

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

July 2010

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## Introduction

Consultation on implementation of EU Directive 2008/122/EC on Timeshare, Long-term Holiday Products, Resale and Exchange Contracts

The Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC (the Directive) was adopted in February 2009. 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. This consultation document seeks the views of businesses, consumers, enforcement authorities and other interested parties on the proposed, Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the Regulations) which we intend will transpose the Directive into UK law.

This consultation will be of particular interest to traders and consumers who enter into contracts related to timeshare, long-term holiday products, resale, and timeshare exchange. In certain instances the regulating provisions differ according to the type of contract, which are collectively referred to in the Regulations as regulated contracts.

The Regulations apply only to transactions between traders and consumers, and will be enforced by local authority trading standards officers. The Regulations also affect contracts which are linked to the regulated contracts (ancillary contracts).

The Regulations will replace entirely the current regime in the UK by repealing the Timeshare Act and revoking the current Timeshare Regulations.

We welcome views on our proposed implementation and amendment of the current regulation of timeshare in the UK. We also invite comments on our assessment of the impact on business, consumers and the enforcement authorities.

Questions about the policy issues raised in the document can be addressed to Steve Hill, Department for Business Innovation and Skills: Email [steve.hill@bis.gsi.gov.uk](mailto:steve.hill@bis.gsi.gov.uk) ; Tel: 020 7215 3134; Fax: 020 7215 0357

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Respond by: 1 October 2010

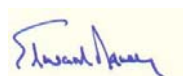
## Foreword

I believe that the provisions of this new Directive will contribute to the very important objectives of boosting consumer confidence in the timeshare industry, and eliminating the operations of rogue traders which bring legitimate traders into disrepute and cause consumers problems. Tourism plays an increasingly important role in the economies of Member States and by setting the conditions for fair trading by introducing common rules across the Community, the Directive should encourage greater growth in timeshare and related services. This will benefit UK citizens in particular when considering whether to purchase a timeshare or other long term holiday product in other Member States.

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.

This consultation will ensure that our approach to implementing the Directive is the right one. We will aim to 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.

I look forward to receiving your views and thank you for taking the time to respond to this consultation.

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

**EDWARD DAVEY – MINISTER FOR CONSUMER AFFAIRS**

## Executive Summary

The new Government is committed to regulating only where absolutely necessary, and to consider alternatives to regulation wherever possible. It is also committed not to gold-plate EU law. The Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive (the Directive) is now European Law which the UK must implement. In order to comply, we propose to introduce UK Regulations which reflect the provisions of the Directive (further details of the other policy options that have been considered are included on page 1 of the Impact Assessment – Annex B). In line with the coalition commitments, we are keen to ensure that we are implementing the requirements of the Directive in the most light touch way possible. We believe that the Directive requires us to transpose it via national legislation, in particular so that we can ensure appropriate enforcement. However, we are keen to receive views on our draft Regulations, in order to see if they can be drafted in a less burdensome way (see Question 37). We would also welcome any alternative views on this approach.

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.

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.

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.

We intend that the new Regulations will extend to the whole of the United Kingdom and will be made with the consent of the Northern Ireland Ministers. The consultation has been agreed with officials in Scotland and Wales.

Your response to the consultation will help to inform our assessment of the impact of the Regulations on business, consumers and the enforcement authorities. They will also help us to ensure that our approach to implementing the Directive is the right one, improving consumer protection in a way that is workable and practical for business.

The Regulations will:

- implement the Directive and replace entirely the current regime in the UK by repealing the Timeshare Act and revoking the current Timeshare Regulations (see notes in relation to regulation 35 on page 9 of the Consultation Document)
- make provisions relating to the advertising of regulated contracts (see notes in relation to regulation 14 on page 14 of the Consultation Document)
- require important key information to be provided in advance of a contract being agreed and in a standardised form (see notes in relation to regulation 12 on page 13 of the Consultation Document)
- make provisions relating to the form and content of the regulated contract (see notes in relation to regulation 15 on page 15 of the Consultation Document)
- make provisions relating to the language of the regulated contract and the pre-contractual information (see notes in relation to regulation 17 and 18 on page 16 of the Consultation Document)
- ban any payment in advance of the completion of the withdrawal period of the regulated contract (see notes in relation to regulation 25 on page 19 of the Consultation Document)
- set out provisions for payment for a long-term holiday product contract by way of yearly instalments (see note in relation to regulation 26 on page 19 of the Consultation Document)
- provide a consumer with a right to withdraw from a regulated contract within a standard 14 day withdrawal period (see notes in relation to regulations 20 and 21 on page 18 of the Consultation Document) and the additional right to withdraw from a long-term holiday product contract when payment of each instalment becomes due.
- provide for the automatic cancellation of a related credit agreement and other ancillary contracts (see notes in relation to regulation 23 on page 18 of the Consultation Document)
- include sanctions and, where appropriate, criminal offences for non compliance. They will also provide for contractual remedies for consumers

- set the penalty for offences to a fine not exceeding the statutory maximum

On the matter of criminal offences it should be noted that we and colleagues in the Ministry of Justice are considering the most appropriate way of meeting our obligation under the Directive to have in place “adequate and effective means to ensure compliance by traders with this directive” (Article 13). In particular it is the Government’s desire not to create or maintain criminal offences where: alternative enforcement options would provide an effective deterrent; the conduct is already an offence under alternative legislation that is to remain in force; or, it is otherwise thought to be unjustified. Those questions in this consultation which relate to offences, penalties and enforcement should therefore be considered against this background and we particularly welcome your views on these elements.

## **How to respond**

When responding please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

The consultation was published on 9 July 2010. The consultation period will run for 12 weeks, and the closing date for responses is 1 October 2010. However, we encourage responses as early as possible to assist us in accelerating the process of considering replies.

A response can be submitted by letter or fax, but preferably by email to:

Email: [steve.hill@bis.gsi.gov.uk](mailto:steve.hill@bis.gsi.gov.uk)

Steve Hill  
BIS  
Consumer and Competition Policy  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 3134  
Fax: 020 7215 0357

It would be helpful if, when responding, you could use a copy of the Consultation Response Form included at Annex D. An electronic version of the [response form](#) is also available.

You do not need to respond to all the questions included in the questionnaire just the ones that are applicable to you or to your organisation.

## **Additional copies**

This consultation can be found at: <http://www.bis.gov.uk/consultations> and is also available from BIS Publications Orderline, ADMAIL 528, London SW1W 8YT, Tel: 0845 015 0010, Fax 0845 015 0020, Minicom: 0845 015 0030. You may make additional copies without seeking permission.

## **Confidentiality and data protection**

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want information, including personal data that you provide, to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals among other things with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not, of itself, be binding on the Department.

## **Help with queries**

Questions about the policy issues raised in the document can be addressed to Steve Hill, Department for Business Innovation and Skills (contact details as above)

If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Sameera de Silva  
Consultation Co-ordinator  
BIS  
Better Regulation Team  
1 Victoria Street  
London SW1H 0ET  
Email: [Sameera.de.silva@bis.gsi.gov.uk](mailto:Sameera.de.silva@bis.gsi.gov.uk)  
Tel: 020 7215 2888  
Fax: 020 7215 0235

A copy of the Government's Code of Practice on Consultation is attached at Annex E.



## The Proposals and Consultation Questions

The new Directive sets a maximum level for harmonising rules across EU states. As such, we are obliged to implement its provisions in national law in a way that accurately reflects, does not exceed, or fall below the requirements of the Directive in relation to the areas covered by it. We have little scope, therefore, as to what we must introduce but it is for us to decide how best this might be achieved in national law.

The following paragraphs outline the main provisions of the Regulations (A copy of the proposed Regulations is attached at Annex A). We would welcome your responses to the questions at the end of each section. There is a form setting out each question at Annex D which you might find useful and which is downloadable in Word format at: [response form](#)

### **Structure of the New Legislation**

#### **Regulation 35**

There is a choice of amending the current regime to implement the Directive or repealing the existing regime and replacing it with implementing regulations. Our preferred option is to repeal the Timeshare Act 1992 in its entirety and to implement the Directive by way of new regulations made under section 2(2) of the European Communities Act 1972.

#### Complexity of the existing regime

The current UK 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 complicated to understand. There are significant advantages to a complete repeal of the existing legislation:

- Simplification by introducing regulations to replace the current regime is likely to benefit consumers and business and to facilitate better enforcement by providing a less complex, more transparent regime. Further amendment of the current regime would add to the already complicated position.
- The 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. While there are similarities between the provisions of the existing regime and how the new regime is 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 intention is to have a comprehensive and effective regulatory regime which is easily enforceable and consistent throughout the Community.

### Business to Business Transactions

The current regime extends beyond business to consumer transactions to cover business to business transactions in limited circumstances.

#### How the existing regime covers business to business transactions

- 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 (as purchasers) but only where the purchase of timeshare is wholly or partly for leisure purposes (Timeshare Act section 1(1)(a)) and the agreement is not entered into in the course of business (Timeshare Act section 4).

Having informally consulted with stakeholders, we believe that these provisions have no real value today. The main benefit to non-“consumers” purchasing timeshare appears to lie only in the right to pre-contractual information and the provisions covering advertising. The restrictions on the applicability of the withdrawal rights seem so narrow as to exclude any “real world” circumstances where a company or body might be purchasing not in the course of its business. Moreover, we understand that it was only on very rare occasions that 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.

Other business to business transactions concern timeshare exchange scheme operators, or timeshare points scheme operators which buy 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. It was noted that the information and advertising provisions added no particular value to their normal business practice of applying due diligence to their purchasing decisions.

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 protection in the timeshare sector, i.e. to redress information asymmetries (the only business customers for timeshare appears to be in the timeshare business themselves) and to provide added and specific

protection for non-business people against unfair, pressure, sales techniques. Accordingly we did not consider it necessary to retain these provisions. The new regime will therefore be as provided for in the Directive.

On this basis, the benefits to businesses in this sector of introducing a simpler and clearer regime in respect of business to consumer transactions are likely to far out-weigh any undetermined benefits from retaining the limited business to business elements of the current regime. Indeed, the complexity of further amending the existing regime to implement the new Directive and retain the business to business coverage would be likely to add to business burdens as they would be presented with an even more complex regulation consisting of more amendments on amendments.

While we have the choice as to whether to retain these provisions within the new implementing Regulations, we are satisfied that removing the protection provided in these circumstances is justified and in accordance with good regulatory practice.

**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?

### **Scope of Application**

#### **Regulations 5 & 6**

Regulations 5 and 6 set out when the Regulations apply to contracts. It is intended that the Regulations should apply where:

- a) the contract is subject to the law of any part of the United Kingdom; or
- b) accommodation in the contract constituting immovable property is situated in an EEA<sup>1</sup> state and the parties are within the jurisdiction of any court of the United Kingdom (e.g. where the consumer or trader are domiciled here); or
- c) the trader in a contract not directly related to immovable property directs his commercial or professional activities to the UK or conducts such activity in the UK and the contract is part of those activities. This is intended to cover the sale of the wider range of timeshare accommodation now available and sales of the new contract types covered by the Directive. It also covers situations where the

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<sup>1</sup> An EEA state is any EU member state and Switzerland, Norway, Iceland and Lichtenstein.

trader may not be based in the UK and any property may not be situated in the UK but the trader is selling to a consumer in the UK. This would apply, for example, to contracts agreed in the UK with traders who are not based in the UK, including beyond the EU.

The Regulations are intended to extend to the whole of the United Kingdom and will be made with the consent of the Northern Ireland Ministers.

