, the Regulations would not help business growth. Large multinational groups wishing to invest in the development of timeshare resorts would choose other locations outside of the EU for their developments given the burdens imposed by the EU regulatory regime. Why invest in the EU and face punitive regulatory requirements such as the ban on advance payments, when you could sell anywhere else in the world and take an advance payment?

567. RCI Europe did not believe that the Regulations were likely to lead to an expansion of the number of traders in respect of timeshare exchange.

Consumers

568. TATOC felt that there would be an increase in the number of traders but gradually rather than instantly. Changes in consumer awareness and confidence did not happen quickly.

569. The Timeshare Consumers Association did not believe that there would be an increase in the number of traders involved in the sector (see to question 45).

570. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations were likely to affect the ability of traders to compete.

Question 47:

Do you think that the proposed Regulations are likely to limit or increase the ability of traders to compete? If so, please explain your reasons and where possible, provide supporting evidence

Businesses

571. Diamond Resorts believed that the Regulations would create a more level playing field by eradicating disreputable traders
572. Interval International considered that provided that the Regulations were adequately enforced and other EU member states adopted a consistent enforcement strategy, the Regulations should not limit competition.
573. RDO expressed the view that with a uniform 14 day cooling off period and an absolute ban on deposit taking, the new Regulations provide a level playing field for timeshare businesses throughout Europe. This was however, only the case if there was effective enforcement in place. In Spain, a number of major timeshare operators had complained to RDO that their customers had been targeted during the cooling off period and persuaded to sign up to a long-term holiday product. As many of these companies did not offer cooling off periods, the legitimate timeshare developer lost the business and the customer was locked into the new contract. As the new Regulations required long-term holiday products to include a cancellation clause within the contract, RDO believed that this change together with effective enforcement would rectify the problems that timeshare operators had been experiencing in Spain and the Canaries.

Consumers

574. TATOC felt that the Regulations should have no detrimental effect on reputable companies.
575. The Timeshare Consumers Association would expect the proposed Regulations to enhance the ability of honest traders to compete. By providing a more level "playing field" by the removal of the rogue elements in the industry, those traders who already comply with the law will find it easier to trade under the stricter regime imposed by the proposed Regulations.

Enforcers

576. OFT felt it was possible that the Regulations could have a positive effect on competition. OFT believed that markets work well when there are efficient interactions on both the demand (consumer) side and the supply (firm) side. The Regulations were aimed at improving consumers' ability to access and assess crucial information. If the Regulations improved the working of the consumer side, this should force firms to react and improve the competition side. If consumers were unable to assess and act on the information, the positive impact on competition would not be delivered.

577. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations were likely to affect traders' incentives to compete

Question 48:

Do you think that the proposed Regulations are likely to reduce or increase traders' incentives to compete vigorously? If so, please explain your reasons and where possible, provide supporting evidence

Business

578. Diamond Resorts felt that if the reputation of the industry was enhanced, more consumers may be inclined to purchase and less consumers would be inclined to cancel during the cooling off period. This would result in lower marketing costs for the trader (which savings could be passed on to the consumer).
579. Interval International did not believe that the Regulations would have a significant impact on competition.
580. RDO and RCI Europe believed that as the Regulations would capture almost every model that could be understood to be timeshare, as well as alternative models such as LTHPs, and that as such the different business models were faced with the same legal requirements. This would automatically lead to enhanced competition on standards, services and quality, rather than leading to 'negative ' differentiation of product, based on avoidance of the law, as was the case in the past.
581. However, RDO stressed that it was not unlikely that loopholes would be discovered and that avoidance would be an issue again. This was the reason why RDO had focussed at the start of the process in Brussels on a horizontal approach which was favoured over sector specific legislation. It was therefore of utmost importance that in order to promote a competitive market, legislators and enforcers work in close cooperation with the industry through the RDO. It should also be highlighted again that increased regulation may deter traders from entering the market, particularly those based in the US who were familiar with far less rigorous trading environments.

Consumers

582. TATOC considered that one of the problems suppressing the timeshare market was the reputation of the products that had been damaged by scam practices. The tightening of regulations would deter many of these, and the harmonisation within Europe would provide a level playing field for reputable companies that would encourage competition and market growth.
583. Timeshare Consumers Association did not expect to see any increase in the level of competition because the industry had always operated in a non-competitive environment. Only sales made by resale brokers were in the "open market" where competition flourished, all other sales by traders were in non-competitive sales presentations and the proposed Regulations did not make any changes to this environment.

584. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations were likely to benefit UK business in the form of additional sales

Question 49:

If you are a trade association, or another organisation that represents the interests of business or consumers, do you think that an increase in consumer confidence resulting from the proposed Regulations is likely to benefit UK business in the form of additional sales? If so, please provide an estimate of the likely increase for (a) Timeshare sales (b) Long Term holiday product sales (c) Timeshare resale (d) Timeshare exchange

Business

585. RDO considered that it was difficult to estimate the number of new timeshare sales that may be made under the new Regulations. However, with the expected demise of Long-term holiday products and with proper enforcement against fraudsters (especially those using resale bait and switch tactics) RDO expected that consumer confidence may increase.

Consumers

586. TATOC felt that there may be a small and gradual increase in timeshare, exchange and resale volumes. The impact on Long-term holiday products should be considerable and negative.

587. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations were likely to have a negative impact on non timeshare UK holiday businesses

Question 50:

If you are a trade association, or another organisation that represents the interests of business, do you think that an increase in total sales of timeshare products in the UK may transfer sales from other holiday products, such as hotel operations, thereby having a possible negative impact on non-timeshare UK businesses? If so, please explain your reasoning and quantify your answer where possible.

Business

588. RDO felt that it was more likely that the timeshare and fractional market would inherit customers from the second home market as people saw the benefit of shared ownership over and above the expense of buying a holiday home.

589. RDO did not anticipate that any increase in future sales would have an impact on the hotel market as this had never been the case. Timeshare was very much complimentary to

existing hotel-travel business as timeshare owners tended to travel more for holiday purposes.

590. British Holiday & Home Parks Association did not believe that the implementation of the regulations was likely to result in any significant change in sales of timeshare products when other factors were likely to have much greater impact i.e. the recession, problems within the airline industry, etc.

591. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the new regime would impose a burden additional to what might be considered “business as usual” for a legitimate business which is setting up in the Long-term Holiday Product market for the first time

Question 51:

Is there anything in the new regime which would impose a burden additional to what might be considered “business as usual” for a legitimate business which is setting up in the Long-term Holiday Product market for the first time? If so please explain. If you are able to quantify any additional burden please do so.

Business

592. Interval International felt that the new regime for long-term holiday products would put their viability into question. Traders of long-term holiday products would no longer be allowed to collect payment upfront and this was likely to influence a trader's decision to set up as a long-term holiday operator in the EU.

593. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on the costs and benefits to small and medium sized business

Question 52:

What do you perceive to be the costs and benefits to small and medium sized business of the proposed Regulations? Please provide supporting evidence where possible.

Business

594. RDO considered it inevitable that the compliance costs would impact more heavily on small and medium sized businesses, specifically the multi lingual requirements if a trader wished to sell to nationals from all EU Member States. This requirement would inevitably result in a barrier to trading by those hit disproportionately by costs.

595. Interval International felt that (as previously stated) disclosure and language compliance would no doubt represent notable costs for small businesses, particularly at times of economic uncertainty.

596. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on the plans that small and medium sized businesses would have to make in order to comply with the proposed Regulations

Question 53:

What plans would small and medium sized business have to make before and after implementations to comply with the proposed Regulations? Please provide supporting evidence where possible.

Business

597. Diamond Resorts considered that sufficient time would be required to enable traders to comply with the legislation as the re-drafting of the contract documentation would take some time. Transitional provisions similar to the Consumer Credit (EU Directive) Regulations 2010 may be helpful, whereby as soon as traders were ready to use the new look timeshare agreement, they may do subject to a long stop date whereupon compliance was mandatory.
598. Interval International advised that businesses would need to take legal advice, pay legal fees, instruct translators, pay translators' costs, periodically update their documentation and incur legal and translators costs. Businesses would also need to adapt their operational structures to address new withdrawal period requirements, train their staff to ensure compliance.
599. RDO expressed the view that prior to operating within the new regime, small and medium-sized businesses would be required to retrain their sales staff, amend their purchase documentation, have this approved by a solicitor, and translate and reprint any materials as appropriate.
600. **Government's response:** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations would change how small and medium sized business operated generally.

Question 54:

Would the proposed Regulations change how small and medium sized business operates generally, and how it relates to other businesses and consumers? Please provide supporting evidence where possible.

Business

601. Diamond Resorts did not consider that the new regime would change the way in which small and medium sized businesses operated generally..

602. Interval International requested that the language in regulations 21(8) and 21(9) be changed to prevent a consecutive withdrawal period arising for exchange companies. If those aspects were not addressed, exchange organisations would be negatively impacted.
603. RDO and RCI Europe felt the government's failure to correct the language in the proposed regulation 21(8) and 21(9) (as previously stated in response to question 18) would be likely to cause significant damage to exchange organisations as they would have to offer a consecutive withdrawal period after the withdrawal period for the timeshare contract had expired.
604. RDO did not anticipate that there would be any significant changes to the way in which small and medium-size businesses operated, aside from the resale sector. RDO resale members would need to review how they handled advertising during the cooling off period.
605. ***Government's response:*** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations provide an opportunity or a threat to small and medium sized business generally

Question 55

Do you consider that the proposed Regulations provide an opportunity or a threat to small and medium sized business generally? Please explain what the opportunities or threats are and provide supporting evidence where possible

Business

606. Interval International considered that the proposed Regulations would increase the costs of doing business. The language requirements and the obligations to provide translation of documents which required regular update would be likely to increase costs and therefore make it more difficult for small firms to enter the timeshare business.
607. RDO felt that as generally there would be few changes to the way in which small and medium-sized businesses operated, RDO did not see the new Regulations as either an opportunity or a threat. As regards resale companies, the proposed Regulations may be seen as a threat in view of the issue with regards to advertising.

Consumers

608. TATOC considered that opportunities should gradually increase as consumer confidence improved and word got around that timeshare and related exchange and resale sectors were now a safe product.
609. ***Government's response:*** *We are grateful for the views put forward which have been used to inform the revised impact assessment included at Annex C.*

Views on whether the proposed Regulations would have an impact on race equality, disability equality, gender equality, or age equality

Question 56:

Do you think that the proposed Regulations will have a negative impact on race equality, disability equality, gender equality, or age equality? If so, please state why, and provide supporting evidence, if possible.

Question 57:

Do you think that the proposed Regulations will have a positive impact on race equality, disability equality, gender equality, or age equality? If so, please state why, and provide supporting evidence, if possible.

Business

610. Diamond Resorts, RCI Europe and RDO all expressed the view that the proposed Regulations would not have an impact on race, disability, gender or age equality.

Consumers

611. Citizens Advice had analyzed the information it had about CAB clients who sought advice about this market. Of interest was the age range and household type. Citizens Advice did not think the proposed Regulations had an impact on equalities matters.