**Question 3: Do you have any comments on the application of the Regulations as set out in regulations 5 & 6?**

## **Definitions**

### **Regulations 7 to 10**

Regulations 7 to 10 reproduce the definitions of the contracts covered by the Directive. In respect of regulation 7, the new broader definition of 'Timeshare Contract', it is our view that all types of timeshare system would be caught. For example, timeshare in fixed real properties, timeshare contracts which provide rights to occupy accommodation in a pool of accommodation in any particular timeshare scheme, and timeshare contracts which provide rights to use accommodation irrespective of the mechanism adopted to facilitate that use, for example points systems.

Under the Timeshare Act the definition of timeshare accommodation includes a reference to a person's right to use *or to participate in arrangements under which they may use accommodation*. We do not think that "the right to participate in arrangements under which a person may use accommodation" is substantially different to acquiring the right to use. We have not repeated this wording in our definition of timeshare contract.

**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.**

**Key Information to be Provided in Advance of Agreeing a Contract and the Language(s) in Which it Must be Provided.**

**Regulation 12**

Regulation 12 sets out the requirements for providing the consumer with specific information before a regulated contract is entered into (key information). The key information must be provided in good time before the conclusion of a contract using the relevant standard information form as set out in the Schedules to the Regulations. It must be clear and comprehensible; accurate and in sufficient detail; provided free of charge; and in writing and easily accessible by the consumer.

While there are common elements to the information to be provided across all of the contract types covered, the amount and nature of the remaining key information varies according to the type of contract. The appropriate standard information forms which must be completed are set out in Schedules 1-4 of the draft Regulations. The Schedules reproduce the equivalent annexes to the Directive. There is no scope for amending the format of the standard information forms. This is because they are intended to provide for consistency of approach to the selling of all regulated contracts within the scope of the Regulations and across borders.

Regulation 12 also sets out the requirements as to the language or languages in which the trader must provide the pre-contractual information to the consumer. For example, consumers are entitled to receive the key information in their own language where they are resident in, or a national of an EEA member State, provided the language is an official language of an EEA state.

Regulation 13 sets rules for the completion of the relevant standard information forms.

We are considering whether contravention of regulation 12 (i.e. failure to meet the requirement to provide the consumer with all of the pre-contractual information in the set format) should be subject to a criminal offence, or whether there are alternative effective means of ensuring compliance.

**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.**

## **Marketing and Sales**

### **Regulation 14**

This Regulation sets out rules relating to the marketing and advertising of regulated contracts. Any advertisement must include an indication that the key information required under the regulations can be obtained and where it can be obtained from (see regulation 14(1)).

Where there is a promotion or sales event, a trader must make clear the commercial purpose of any such event on any invitation. This would include, for example, scratch cards requiring the “winner” to collect a prize in person or an invitation to sample a holiday or holiday accommodation when the person is actually being invited to a promotion or sales event. The trader must also make the key information available at the promotion or sales event (see regulation 14(2)).

A trader must not market or sell a timeshare or long term holiday product as an investment. For example there should not be any inference that the cost of the contract would be recoupable at a profit in the future (see regulation 14(3)).

We are considering the appropriate sanctions for regulation 14, including making contravention of any of articles 14(1) to (3) a criminal offence. Should we conclude that contravention of regulations 14(1) to 14(3) should be a criminal offence, we consider it reasonable to include a defence for the trader (which includes anyone acting on his behalf) in relation to regulation 14(1). We consider that regulation 14(1) would cover individuals who, for example, hand out leaflets to tourists. Those traders will not necessarily have been involved with creating the advert and may not even be familiar with the product that is being advertised. This is in contrast to regulations 14(2) and (3) where the trader would be actively marketing a product at a sales event or describing it as an investment. The defence for regulation 14(1), if it were included would be inserted into regulation 14 and would be along the following lines:

*“It is a defence for a trader charged with contravening paragraph (1) to show that at the time when the trader advertised the opportunity to enter into a regulated contract:*

*the trader did not know and had no reasonable cause to suspect that the proposed contract would be a regulated contract, or*

*the trader had reasonable cause to believe that the advertisement complied with the requirements of paragraph (1).”*

While this places the burden of proof on the trader to establish the defence, clearly it would only be the trader that would be in a position to be able to show that they should not be liable for the offence in circumstances where the evidence suggests that they should be liable.

**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.**

### **Form of the Contract**

#### **Regulation 15**

This Regulation sets out conditions which apply to the form of regulated contracts. It prohibits a trader from entering into a non-compliant regulated contract. A copy or copies of a contract must be provided to the consumer at the time of its conclusion.

**Question 12: Do you think that the wording of the requirements in regulation 15 is sufficiently clear? If not, please explain why.**

**Regulation 15(8)** provides that failure by the trader to comply with the contractual requirements would render the regulated contract unenforceable against the consumer. Although the trader cannot enforce the contract under these circumstances, the consumer retains the choice to continue with the contract, despite discovering these irregularities (possibly some time into the contract). We are also considering whether failure to comply with the requirements as to the form of the 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.**

## **Obligations of Trader (in respect of the contract)**

### **Regulation 16**

This sets out what the trader is required to do in respect of the contract before entering into the contract. We are considering whether non-compliance with regard to these requirements should, in addition to rendering the contract unenforceable against the consumer, be a criminal offence, or whether there are any alternatives which could effectively ensure compliance.

**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.**

### **Language of the Contract**

#### **Regulations 17 & 18**

These set out the essential language requirements in respect of the contract; it must be in one of the official languages of a Member State in which the consumer is resident or a national (at the consumer's choice).

In addition we have chosen to implement the option of providing that where the consumer is resident in the UK or the trader carries out sales activities here, the contract must be drawn up in English (in addition to any other language in which it is drawn up).

We have also chosen to implement the option, in relation to a timeshare contract concerning one specific immovable property (flat, apartment, etc), that the trader should 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.

We are considering whether contravention of Regulations 17 and 18 (i.e. failure to provide the contract in the required language(s)) should be the subject of criminal offences or whether there are other means of discouraging non-compliance.

**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.**



## **Cost of Compliance with Regulations 12, 15 and 17**

Our initial assessment of the likely costs and benefits of compliance with our proposals is attached at Annex B. We estimate a total one-off transition cost to business in the UK of £151,000. This figure includes initial estimates of the costs involved in designing and producing copies of the information material for timeshare, timeshare exchange and timeshare resale, and an estimate of the legal validation costs and the translation costs for each UK business. We welcome your input on the likely cost of 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.**

## **Consumers' Right to Withdraw from Contracts**

**Regulations 20 and 21** set out the right of withdrawal and the applicable withdrawal periods.

A consumer has the right to withdraw from any regulated contract at any time on or before the expiry of the withdrawal period at no cost to the consumer. In general the standard withdrawal period of 14 days starts on conclusion of the contract or the date on which the consumer receives the contract in accordance with the requirements of the Regulations (whichever is later).

However, different withdrawal periods apply where a trader has not complied with all the information requirements or the consumer has not been provided with the standard withdrawal form (Schedule 5). Where all of the key information has not been provided the withdrawal period is extended for up to 3 months and fourteen days. In the case that the consumer has not been provided with the standard withdrawal form, in accordance with the regulations, the period is extended to up to one year and fourteen days. These provisions are intended to encourage traders to ensure that they comply with these provisions and to provide consumers with extra time in which to withdraw where the requirements have not been met.

In relation to exchange contracts, special provisions apply. This is necessary to avoid these contracts (which are ancillary contracts and dependent on the consumer owning a timeshare) being subject to consecutive withdrawal periods when they are entered into at the same time as a timeshare contract. Thus only a single withdrawal period (that which applies to the timeshare contract) applies in respect of the exchange contract. Where an exchange contract is sold separately the consumer will benefit from the normal 14 day withdrawal period.

There are also special provisions for withdrawal from long-term holiday product contracts which provide the consumer with an additional annual option to withdraw from the contract within 14 days of receipt of each request for payment in accordance with the payment schedule of annual payments

**Question 18: Do you have any comments on the rights of withdrawal? (regulations 20 and 21)**

### **How Consumers Withdraw from Contracts**

**Regulation 20** sets out the procedure for exercising the right of withdrawal and **Regulation 22** the effect of exercising that right.

**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)**

### **The Effect of Withdrawal on Related Credit Agreements**

**Regulation 23** relates specifically to the effect of withdrawal from a regulated contract on any related credit agreement.

We have not maintained the provisions in the Timeshare Act 1992 relating to payment of interest and credit on cancellation of a related credit agreement. This is because the Directive provides that a related credit agreement should be terminated automatically at no cost to the consumer if they decide to exercise their right of withdrawal from a regulated contract.

We are considering whether contravention of the requirement for the trader to inform the third party credit provider of a consumer's withdrawal should be subject to a criminal offence.

**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**

## **Ban on Advance Payments and Payment Regime for Long Term Holiday Products**

### **Regulations 25 and 26**

Regulations 25 and 26 set out different regimes for payment depending on the type of contract. In respect of all contracts it amounts to a prohibition on a trader (including any third party acting on his behalf) receiving any payment by any means in advance of the completion of the relevant period within which the consumer is entitled to withdraw from the contract (see above).

In respect of resale contracts, accepting any payment before either a sale is completed for the consumer or the contract is otherwise terminated (as provided for in the contract) is banned. The objective is to end the practice of asking for payments in advance of a sale e.g. for marketing costs, or as a standard consultation fee. Consumers will therefore pay for services rendered rather than services promised and will be able to recognise when a trader is not abiding by the regulations.

Under the proposal a trader who contravenes regulation 25(3) to 25(5) (i.e. accepts any form of payment before they are entitled to under the regulations) would be guilty of a criminal offence.

In relation to long-term holiday product contracts a staggered system of payment by equal annual instalments is required, with a right for the consumer to withdraw as each payment becomes due. This is intended to put these, usually long –term contracts on a similar footing to any other continuing contract for providing services where the consumer may, where they are dissatisfied with a service, choose not to continue with the contract, for example for the supply of gas or electricity.

We are considering whether non-compliance with the provisions in regulations 26(1) to 26(4) should be the subject of a criminal offence.

**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.**

### **Criminal offences and Penalties**

We recognise the importance of flexibility and proportionality in the regulatory response and we are currently considering the appropriate level of deterrence in relation to all of the areas identified above. The current UK Timeshare regime includes a series of criminal penalties for breach of requirements which provide deterrents to contravention. It will be appreciated that the range of contracts in the new regime is wider than under the current regime, however, the nature of the breaches are the same and the potential damage to individual consumers is very similar and can amount to the loss of several thousand pounds.

Nevertheless, in line with Government policy, we are considering whether we should maintain existing or introduce new criminal offences.

We have proposed criminal offences for contravention of regulation 25 (ban on accepting payment during the withdrawal period) and 33 (obstruction of investigating officers).

We are considering whether criminal sanctions are also appropriate for the following:

- Failure to meet the requirement to provide the consumer with all of the pre-contractual information in the set format (regulation 12)
- Failure to comply with the rules relating to marketing and sales (regulation 14)
- Failure to comply with the requirements as to the form of the contract (regulation 15)
- Failure to comply with the obligations to provide a copy of the contract and specifically draw attention to specified matters (regulation 16)
- Failure to provide the contract in the required EEA languages (regulation 17)
- Failure to provide a translation of the contract (regulation 18)
- Failure to notify a third party providing credit in relation to the timeshare agreement that the consumer has withdrawn (regulation 23)

- Failure to comply with the payment schedule requirements in relation to long-term holiday product contracts (regulation 26)

We are considering the extent to which any of this conduct would be covered by offences that already exist in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Those regulations prohibit unfair commercial practices and include a range of criminal offences (with penalties of fines up to £5,000 and possible imprisonment). It is, for example, an offence to engage in a commercial practice that is a “misleading omission”. This would include where the trader has omitted material information and that would be likely to cause a consumer to take a different decision when considering whether, how and on what terms to purchase a product.