612. **Government's response:** *We are satisfied that the proposed Regulations do not raise any particular issues with regard to race equality, disability equality, gender equality, or age equality.*

Views on whether the proposed Regulations would have an impact on sustainable development

Question 58:

Do you think that the proposed Regulations will have any negative impact on sustainable development issues? If so, please state why, and provide supporting evidence, if possible.

Question 59:

Do you think that the proposed Regulations will have any positive impact on sustainable development issues? If so, please state why, and provide supporting evidence, if possible.

Business

613. RDO and RCI Europe did not believe that the Regulations would have any impact on sustainable development issues.

Consumers

614. Citizens Advice did not believe that the Regulations would have any impact sustainable development issues apart from a possible small increase in air travel.

615. **Government's response:** *we are satisfied that the proposed Regulations will not have any significant impact on sustainable development.*

Views on whether the proposed Regulations would have any impact on the environment

Question 60:

Do you think that the proposed Regulations will have any negative impact on the environment? If so, please state why, and provide supporting evidence, if possible.

Question 61:

Do you think that the proposed Regulations will have any positive impact on the environment? If so, please state why, and provide supporting evidence, if possible.

Business

616. RDO considered that it was not possible to state per se that the Regulations would have any impact, either positive or negative, on the environment. However, it was long proven that the timeshare model made better use of the available resource (the building) with higher occupancy rates than hotels, let alone second homes. Timeshare therefore was an attractive alternative to 'dormant villages/resorts'.

617. **Government's response:** *We are satisfied that the proposed Regulations will not have any significant impact on the environment.*

Views on whether the proposed Regulations raised any particular issues with regard to human rights

Question 62: Do you think that the proposed Regulations raise any particular issues with regard to Human Rights? If so, please state why, and provide supporting evidence, where possible.

Business

618. RDO did not believe that the Regulations would raise any Human Rights issues.

Consumers

619. Citizens Advice considered the proposed Regulations would not raise any Human Rights issues. **Government's response:** *We are satisfied that the proposed Regulations do not raise any particular issues with regard to Human Rights.*

Next Steps

620. The proposed Regulations will be laid before Parliament in time to come into force on 23 February 2011. Prior to the proposed Regulations coming into force, BIS will publish guidance for business on the new regulations on the BIS website.

Enquiries

621. In case of enquiries please contact:

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Additional copies

622. This Government response is available electronically at:

<http://www.bis.gov.uk/Consultations/category/closedwithresponse>

You may make copies of this document without seeking permission. Other versions of this document can be made available on request in Braille, other languages, large fonts and other formats. Contact the Departmental contact above.

Annex A - List of Questions in the Consultation Document

Question 1:

Do you agree with our policy decision to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations in order to simplify the UK legislative regime for traders and consumers? Please explain your reasons.

Question 2:

Do you agree with our decision not to retain the limited coverage of the current legislation in respect of business to business transactions?

Question 3:

Do you have any comments on the application of the Regulations as set out in regulations 5 & 6?

Question 4:

Do you agree that all current timeshare models would be caught by the definition included at regulation 7? Please provide examples of timeshare types where you have doubts that they would be covered.

Question 5:

Do you agree that, in regulation 7, we do not need to include *the right to participate in arrangements under which a person may use accommodation*? Please provide examples of arrangements for acquiring rights in timeshares where you have doubts that they would be covered unless this wording was added to the definition.

Question 6:

Do you have any comments on the clarity of the requirements relating to key information and language of the material included at regulation 12?

Question 7:

Do you think that the requirements with regard to use of the standard information forms are clear? (regulation 13). If not, please explain why.

Question 8:

Do you consider that contravention of regulation 12 (i.e. failure to meet the requirements with regard to the provision of key information) should be the subject of a criminal offence? If not, please suggest any alternative effective means of ensuring compliance and providing a sufficient deterrent.

Question 9:

Do you have any comments on the requirements of the advertising and marketing rules as set out in regulation 14?

Question 10:

We would welcome your views on whether a trader who contravenes regulations 14(1) to 14(3) should be guilty of a criminal offence? If not, please suggest what alternatives to a criminal offence might provide a sufficient deterrent.

Question 11:

Do you agree that if we conclude that a criminal offence is proportionate in relation to non-compliance with regulation 14(1) the defence outlined above should be available as a reasonable balance? If not, please explain why.

Question 12:

Do you think that the wording of the requirements in regulation 15 is sufficiently clear? If not, please explain why.

Question 13:

Aside from the effect of non compliance rendering the contract unenforceable against the consumer, do you think that failure to comply with the requirements as to the form of the contract should be the subject of a criminal offence? If not, please suggest any alternative means of deterring a trader from not providing contracts as required.

Question 14:

Do you think that failure to comply with the requirements as these actions should be the subject of a criminal offence? If not, please suggest any alternative means of deterring a trader from not providing contracts as required.

Question 15:

Do you agree with our implementation of the options in relation to Regulation 17? Do you consider the benefit to consumers outweighs the burden on traders? Please provide reasons for your answer.

Question 16:

Should contravention of regulation 17 and/or 18 (i.e. failure to provide the contract in the required language(s) be subject to a criminal offence? If not, please suggest any alternatives which might provide a sufficient deterrent to non-compliance.

Question 17:

If you are a trade association, or another organisation that represents the interests of business, or a business engaged in the markets regulated under this regime, please provide an estimate of the likely additional administrative cost to UK business or your business of complying with the requirements of proposed regulations 12, 15, and 17 (over and above what might otherwise be considered normal business practice under the current regime). If possible, please provide a breakdown of the quantified costs.

Question 18:

Do you have any comments on the rights of withdrawal? (regulations 20 and 21)

Question 19:

Do you have any comments on the provisions for exercising the right of withdrawal? (regulation 20)

Question 20:

Do you have any comments on the consequences of exercising the right of withdrawal? (regulation 22)

Question 21:

Do you have any comments in relation to automatic cancellation of related credit agreements? (regulation 23)

Question 22:

Would applying a criminal offence in relation to non compliance with regulation 23(3) be appropriate? If not, please suggest any alternative means of deterring non-compliance

Question 23:

Do you have any comments on the clarity of the requirements and prohibitions on payment set out in regulations 25 and 26?

Question 24:

Should a trader who contravenes regulations 25(3) to 25(5) (i.e. fails to meet the requirements of the Regulations with regard to advance payments) be subject to a criminal offence? If not, please suggest any alternatives to criminal sanctions which might provide a sufficient deterrent to non-compliance.

Question 25:

Should a trader who contravenes regulations 26(1) to 26(4) (i.e. fails to meet the requirements with regard to the payment schedule for long term holiday product contracts) be subject to a criminal offence? If not, please suggest any alternatives to criminal sanctions which might provide a sufficient deterrent to non-compliance.

Question 26:

If you are a trade association, or another organisation that represents the interests of business, or a business in the relevant market, please provide an estimate of the likely cost to UK business or your business of extending the ban on deposits to resale, timeshare exchange, and long term holiday products. Please provide quantifiable evidence to support your answer and a breakdown of costs, if possible.

Question 27:

In general, do you consider that we need to introduce and maintain criminal offences for breach of the regulatory proposals to tackle problems in this sector? Please provide reasons for your answer

Question 28:

Do you consider that any of the specific activities to be regulated under the new regulations might already be covered under existing consumer protection legislation? If so, please provide reasons for your answer and details of the existing consumer protection and where it applies.

Question 29:

Do you consider that the introduction of civil sanctions, (such as the ability to seek formal undertakings from business; to apply stop orders backed-up with possible criminal prosecution for non-compliance; and to ensure consumers are compensated by the trader for the effects of non-compliance) rather than criminal offences would provide a proportionate and effective deterrent? (civil sanctions would only become a viable option when and if there is an adequate framework of inspectors with sufficient powers). Please provide reasons for your answer.

Question 30:

Do you agree that culpability as set out in Regulations 28 and 29 are appropriate given the nature of the regulated contracts and the sales practices associated with them? Please explain your reasons.

Question 31:

Do you agree that the availability of the defence set out in regulation 30 is appropriate to the offences included in the Regulations (and to any offences that may subsequently be included in the Regulations)? If not please explain why.

Question 32:

Do you consider the powers included at regulation 32 are appropriate and proportionate in relation to the enforcement of any subsequent criminal offences which might apply in these Regulations?

Question 33:

Do you consider the provision of the offence at Regulation 33 is reasonable? If not, please provide reasons.

Question 34:

For enforcers: What would be the impact on you of the proposed Regulations if applicable criminal offences were identified or introduced at the points where they are discussed above? Where possible, please provide supporting evidence including:

1. estimates of any additional costs and benefits associated with familiarisation with the proposed Regulations;
2. any increase/decrease in workload resulting from the increased scope of the proposed Regulations, for example ease of prosecution or other enforcement activity under the new regime as compared to possible activity under other statutes;
3. benefits from replacing the old complicated Act and Regulations with a single set of regulations;
4. and, any increase/decrease in the overall annual cost of enforcement (taking into account the level of enforcement in the UK).

Question 35:

Are the provisions in Regulation 34, relating to civil proceedings clear? If not, please provide reasons.

Question 36:

Do you agree with the amendments relating to enforcement and saving of the implementing Regulations? If not, please explain.

Question 37:

Do you have any suggestions as to how the draft Regulations might be improved so that they are least burdensome to business while still including provisions which implement all of the requirements in Directive 2008/122/EC (Annex C)? If so please, provide details

Question 38:

Do you have any further comments on the draft Regulations?

Question 39:

If you are an enforcement agency or an organisation that compiles statistics relating to UK consumer complaints, please provide any quantifiable evidence that shows the current number of UK consumer complaints and the associated losses/detriment with regard to the purchase of:

- (a) Timeshare sales
- (b) Long term holiday products
- (c) Resale
- (d) Timeshare exchange

Question 40:

If you are an enforcement agency or an organisation that compiles statistics relating to UK consumer complaints, please provide your view of the likely reduction in the number of UK consumer complaints and the associated losses/detriment likely to result from businesses' compliance with our proposals with regard to:

- (a) Timeshare sales
- (b) Long term holiday products
- (c) Resale
- (d) Timeshare exchange

Question 41:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide any additional information on the estimate of the size of the UK timeshare market in terms of the:

- (a) number of UK based businesses selling new timeshares
- (b) the size of those businesses (in terms of number of employees)
- (c) total value of new timeshares sold by UK based businesses
- (d) number of UK consumers that purchase new timeshares from UK based businesses
- (e) total value of new timeshares purchased by UK consumers from UK based businesses

Question 42:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide any additional information on the estimate of the size of the UK long term holiday product market in terms of the:

- (a) number of UK businesses selling long term holiday products
- (b) the size of those businesses (in terms of number of employees)

- (c) type of long term holiday products sold e.g. holiday discount clubs
- (d) total value of long term holiday products sold by UK based businesses
- (e) number of UK consumers that purchase long term holiday products from UK based businesses
- (f) total value of long term holiday products purchased by UK consumers from UK based businesses

Question 43:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide an estimate of the size of the UK timeshare resale market in terms of the:

- (a) number of UK businesses involved in resales
- (b) the size of those businesses (in terms of number of employees)
- (c) total value of resale contracts entered into by UK based businesses
- (d) number of UK consumers that enter into a contract with a UK based business to purchase a timeshare or long term holiday product through a resale
- (e) total value of purchases where a UK consumer has entered into a contract with a UK based business to purchase a timeshare or a long term holiday product through resale
- (f) percentage of total timeshare purchases purchased through resale by UK consumers

Question 44:

If you are a trade association, or another organisation that represents the interests of business or consumers, please provide an estimate of the timeshare exchange market in terms of the:

- (a) number of UK businesses involved in exchange
- (b) the size of those businesses in terms of number of employees
- (c) total value of exchange contracts entered into by UK based businesses
- (d) number of UK consumers that enter into a contract with a UK based business to facilitate a timeshare exchange
- (e) total value of timeshare exchanges where a UK consumer has entered into a contract with a UK based business to facilitate a timeshare exchange

Question 45:

Do you think that the proposed Regulations are likely to directly or indirectly limit the number of traders involved in the sale of timeshare, long term holiday products, timeshare resale or timeshare exchange? (e.g. by providing a barrier to entry into the market) If so, please explain your reasons and where possible, provide supporting evidence.

Question 46:

Do you think that the proposed Regulations are likely to lead to an expansion of the number of traders involved in the sale of timeshare, long term holiday products, and timeshare resale or timeshare exchange? If so, please explain your reasons and where possible, provide supporting evidence.

Question 47:

Do you think that the proposed Regulations are likely to limit or increase the ability of traders to compete? If so, please explain your reasons and where possible, provide supporting evidence

Question 48:

Do you think that the proposed Regulations are likely to reduce or increase traders' incentives to compete vigorously? If so, please explain your reasons and where possible, provide supporting evidence

Question 49:

If you are a trade association, or another organisation that represents the interests of business or consumers, do you think that an increase in consumer confidence resulting from the proposed Regulations is likely to benefit UK business in the form of additional sales? If so, please provide an estimate of the likely increase for (a) Timeshare sales (b) Long Term holiday product sales (c) Timeshare resale (d) Timeshare exchange

Question 50:

If you are a trade association, or another organisation that represents the interests of business, do you think that an increase in total sales of timeshare products in the UK may transfer sales from other holiday products, such as hotel operations, thereby having a possible negative impact on non-timeshare UK businesses? If so, please explain your reasoning and quantify your answer where possible.

Question 51:

Is there anything in the new regime which would impose a burden additional to what might be considered "business as usual" for a legitimate business which is setting up in the Long-term Holiday Product market for the first time? If so please explain. If you are able to quantify any additional burden please do so.

Question 52:

What do you perceive to be the costs and benefits to small and medium sized business of the proposed Regulations? Please provide supporting evidence where possible.

Question 53:

What plans would small and medium sized business have to make before and after implementations to comply with the proposed Regulations? Please provide supporting evidence where possible.

Question 54:

Would the proposed Regulations change how small and medium sized business operates generally, and how it relates to other businesses and consumers? Please provide supporting evidence where possible.

Question 55:

Do you consider that the proposed Regulations provide an opportunity or a threat to small and medium sized business generally? Please explain what the opportunities or threats are and provide supporting evidence where possible

Question 56:

Do you think that the proposed Regulations will have a negative impact on race equality, disability equality, gender equality, or age equality? If so, please state why, and provide supporting evidence, if possible.

Question 57:

Do you think that the proposed Regulations will have a positive impact on race equality, disability equality, gender equality, or age equality? If so, please state why, and provide supporting evidence, if possible.

Question 58:

Do you think that the proposed Regulations will have any negative impact on sustainable development issues? If so, please state why, and provide supporting evidence, if possible.

Question 59:

Do you think that the proposed Regulations will have any positive impact on sustainable development issues? If so, please state why, and provide supporting evidence, if possible.

Question 60:

Do you think that the proposed Regulations will have any negative impact on the environment? If so, please state why, and provide supporting evidence, if possible.

Question 61:

Do you think that the proposed Regulations will have any positive impact on the environment? If so, please state why, and provide supporting evidence, if possible.

Question 62: Do you think that the proposed Regulations raise any particular issues with regard to Human Rights? If so, please state why, and provide supporting evidence, where possible.

Annex B - List of Respondents

ABTA Limited
Andrew Walker
Association of Chief Trading Standards Officers
British Holiday and Home Parks Association
Citizens Advice
Devon Trading Standards
Diamond Resorts (Europe) Limited
Interval International Limited
HPB Management Limited
The Law Society
The Law Society of Scotland
Local Government Regulation (LGR) (formerly LACORS)
The Newspaper Society
Office of Fair Trading
Ombudsman Services
RCI Europe
Resort Development Organisation (RDO)
Trading Standards Institute (TSI)
TATOC (Timeshare Association Timeshare Owners and Committees)
Timeshare Consumers Association
Wales Tourism Alliance
Wiltshire Trading Standards
Windsor and Maidenhead Trading Standards

Annex C – Final Stage Impact Assessment

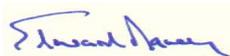
Title: Impact Assessment of the proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011 Lead department or agency: BIS Other departments or agencies: N/A	Impact Assessment (IA)
	IA No: BIS0007
	Date: 12/11/2010
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
Contact for enquiries: Kevin Davis 020 7215 0329	

Summary: Intervention and Options

<p>What is the problem under consideration? Why is government intervention necessary?</p> <p>Since the adoption of Directive 94/47/EC, timeshare has evolved and new holiday products similar to it have appeared on the market. These new products and certain transactions related to timeshare, such as resale contracts and exchange contracts do not fall within the scope of Directive 94/47/EC. These regulatory gaps create distortions of competition and cause serious problems for consumers in that the seller of the contract is likely to have more information than the purchaser, creating the potential for consumer detriment due to information asymmetry. New, unregulated and miss-sold holiday products hinder the smooth functioning of the internal market. In order to address these issues, Directive 94/47/EC has now been replaced with Directive 2008/122EC, which was adopted in February 2009. Member States have until 23 February 2011 to introduce legislation to comply with Directive 2008/122/EC.</p>	
<p>What are the policy objectives and the intended effects?</p> <p>To (a) modernise and simplify the current legislative regime (b) help improve the functioning of the internal market by clarifying and harmonising the regulatory regime across the EU (c) provide adequate and proportionate protection for consumers (d) protect business by squeezing out rogue traders in this market and creating the conditions to foster legitimate business across the UK and (e) introduce a level playing field for timeshare sales and other long term holiday sales, providing greater certainty for consumers. .</p>	
<p>What policy options have been considered? Please justify preferred option (further details in Evidence Base)</p> <p>The options that have been considered are (1) Introducing new UK regulations and amending the existing UK regulatory regime (2) Introducing new UK regulations and replacing the existing UK regulatory regime (3) Self Regulation and (4) Do Nothing. Option 1 would achieve policy objectives (b), (c), (d) and (e) above. but would <u>not</u> achieve policy objective (a). Option 3, Self regulation is not likely to achieve the policy objectives (c) of ensuring adequate and proportionate protection for consumers or (e) of levelling the competitive playing field between timeshare sales and other long-term holiday product sales as required by Directive 2008/122/EC. Option 4, a 'do nothing' approach is not a viable option at this stage as the market failure described above would not be resolved and none of the policy objectives would be achieved. The Government's preferred option is Option 2, to introduce new regulations and replace the existing UK regulatory regime. Option 2 is considered to be the most effective way to implement Directive 2008/122/EC and to simplify the UK legislative regime thus achieving all policy objectives (a), (b), (c), (d) and (e).</p>	
<p>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</p>	<p>It will be reviewed 02/2014</p>
<p>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</p>	<p>Yes</p>

Ministerial Sign-off For consultation stage Impact Assessments:

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.

A handwritten signature in blue ink, appearing to read 'Edward Davey', is placed on a light yellow rectangular background.

Signed by the responsible Minister: Edward Davey MP, Minister for Consumer Affairs Date:
14/11/10

Summary: Analysis and Evidence Policy Option 1

Description:

Modernise and Simplify the Current Legislative Regime

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £233
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	£0.44		zero		£0.44
Description and scale of key monetised costs by 'main affected groups'					
Calculation of the one-off transition cost to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business in the industry approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business					
Other key non-monetised costs by 'main affected groups'					
There may be costs to business related to a ban on deposits on new products during the cooling-off period. However, respondents to the Government's formal consultation (URN10/500) have been unable to provide any quantifiable evidence of the costs associated with a ban on deposits. The cost of enforcement under Option 1 is likely to be higher than Option 2 as retention of the business to business provisions would make the law more complicated to interpret.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		£23.0		£191.9
High	Optional		£32.4		£275.1
Best Estimate			£27.7		£233.4
Description and scale of key monetised benefits by 'main affected groups'					
The average annual benefit figure of £27.7 million relates to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products from the UK regulations. The EU Directive is expected to reduce UK consumer detriment related to long term holiday products by £162.1 million per year. This has been calculated against the baseline, that consumer detriment in this area would remain unchanged if this regulation was not implemented. We would also expect a reduction in consumer detriment related to timeshare resale and timeshare exchange contracts. However, we have not included an estimate of this likely benefit as respondents to the consultation have been unable to provide any quantifiable evidence to indicate the current level of consumer detriment related to timeshare resale and timeshare exchange. In addition, we would also expect a benefit to business in the form of an increase in sales resulting from increased consumer confidence.					
Other key non-monetised benefits by 'main affected groups'					
A number of rogue traders will be squeezed out of the market and the unfair competition element for legitimate businesses will be removed. There will be clarity over operations across the EU. There may be unsubstantiated benefits of retaining the business to business elements of the UK regime. There may be a small positive impact in terms of output and employment for specific regions in the UK.					
Key assumptions/sensitivities/risks					Discount rate (%)
In calculating the cost and benefits we have made the assumptions that (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market, so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement will ever be 100 per cent effective (we have made a conservative assumption that the regulations will be between 20-50% effective, with the best estimate being 35%). There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce. There is also a risk that UK businesses will not be aware of the new regulations in advance of the planned commencement date of February 2011					3.5%
(Further details of risks and mitigating actions are provided at page 20)					

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	23/02/2011				
Which organisation(s) will enforce the policy?	Trading Standards & OFT				
What is the annual change in enforcement cost (£m)?	0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹	No	23
Economic impacts		
Competition	Yes	21
Small firms	Yes	22
Environmental impacts		
Greenhouse gas assessment	No	n/a
Wider environmental issues	Yes	23
Social impacts		
Health and well-being	No	n/a
Human rights	Yes	23
Justice system	Yes	23
Rural proofing	No	n/a
Sustainable development	Yes	23

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence Policy Option 2

Description:

Introduce new UK regulations and replace the existing UK regulatory regime (preferred option)

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £233

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	£0.44		£0.44

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

Calculation of the one-off transition cost to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business.

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

There may be costs to business related to a ban on deposits on new products during the cooling-off period. However, respondents to the Government's formal consultation (URN 10/500) have been unable to provide any quantifiable estimate of costs related to the ban on deposits. We do not expect any increase in the cost of enforcement.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	£23.0	£191.9
High	Optional	£32.4	£275.1
Best Estimate		£27.7	£233.4

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

The average annual benefit figure of £27.7 million relates to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products from the UK regulations. The EU Directive is expected to reduce UK consumer detriment related to long term holiday products by £162.1 million per year. This has been calculated against the baseline, that consumer detriment in this area would remain unchanged if this regulation was not implemented. We would also expect a reduction in consumer detriment related to timeshare resale exchange contracts. However, we have not included an estimate of this likely benefit as respondents to the consultation have been unable to provide any quantifiable evidence to indicate the current level of consumer detriment related to timeshare resale and timeshare exchange. In addition, we would also expect a benefit to business in the form of an increase in sales resulting from increased consumer confidence.