Where conduct is not considered to be sufficiently covered by the CPRs we are considering whether it is appropriate to maintain the offences currently in the Timeshare Act and/or to create new ones where necessary or whether alternative enforcement mechanisms would be appropriate.

We would be grateful for your views.

**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.**

We are also aware of the potential benefits of making available to the enforcement authorities civil sanctions as an alternative to criminal prosecution where they are appropriate and available. In March this year, BIS published a consultation (URN 10/706) on a pilot programme in which it is proposed that civil sanctions will be applied to a limited range of consumer law (The Consumer Protection from Unfair Trading Regulations and the General Product Safety Regulations). Under the pilot it is proposed that powers will be allocated to a number of enforcers who have demonstrated their compliance with Hampton principles<sup>2</sup>. The pilot will trial the use of civil sanction powers as an alternative, where appropriate and proportionate, to criminal prosecution, in respect of consumer law enforcement with a view to establishing best practice and establishing policies and processes both in respect of applying the sanctions and to secure consumer compensation that have the confidence of both business and regulators.

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<sup>2</sup> The Hampton principles are listed at: <http://www.berr.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system>

Assuming the trial goes ahead, when completed it is intended to review the scope of the application of the powers with reference to the enforcement of other legislation. The new timeshare regime will be included in that review. From a policy perspective we think the application of the undertakings and stop notices provisions in the civil sanctions regime could well prove effective in this context. However, until best practice has been established and accepted by business, regulators, and the Government, current policy is that these civil sanction powers are not generally available to the enforcement community at present.

**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.**

#### **Other provisions relating to offences**

**Regulation 28** sets out the possible culpability of individuals where a body corporate has committed any offence which may be included in the Regulations and **regulation 29** provides for culpability of a third party where an offence is attributable to the actions of that third person even though the offence was committed by a trader, not the third person. It does not remove liability from the trader in these circumstances.

If we do include criminal offences as described above, those offences will be subject to regulations 28 and 29.

**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.**

#### **Due Diligence Defence**

**Regulation 30** provides for the “standard” due diligence defence which we consider appropriate to apply to strict liability offences. This currently applies to the proposed criminal offence under regulation 25 (ban on advance payments). If any of the further criminal offences described above are added we think that the due diligence offence should also apply to them.

**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.**

**Powers of Enforcement Authorities (Trading Standards Officers and, in Northern Ireland, the Department of Enterprise, Trade and Investment)**

**Regulation 32** sets out powers of investigation.

**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?

**Regulation 33** provides that intentional obstruction of an enforcement officer acting in pursuance of his functions is an offence. We consider it necessary to include this provision given the nature of the investigations necessary to determine whether the Regulations have been breached.

**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:

- 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).

**Right to Civil Action**

**Regulation 34** outlines the circumstances in which the proposed Regulations provide civil rights to action for non-compliance (in addition to the criminal offences).

**Question 35:** Are the provisions in Regulation 34, relating to civil proceedings clear? If not, please provide reasons.

## **Repeals, Amendments and Consequential Changes to Other Legislation.**

**Regulation 35** also gives effect to the amendment, transitional and savings provisions and other repeals listed in the relevant Schedules (6-8)

In respect of the amendments relating to the Enterprise Act 2002 and subsequent Orders made under that Act the effect is to bring within the application of that Act the new Directive and the new Regulations in place of the old regime. This means that enforcement action in relation to the new regulations will be subject to the regime set out in the Act, including the necessity to inform the Office of Fair Trading of intended prosecutions and their outcomes, and the application of the provisions on disclosure of information by public authorities. It also means that injunctive action may be taken against traders by general enforcers (for example Trading Standards or the Office of Fair Trading) or those bodies designated under the Act for this purpose where transgressions of the Directive/implementing Regulations are considered to harm the collective interests of consumers.

We have provided for appropriate savings in respect of any community infringements, domestic infringements and offences under the Timeshare Act 1992 committed up to the point that the new regulations take effect so that they continue to be actionable under the old regime.

**Question 36: Do you agree with the amendments relating to enforcement and saving of the implementing Regulations? If not, please explain.**

## **General Comments on the draft Regulations**

**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?**

## **Questions Relating to our Impact Assessment**

### **Benefit to Consumers**

Our initial assessment of the likely benefits of compliance with our proposals is attached at Annex B. We would like to develop our estimate of the likely quantifiable benefit to UK consumers (i.e. the reduction in the number of complaints and the associated reduction in losses/detriment) that is likely to result from our proposals. To do this we need to form a clearer idea of the current level of complaints and the associated losses/consumer detriment.



Our initial estimate, of an average annual benefit of £161.8 million, relates only to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products (mostly accrued abroad). We would also expect a reduction in consumer detriment related to timeshare resale and timeshare exchange and an additional benefit to business in the form of an increase in sales resulting from increased consumer confidence. We welcome your input on the likely benefits of our proposals.

**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

### **Impact of the Regulations on Competition**

Your responses to the following questions will help us to develop (a) our assessment of the impact of the proposed Regulations on competition i.e. the process of rivalry between firms seeking to win customers' business and (b) our estimate of the likely costs and benefits of the proposed Regulations (our initial impact assessment is included at Annex B).

**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, 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.**

The sale of long-term holiday products other than timeshare is to be regulated for the first time under the Regulations. The approach in the Directive to the sale of these types of products reflects the general view that current practices in this market operate to the disbenefit of the consumer (we are not aware of businesses selling these types of products which do not seek to take unfair advantage of consumers). The Directive, and the Regulations, set a framework within which it is believed legitimate businesses in the sector will be able to operate fairly and in the absence of unfair competition from businesses which seek to take unfair advantage of consumers.

**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.**

### **Impact of the Regulations on Small and Medium Sized Firms**

The vitality of the small business sector is critical to the Government’s drive to raise UK levels of productivity, and to strengthen the economic performance of all the regions. Your responses will help us to develop our assessment of the impact of the proposed Regulations on 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.**

**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

#### **Impact of the Regulations on Race, Disability, Gender and Age**

**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.

#### **Impact of the Regulations on Sustainable Development and the Environment**

The UK is committed to ‘doing more with less’, which means improving resource productivity, helping boost business competitiveness and decoupling economic growth and environmental degradation. The goal of sustainable development is to meet the needs of the present without compromising the ability of future generations to meet their own needs. Your responses to the following questions will help us to develop our assessment of the impact of the proposed Regulations on sustainable development and the environment.

**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.

## **Impact of the Regulations on Human Rights**

Your response to the following question will help us to assess the Human Rights impact of the proposed Regulations.

**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.

## **What happens next?**

The results of this consultation exercise, including a summary of the views expressed, will be published within 12 weeks of the closing date of the consultation. See BIS website <http://www.bis.gov.uk/consultations>

The summary will also be available in hard copy form on request.

Subject to Ministerial approval it is anticipated that new Regulations will be made and laid before Parliament using the negative Resolution Procedure by December 2010, with a planned commencement date of 23 February 2011.

Once made the Regulations will be published and may be viewed on the OPSI (Office of Public Sector Information) website at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm)

## Annex A: Draft Regulations

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### STATUTORY INSTRUMENTS

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**2010 No. [draft of 9/06/10]**

## **CONSUMER PROTECTION**

### **The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010**

*Made* - - - - - \*\*\*\*\*

*Laid before Parliament* \*\*\*\*\*

*Coming into force* - - - [23 February 2011]

The Secretary of State being a Minister designated<sup>(3)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(4)</sup> in relation to measures relating to consumer protection, in exercise of the powers conferred upon him by that section makes the following Regulations.

#### CHAPTER 1

#### INTRODUCTION

##### **Citation and Commencement**

1.—(1) These Regulations may be cited as the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

(2) They come into force on 23 February 2011.

##### **Interpretation**

2.—(1) In these Regulations—

“ancillary contract”, in relation to a timeshare contract or long-term holiday product contract, has the meaning given in regulation 22(6);

“consumer” has the meaning given in regulation [11];

“enforcement authority” has the meaning given in regulation [31(1)];

“exchange contract” has the meaning given in regulation [10(1)];

“holiday accommodation contract” has the meaning given in regulation [4];

“key information”, in relation to a regulated contract, has the meaning given in regulation [12(3)];

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<sup>(3)</sup> S.I.1993/2661.

<sup>(4)</sup> 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51).

“long term holiday product contract” has the meaning given in regulation [8];  
“regulated contract” has the meaning given in regulation [3];  
“related credit agreement”, in relation to a regulated contract, has the meaning given in regulation [23(5)];  
“resale contract” has the meaning given in regulation [9];  
“standard information form” has the meaning given in regulation [13(2)];  
“timeshare contract” has the meaning given in regulation [7(1)];  
“timeshare exchange system” has the meaning given in regulation [10(2)];  
“trader” has the meaning given in regulation [11].

## CHAPTER 2

### KEY DEFINITIONS

#### **Regulated contract**

- 3.** A “regulated contract” means a contract which—
- (a) is a holiday accommodation contract (see regulation 4) to which these Regulations apply (see regulation 5), but
  - (b) is not an excluded arrangement (see regulation 6).

#### **Holiday accommodation contracts**

- 4.—**(1) A “holiday accommodation contract” means—
- (a) a timeshare contract,
  - (b) a long term holiday product contract,
  - (c) a resale contract, or
  - (d) an exchange contract.
- (2) See Regulations 7 to 10 for definitions of these types of contract.

#### **Holiday accommodation contracts to which these Regulations apply**

- 5.—**(1) These Regulations apply to a holiday accommodation contract which falls within any of paragraphs (2), (3) and (5).
- (2) A holiday accommodation contract falls within this paragraph if it is to any extent governed by the law of—
- (a) the United Kingdom, or
  - (b) a part of the United Kingdom.
- (3) A holiday accommodation contract falls within this paragraph if—
- (a) the relevant accommodation is in immovable property situated in an EEA State, and
  - (b) the parties to the contract are to any extent subject to the jurisdiction of a court in the United Kingdom in relation to the contract.
- (4) In paragraph (3)(a) “relevant accommodation” means—
- (a) the accommodation which is the subject of the contract, or
  - (b) in a case where a pool of accommodation is the subject of the contract, some or all of the accommodation in that pool.
- (5) A holiday accommodation contract falls within this paragraph if—
- (a) it is not directly related to immovable property,
  - (b) the trader carries on commercial or professional activities in the United Kingdom or by any means directs such activities to the United Kingdom, and



- (c) the contract falls within the scope of those activities.

### **Excluded arrangements**

**6.**—(1) An “excluded arrangement” is an arrangement to which any of the following paragraphs apply.

(2) This paragraph applies to multiple reservations of accommodation to the extent that they do not imply rights and obligations beyond those arising from the separate reservations.

(3) This paragraph applies to a lease agreement which provides for a single continuous period of occupation.

(4) This paragraph applies to a loyalty scheme, operating within a group of hotels, which provides consumers with discounts on future stays at hotels within the group where—

- (a) no consideration is payable in respect of membership of the scheme, and
- (b) consideration payable by consumers for accommodation at hotels within the group is not payable primarily for the purpose of obtaining discounts or other benefits in respect of accommodation.

(5) This paragraph applies to contracts falling within the scope of the Package Travel, Package Holidays and Package Tours Regulations 1992<sup>(5)</sup>.