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

A number of rogue traders will be squeezed out of the market and the unfair competition element for legitimate businesses will be removed. There will be clarity over operations across the EU. There may be a small positive impact in terms of output and employment for specific regions in the UK. There will be a simpler and clearer regime for business to comply with and for the enforcement bodies to interpret. The difference between Option 1 and Option 2 (our preferred option) is that, in Option 1, we would retain the Timeshare Act 1992 (and the business to business provisions) whereas in Option 2, in accordance with good regulatory practice, we would repeal the Timeshare Act 1992. The overwhelming majority of respondents to the consultation were in favour of Option 2.

Key assumptions/sensitivities/risks	Discount rate	3.5%
<p>In calculating the cost and benefits we have made the assumptions that (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market, so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement will ever be 100 per cent effective (we have made a conservative assumption that the regulations will be between 20-50%, with the best estimate being based on 35%). There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce. There is also a risk that UK businesses will not be aware of the new regulations in advance of the planned commencement date of February 2011 (Further details of risks and mitigating actions are provided at page 20)</p>		

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	23/02/2011				
Which organisation(s) will enforce the policy?	Trading Standards & OFT				
What is the annual change in enforcement cost (£m)?	0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: n/a		Non-traded: n/a		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: n/a		Benefits: n/a		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro 0	< 20 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ² Statutory Equality Duties Impact Test guidance	No	22
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	21
Small firms	Yes	21
Environmental impacts		
Greenhouse gas assessment	No	n/a
Wider environmental issues	Yes	22
Social impacts		
Health and well-being	No	n/a
Human rights	Yes	22
Justice system	Yes	22
Rural proofing	No	n/a
Sustainable development	Yes	22

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-terms holiday product, resale and exchange contracts http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0122:EN:NOT
2	BIS consultation (URN 10/500) on the proposed 'Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011' http://www.bis.gov.uk/Consultations/timeshare-holidays-exchange-resale
3	Resort Development Organisation Report, 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' http://www.rciventures.com/wp-content/uploads/2010/03/The_European_Timeshare_Industry_2008.pdf
4	Review of the Timeshare Directive (94/47/EC), a consultation report by the Office of Fair Trading, August 2006 http://www.offt.gov.uk/OFTwork/publications/publication-categories/reports/oft_response/oft859
5	OFT Research on Impact of Mass Market Scams (2006) http://www.offt.gov.uk/OFTwork/publications/publication-categories/reports/consumer-

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	£0.44									
Annual recurring cost										
Total annual costs	£0.44									
Transition benefits										
Annual recurring benefits	£17	£20	£23	£25	£28	£30	£31	£33	£35	£36
Total annual benefits	£17	£20	£23	£25	£28	£30	£31	£33	£35	£36

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Strategic Overview

1. Directive 2008/122/EC (the Directive) was published in the Official Journal of the European Union on 3 February 2009. The Directive addresses shortfalls in consumer protection in relation to Timeshare, Long-term Holiday Product, Resale and Exchange contracts. Intervention at European level was necessary because of the cross-border nature of the sale of these products and the nature of the exposure to detriment which consumers face in this market. The Directive replaces Directive 94/47/EC.

2. Member States have until 23 February 2011 to comply with the Directive. The Directive is a maximum harmonisation Directive which means that Member States are obliged to implement its provisions in national law in a way that accurately reflects, does not exceed (i.e. 'goldplate'), or fall below the requirements of the Directive. On 9 July 2010 the Government published a formal consultation (URN 10/500) seeking the views of businesses, consumers, enforcement authorities and other interested parties on a set of draft regulations proposed to implement the Directive in the UK i.e. the proposed 'Consumer Protection: Timeshare, Long-term Holiday Products, Resale and Exchange Contracts Regulations 2011' (the proposed regulations).

The Issue

3. Directive 94/47/EC which applied just to timeshare contracts provided for the protection of consumers in respect of the pre-contractual information consumers receive, their right to withdraw from the contract within a minimum period of 10 days, and the ban on advance payments during this period. Directive 94/47/EC has been transposed in all EU Member States. Given the minimum harmonisation nature of the Directive, a number of States, including the UK, have adopted national provisions that go beyond the level of consumer protection required by Directive 94/47/EC. Specifically, in implementing Directive 94/47/EC, the UK has adjusted the definition of relevant accommodation by adding timeshare in caravans, and added 4 days to the 10 day cooling-off period (the period of time during which a consumer can withdraw from a contract without giving a reason) is specified in the Timeshare Act 1992 (as amended).

4. However, since the adoption of Directive 94/47/EC timeshare has evolved and new holiday products similar to it have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale contracts and exchange contracts are not covered by Directive 94/47/EC. In addition experience with the application of Directive 94/47/EC has shown that some subjects already covered need to be updated to clarify requirements and to prevent the development of products aimed at circumventing the Directive. The existing regulatory gaps create appreciable distortions of competition and cause serious problems for consumers. For example, research carried out by OFT in 2006, suggests that UK consumers lose about £3.5 billion each year to mass markets scams. OFT estimate that £1.17 billion of that £3.5 billion figure relates to scams involving long-term holiday club products. Existing legitimate timeshare sellers must compete with new unregulated and miss-sold long-term holiday products. Similarly, timeshare owners (consumers) are attracted by bogus promises to sell their timeshare at a high price, to the disadvantage both to the consumer and to legitimate resale businesses. Furthermore, businesses selling timeshare in real property, which has been the subject of the former regime, have needed to compete with businesses selling timeshare in other types of overnight accommodation, for example in boats, which have not been subject to the same level of regulation. As a minimum harmonisation directive the former regime led to variations in implementation across borders. The timeshare and long-term holiday product business operates substantially across borders. The maximum harmonisation nature of the new regime should mean consistency of requirements (and protections) across the EU, facilitating the smooth functioning of the internal market. Directive 94/47/EC has therefore been replaced by Directive 2008/122/EC.

5. For the purposes of Directive 2008/122/EC, and for the purposes of the proposed regulations, the following definitions apply:

(a) 'timeshare contract' means a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation;

(b) 'long term holiday product contract' means a contract of a duration of more than one year under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodation in isolation or together with travel or other services;

(c) 'resale contract' means a contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a long term holiday product;

(d) 'exchange contract' means a contract under which a consumer, for consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services, in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer's timeshare contract;

The Timeshare Market in the UK

6. In 2007, the UK had 145 resorts (11.1% of the market share of resorts in Europe) and UK citizens represented the largest number of European timeshare owners³. It is estimated that 590,000 UK families own a timeshare, and around 472,000 (80% of them) own timeshares outside the UK⁴. In 2007, the UK industry in terms of timeshare agencies, timeshare developers, sellers and resellers was estimated to be worth around €526 million per year⁵.

7. There are a number of factors that explain the appeal of timeshare holidays to buyers⁶, including the following:

- Timeshares involve significantly less initial capital outlay than complete ownership;
- Consumer purchasers are limited to the number of holiday weeks they intend to use;
- Consumers purchase at today's prices, potentially saving money on future holidays (depending on use);
- An increasing network of timeshare exchanges is being developed that provides flexibility to consumers; and
- Consumers are able to let their occupation rights to others.

Developments in the Timeshare Market

8. There are four specific problems that have developed in the Timeshare market. These have an effect on competition through businesses circumventing Directive 94/47/EC and on consumer welfare. The specific requirements of the former regime were designed to address particular sales methods and practices affecting, in large part, consumers while they were not in their home State. These practices are not adequately protected against under existing wider protections. The wider remit of the new regime is designed to provide measured levels of protection for consumers who are exposed to potential detriment while they are out of their home State

Development of alternative 'Timeshare' products

9. The definition of timeshare in Directive 94/47/EC is quite restricted and can be easily circumvented. A number of products, such as timeshare in boats and shorter timeshare agreements, do not fall under the scope of the Directive; hence purchasers are not entitled to the benefits (e.g. pre-contractual information, right to withdraw) that Directive 94/47/EC affords to purchasers of 'traditional' timeshare rights.

Development of other Long-term Holiday Products such as Discount Holiday Clubs

10. Consumers joining such a club pay an initial fee, often of several thousand pounds, for joining the club, in return for which they gain access (in some cases in the form of a password to enter a website) to a booking service promising special rates or discounts on flights, accommodation, car hire, insurance and others services. Typically, the contracts for such products extend well into the future. Consumers

³ RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

⁴ RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

⁵ RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

⁶ *A Time to Share*, TRI Hospitality Consulting, <http://www.trihospitality.com/data/publications/dubai/timetoshare.pdf>.

experience problems because businesses are often unable to honour the promises made due to the business practices (especially in relation to sales) of the service being sold.

11. According to the OFT, these problems include:⁷

- Gross exaggeration of the benefits of club membership (for instance, Club class flights from UK to Australia for unrealistically low fares);
- Telling the consumer that the discount price quoted for membership is available on that day only to force the sale through;
- Being aggressive towards consumers during the sales process when the consumer has said they are not interested; and
- Advising consumers that they cannot go away and think about whether they want to purchase or not because it is against the law for the sales company to allow the consumer to return to the sales premises within a specified time period, usually quoted as two years.

12. Unlike timeshare there are no underlying real property assets, and there is little evidence of any agreements between holiday clubs and the providers of transport or accommodation services to suggest that the club is likely to be able to continue to provide the promised services for the duration of the contract (often up to 20 years).

Development of timeshare resale market

13. A consumer who wants to sell his or her timeshare could do so on his or her own or involve a resale agent (either affiliated to the resort to which the timeshare is linked or an independent agent). The resale agent will often seek a fee in advance for his services, and acts as an intermediary between the consumer who is selling the timeshare and the consumer or business buying the timeshare. Consumer evidence suggests that timeshare resale provides an opportunity for rogue traders to exploit. For instance, the 'agent' may charge an up-front fee to a consumer wishing to sell a timeshare when the 'agent' has no intention of selling the timeshare or the 'agent' may charge for a timeshare exchange or upgrade where no sale takes place at all, so the consumer ends up with two timeshares⁸. Therefore, the consumer interests in the area of resale are twofold: the protection of those consumers whose timeshares are being sold, and a degree of protection for consumers purchasing timeshares on the private market.

14. The resale market for timeshare products in Europe is not well-developed in terms of number of businesses and total sales. Within the UK, there are only 4 resale businesses that are RDO members, although we believe that there are an additional 4 non RDO resale companies that operate in the UK⁹. In the UK, the value of resales was estimated at £23.5 million for 2007. The figure did, however decrease by 25% for 2008¹⁰. Even though there are only an estimated 8 resale businesses within the UK, UK buyers are likely to buy a timeshare through resale (secondary market). In 2007, 16% of UK buyers had bought their timeshare through a resale¹¹.