### **Timeshare contracts**

**7.**—(1) A “timeshare contract” means a contract between a trader and a consumer—

- (a) under which the consumer, for consideration, acquires the right to use overnight accommodation for more than one period of occupation, and
- (b) which has a duration of more than one year, or contains provision allowing for the contract to be renewed or extended so that it has a duration of more than one year.

(2) The reference to “accommodation” in paragraph (1) includes a reference to accommodation within a pool of accommodation to which the accommodation belongs.

### **Long term holiday product contracts**

**8.**—(1) A “long term holiday product contract” means a contract between a trader and a consumer—

- (a) the main effect of which is that the consumer, for consideration, acquires the right to obtain discounts or other benefits in respect of accommodation, and
- (b) which has a duration of more than one year, or contains provision allowing for the contract to be renewed or extended so that it has a duration of more than one year.

(2) The contract may also make provision for the consumer to acquire other services.

### **Resale contracts**

**9.** A “resale contract” means a contract between a trader and a consumer under which the trader, for consideration, assists the consumer in buying or selling rights under a timeshare contract or under a long term holiday product contract.

### **Exchange contracts**

**10.**—(1) An “exchange contract” means a contract between—

- (a) a consumer who is also party to a timeshare contract, and
- (b) a trader,

under which the consumer, for consideration, joins a timeshare exchange system.

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<sup>(5)</sup> S.I. 1992/3288 as amended by S.I. 1995/1208

(2) A “timeshare exchange system” is a system which allows a consumer access to overnight accommodation or other services in exchange for giving other persons temporary access to the benefits deriving from the consumer’s timeshare contract.

### **“Consumer” and “trader”**

**11.**—(1) In these Regulations—

“consumer” means an individual who is not acting for the purposes of a trade, business, craft or profession;

“trader” means—

- (a) a person acting for purposes relating to that person’s trade, business, craft or profession, or
- (b) anyone acting in the name of, or on behalf of, a person falling within paragraph (a).

(2) Any reference in these Regulations to a consumer or trader in relation to a regulated contract, means—

- (a) in the case of a contract which has been entered into, the consumer or trader who is party to the contract, or
- (b) in the case of a proposed contract, the consumer and trader who will be parties to the contract, once it is entered into.

## **CHAPTER 3**

### **PRE-CONTRACTUAL MATTERS**

#### **Key information**

**12.**—(1) Before entering into a regulated contract, the trader must—

- (a) give the consumer the key information in relation to the contract, and
  - (b) ensure that the information meets the requirements of this regulation.
- (2) The trader must comply with paragraph (1) in good time before entering into the contract.

(3) The “key information” in relation to a contract means—

- (a) the information required by Part 1 of the standard information form (see regulation 13(2)),
- (b) the information set out in Part 2 of that form, and
- (c) any additional information required by Part 3 of that form.

(4) The information must be—

- (a) clear, comprehensible and accurate, and
- (b) sufficient to enable the consumer to make an informed decision about whether or not to enter into the contract.

(5) The information must be provided—

- (a) in the standard information form, completed in accordance with regulation 13(1),
- (b) in writing,
- (c) in a manner which is easily accessible to the consumer.

(6) If the consumer is resident in, or a national of, an EEA State, the information must be provided in a language which is an official language of an EEA State and which is—

- (a) the language, or one of the languages, of the EEA State in which the consumer is resident, or
- (b) the language, or one of the languages, of the EEA State of which the consumer is a national.

(7) If there are two or more languages in which the information could be provided under paragraph (6), and the consumer nominates one of them, the information must be provided in the nominated language.

(8) If the consumer does not make any nomination, the information may be provided in any one of those languages.

**Possible sanctions, including making contravention of this regulation a criminal offence, are being considered. Please see the consultation document.**

### **Completing the standard information form**

**13.**—(1) The standard information form must be completed as follows—

- (a) the information required by Part 1 of the form must be inserted in the appropriate places (without deleting the existing text in that Part),
- (b) Part 2 of the form must not be amended,
- (c) the information required by Part 3 of the form must be inserted in the appropriate places in accordance with any applicable notes (which may then be deleted).

(2) The “standard information form” means the form set out in—

- (a) Schedule 1, in the case of a timeshare contract;
- (b) Schedule 2, in the case of a long-term holiday product contract;
- (c) Schedule 3, in the case of a resale contract, and
- (d) Schedule 4, in the case of an exchange contract.

### **Marketing and sales**

**14.**—(1) A trader must not advertise an opportunity to enter into a regulated contract unless the advertisement—

- (a) contains a reference to the key information in relation to the proposed regulated contract, and
- (b) specifies how that information may be obtained.

(2) A trader must not offer an opportunity to enter into a regulated contract to a consumer at a promotion or sales event unless—

- (a) the invitation to the event clearly indicates the commercial purpose and nature of the event, and
- (b) the key information in relation to the proposed regulated contract is made available to the consumer during the event.

(3) A trader must not market or sell a proposed timeshare contract or long term holiday product contract as an investment if the proposed contract would be a regulated contract.

(4) The references to key information in paragraphs (1) and (2) are references to key information which meets the requirements of regulation 12(4) to (7).

**Possible sanctions, including making contravention of paragraphs (1) to (3) of this regulation a criminal offence, are being considered. Please see the consultation document.**

## **CHAPTER 4**

### **REGULATED CONTRACT: FORMALITIES**

#### **Form of contract**

**15.**—(1) A trader must not enter into a regulated contract unless the contract complies with the requirements of this regulation.

(2) The contract must be in writing and include—

- (a) the identity, place of residence and signature of each of the parties;
  - (b) the date and place of conclusion of the contract.
- (3) The contract must set out the key information in relation to the contract which was provided to the consumer under regulation 12.
- (4) That information must be set out—
- (a) as terms of the contract, and
  - (b) with no changes, other than permitted changes.
- (5) “Permitted changes” means changes to the key information which were communicated to the consumer in writing before the conclusion of the contract and which—
- (a) were expressly agreed between the trader and the consumer, or
  - (b) resulted from unusual and unforeseeable circumstances beyond the trader’s control, the consequences of which could not have been avoided even if all due care had been exercised.
- (6) Any permitted changes must be expressly mentioned in the contract.
- (7) The contract must include the standard withdrawal form set out in Schedule 5.
- (8) If a trader contravenes paragraph (1) the contract is unenforceable against the consumer.

**Possible sanctions in addition to paragraph (8), including making contravention of paragraph (1) of this regulation a criminal offence, are being considered. Please see the consultation document.**

### **Obligations of trader**

- 16.**—(1) Before entering into a regulated contract, a trader must comply with paragraphs (2) to (4).
- (2) The trader must draw the attention of the consumer to the following matters—
- (a) the right of withdrawal under the contract (see regulation 20);
  - (b) the length of the withdrawal period (see regulation 21);
  - (c) the prohibition on advance consideration during the withdrawal period (see regulation 25).
- (3) The trader must obtain the signature of the consumer in relation to each section of the contract dealing with those matters.
- (4) When a trader and consumer enter into a regulated contract, the trader must provide the consumer with a copy of the contract at the time the contract is concluded.
- (5) If a trader fails to comply with any of paragraphs (2) to (4) the contract is unenforceable against the consumer.

**Possible sanctions in addition to paragraph (5), including making contravention of paragraphs (2) to (4) of this regulation a criminal offence, are being considered. Please see the consultation document.**

### **Language of the contract**

- 17.**—(1) A trader must not enter into a regulated contract unless it complies with the requirements of this regulation, so far as applicable.
- (2) If the consumer is resident in, or a national of, an EEA State, the contract must be drawn up in a language which is an official language of an EEA State and which is—
- (a) the language, or one of the languages, of the EEA State in which the consumer is resident,
- or

(b) the language, or one of the languages, of the EEA State of which the consumer is a national.

(3) If there are two or more languages in which the contract could be drawn up under paragraph (2), and the consumer nominates one of them, the contract must be drawn up in the nominated language.

(4) If the consumer does not make any nomination, the contract may be drawn up in any one of those languages.

(5) The contract must be drawn up in English (in addition to any other language in which it is drawn up) if—

(a) the consumer is resident in the United Kingdom, or

(b) the trader carries on sales activities in the United Kingdom,

and the contract would not, apart from this paragraph, be drawn up in English.

**Possible sanctions, including making contravention of paragraph (1) a criminal offence, are being considered. Please see the consultation document.**

### **Translation of contract**

**18.**—(1) This regulation applies to a regulated contract if—

(a) it is a timeshare contract, and

(b) the subject of the contract is specific immovable property situated in an EEA State.

(2) The trader must not enter into the contract unless the trader has provided the consumer with a certified translation of the contract in the language, or one of the languages, of that State.

(3) The language of the translation must be an official language of an EEA State.

(4) Paragraphs (2) and (3) do not apply if the contract is drawn up in a language in which the translation is required or permitted to be made.

(5) A “certified translation” means a translation which is certified to be accurate by a person authorised to make or verify translations for the purposes of court proceedings.

**Possible sanctions, including making contravention of paragraphs (2) or (3) a criminal offence, are being considered. Please see the consultation document.**

### **Protection of consumer**

**19.** A term contained in a regulated contract is void to the extent that it is inconsistent with a provision for the protection of the consumer contained in these Regulations.

## **CHAPTER 5**

### **TERMINATION OF REGULATED CONTRACTS**

#### **Rights of withdrawal**

**20.**—(1) A consumer may withdraw from a regulated contract by sending the trader a notice of withdrawal during the withdrawal period.

(2) The consumer does not have to give any reason for the withdrawal.

(3) The consumer may (but need not) use the standard withdrawal form included in the contract under regulation 15(7) as the notice of withdrawal.

## **The withdrawal period**

**21.**—(1) The withdrawal period for a regulated contract—

- (a) begins on the start date, and
- (b) ends on the date which is 14 days after the start date, subject to the following provisions.

(2) The start date is the later of—

- (a) the date of conclusion of the contract, and
- (b) the date on which the consumer receives a copy of the contract.

(3) Paragraph (4) applies if a standard withdrawal form is not included in the contract in accordance with regulation 15(7).

(4) The withdrawal period ends—

- (a) on the date which is one year and 14 days after the start date, or
- (b) in a case where the standard withdrawal form is provided to the consumer within the period of one year beginning on the start date, on the date which is 14 days after the day on which the consumer receives the form.

(5) Paragraph (6) applies if the key information in relation to the contract is not provided to the consumer in accordance with regulation 12.

(6) The withdrawal period ends—

- (a) on the date which is three months and 14 days after the start date, or
- (b) in a case where the key information in relation to the contract is provided to the consumer within the period of three months beginning on the start date in accordance with the requirements in regulation 12(4) to (7), on the date which is 14 days after the day on which the consumer receives the information.

(7) In a case where both paragraphs (4) and (6) apply, the withdrawal period ends on the later of the dates determined by those paragraphs.

(8) Paragraph (9) applies in a case where a timeshare contract and a related exchange contract are entered into at the same time.

(9) The withdrawal period for both contracts is to be the one which would apply to the timeshare contract under this regulation.

(10) For the purposes of paragraph (8), an exchange contract is related to a timeshare contract if the exchange contract gives other persons access to benefits under the timeshare contract under a timeshare exchange system (see regulation 10(2)).

## **Effect of exercising right of withdrawal**

**22.**—(1) This regulation applies if a consumer withdraws from a regulated contract by sending a notice of withdrawal to the trader under regulation 20.

(2) The following obligations of the parties are terminated with effect from the date the consumer sends the notice of withdrawal—

- (a) their obligations under the regulated contract, and
- (b) if the regulated contract is a timeshare contract or a long-term holiday product contract, their obligations under any ancillary contract.