Timeshare Exchange Systems

15. Consumers belonging to an exchange scheme 'deposit' their weeks of timeshare into the scheme 'pool' of available timeshare and request in exchange other weeks, usually in another resort, from the pool. Another type of exchange system assigns points to the deposited timeshare based on several factors, including the quality of the resort and size of the apartment. Members can identify how many points they need for stays in other affiliated resorts and request a stay. They can accrue extra points or carry unused points from one year to another. Points can be used for expenditure items, including air travel and car hire.

⁷ Review of the Timeshare Directive (94/47/EC), a consultation report by The Office of Fair Trading, August 2006, http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft859.pdf.

⁸ See footnote 5.

⁹ Information provided to BIS by the RDO in December 2009

¹⁰ Information provided to BIS by the RDO in December 2009

¹¹ RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

16. The availability of membership to an exchange scheme can be pivotal in a consumer's decision to purchase because of the flexibility it offers in relation to what is otherwise a quite inflexible product. Problems with exchange schemes are related to the 'overselling' of the advantages and options, leaving consumers disappointed with the service ultimately supplied. For example, consumer organisations have stressed to the EU Commission that the marketing of exchange often gives consumers the impression that they are signing up to something that will give them unlimited choice from a large number of properties. However, the choice in practice is often limited due to availability and depending on the value of the timeshare to which the exchange membership is linked. Indicatively, in a 2003 OTE survey of timeshare owners in Spain, 32% of respondents said that exchange options with other resorts were unclear.

Rationale

17. Timeshare (and related products) involves substantial payment upfront, followed by payments linked to later actual use of holiday accommodation (either on its own or in combination with travel). Typically, the marketing and/or conclusion of the contract often takes place in a country other than the consumer's home country, or in a country other than that where the property is located. This separation – in terms of time and geography – between purchase and consumption exacerbates the potential for consumer harm, in that the seller of the contract is likely to have more information than the purchaser, creating the potential for **information asymmetry**.

18. In addition, contracts for timeshare (or related products) are legally complex, with division of responsibilities between parties not always entirely clear to consumers. This can potentially further impede consumer understanding of what they are signing up to.

19. The minimum harmonisation nature of the previous Directive in this policy area has led to discrepancies between levels of consumer protection in different Member States, such as differences in the cooling-off period for timeshare transactions (as shown in the table below).

Current cooling off periods across Member States (calendar days, unless specified)

15 days	Belgium (working days), Cyprus, Czech Republic, Hungary, Slovenia
14 days	Austria, Germany, Latvia, UK
10 days	Denmark, Estonia (from receipt of contract), Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden

According to the European Commission, responses to the stakeholder consultation confirmed that these differences cause fragmentation and legal uncertainty, which can be considered as a significant legal barrier to conducting business cross-border in the EU. This causes cost, complexity and uncertainty for firms, and negatively affects consumer confidence when conducting cross-border transactions. This is a particular problem for SMEs who face the same start-up costs as larger businesses, and whose activities are more seriously impeded by such obstacles due to their smaller size and capacity. Business and consumer stakeholders affirmed that a fully harmonised 14-day cooling off period for consumers would effectively tackle this problem with very beneficial effects for all stakeholders involved, without imposing a disproportional burden on businesses.

20. The development of new products which fall outside the scope of the existing Directive (as outlined above) has led to gaps in the regulatory framework. Indeed, the European Commission reports UK complaint data showing that complaints about these new types of products accounted for between three-quarters and four-fifths of all timeshare-related complaints. In response to the Government's formal consultation (URN 10/500) OFT provided figures taken from the Consumer Direct database for the calendar year 2009, relating to consumer complaints/enquiries for Great Britain. It is important to note that complaints to Consumer Direct are unverified and there is no distinction between enquiries and actual complaints, or between calls about products in the UK or abroad. The number of complaints in relation to timeshare resales were 1,706 and the number of complaints in relation to long-term holiday

clubs were 1665. OFT was unable to provide any data indicating the number of complaints in relation to timeshare exchange.

21. Some Member States have also attempted to remedy the regulatory lacunae caused by the Directive's lack of coverage of the new products, by extending its scope. Such unilateral action on the part of Member States is however not sufficient to remedy the problems, since the rules will apply only when the law of the Member State which has extended the scope is the applicable one. For instance, a consumer buying a discount travel membership will only enjoy the rights afforded to buyers of such products by Portuguese legislation, if that is the applicable law. Moreover, unilateral action by Member States further increases fragmentation and legal inconsistency.

Objectives

22. To implement the requirements of the Directive by introducing regulations that will:

- modernise and simplify the coverage of the current UK legislative regime as it applies to timeshare agreements;
- help improve the functioning of the internal market by harmonising the regulatory regime across the EU;
- include adequate and effective means to ensure compliance by traders with the Regulations;
- protect consumers and provide a level playing field for businesses whose choices and business activities are affected by the marketing of products that are economically broadly similar to timeshare, in the sense that there is a substantial payment upfront, followed by payments linked to later actual use of holiday accommodation (on its own or in combination with travel); and
- protect consumers in the timeshare aftermarket

Outcomes

23. A successful set of outcomes would constitute:

- a reduction in the number of consumer complaints relating to the purchase of timeshare, long term holiday products, and timeshare resale and exchange contracts;
- a reduction in the level of consumer detriment relating to the purchase of timeshare, long-term holiday products, and timeshare resale and exchange contracts;
- a more competitive market (due to the removal of rogue traders, unfair competition, and increased consumer confidence)

Options

24. The Directive includes a range of measures to protect business and consumers when entering into timeshare, long-term holiday products, resale and exchange contracts. Measures include:

Timeshare

- to extend existing consumer protection by adjusting the definition so that it no longer refers to agreements relating to "immoveable property" only, but to wider "overnight accommodation" and by reducing the minimum period of agreements caught by the regime from 3 years to 1 year;
- to standardise the length of the cooling-off period, during which the taking of deposits or any payment is banned, at 14 days (the consumer is entitled to withdraw from the contract without giving any reason and at no cost during the cooling off period);
- to clarify and extend the existing information requirements.

Long-term holiday products:

- to introduce substantially the same legislative regime to selling long-term holiday products as is applied to timeshare sales i.e. a 14 day cooling-off period, during which no money may be taken, and specific information requirements in the contract, and in advance (on request), and via regulating

payment, to provide dissatisfied consumers with the opportunity to withdraw from the contract each year.

Resale of timeshare:

- to introduce the ban on taking payment for this type of intermediary/agency activity, until a sale has been completed, or the contract is otherwise terminated;
- to require relevant information to be provided both in the agency contract and in advance of agreeing the contract.

Timeshare exchange schemes

- to make selling membership of a timeshare exchange scheme subject to essentially the same regime as selling a timeshare agreement i.e. a 14 day cooling-off period, during which no money may be taken, and specific information requirements in the contract, and in advance of agreeing the contract.

We have a number of options with regard to transposition of the Directive in the UK.

Option 1 - Introducing new UK regulations and amending the existing UK regulatory regime

25. This option would involve further amendments to the already complex and difficult to understand 1992 Timeshare Act by making new regulations under s.2(2) ECA (revoking those elements of the 1997 regulations and amending orders which are no longer applicable).

Option 2 - Introducing new UK regulations and replacing the existing UK regulatory regime

26. This option would involve repealing the 1992 Timeshare Act and revoking the 1997 regulations and related orders replacing them with an entirely fresh set of regulations under s.2(2) ECA. This would remove the business to business coverage of the old UK Act and provide for a clearer more easy to understand set of regulations (rationale provided at paragraphs 67 to 81). This is our preferred option.

Option 3 - Self Regulation

27. Self regulation is not a viable option at this stage – a ‘summary: analysis and evidence sheet has not been produced’. The RDO Code of Ethics establishes standards of practice, which help to ensure the fairness and propriety with which member companies conduct their business. It applies to all holiday products offered by RDO Members, including products marketed as timeshare, vacation ownership, holiday ownership, and points clubs. The Code includes disclosure requirements that are additional to those provided by the old Directive. However, the Code will not be in a position to resolve consumer problems in this area as it is non-obligatory for non-RDO members. Hence, the voluntary nature of the Code for non-members cannot prevent rogue traders from non compliance with the prescribed rules. Self regulation is not likely to achieve the objectives of ensuring adequate and proportionate protection for consumers and of levelling the competitive playing field between timeshare sales and other long-term holiday product sales as required by Directive 2008/122/EC.

Option 4 - ‘Do nothing’

28. A ‘do nothing’ approach is not a viable option at this stage because the Directive has already been argued at the EU level and the focus is on the most effective form of implementation of the Directive in the UK. The UK is required to introduce measures to comply with Directive 2008/122/EC by 23 February 2011. A ‘do nothing’ approach would leave a gap in consumer protection with respect to timeshare-like products not covered under the current UK regulatory regime, as such the benefits of the Directive would not be realised.

29. It is likely that infraction proceedings would result from any failure to implement the Directive.

Analysis of Options 1 and 2

30. We have identified two regulatory options (Options 1 & 2) for the feasible means of implementation.

31. The majority of the benefits and costs associated with implementing the Directive apply equally to both Option 1 and to Option 2. The benefits and associated costs that would apply equally to either Option 1 or 2, relative to the counterfactual scenario of maintaining the current UK legislative regime, are explored from paragraph 34 to 60.

32. The additional benefits associated with a clearer and simpler UK legislative regime that would result from Option 2 are explored at paragraphs 65 to 80.

33. Net benefits take into account only the additional costs and benefits and do not allow for transfers between parties (for example any displaced sales from other holiday products to timeshare products). Where the costs and benefits cannot be quantified, we note these qualitatively, in keeping with best practice.

Benefits (common to both Options 1 and 2)

Beneficial impact on Consumers

34. Both Option 1 and Option 2 and are likely to lead to a boost in consumer confidence, and an associated increase in sales, for a number of reasons. Options 1 and 2:

- impart a benefit to consumers in terms of being able to make a better informed timeshare purchase decision and possibly a faster one. We are informed by the trade and relevant consumer groups that the current UK regulatory regime and the implementation of the current Directive in Europe, have been substantially successful in improving consumer confidence by discouraging the rogue element which was formerly rife in the sector. We anticipate similar benefits to consumers as the requirements are extended to new products. This is likely because, for example, consumers will have a no-obligation cooling-off period during which they can cancel a purchase contract without penalty or loss. This benefit applies to purchases not only of timeshare but also to the other products covered both within the UK and the EU; and
- impart a benefit to consumers in that they are likely to be frustrated less by the overall purchase process because clearer information for new timeshare products covered by the proposed regulations will be available.

35. Consumers purchasing the new products that would be covered by the proposed regulations - namely long-term holiday products, timeshare exchange schemes, or contracts for resale services - will now be protected with rights. For instance, in addition to the cooling off period, consumers participating in exchange schemes will benefit by being afforded rights and protection when entering these contracts e.g. better information and the fact that any exchange contract will be cancelled if the timeshare contract is cancelled within the cooling-off period. In response to our Consultation, Citizens Advice, OFT and Local Government Regulation all welcome the fact that the new Directive covers a wider range of products than the previous Directive – including timeshares on boats, resales and long-term holiday clubs.