(3) The reference to obligations in paragraph (2) includes, in the case of a long term holiday product contract, an obligation to pay any penalty or further instalments of the payment schedule (see regulation 26).

(4) The consumer is not liable for any costs or charges—

- (a) in respect of the regulated contract, or
- (b) if the regulated contract is a timeshare contract or a long-term holiday product contract, in respect of any ancillary contract.

(5) The reference to costs and charges in paragraph (3) includes any costs or charges corresponding to services provided under a contract before withdrawal.

(6) “Ancillary contract”, in relation to a timeshare contract or long-term holiday product contract (“the main contract”), means a contract under which the consumer acquires services which are related to the main contract and which are provided by—

- (a) the trader, or
- (b) a third party on the basis of an arrangement between the third party and the trader.

(7) An exchange contract which is related to a timeshare contract (see regulation 21(10)), is an ancillary contract in relation to the timeshare contract for the purposes of paragraph (6).

#### **Automatic termination of credit agreement**

**23.**—(1) This regulation applies if a consumer withdraws from a regulated contract by sending a notice of withdrawal to the trader under regulation 20.

(2) Any related credit agreement is automatically terminated at no cost to the consumer.

(3) If the trader is not also the creditor under the related credit agreement, the trader must, on receipt of the notice of withdrawal, without delay inform the creditor that the notice has been received.

(4) A credit agreement is related to a regulated contract if it is an agreement under which credit which fully or partly covers any payment under the regulated contract is granted to the consumer by—

- (a) the trader, or
- (b) a third party on the basis of an arrangement between the third party and the trader.

**Possible sanctions, including making contravention of paragraph (3) a criminal offence, are being considered. Please see the consultation document.**

#### **Termination of long-term holiday product contracts**

**24.**—(1) A consumer who is party to a long-term holiday product contract may terminate the contract in accordance with this regulation without incurring any penalty.

(2) The consumer may terminate the contract by giving notice of termination to the trader within a period of 14 days beginning with any day on which the consumer receives a request for payment of an instalment under regulation 26(4).

(3) The right to terminate the contract under this regulation does not affect any other right available to the consumer to terminate or withdraw from the contract.

## **CHAPTER 6**

### **PAYMENTS**

#### **Advance consideration**

**25.**—(1) This regulation makes provision about when consideration may be accepted in relation to regulated contracts.

(2) Paragraph (3) applies in relation to a timeshare contract, long-term holiday product contract or exchange contract.

(3) The trader must not accept any consideration from the consumer before the end of the withdrawal period in relation to the contract (see regulation 21).

(4) Paragraph (5) applies in relation to a resale contract, the subject of which is rights under a timeshare contract or long-term holiday product contract.

(5) The trader must not accept any consideration from the consumer before—

- (a) the sale of those rights takes place, or

- (b) the contract is otherwise terminated.
- (6) For the purposes of this regulation “consideration” includes any of the following—
  - (a) payments,
  - (b) guarantees,
  - (c) reservations of money on account,
  - (d) acknowledgements of debt.
- (7) A trader who contravenes paragraph (3) or (5) commits an offence.

#### **Payment schedule: long-term holiday product contracts**

**26.—**(1) A trader must not accept any payment in respect of a long-term holiday product contract unless the payment is made in accordance with a schedule which complies with the requirements of this regulation.

(2) The schedule must provide for all payments under the contract (including any membership fee) to be divided into yearly instalments of equal value, taking into account the duration of the contract.

(3) The schedule must be prepared by the trader and provided to the consumer.

(4) The trader must send a request for payment in writing to the consumer at least 14 days before a payment of an instalment becomes due under the schedule.

**Possible sanctions, including making contravention of paragraph (1) or (4) a criminal offence, are being considered. Please see the consultation document.**

## **CHAPTER 7**

### **OFFENCES: PENALTIES ETC**

**As drafted, regulations 27 to 30 would apply to the offence in regulation 25(7). Other offences to which Regulations 27 to 30 would also apply are under consideration. Please see the consultation document.**

#### **Penalties for offences**

**27.** A person guilty of an offence under [the preceding provisions] of these Regulations is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

#### **Offences committed by bodies of persons**

**28.—**(1) Paragraph (2) applies where an offence under these Regulations committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the officer’s part.

(2) The officer (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In paragraphs (1) and (2) each reference to an officer of the body corporate includes a reference to—

- (a) a director, manager, secretary or other similar officer;
- (b) a person purporting to act as a director, manager, secretary or other similar officer;
- (c) in a case where the affairs of the body are managed by its members, a member.



(4) Paragraph (5) applies where an offence under these Regulations committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on that partner's part.

(5) The partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In paragraphs (4) and (5) each reference to a partner includes a reference to a person purporting to act as a partner.

### **Offences due to the default of another person**

**29.**—(1) This regulation applies where a person (“X”)—

- (a) commits an offence under **[the preceding provisions]** of these Regulations, or
- (b) would have committed such an offence but for a defence under regulation 30 (due diligence),

and the commission of the offence, or what would have been an offence but for the defence under regulation 30, is due to the act or default of another person (“Y”).

(2) Y is guilty of the offence (subject to regulation 30), whether or not Y is a trader.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2), whether or not proceedings are taken against X.

### **Due diligence defence**

**30.**—(1) 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.

(2) This is subject to the following provisions of this regulation.

(3) Paragraph (4) applies where in proceedings against any person (“the defendant”) for such an offence the defence provided by paragraph (1) involves an allegation that the commission of the offence was due to—

- (a) the act or default of another, or
- (b) reliance on information given by another.

(4) The defendant is not, without the leave of the court, entitled to rely on the defence unless the defendant has served a notice under paragraph (5) on the person bringing the proceedings no later than the day which is 8 days before—

- (a) the hearing of the proceedings or,
- (b) in Scotland, the diet of the trial.

(5) A notice under this paragraph must give such information identifying or assisting in the identification of the person who committed the act or default, or gave the information, as is in the possession of the defendant at the time the notice is served.

(6) A person is not entitled to rely on the defence provided by paragraph (1) by reason of reliance on information supplied by another, unless the person shows that it was reasonable, in all the circumstances to have relied on the information having regard in particular to—

- (a) the steps which the person took, and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) whether the person had any reason not to believe the information.

## CHAPTER 8

### ENFORCEMENT

#### **Enforcement authorities**

**31.**—(1) “Enforcement authority” means—

- (a) a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985<sup>(6)</sup>);
- (b) the Department of Enterprise Trade and Investment in Northern Ireland.

(2) An enforcement authority in Great Britain must enforce these Regulations within its area.

(3) The enforcement authority in Northern Ireland must enforce these Regulations within Northern Ireland.

(4) Nothing in this regulation authorises any enforcement authority to bring proceedings in Scotland for an offence under these Regulations.

#### **Powers of officers**

**32.**—(1) Paragraph (2) applies if a duly authorised officer of an enforcement authority has reasonable cause to suspect that an offence under the preceding provisions of these Regulations has been committed.

(2) The officer may, for the purpose of ascertaining whether the offence has been committed, require a trader to produce any document relating to the trader’s business and take copies of it or of any entry in it.

(3) If such an officer has reason to believe that any documents may be required as evidence in proceedings for such an offence, the officer may seize and detain them and must, if the officer does so, inform the person from whom they are seized.

(4) The powers in paragraphs (2) and (3) may only be exercised by an officer at a reasonable hour.

(5) In this regulation “document” includes information recorded in any form.

(6) The reference in paragraph (2) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(7) Nothing in this regulation is to be construed as requiring a person to answer any question or give any information if to do so might incriminate that person.

(8) Nothing in this regulation gives any power to an officer of an enforcement authority to require any person to produce, or to seize from another person, a document to which paragraph (9) applies.

(9) This paragraph applies to any document which the other person would be entitled to refuse to produce—

- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
- (b) (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(10) In paragraph (9) “communications” means—

- (a) communications between a professional legal adviser and his or her client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

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<sup>(6)</sup> 1985 c. 72: section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19) and by paragraph 144 of Schedule 13 to the Local Government (Scotland) Act 1994 (c. 34).

## **Obstruction of authorised officers**

**33.**—(1) A person commits an offence if the person—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of these Regulations,
- (b) intentionally fails to comply with any requirement properly made of the person by such an officer under regulation 32,
- (c) without reasonable cause fails to give such an officer any other assistance or information which the officer may reasonably require of the person for the purpose of the officer's functions under these Regulations.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) A person commits an offence if the person, in giving information to an officer of an enforcement authority who is acting in pursuance of these Regulations—

- (a) makes a statement which the person knows to be false in a material particular, or
- (b) recklessly makes a statement which is false in a material particular.

(4) A person guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale, or
- (b) on conviction on indictment, to a fine.

## **Civil proceedings**

**34.**—(1) The obligation to comply with regulation 12(1) is a duty owed by the trader who proposes to enter into a regulated contract to any person with whom the trader is required to provide with information under that provision.

(2) The obligation to comply with Regulations 15(1), 16(1), 17(1) and 18(2) is, in each case, a duty owed by the trader who enters into a regulated contract to the consumer.

(3) The obligation to comply with regulation 23(3) is a duty owed by the trader who enters into a regulated contract to the creditor under a related credit agreement.

(4) A contravention of any of the obligations mentioned in paragraphs (1) to (3) is to be actionable accordingly.

(5) Liability by virtue of paragraphs (1) to (3) is not to be limited or excluded by any contractual term, by any notice or by any other provision.

## **CHAPTER 9**

### **GENERAL**

## **Repeals, amendments and transitional and savings provisions**

**35.**—(1) The Timeshare Act 1992<sup>(7)</sup> is repealed.

(2) The following are revoked—

- (a) The Timeshare Regulations 1997<sup>(8)</sup>,
  - (b) The Timeshare Act 1992 (Amendment) Regulations 2003<sup>(9)</sup>.
- (3) Schedule 6 (which contains amendments) has effect.
- (4) Schedule 7 (which contains savings provision) has effect.
- (5) Schedule 8 (which contains repeals and revocations) has effect.

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<sup>(7)</sup> 1992 c. 35

<sup>(8)</sup> S.I. 1997/1081 as amended by S.I. 2003/1398

<sup>(9)</sup> S.I. 2003/1922

## SCHEDULE 1

### Standard Information form for Timeshare contracts

#### Part 1

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product (e.g. description of the immovable property):  Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:  Date on which the consumer may start to exercise the contractual right:  If the contract concerns a specific property under construction, date when the accommodation and services/facilities will be completed/available:
Price to be paid by the consumer for acquiring the right(s):  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual fees, other recurrent fees, special levies, local taxes):
A summary of key services available to the consumer (e.g. electricity, water, maintenance, refuse collection) and an indication of the amount to be paid by the consumer for such services:  A summary of facilities available to the consumer (e.g. swimming pool or sauna):  Are these facilities included in the costs indicated above?  If not, specify what is included and what has to be paid for:
Is it possible to join an exchange scheme?  If yes, specify the name of the exchange scheme:  Indication of costs for membership/exchange:
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

## Part 2

### General information:

- The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later.
- During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.
- The consumer shall not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.

Signature of the consumer:

## Part 3

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

### 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- conditions governing the exercise of the right which is the subject of the contract within the territory of the Member States(s) in which the property or properties concerned are situated and information on whether those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled,
- where the contract provides rights to occupy accommodation to be selected from a pool of accommodation, information on restrictions on the consumer's ability to use any accommodation in the pool at any time.

### 2. INFORMATION ON THE PROPERTIES

- where the contract concerns a specific immovable property, an accurate and detailed description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities,
- the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions,
- where applicable, the common facilities, such as swimming pool, sauna, etc., to which the consumer has or may have access and under what conditions.

### 3. ADDITIONAL REQUIREMENTS FOR ACCOMMODATION UNDER CONSTRUCTION (where applicable)

- the state of completion of the accommodation and of the services rendering the accommodation fully operational (gas, electricity, water and telephone connections) and any facilities to which the consumer will have access,
- the deadline for completion of the accommodation and of the services rendering it fully operational (gas, electricity, water and telephone connections) and a reasonable estimate of the deadline for the completion of any facilities to which the consumer will have access,
- the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,
- a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

#### 4. INFORMATION ON THE COSTS

- an accurate and appropriate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumer and how and when such costs may be increased; the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs),
- where applicable, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation.

#### 5. INFORMATION ON TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

#### 6. ADDITIONAL INFORMATION

- information on how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues,
- information on whether or not it is possible to join a system for the resale of the contractual rights, information about the relevant system and an indication of costs related to resale through this system,
- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

## SCHEDULE 2

### Standard Information Form for Long-Term Holiday Product Contracts

#### Part 1

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product:  Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:  Date on which the consumer may start to exercise the contractual right:
Price to be paid by the consumer for acquiring the right(s), including any recurring costs the consumer can expect to incur resulting from the right to obtain access to the accommodation, travel and any related products or services as specified:  The staggered payment schedule setting out equal amounts of instalments of this price for each year of the length of the contract and the dates on which they are due to be paid:  After year 1, subsequent amounts may be adjusted to ensure that the real value of those instalments is maintained, for instance to take account of inflation.  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual membership fees):
A summary of key services available to the consumer (e.g. discounted hotel stays and flights):  Are they included in the costs indicated above?  If not, specify what is included and what has to be paid for (e.g. three-night stay included in annual membership fee, all other accommodation must be paid for separately):
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

#### Part 2

General information:  -The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later.  - During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the
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trader, but also to third parties.

- The consumer has the right to terminate the contact without incurring any penalty by giving notice to the trader within 14 calendar days of receiving the request for payment for each annual instalment.
- The consumer shall not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.

Signature of the consumer:

### Part 3

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

#### 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- an appropriate and correct description of discounts available for future bookings, illustrated by a set of examples of recent offers,
- information on the restrictions on the consumer's ability to use the rights, such as limited availability or offers provided on a first-come-first-served basis, time limits on particular promotions and special discounts.

#### 2. INFORMATION ON THE TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination;
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

#### 3. ADDITIONAL INFORMATION

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:



# SCHEDULE 3

## Standard Information Form for Resale Contracts

### Part 1

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the services (e.g marketing):
Duration of the contract:
Price to be paid by the consumer for acquiring the services:  Outline of additional obligatory costs imposed under the contract, type of costs and indication of amounts (e.g. local taxes, notary fees, cost of advertising):.
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

### Part 2

<p>General information:</p> <ul style="list-style-type: none"><li>- The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later.</li><li>- Any advance payment by the consumer is prohibited until the actual sale has taken place or resale contract otherwise is terminated. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.</li><li>- The consumer shall not bear any costs or obligations other than those specified in the contract.</li><li>- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.</li></ul> <p>Signature of the consumer:</p>
---

### Part 3

<p>Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:</p> <ul style="list-style-type: none"><li>- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination,</li><li>- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,</li><li>- where applicable, the possibility for out-of-court dispute resolution.</li></ul>
---

Acknowledgement of receipt of information:

Signature of the consumer:

## SCHEDULE 4

### Standard Information Form for Exchange Contracts

#### Part 1

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product:
Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:
Date on which the consumer may start to exercise the contractual right:
Price to be paid by the consumer for the exchange membership fees:
Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. renewal fees, other recurrent fees, special levies, local taxes):
A summary of key services available to the consumer:
Are they included in the costs indicated above?
If not, specify what is included and what has to be paid for (type of costs and indication of amounts; e.g. an estimate of the price to be paid for individual exchange transactions, including any additional charges):
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

#### Part 2

General information:
- The consumer has the right to withdraw from this contract without giving any reason within 14 days from the conclusion of the contract or receipt of the contract if that takes place later. In cases where the exchange contract is offered together with and at the same time as the timeshare contract, only a single withdrawal period shall apply to both contracts.
- During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.
- The consumer shall not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by the law other than

the law of the Member State in which the consumer is resident or is habitually and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or habitually domiciled.

Signature of the consumer:

### Part 3

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

#### 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- explanation of how the exchange system works; the possibilities and modalities for exchange,; an indication of the value allotted to the consumer's timeshare in the exchange system and a set of examples of concrete exchange possibilities,

- an indication of the number of resorts available and the number of members in the exchange system, including any limitations on the availability of particular accommodation selected by the consumer, for example, as a result of peak periods of demand, the potential need to book a long time in advance, and indications of any restrictions on the choice resulting from the timeshare rights deposited into the exchange system by the consumer.

#### 2. INFORMATION ON THE PROPERTIES

- a brief and appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities; description of where the consumer can obtain further information.

#### 3. INFORMATION ON THE COSTS

- information on the obligation on the trader to provide details before an exchange is arranged, in respect of each proposed exchange, of any additional charges for which the consumer is liable in respect of the exchange.

#### 4. INFORMATION ON THE TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination;

- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

#### 5. ADDITIONAL INFORMATION

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,

- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

## SCHEDULE 5

### Separate Standard Withdrawal Form to facilitate the Right of Withdrawal

<p style="text-align: center;">Right of withdrawal</p> <p>The consumer has the right to withdraw from this contract within 14 days without giving any reason.</p> <p>The right of withdrawal starts from.....(to be filled in by the trader before providing the form to the consumer).</p> <p>Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 calendar days.</p> <p>To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below by using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.</p> <p>Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.</p> <p>In addition to the right of withdrawal, national contract law rules may provide for consumer rights, e.g. to terminate the contract in case of omission of information.</p> <p style="text-align: center;">Ban on advance payment</p> <p>During the withdrawal period any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicitly acknowledgement of debt, etc.</p> <p>It includes not only payment to the trader, but also to third parties.</p>
<p style="text-align: center;">Notice of withdrawal</p> <ul style="list-style-type: none"><li>- To (Name and address of the trader) (*):</li><li>- I/We (**) hereby give notice that I/We (**) withdraw from the contract,</li><li>- Date of conclusion of contract (*):</li><li>- Name(s) of consumer(s) (***):</li><li>- Address(es) of consumer(s) (***):</li><li>- Signature(s) of consumer(s) (only if this form is notified on paper) (***):</li><li>- Date (***):</li></ul> <p>(*) To be filled in by the trader before providing the form to the consumer. (**) Delete as appropriate.</p>

Acknowledgement of receipt of information:

Signature of the consumer:

## SCHEDULE 6

### Amendments

#### Local Government Finance Act 1988

1.—(1) The Local Government Finance Act 1988<sup>(10)</sup> is amended as follows.

(2) In section 66(2E) for the words from “timeshare accommodation” to the end substitute “overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

#### Criminal Justice and Police Act 2001

2.—(1) The Criminal Justice and Police Act 2001(a) is amended as follows.

(2) In section 65 (meaning of “legal privilege”)—

(a) in subsection (6)—

(i) for “sub-paragraph (2) of paragraph 3 of Schedule 2 to the Timeshare Act 1992” substitute “regulation 32(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/X)”;

(ii) for “sub-paragraph (4) of that paragraph” substitute “regulation 32(8) of those Regulations”;

(b) for subsection (9)(c) substitute—

“(c) regulation 32(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

(3) In section 66 (general interpretation of Part 2)—

(a) omit subsection (4)(m);

(b) after subsection (4)(r) insert—

“(s) regulation 32 of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/X) (powers of officers of enforcement authorities).”

(4) In Part 1 of Schedule 1 (powers to which section 50 applies)—

(a) omit paragraph 56;

(b) after paragraph 73M insert—

#### “73N Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/X)

The power of seizure conferred by regulation 32(3) of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (SI 2010/X) (powers of officers of enforcement authorities).”

(5) In paragraph 20 of Part 2 of Schedule 2 (minor and consequential amendments) omit “and paragraph 3(1)(b) of Schedule 2 to the Timeshare Act 1992”.

#### Enterprise Act 2002

3.—(1) The Enterprise Act 2002<sup>(11)</sup> is amended as follows.

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<sup>(10)</sup> c. 41

- (2) In Part 1 of Schedule 13 (listed Directives and Regulations)—
- (a) omit paragraph 6 (Directive 94/47/EC concerning timeshare contracts);
- (b) after paragraph 9D insert—

“9E. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.”

- (3) In Schedule 14 (specified functions) omit “Timeshare Act 1992.”
- (4) In Schedule 15 (enactments conferring functions) omit “Timeshare Act 1992.”

### **Regulatory Enforcement and Sanctions Act 2008**

- 4.—(1) The Regulatory Enforcement and Sanctions Act 2008<sup>(12)</sup> is amended as follows.
- (2) In Schedule 3 omit “Timeshare Act 1992”.
- (3) In Schedule 6 omit “Timeshare Act 1992”.

### **Consumer Credit (Agreements) Regulations 1983**

- 5.—(1) The Consumer Credit (Agreements) Regulations 1983<sup>(13)</sup> are amended as follows.
- (2) For paragraph 23 in Schedule 1 substitute—

“23. Agreements that cannot be cancelled by the debtor under the Act, the Financial Services (Distance Marketing) Regulations 2004 or the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.	(3) A statement that the debtor has no right to cancel the agreement under the Consumer Credit Act 1994, the Financial Services (Distance Marketing) Regulations 2004 or the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”
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### **Consumer Protection (Distance Selling) Regulations 2000**

- 6.—(1) The Consumer Protection (Distance Selling) Regulations 2000<sup>(14)</sup> are amended as follows.
- (2) For regulation 6(1) substitute “(1) Regulations 7 to 20 shall not apply to a contract which is a regulated contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

### **Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

- 7.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(15)</sup> is amended as follows.
- (2) For article 61(4)(d) (regulated mortgage contracts) substitute—
  - “(d) “timeshare accommodation” means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

<sup>(11)</sup> 2002 c. 40; paragraph 7A was inserted by regulation 22(2)(b) of S.I. 2006/3363 and paragraph 11 was substituted by paragraph 19 of the Schedule to S.I. 2005/2759.

<sup>(12)</sup> 2008 c.13

<sup>(13)</sup> S.I. 1983/1553, amended by S.I.2004/1482; there are other amending instruments but none is relevant to these Regulations.

<sup>(14)</sup> S.I.2000/2334, amended by S.I. 2004/2095 and S.I. 2005/689.

<sup>(15)</sup> S.I. 2001/544, as amended by SI 2001.3544, S.I. 2005/2114, SI 2006/2383 and S.I. 2009/1342; there are other amending instruments but none is relevant to these Regulations.

(3) For article 63J(4)(b)<sup>(16)</sup> (entering into and administering regulated sale and rent back agreements), but not the “and” immediately following it, substitute—

“(b) “timeshare accommodation” means overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010;”.

### **Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001**

**8.**—(1) The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001<sup>(17)</sup> is amended as follows.

(2) In article 2—

(a) after the definition of “individual pension account” insert—

“long-term holiday product contract” has the meaning given by regulation [8] of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010;” and

(b) for the definition of “timeshare rights” substitute—

“timeshare contract” has the meaning given by regulation [7] of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

(3) In the Schedule for paragraph 13 substitute—

#### **“13. Timeshare and long-term holiday product schemes**

Arrangements do not amount to a collective investment scheme if the rights or interests of the participants are rights under a timeshare contract or a long-term holiday product contract.”