36. It is difficult to measure directly the value of consumer confidence as a result of new products being captured by the regulations. However, we can utilise information on evidence of the extent of consumer detriment to estimate the value that consumers would place if they knew that the new products developed in the marketplace were regulated. The OFT has investigated the extent of consumer detriment in the discount holiday club market. According to the OFT¹², in 2006, there appeared to be five or six holiday discount clubs operating, services being provided from premises, mostly within Spain (in Costa Del Sol and in the Canary Islands). The two big holiday discount clubs operating within the UK have between them five marketing outlets operating within the UK and around twenty marketing outlets in Spain. The OFT's *Research on the Impact of Mass Market Scams (2006)*¹³ identifies 400,000 holiday makers (purchasing long term holiday products both abroad and within the UK) who could be affected, many consumers feeling pressurised into signing up to these products on the spot. This regulation will,

¹²Review of the Timeshare Directive (94/47/EC), a consultation report by The Office of Fair Trading, August 2006, http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft859.pdf.

¹³ *Research on the Impact of Mass Market Scams: a summary of research into the impact of scams on UK consumers*, The Office of Fair Trading, 2006, http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft883.pdf

among other things regulate the sale of long term holiday products, including introducing a 14 day cooling off period, which should significantly reduce the estimated consumer detriment. The estimated consumer detriment amounts to £1.17 billion annually¹⁴.

37. The impact of boosting consumer confidence could be threefold: first, the economic benefit to consumers who have previously been victims of a discount holiday scam can be approximated to the amount of the identified detriment; second, the fact that other purchasers of holiday clubs who have not been subject to fraudulent sales feel more confident about their actual and prospective purchases bears a value as an added benefit; finally, some of those consumers who were deterred from purchasing now feel more confident to do so, and may purchase one and enjoy an associated benefit by doing so.

38. The above analysis of avoided detriment as an approximation to the benefit of higher consumer confidence only includes scams on discount holiday products and does not include scams on timeshare-like products, or resale. According to the European Commission, 81 and 53 complaints were reported for timeshares and timeshare resale respectively for the period between September 2005 and September 2006, in addition to those relating to discount holiday clubs. In addition to reducing detriment relating to discount holiday clubs we would also expect a reduction in detriment with regard to the other types of regulated contract. In response to the Government's formal consultation (URN 10/500) OFT provided figures taken from the Consumer Direct database for the calendar year 2009, relating to consumer complaints/enquiries for Great Britain. It is important to note that complaints to Consumer Direct are unverified and there is no distinction between enquiries and actual complaints, or between calls about products in the UK or abroad. The number of complaints were as follows: Timeshare sales 1,222; Timeshare resale 1,706; and Holiday Clubs 1665. OFT was unable to provide any data on the associated losses detriment or any statistics relating to Timeshare Exchange. The following estimate of benefits therefore relates only to the potential reduction in the £1.17 billion consumer detriment identified by OFT in relation to discount holiday clubs. .

39. In estimating benefits to consumers from increased confidence, dynamic effects must be taken into account. Such effects can potentially arise as the benefits of the proposal are likely to change over time. Implementation of the proposal is likely to provide consumers with a benchmark of business quality (in terms of information provided) such that they would be less likely to trade with businesses who did not provide the information required by the regulations. This increased ability to identify rogue traders would mean that the estimate of £1.17 billion may decrease as consumers become more sophisticated. If at least one of the organisations behind the discount holiday clubs abides by the regulations, the value of this benefit in the second year would be smaller than £1.17 billion and decline as the number of fraudulent sales declines. Equally however, the possible decline in consumer benefit may be offset by an increase in the overall level of timeshare purchases. In the scenario that the two organisations understood to be behind the discount holiday scams comply fully with the regulations once the proposal is implemented, the identified benefit due to higher consumer confidence would be one-off.

40. In estimating the average annual benefit to consumers we have adopted a conservative methodology. We have taken the figure of 80,000¹⁵ UK holiday makers who are likely to fall within the scope of the UK regulations and multiplied that figure by the median consumer detriment figure (related to discount holiday club sales) of £601. This gives us a potential consumer detriment figure of £48 million per annum. In the absence of data relating to buying trends in the market since 2006, for the purposes of the Impact Assessment, we have worked on the assumption that a failure to regulate the UK market would mean that the potential consumer detriment figure would be likely to remain at £48 million per annum over the next ten years. We have then worked on the assumption that if regulations are introduced (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market - so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement can ever be 100 per cent effective and we have also made some allowance for the resourcefulness of rogue traders. Taking all of these factors into account we have estimated an overall effectiveness of between

¹⁴ The OFT commissioned Carol Goldstone Associates, together with GfK NOP to undertake this research. This was a major piece of work that included initial interviews with more than 11,200 people and 1,900 detailed follow-up interviews with people who reported that they had been a victim of a scam, or knew someone who had been a victim, or had been a target of a scam.

¹⁵ This regulation will apply to UK holidaymakers purchasing long-term holiday products in the UK. The OFT estimated 400,000 UK holiday makers could be affected by bogus holiday scams, we also know at least 20% UK timeshare owners own timeshares in the UK. Combining this information, it has been assumed 80,000 UK holiday would benefit from this regulation.

20-50% (35% best estimate) reducing the level of consumer detriment by 10 per cent each year over 10 years i.e. by £17 million in year 1, £20 million in year 2, £23 million in year 3 etc. Applying a further discount of 3.5% results in an estimated average annual benefit to consumers of £27.7 million (constant prices), totalling £233 million over 10 years. We have based our estimate of 20-50% effectiveness on the fact that there is a relatively small number of UK businesses operating in the sector (although they do have the potential to cause considerable consumer detriment due to the nature of the contracts involved). Trading Standards will therefore have relatively few businesses to deal with plus the relatively small number of businesses will also make it easier for BIS to target those businesses when implementing our communication strategy to help raise business awareness of the requirements of the regulations. Another point that should help deliver immediate benefit is the new requirement (for long-term holiday contracts, timeshare resale and timeshare exchange) for a 14 day cooling off period (under the current regime, for these type of contracts, once the consumer has signed there is no chance to withdraw). The specific requirements for the trader to provide pre-contractual information and to provide it in a very prescriptive format and in 'good time' should also help to deliver an immediate benefit as consumers will be in a position to make a more informed decision. Applying the same methodology described above, it has been estimated that as the Directive is implemented across the EU that the total annual benefit to UK consumers from the EU directive would be £162.1 million over ten years (and applying the discount rate of 3.5%) the total benefit to UK consumers of this directive would be £1,375 million. This is based on the assumption 400,000 UK holiday makers could be affected by this Directive i.e. UK holiday makers buying timeshare in Spain for instance, would not be covered by the UK regulation, but would be covered by the Spanish equivalent, hence creating benefits to UK consumers from the EU Directive.

Beneficial impact on businesses

41. As stated in the previous section, a key impact of both Option 1 and Option 2 is to increase overall consumer confidence in purchasing the products covered. This may lead to an increase in total sales. It is pertinent to point out that some of the benefits from higher sales would flow to timeshare companies based outside the UK, as UK consumers are more likely to purchase timeshare products outside the UK. The RDO estimates that about 80% of UK timeshare owners own timeshares outside the UK¹⁶.

42. Moreover, by extending coverage to long-term holiday products, a broader range of timeshare products, and resale, it is likely that a large number of rogue traders will be squeezed out of the market.

43. Finally, a level playing field will be provided for legitimate timeshare businesses as operators of long-term holiday products, timeshare-like products, resale services or exchange scheme will need to comply with the same degree of regulation. Especially in relation to long-term holiday products, developers of timeshare resorts and associated businesses are at a disadvantage relative to discount holiday clubs because they have to offer cooling-off periods and are prohibited from taking deposits. The RDO estimates that there are approximately 100 timeshare developers based in the UK who own and manage resorts and sell in the UK. However, it is likely that many of the resorts are sold out and that many of the timeshare developers are no longer active in sales. Of the estimated 100 UK timeshare developers, the RDO has 7 members which represent approximately 60% of timeshare sales in the UK.¹⁷

44. Some stakeholders (specifically developers) consulted by KPMG (2007)¹⁸ asserted that by including discount clubs under the scope of the regulations there might be negative consequences on sales due to negative image of discount holiday clubs being associated with timeshare products. On the contrary, we feel that by extending the coverage of the regulations to the new products developed in the marketplace, the image of the industry's products is actually likely to improve as such products will be competing on a level playing field. Overall, the increase in consumer confidence is likely to boost industry sales for timeshare products (primary market) and exchange scheme products (secondary market).

45. We have not been able to develop robust, quantitative estimates of these benefits. However, in keeping with best practice it is important to note these qualitatively.

¹⁶ RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

¹⁷ Information provided to BIS in December 2009.

¹⁸ *Timeshare Directive Impact Assessment*, a report prepared for the OTE by KPMG with regard to the potential amendments to the Timeshare Directive (94/47/EC).

46. An increase in total sales of timeshare products in the UK may transfer sales from other holiday products, such as hotel operations, thereby having a possible negative impact on non-timeshare UK businesses. The impact of possible transfers in sales of timeshare products is not taken into account in this analysis because it is difficult to make predictions of the extent of such transfers. Transfers will not have a direct impact on the UK economy, rather distributional impacts on certain industries.

Beneficial impact across the UK

47. A better functioning market for consumers and businesses of timeshare products and resale and exchange schemes may encourage investment in regions of the UK traditionally attracting investment in holiday accommodation. In 2001 the UK timeshare market was predominantly concentrated in England which had 70% of the resorts in the UK (91 resorts in England, 26 in Scotland, and 12 in Wales)¹⁹. So it could be anticipated that by extending the scope of the regulations to cover new products, there could be an increase in the number of timeshare developments and products through increased demand as a result of boosting consumer confidence..

48. Moreover, an expansion of the timeshare market could lead to a higher demand for labour and subsequent job creation in the leisure industry. Across the UK, the second round impact of the proposal would be to increase the number of resort staff and staff in head office locations who need to deal with the administration of the resorts. The OTE 2001 study identified 4,713 employees (other than the 2,490 who were employed in resorts) who were employed by head offices in timeshare organisations. This brought the total number of employees employed in the UK timeshare industry at 7,203. Future employment levels due to the development of the timeshare market may be higher and therefore exert a positive impact to the local economy.

Costs (common to Options 1 and 2)

Cost to businesses

49. There could be a negative consequence on the timeshare market resulting from the introduction of a ban on deposits during the cooling-off period to the new products which are covered by the proposal. Businesses have argued that such a ban dissuades international brand name hotel chains from investing in timeshares. For example, Interval International considers that while the proposals may contribute to enhance consumer confidence and therefore make timeshare a more attractive product, the proposals will not help business growth. Interval International argue that large multi-national groups wishing to invest in the development of timeshare resorts will choose locations outside the EU for their developments given the burdens imposed by the EU regulatory regime. Interval International believe that the cost of extending the ban on deposits to resale, timeshare exchange, and long-term holiday products is likely to be significant but Interval International is unable to provide any quantifiable evidence to support that view. Diamond Resorts believe that whilst the Regulations are unlikely to lead to an expansion of the number of traders involved in the sale of timeshare the proposals will hopefully improve the reputation of the industry and thereby enhance the business operations of the legitimate traders.