### **Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003**

**9.** In the Schedule to the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003<sup>(18)</sup> (listed Directives)—

(a) omit the entry for Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis<sup>(19)</sup>;

(b) at the appropriate place, insert—

“Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts	Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010”.
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### **Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003**

**10.**—(1) In the Schedule to the Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003<sup>(20)</sup> the table is amended as follows.

(2) Omit the entry for the Timeshare Act 1992.

(3) At the appropriate place, insert—

“Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010	All offences under those Regulations”.
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<sup>(16)</sup> Article 63B was inserted by SI 2006/2382.

<sup>(17)</sup> S.I. 2001/1062, to which there are amendments not relevant to these Regulations.

<sup>(18)</sup> S.I. 2003/1374, amended by S.I. 2004/2095; there are other amending instruments but none is relevant to these Regulations.

<sup>(19)</sup> O.J. L 280, 29.10.1994, p. 83.

<sup>(20)</sup> S.I. 2003/1376, to which there are amendments not relevant to these Regulations.

### **Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003**

11. In Part 1 of the Schedule to the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003<sup>(21)</sup> (specified acts or omissions) omit the entry for the Timeshare Act 1992.

### **Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003**

12.—(1) The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003<sup>(22)</sup> is amended as follows.

(2) In Schedule 3 at the appropriate place insert “Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

(3) In Schedule 4 at the appropriate place insert “Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.”

### **Financial Services (Distance Marketing) Regulations 2004**

13.—(1) The Financial Services (Distance Marketing) Regulations 2004<sup>(23)</sup> are amended as follows.

(2) For regulation 11(f) substitute “(f) a credit agreement cancelled under regulation [23] of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (automatic termination of credit agreement);”

### **Legislative and Regulatory Reform (Regulatory Functions) Order 2007**

14.—(1) The Legislative and Regulatory Reform (Regulatory Functions) Order 2007<sup>(24)</sup> is amended as follows.

(2) In Part 3 of the Schedule under the heading “Consumer and business protection” omit “Timeshare Act 1992”.

(3) At the appropriate place in Part 3 of the Schedule under that heading insert “Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010”.

### **Coordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009**

15.—(1) The Coordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009<sup>(25)</sup> is amended as follows.

(2) In Part 1 of Schedule 1 omit “Timeshare Act 1992”.

## **Schedule 7**

### **Transitional and Savings Provisions**

### **Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003**

1.—(1) Despite paragraph 9(a) of Schedule 6, an act or omission to which paragraph (2) applies is to continue to be a Community infringement under section 212 of the Enterprise Act 2002.

(2) This paragraph applies to an act or omission which immediately before the date on which these Regulations comes into force is a Community infringement under section 212 of the Enterprise Act 2002 by contravening the provisions of—

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<sup>(21)</sup> S.I. 2003/1593.

<sup>(22)</sup> S.I. 2003/1400, relevant amending instruments are S.I.2005/1803, 2006/1057

<sup>(23)</sup> S.I. 2004/2095 to which there amendments not relevant to these Regulations

<sup>(24)</sup> S.I. 2007/3544.

<sup>(25)</sup> S.I. 2009/669



- (a) Directive 94/47/EC of the European Parliament and of the Council of 26th October 1994 on the protection of purchasers in respect of certain contracts relating to the purchase of the right to use immovable properties on a timeshare basis; or
- (b) the Timeshare Act 1992 (not including its application to timeshare accommodation in caravans).

**Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution, Specified Enactments, Revocation and Transitional Provision) Order 2003**

2. Despite paragraph 10(2) of Schedule 6, section 230 of the Enterprise Act 2002 is to continue to apply in relation to an intention by a local weights and measures authority in England and Wales to start proceedings for an offence under the provisions of the Timeshare Act 1992.

**Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003**

3.—(1) Paragraph (2) applies in relation to an act or omission which, immediately before the date on which these Regulations come into force, is a domestic infringement under section 211 of the Enterprise Act 2002 in respect of the provisions of the Timeshare Act 1992.

(2) Despite paragraph 11 of Schedule 6, the act or omission is to continue to be a domestic infringement under section 211 of the Enterprise Act 2002.

**Disclosure of information**

4.—(1) This paragraph applies in relation to information which, immediately before the date on which these Regulations come into force, was subject to the provisions of any enactment which permitted the disclosure of information for the purposes of any function under, or proceedings brought under or by virtue of the Timeshare Act 1992.

(2) Despite the repeal of such provisions by these Regulations, such disclosure is to continue to be permitted.

## Schedule 8

### Repeals and Revocations

#### PART 1

##### Repeals

Short title	Chapter	Extent of repeal.
Timeshare Act 1992	c. 35	The whole Act.
Criminal Justice and Police Act 2001	c. 16	Section 66(4)(m). In Part 1 of Schedule 1 (powers to which section 50 applies), paragraph 56. In Part 2 of Schedule 2 (minor and consequential amendments), in paragraph 20 the words ““and paragraph 3(1)(b) of Schedule 2 to the Timeshare Act 1992””.
Enterprise Act 2002	c.40	In Schedule 13, paragraph 6. In Schedule 14, the words “Timeshare Act 1992”. In Schedule 15, the words “Timeshare Act 1992”.
Regulatory Enforcement and Sanctions Act 2008	c.13	In Schedule 3, the words “Timeshare Act 1992”. In Schedule 4, the words “Timeshare Act

		1992”.
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## PART 2

### Revocations

Title	Reference	Extent of revocation
The Timeshare Regulations 1997	S.I. 1997/1081	The entire Regulations.
Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003	S.I. 2003/1374	In the Schedule the entry for Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.
Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecutions, Specified Enactments, Revocation and Transitional Provision) Order 2003	S.I. 2003/1376	In the Schedule the entry for the Timeshare Act 1992.
Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003	S.I. 2003/1593	In the Schedule the entry for the Timeshare Act 1992.
The Timeshare Act 1992 (Amendment) Regulations 2003	S.I. 2003/1922	The entire Regulations.
Legislative and Regulatory Reform (Regulatory Functions) Order 2007	S.I. 2007/3544	In Part 3 of the Schedule the words “Timeshare Act 1992”.
Coordination of Regulatory Enforcement (Regulatory Functions in Scotland and Northern Ireland) Order 2009	S.I. 2009/669	In Part 1 of the Schedule the words “Timeshare Act 1992”.

## Annex B: Consultation Stage Impact Assessment Form

Consultation On Implementation Of Eu Directive 2008/122/Ec On Timeshare, Long-Term Holiday Products, Resale And Exchange Contracts

<b>Title:</b> <b>Impact Assessment of the proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011</b> <b>Lead department or agency:</b> BIS <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0007
	<b>Date:</b> 09/07/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Kevin Davis 020 7215 0329

### Summary: Intervention and Options

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

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. 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.

#### What are the policy objectives and the intended effects?

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) remove the competitive disadvantage for timeshare by introducing a level playing field for timeshare sales and other long term holiday sales, providing greater certainty for consumers. .

#### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

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. 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. Option 3, 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, a 'do nothing' approach is not a viable option at this stage as the Directive has already been agreed and the UK has obligations to comply with Directive 2008/122/EC by 23 February 2011. It likely that the infraction proceedings would result from any failure to implement the Directive (further details at Page 12)..

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
02/2014

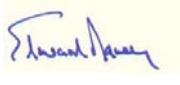
**Are there arrangements in place that will allow a systematic collection of**

No

monitoring information for future policy review?	
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**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.***

Signed by the responsible Minister:  ..... Date: 9 July 2010.....

# 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: £1,373

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	£0.151			£0.151

#### 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 £1,200; and an estimate of the legal validation costs and the translation costs for each UK business (formal consultation seeks further estimates)

#### 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. Cost of enforcement by Trading Standards. 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 (our formal consultation seeks further estimates).

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			£161.8	£1,373

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

The average annual benefit figure of £161.8 million relates only to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products. We would also expect a reduction in 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 (our formal consultation seeks further estimates).

#### 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 positive impact in terms of output and employment in the UK (we have sought further views in our consultation).

Key assumptions/sensitivities/risks	Discount rate (%)
-------------------------------------	-------------------

3.5%

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. 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)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: -0.15	No

## 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		
What is the annual change in enforcement cost (£m)?			tbc		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: n/a		Non-traded:
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
<b>Statutory equality duties</b> <sup>26</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	22
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	21
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	21
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	22
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	22
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	22
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	22
Justice system <a href="#">Justice Impact Test guidance</a>	No	22
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	22
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	22

<sup>26</sup> 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: £1,373

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	£0.151			£0.151

#### 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 £1,200; and an estimate of the legal validation costs and the translation costs for each UK business (our formal consultation seeks further estimates).

#### 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. Cost of enforcement by Trading Standards. The cost of enforcement under Option 2 is likely to be lower than Option 1 as removal of the business to business provisions would make the law simpler to interpret (our formal consultation seeks further views).

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			£161.8	£1,373

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

The average annual benefit figure of £161.8 million relates only to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products. We would also expect a reduction in 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 (our formal consultation seeks further estimates).

#### 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 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.

#### Key assumptions/sensitivities/risks

#### Discount rate (%)

3.5%

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 can ever be 100 per cent effective. There is a risk that the removal of the provisions relating to business to business transactions may leave an area of the market unregulated. 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)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB: 0	AB savings: 0	Net: 0	Policy cost savings: -0.15	No

## 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		
What is the annual change in enforcement cost (£m)?			tbc		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: n/a		Non-traded: 
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
<b>Statutory equality duties</b> <sup>27</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	22
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	21
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	21
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	22
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	22
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	22
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	22
Justice system <a href="#">Justice Impact Test guidance</a>	No	22
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	22
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	22

<sup>27</sup> 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

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### 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
2	BIS consultation (URN 10/500) on the proposed 'Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011'
3	Resort Development Organisation Report, 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts'
4	Review of the Timeshare Directive (94/47/EC), a consultation report by the Office of Fair Trading, August 2006

## Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

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

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	£0.151									
<b>Annual recurring cost</b>										
<b>Total annual costs</b>	£0.151									
<b>Transition benefits</b>	£120	£132	£143	£153	£161	£169	£176	£183	£188	£194
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>	£120	£132	£143	£153	£161	£169	£176	£183	£188	£194

\* 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. 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, 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 owners<sup>28</sup>. It is estimated that 590,000 UK families own a timeshare, and around 472,000 (80% of them) own timeshares outside the UK<sup>29</sup>. In 2007, the UK industry in terms of timeshare agencies, timeshare developers, sellers and resellers was estimated to be worth around €526 million per year<sup>30</sup>.

7. There are a number of factors that explain the appeal of timeshare holidays to buyers<sup>31</sup>, 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 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 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.

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<sup>28</sup> RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' [www.rdo.org](http://www.rdo.org)

<sup>29</sup> RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' [www.rdo.org](http://www.rdo.org)

<sup>30</sup> RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' [www.rdo.org](http://www.rdo.org)

<sup>31</sup> *A Time to Share*, TRI Hospitality Consulting,  
<http://www.trihospitality.com/data/publications/dubai/timetoshare.pdf>.

11. According to the OFT, these problems include:<sup>32</sup>

- 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. There is a risk that the timeshare resale is fraudulent. 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 timeshares<sup>33</sup>. 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 UK<sup>34</sup>. In the UK, the value of resales was estimated at £23.5 million for 2007. The figure did, however decrease by 25% for 2008<sup>35</sup>. 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 resale<sup>36</sup>.

#### 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.

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

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<sup>32</sup> 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](http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft859.pdf).