50. The Government's formal consultation [URN 10/500] sought to clarify the extent of costs associated with the ban on deposits, however, while industry respondents including Interval International and the Resort Development Organisation suggested there would be added costs, none were able to provide any quantitative estimates of the costs involved. Again, in keeping with best practice, it is important to note these qualitatively.

51. There is an associated negative impact on business as a result of increased administrative costs, particularly in relation to the newly regulated businesses. Administrative costs relate to the preparation of pre-contractual information/contracts for consumers are one-off. Such costs include the translation costs of providing information to foreign consumers of UK timeshares in the language in which the purchaser is a resident. A number of respondents to the formal consultation (URN 10/500) felt that the potential additional costs involved in translating information would be prohibitive to the average developer and as a result many developers may turn away potential clients. However, in respect of timeshare sales, developers are already required to provide information and contracts in different languages depending on the circumstances. Furthermore, it is our view that traders will not necessarily need to keep stocks of documentation in all 24 languages unless they are confident that they will be

¹⁹ OTE Report 2001.

selling to consumers who would choose any one of those languages. When a trader is contacted by a potential buyer, in respect of whom the trader does not hold the documentation in the required language, the trader must make a decision of whether they wish to sell, and therefore translate the relevant documents or not. Our understanding is that most traders are very familiar with the nationalities which are most likely to be attracted by their offers and will stock accordingly.

52. For the calculation of such additional costs, the methodology followed by the Commission was used. Information provided by the RDO was used to estimate the number of timeshare, timeshare resale and timeshare exchange companies. In estimating the cost to business we have worked on the basis that there are 57 timeshare businesses²⁰ (7 of which are RDO members) actively selling in the UK, 8 resale businesses (4 of which are RDO members), and 3 exchange businesses based in the UK (2 of which are RDO members). As a proxy to the average wage of a timeshare industry employee, the average wage for the real estate, renting and business activities sector (that relates to computer and related activities) was used from the 2006 Annual Survey of Hours and Earnings (ASHE)²¹ which have been updated to 2009 prices using the HMT's GDP deflator²². These numbers have then be multiplied by 1.3 to take account of the non-wage labour costs, which includes employer national contributions, pensions provision and other related costs. . Furthermore, the analysis utilised the estimated number of hours that are needed to perform the activities relating to the pre-contractual information obligations. The calculation of administrative costs involves the multiplication of the number of hours needed to perform the required action by one employee by the proxy of the average wage for that sector. This figured is then multiplied by the number of enterprises required to perform this action in each category (timeshare, timeshare exchange and timeshare resale).

53. The calculation comprises of the following elements/assumptions:

- An assumption that the costs involved in designing the information material in each category (timeshare, timeshare exchange and timeshare resale) are approximately equal to the hourly wage paid in the real estate, renting, and business activities sector;
- An estimate of the costs involved in reproducing this material for members in all categories. According to the Commission report, each RDO member has, on average, 964 sales per year. Anecdotal evidence cited in the European Commission's calculations suggest that the cost of printing 1000 copies of a 30-page black-and-white booklet containing text and cover colour is €900. Making the assumption that each company needs 2000 copies of this material per year, there would be a cost of €1,800 for the reproduction of the material per business;
- An estimate of the costs of legal validation of the information (converted the amount used in the European Commission's calculations into GBP); and
- An estimate of the costs involved in translating the pre-contractual information requirements from English into 20 other European languages²³ (converted the amount used in the European Commission's calculations into GBP). This estimate was obtained through an assessment of the EU-level average costs of translating 30 pages of legal/economic information material in the private sector.

54. If businesses pass on such costs to consumers directly (or indirectly through developers of timeshare resorts), this would make the facility less attractive and thus lower sales volumes. KPMG (2007)²⁴ notes that the two major exchange companies it has consulted indicated that they would be strongly opposed to regulation of exchange as timeshare for the aforementioned reason, and stressed that there was no evidence of high number of complaints concerning exchange. However, contact with UK officials suggested less concern on the part of the companies at providing more accurate information for consumers.

²⁰ For the purpose of our cost calculations, we have assumed there are six large timeshare (developer) businesses.

²¹ Go to <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=14630>, then Table 4: Industry, and select Table 4.6a. It is interesting to note that this average wage is higher than that used in the Commission's analysis (when converted in £GBP) for the Pan-European calculation of administrative costs.

²² http://www.hm-treasury.gov.uk/data_gdp_fig.htm - accessed 22 October 2010

²³ It is estimated that 37,000 timeshares in the UK are owned by non-UK consumers. According to the 2001 OTE report, the majority of non-UK consumers owning timeshares in the UK come from countries including, Germany, Switzerland, the Netherlands, and Austria.

²⁴ See footnote 15.

55. Our initial estimate of the additional administrative cost for the industry involved in implementing the proposal amounts to £441,000 (Four hundred and forty-one thousand GBP). This equates to, approximately, £6,300 (six thousand and three hundred GBP) for the average business. It is pertinent to note that this calculation involves the costs imposed on the UK-based RDO members active in selling in the UK plus an estimate of 50 additional timeshare UK based businesses that may be selling in the UK (we are not at this stage able to say how many UK based businesses are actively selling) plus an estimate of 8 resale businesses (4 of which are RDO members), and 3 exchange businesses based in the UK (2 of which are RDO members). The £6,300 figure represents, therefore, in our view a maximum average additional administration cost per business. Based on a calculation of additional administrative costs relating to time requirements to comply with information obligations imposed by the proposal, administrative cost per business amounts to, approximately: £5,400 (five thousand and four hundred GBP) for each small and medium timeshare developer; £18,700 (eighteen thousand and seven hundred GBP) for each large timeshare developer £4,100 (four thousand and one hundred GBP) per resale business; and £4,100 (four thousand and one hundred GBP) per exchange business. Calculation of these costs to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business (our formal consultation seeks further estimates).

56. Albeit the two major discount holiday clubs that operate in Europe have five marketing outlets in the UK, the administrative costs of complying with the regulations will fall on non-UK businesses. As we understand that there are no discount holiday clubs that are UK-based, the total costs to the industry are lower than in the case where some clubs were located in the UK.

"One In, One Out" Rule

57. EU measures are, for the present, excluded from the 'one-in-one-out' rule whereby no new regulation can be brought in without other regulation being removed. Therefore, regulatory savings to compensate for the additional transition cost will not be sought.

Impact on enforcement costs

58. The impact of the uptake of both Option 1 and Option 2, to capture new products under the coverage of consumer protection legislation, will have a twofold impact on enforcement costs. On one hand, it will facilitate the work of Trading Standards as it will set clear and unequivocal enforceable rights and obligations for consumers and business. This is expected to reduce enforcement costs. On the other hand, the fact that Trading Standards will need to monitor a larger market due to the inclusion of new products (resale and exchange) under the regulation of the new Directive, could imply higher enforcement costs. However, according to statistics from the RDO, it is important to point out that the number of resale and exchange businesses that are UK-based and would need to comply with the regulations amount to 8 entities. Respondents to the Government's formal consultation (URN 10/500) including the Association of Chief Trading Standards Officers, Local Government Regulation, OFT and the Trading Standards Institute agreed that the proposed regulations would not result in any additional enforcement costs for Trading Standards and that the inclusion of criminal offences would make it quicker and easier for Trading Standards to enforce the proposed regulations and to remove rogue traders from the sector.

59. The level of local authority enforcement that happens at the moment is unknown. Hence, we have not been able to develop quantitative estimates of enforcement costs. Nevertheless, as the number of complaints received, with regard to timeshares sold within the UK, is small relative to the size of the UK market²⁵, we believe that the current level of enforcement activity is limited. Moreover, there is no minimum level of enforcement activity set out at the EU level in terms of the activity carried out by Trading Standards in order for the UK to meet its obligation to enforce neither the 1992 Act, nor the new

²⁵ The OFT has recorded 81 complaints related to timeshare and 53 complaints related to timeshare resale for the period spanning September 2005 to September 2006. Consumer Direct has recorded 530 complaints related to timeshare and 500 complaints related to timeshare resale during the same period. There is no data on the number of complaints on exchange timeshares available. These figures contrast to the figure of 500,000 UK families are reported to own a timeshare within and outside the UK.

Directive. However the need to enforce the Act within the local authority exists and should the problem become larger (especially in light of the fact that a number of unregulated businesses would be covered in future) the UK would need to ensure that it meets its obligation in terms of effective enforcement of the Directive.

60. It should be acknowledged that much of the enforcement costs will not fall upon the UK Trading Standards. It is estimated that approximately 80,000 UK consumers own timeshares in the UK out of a total of around 500,000 UK consumers who own timeshares worldwide. Hence, much of the enforcement costs will fall upon enforcement agencies of other countries (mainly Spain, Portugal and Malta according to the OTE survey of the European Timeshare Industry in 2001). However, UK based timeshare will require enforcement. The impact of enforcement on Trading Standards will be measured in the Post Implementation Review.

Preferred Option

61. Our preferred option is Option 2 for the reasons set out below. In general, we consider that replacing the current UK legislative regime will make the law a lot clearer and easier for business to comply with, for consumers to understand and for Trading Standards to enforce. A detailed rationale for our preferred option is provided below.

Rationale for Preferred Option

62. The current UK legislative regime consists of the 1992 Act which predates Directive 94/47/EC and which was substantially amended by the 1997 regulations to implement that directive. The Act has been further amended by regulations and an order in 2003. Consequently, the regime is difficult and complicated to understand.

63. Simplification by introducing regulations to replace the current regime would benefit consumers and business. Further amendment of the current regime would add to the already complicated position.

64. The new directive represents a complete revision of directive 94/47/EC, introducing maximum harmonisation to the regulation of the sale of timeshare contracts. It extends the coverage of timeshare contracts and introduces regulation to long-term holiday product contracts (which are not timeshare), timeshare exchange contracts, and contracts covering services which facilitate the sale and purchase by consumers of timeshare contracts and long-term holiday product contracts.

65. The new directive also introduces set formats for the provision of pre-contractual information for consumers in respect of all of the contract types covered, and for a form designed to facilitate the withdrawal by the consumer from a contract within the withdrawal period.

66. While there are similarities between the provisions of the existing regime and how one might envisage some of the new regime being implemented, the differences and new coverage effectively render the bulk of the existing provisions inappropriate and in need of substantial amendment and additions.

The case for not retaining elements of the existing regime which apply beyond the coverage of the new directive.

67. The 1992 Act contains some limited provisions which are not the subject of the new directive. We are satisfied that removing the provisions is justified, in accordance with good regulatory practice and within the vires of s 2(2) ECA.

68. The new directive applies to business to consumer transactions only. Under the Directive a consumer is an individual acting for purposes outside his trade, business, craft or profession. The current 1992 Act applies in some particular respects to transactions where the customer or "offeree" is not such a consumer. For example, the UK regime can in some respects apply to companies and other bodies (and not just individuals) or to individuals where they are acting for business purposes when they are purchasing timeshare agreements.

69. The current regime applies to "business to business" transactions in very restricted circumstances:

- The obligation on operators to provide pre-contractual information applies in relation to any person who requests it whether or not they are consumers (although this information only becomes part of the timeshare agreement where the person in question is a consumer);
- The provisions relating to advertising apply to any advertisements irrespective of the target audience (consumer or non-consumer);
- The right of withdrawal, including the right of withdrawal from related credit agreements, applies to companies or bodies but only where the purchase of timeshare is wholly or partly for leisure purposes (section 1(1)(a)) and the agreement is not entered into in the course of business (section 4).

70. While we are not aware of the reasons for the introduction of these provisions in the 1992 Act, we believe that they have no real value today. If these elements of the current regime were to be of any benefit to non-“consumers” purchasing timeshare, that benefit would appear to lay only in the right to pre-contractual information and the provisions covering advertising.

71. The restrictions on the applicability of the withdrawal rights seem so tight as to exclude any “real world” circumstances where a company or body might be purchasing not in the in the course of its business.

72. Informal consultation with industry stakeholders in the UK tends to confirm our view. They reported that they were aware of only rare occurrences where a non-timeshare related business might purchase a timeshare agreement, for example for the use of employees for leisure purposes. Even these transactions might not benefit from these provisions as it could be argued that these businesses were still purchasing in the course of their business objectives.

73. Other business to business transactions reported by respondents concern timeshare exchange scheme operators, or timeshare points scheme operators buying timeshare in order to increase their portfolio of available properties for use by their customers or members. Again, these are clearly transactions carried out in the course of the operators’ business.

74. Those respondents who undertake these transactions pointed out that the information and advertising provisions added no particular value to their normal business practice of applying due diligence to their purchasing decisions.

75. To the very limited extent that these business to business provisions apply in the UK, in reality they apply in circumstances which do not fit the rationale for providing additional protections in the timeshare sector, i.e. to redress information asymmetries and to provide added and specific protection against unfair, pressure, sales techniques.

76. The business benefits of introducing a simpler and clearer regime in respect of business to consumer transactions are likely to far out-weigh any, unconfirmed and unsubstantiated, benefits from retaining the business to business elements of the current regime. Indeed, the complexity of further amending the existing regime to implement the new directive is likely to add business burdens and costs far in excess of anything which business might gain by retaining these elements. This option would also be likely to add to enforcement costs. Respondents to the Consultation overwhelmingly support our proposals to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations in order to simplify the UK legislative regime for traders and consumers.

Risks

Risk 1

77. There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce.

Mitigating Action – Risk 1

78. Our preferred option – Option 2 – will involve replacing the current UK legislative regime. This will make the law a lot clearer and easier for business to comply with, for consumers to understand and for Trading Standards to enforce. We will also be issuing guidance on the new regime (see below).

Risk 2

79. There is a risk that the removal of the provisions relating to business to business transactions may leave an area of the market unregulated.

Mitigating Action – Risk 2

80. The 1992 Act contains some limited provisions which are not the subject of the new directive. We are satisfied that removing the provisions is justified, in accordance with good regulatory practice and within the vires of s 2(2) ECA. Informal consultation with industry stakeholders in the UK tends to confirm our view.

Risk 3

81. There is a risk that UK businesses will not be sufficiently aware of the requirements of the new regulations in advance of the planned commencement date of February 2011.

Mitigating Action – Risk 3

82. We shall issue guidance on the new regulations and how they are likely to impact on business at least 12 weeks before the new regulations come into force. We will try to make sure that businesses likely to be affected by the regulations, know in advance that guidance will be available 12 weeks before the new regulations come into force. We will seek help from the representative bodies to help shape and disseminate the guidance effectively. The Regulations will be made publicly available and will be sent to key stakeholders in the travel industry.

Enforcement

83. The duties of the proposal would be enforced by local authority Trading Standards and OFT. As analysed previously, implementation of the proposal is expected to entail little additional enforcement cost because of the small number of entities that would be covered by the regulations.

84. Enforcement will be compliant with the Hampton Code, and will be conducted in a fair, open and transparent manner.

Implementation

85. The new regulations will come into force in February 2011. As previously stated, the proposal would be enforced by local authority Trading Standards. We shall issue guidance on the new regulations and how they are likely to impact on business at least 12 weeks before the new regulations come into force.

Monitoring and Evaluation

86. The Commission shall review the Directive and report to the European Parliament and Council by no later than 23 February 2014. The Department for Business, Innovation and Skills will work with Trading Standards to develop an evaluation mechanism for the UK regulations – the Post Implementation Review – will be conducted by the end of 2013 and will feed into the Commission's Review.

Specific Impact Tests

Competition Assessment

87. We do not expect there to be adverse effect on competition in relevant markets (i.e. timeshare products, long-term holiday products, timeshare-like products, or products sold within a resale or exchange scheme). On the contrary, the effect of these measures is likely to improve competitive

conditions in the marketplace by levelling the playing field, and making the new timeshare products subject to the same regulatory regime.

88. The majority of respondents to our formal consultation (URN 10/500) felt that the proposed regulations would be likely to increase the ability of traders to compete. OFT expressed the view that markets work well when there are efficient interactions on both the demand (consumer) side and the supply (firm) side. On the demand side, confident consumers activate competition by making well-informed and well-reasoned decisions which reward those firms who best satisfy their needs. On the supply side, vigorous competition provides firms with incentives to deliver what consumers want as efficiently and innovatively as possible. When both sides function well, a virtuous circle is created between consumers and competition. OFT felt that the proposed regulations should improve the consumer's ability to access and assess key information. This would improve the working of the consumer demand side and should encourage firms to react and improve performance in the supply side. A number of respondents emphasised the importance of effective and uniform enforcement across the EU to ensure that UK traders were not put at a competitive disadvantage to their EU counterparts. Enforcement is a matter for Member States, however, we are aware that during negotiation of the Directive the main market countries, for example Spain and Portugal, were very much in favour of the revision and we might therefore assume that, in implementing, they will be keen to ensure firm enforcement. Ultimately, it would be for the Commission to be satisfied that implementation in each Member State is effective. The Resort Development Organisation considered that the broadening of the proposed regulations to include a wider range of products would automatically lead to enhanced competition on standards, services and quality rather than leading to 'negative' differentiation of products based on circumvention of the regulations, as was the case in the current regime.

Impact on Small Firms

89. In our view small and medium sized enterprises (SMEs) are likely to benefit as much as larger operators from overall improvements in the functioning of the market. There will be some additional administrative costs, particularly in the form of additional translations costs, but we feel that these additional costs are proportionate when balanced against the benefits provided by improved consumer confidence, improved consumer protection and the likely reduction in rogue traders operating in the sector. RDO figures suggest that there are potentially 100 timeshare developers in the UK, although they suggest that less than 10 are actively selling. The fact that the RDO's UK members, which total just 7, account for some 60% of timeshare sales in the UK suggests that many of the remaining businesses are likely to be SMEs.

90. There was broad agreement among respondents to our formal consultation (URN 10/500) on implementation of the Directive, that the proposed regulations were likely to benefit reputable business by limiting the number of rogue traders in the market. However, concerns were expressed that even though disreputable traders were now more likely to be shut down by the enforcement authorities, these traders would still be free to set up again under another name. This is not unique to this sector and is substantially a matter for alert enforcement. Concerns were also expressed that the cost of complying with the translation requirements for pre-contractual and contractual information and the ban on taking advanced payments may deter new businesses from entering the sector. Aside from timeshare resale contracts, the ban on pre-payments means that traders will not receive their payment for a period of just two weeks after the consumer has entered into the contract. Given the overall investment which is required in this sector to be able to produce an attractive product, a two week delay in the payment for individual sales should not jeopardise the participation of properly run businesses. While there may be some upfront costs in relation to translations, as we have commented above (paragraph 55) a business should be able to tailor its stocks to the intended target purchasers. In respect of timeshare resale contracts, pre-payments on the promise of services ultimately not delivered are the chief cause of detriment. In general, payment on the successful performance of a service is the norm and throughout negotiations on the Directive, and since, we have received no convincing evidence that it should not be the norm in this market. Interval International held the view that large multinational groups wishing to invest in the development of timeshare resorts would now choose locations outside the EU for their developments given the burdens imposed by the EU regulatory regime. Alternatively, a number of respondents felt an increase in consumer confidence resulting from the additional protection provided by the proposed Regulations may encourage more businesses into the market.

91. Respondents felt that business would need to plan carefully to ensure compliance with the proposed regulations. Business would be likely to need to take legal advice, instruct translators and adjust their

operational structures, including training staff, to address the new requirements. Changes in regulation almost inevitably lead to additional expenses for business, at least in the short term. However, prospects for this sector suffer considerably due to the activities of a small number of traders who are able to circumvent the current regime or who are not covered by it. If consumer confidence in the products covered by the proposed regulations is to be regained, then transparency and the minimising of risk for consumers is essential. If this sector can deliver an attractive and worthwhile product for consumers, measures to encourage consumer confidence should pay off in the longer-term.

Impact on the Environment

92. Having considered the responses to questions 60 and 61 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations will have any significant impact, either positive or negative, on the environment .

Impact on Human Rights

93. Having considered the responses to question 62 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations raise any human rights issues.

Impact on Race Equality, Disability Equality, Gender Equality, and Age Equality

94. Citizens Advice has analysed the information on its database about clients who have sought advice about the timeshare and long – term holiday product market. On the basis of this analysis, Citizens Advice is satisfied that the proposed regulations will not have any significant impact on equality matters. Other respondents to questions 56 and 57 in our formal consultation (URN 10/500) agreed that there would be no significant impact on equality issues.

Impact on Sustainable Development

95. Having considered the responses to questions 58 and 59 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations will have any significant impact, either positive or negative, on sustainable development issues.

Impact on the Judicial System

96. BIS and the Ministry of Justice are satisfied that the regulations will have a minimal impact of the judicial system. The regulations will not require the introduction of new IT systems, new forms or any new training or guidance for Court staff.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

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. 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.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Article 17 of Directive 2008/122/EC provides that the Commission shall review the Directive and report to the European Parliament and the Council by no later than 23 February 2014. If necessary, the Commission shall make further proposals to adapt the Directive. The Commission will request information from the Member States and the national regulatory bodies. This Impact Assessment states that the UK PIR will be undertaken to feed into the EU's evaluation

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To check that the Regulations are operating as expected; that the benefits to consumers, industry and enforcers set out in this impact assessment have been achieved; and to identify opportunities for further improvement e.g. to update the guidance. To check that costs have not greatly exceeded what we expected in this impact assessment. To validate the costs and benefits and any administrative burdens reductions. To provide information to the Commission for its review of Directive 2008/122/EC planned for 23 February 2014

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Information gathered from business, consumers, the enforcement bodies and other interested parties will be analysed to identify what has worked well and what has worked badly. The data obtained from the information gathered will be brought together in a suitable form to support any recommendations put forward.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The effectiveness of the regulations will be evaluated against the baseline of the current UK legislative regime.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Success criteria will be achievement of the policy objectives and delivery of the benefits identified in the impact assessment. i.e. a reduction in the number of consumer complaints relating to timeshare, long term holiday products, and timeshare resale and exchange contracts; a reduction in consumer detriment related to those types of contract; and a more competitive market (due to the removal of rogue traders and increased consumer confidence).

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

We will agree with the trade associations, consumer representative groups, and the enforcement bodies (Trading Standards) the most effective way to collect data and to monitor information for future policy review.

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