<sup>33</sup> See footnote 5.

<sup>34</sup> Information provided to BIS by the RDO in December 2009

<sup>35</sup> Information provided to BIS by the RDO in December 2009

<sup>36</sup> RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' [www.rdo.org](http://www.rdo.org)

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 creates 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.

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:

- update and simplify the coverage of the current UK legislative regime as it applies to timeshare agreements; and
- protect consumers and 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).
- protect consumers in the timeshare aftermarket

23. The proposed Regulations include a range of provisions 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”, but to wider “overnight accommodation” and by reducing the minimum period of agreements caught by the regime 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 apply 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 extend 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.

## **Outcomes**

24. 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**

### **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. 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 of 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.

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 OFT<sup>37</sup>, 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)<sup>38</sup> identifies 400,000 holiday makers (purchasing holiday club membership both abroad and within the UK) who could be affected and the estimated costs amount to £1.17 billion annually.

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 purchasers 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. Our consultation document URN 10/500 seeks to establish the number of consumer complaints and the associated consumer detriment in relation to new timeshare sales, long

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<sup>37</sup> 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](http://www.offt.gov.uk/shared_offt/business_leaflets/general/oft859.pdf).

<sup>38</sup> *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](http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft883.pdf)



term holiday products, timeshare resale and timeshare exchange. Provision of this information will, following the consultation, enable us to make a revised estimate of the likely benefit to consumers.

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 (which at time of publishing the Consultation Stage Impact Assessment is based on potential consumer detriment in relation to discount holiday club sales only) we have adopted a conservative methodology. We have taken the figure of 400,000 UK holiday makers who could be affected and multiplied that figure by the median consumer detriment figure (related to discount holiday club sales) of £600. This gives us a potential consumer detriment figure of £240 million per annum. In the absence of data relating to buying trends in the market since 2006, for the purposes of the Consultation Stage Impact Assessment, we have worked on the assumption that a failure to regulate the European market would mean that the potential consumer detriment figure would be likely to remain at £240 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 50% reducing the level of consumer detriment by 10 per cent each year over 10 years i.e. by £120 million in year 1, £108 million in year 2, £97 million in year 3 etc. Applying a further discount of 3.5% results in an estimated average annual benefit to consumers of £161.8 million, totalling £1,373 million over 10 years.

### **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 UK<sup>39</sup>.

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, unfair competition for legitimate timeshare businesses will be removed as operators of long-term holiday products, timeshare-like products, resale services or exchange scheme 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.<sup>40</sup>

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<sup>39</sup> RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' [www.rdo.org](http://www.rdo.org)

<sup>40</sup> Information provided to BIS in December 2009.

44. Some stakeholders (specifically developers) consulted by KPMG (2007)<sup>41</sup> 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. Our consultation document URN 10/500 seeks to quantify the benefit to business that is likely to result from an increase in sales due to increased consumer confidence.

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 is likely to 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)<sup>42</sup>. 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.

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 direct 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. Current employment levels due to the development of the timeshare market are likely to be higher and therefore exert a considerable positive impact to the local economy.

49. In addition to the above, other direct effects may include the creation of jobs related to any new resort construction and jobs at other businesses providing goods and services to timeshare owners whilst on holiday. The OTE estimated that spending on timeshare unit construction amounts to £20 million annually, leading to 1,800 full-time equivalent jobs. In addition there will be a multiplier effect. This multiplier effect arises because of the induced increases in consumer spending which occur due to the increased employee incomes - and because of the feedback into increasing business revenues, jobs, and income again this has been estimated at an additional £60million multiplier effect. According to the same source, spending as a result of sales and marketing activity is estimated at £25 million, generating 1,900 equivalent jobs and stimulating £62 million multiplier effect annually<sup>43</sup>.

50. It should be noted that the estimated multiplier effects due to spending on timeshare unit construction and on sales and marketing activity indicate the *gross*, as opposed to net, impact of a possible expansion to the timeshare industry. In other words, the aforementioned estimates do not indicate the impact that would be generated solely as a result of the implementation of the UK regulations.

51. Moreover, there are associated indirect effects on the local economy associated with timeshare resorts, for instance when employees of timeshare resorts hire construction workers to renovate their homes. Therefore, the timeshare industry indirectly supports other jobs in the economy.

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<sup>41</sup> *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).

<sup>42</sup> OTE Report 2001.

<sup>43</sup> Information provided to BIS by the OTE in June 2006.

52. By combining the direct impact to the economy due to the construction of timeshare units and sales/marketing activity, this suggests a potential boost of £102 million in output annually. According to the Green Book, the success of the European Commission proposal in terms of increasing output or employment within the timeshare industry and related businesses, should be assessed in terms of its 'additionality'<sup>44</sup>. This is the net, rather than gross, impact after making allowances for what would have happened in the absence of implementation of the proposal. As it is difficult to make such an assessment, this analysis refrains from developing any assumptions to try to estimate this additional impact and reports the estimates of gross impact reported by RDO.

### **Costs** (common to Options 1 and 2)

#### **Cost to businesses**

53. There could be a number of negative consequences on the timeshare market by maintaining bans on deposits during the cooling-off period which will apply to the new products that would be covered by the proposal. Businesses have argued that such a ban dissuades international brand name hotel chains from investing in timeshares. Second, the maintenance of such bans would trigger the development and sale of other products which fall outside the scope of the Directive. On the other hand, a possible lift on the ban of deposits would see fewer consumers withdrawing their purchase and higher industry sales due to enhanced consumer confidence.

54. The Government's formal consultation [URN 10/500] on the proposed regulations should help to clarify the extent of costs associated with the ban on deposits, as yet we have not been able to develop robust, quantitative estimates on these. Again, in keeping with best practice, it is important to note these qualitatively.

55. There is an associated negative impact upon businesses arising 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 and 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.

56. 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 businesses (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)<sup>45</sup>. 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).

57. 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

<sup>44</sup> *Green Book: Appraisal and Evaluation in Central Government*, HM Treasury, 2003, [http://www.hm-treasury.gov.uk/economic\\_data\\_and\\_tools/greenbook/data\\_greenbook\\_index.cfm](http://www.hm-treasury.gov.uk/economic_data_and_tools/greenbook/data_greenbook_index.cfm).

<sup>45</sup> 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.

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 languages<sup>46</sup> (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.

58. 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)<sup>47</sup> 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.

59. Our initial estimate of the additional administrative cost for the industry involved in implementing the proposal amounts to £151,000 (One hundred and fifty one thousand GBP). This equates to, approximately, £2,220 (two thousand, two hundred and twenty 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 £2,220 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: £2,015 (two thousand and fifteen GBP) per developer; £3,275 (three thousand two hundred and seventy five GBP) per resale business; and £3,297 (three thousand two hundred and ninety seven 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 £1,200; and an estimate of the legal validation costs and the translation costs for each UK business (our formal consultation seeks further estimates).

60. 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**

61. Under the 'one-in-one-out' rule whereby no new regulation can be brought in without other regulation being removed, regulatory savings to compensate for the small additional transition cost of £151k associated with this proposal, will be sought.

### **Impact on enforcement costs**

62. 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

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<sup>46</sup> 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.

<sup>47</sup> See footnote 15.

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. This would entail little additional enforcement cost, which could nevertheless increase if the resale and exchange market expand.

63. 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. As part of the formal consultation we will consult on the issue of local authority enforcement. Nevertheless, as the number of complaints received, with regard to timeshares sold within the UK, is small relative to the size of the UK market<sup>48</sup>, 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 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.

64. 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**

65. 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**

66. 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.

67. 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.

68. 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.

69. 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.

70. 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

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<sup>48</sup> 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.

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.

71. 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.

72. 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.

73. 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).

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

## **Risks**

### **Risk 1**

81. 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**

82. 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**

83. 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**

84. 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**

85. 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**

86. 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**

87. The duties of the proposal would be enforced by local authority Trading Standards. 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.

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

## **Implementation**

89. 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**

90. 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**

91. 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.

92. Our formal consultation URN 10/500 includes a range of questions to help develop our assessment of the any likely effect on competition.

### **Small Firms Impact Test**

93. Our current view is that 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 but the RDO has indicated that the industry feels able to absorb them. RDO figures suggest that there are potentially 100 timeshare developers in the UK. The fact that their members, which total 7, account for some 60% of timeshare sales in the UK suggests that many of the remaining businesses are likely to be SMEs. Our formal consultation URN 10/500 includes a range of questions to help develop our assessment of the number of SMEs in the markets covered and any likely effect on competition.

94. In the course of formulating the UK's views for the Commission as it carried out its research for Directive 2008/122/EC, we continued to meet with representatives of the timeshare industry in the UK, and of the two main timeshare exchange companies operating in Europe. We have spoken to RDO whose members include small firms as well as larger operators. They questioned the need for further action in respect of timeshare, particularly in relation to extending provisions to timeshare agreements which were not originally included (i.e. timeshare agreements of less than three years or for occupation periods of less than one week). It should be noted that, their code of practice already includes a cooling-off period for timeshare of a shorter period. Moreover, RDO has supported extending the provisions to timeshare in other types of accommodation (such as boats and caravans), as well as setting the cooling-off period at 14 days Europe-wide. They have not presented any strong objection to extending and clarifying the information/contractual provisions, preferring this option in relation to resort management issues rather than, possibly, more robust provisions.



95. RDO were not in favour of covering timeshare exchange schemes on the grounds that the capital outlay to belong to such a scheme is far less than that required to buy a timeshare. However, this did not appear to address the issue that, irrespective of the cost, membership of an exchange scheme and the flexibility it promises can be a very strong incentive to buy a timeshare.

96. RDO acknowledged that there is a serious problem with fraudulent timeshare resellers who demand advance payment, and their code of practice already sets out that any payments sought in advance of a sale must be properly justified to consumers and for specified reasons, although it does not ban all pre-payments as in the proposal. They were sceptical, however, that including resale within the directive will provide an effective solution to the problem of the out-and-out fraudulent operator.

97. RDO was opposed to including long-term holiday products within the timeshare regime. They argued that including holiday clubs will, by association, tarnish the reputation of bona fide timeshare providers and believed that alternative means should be better explored. However, we understand that they are reconciled to the current position, particularly in the light of the regime of staggered payments for long-term holiday product contracts. RDO also lobbied for the removal of the ban on payment in advance of the end of the cooling-off period for timeshare sales generally.

98. The exchange companies took essentially the same view as the RDO, but said that an obligation to provide better information about their offer and what it means in individual circumstances would cause them no significant problems.

### **Other Specific Impact Tests**

99. Other specific impact tests have been considered including Impact on the Justice System, Sustainable Development, Carbon Assessment, Other Environment, Health Impact, Race Equality, Disability Equality, Gender Equality, Age Equality, Human Rights and Rural Proofing. It is our initial assessment that no significant impact is anticipated in any specific cases above. However, our formal consultation URN 10/500 includes a range of questions to help assess any potential impact in these areas..

## 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.

<p><b>Basis of the review:</b> [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];</p> <p>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</p>
<p><b>Review objective:</b> [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?]</p> <p>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</p>
<p><b>Review approach and rationale:</b> [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]</p> <p>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.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The effectiveness of the regulations will be evaluated against the baseline of the current UK legislative regime.</p>
<p><b>Success criteria:</b> [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]</p> <p>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).</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>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.</p>
<p><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

## **Annex C: EU Directive 2008/122/EC on Timeshare, Long-term Holiday Products, Resale and Exchange Contracts**

See next page

## DIRECTIVES

## DIRECTIVE 2008/122/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 January 2009

## on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

(1) Since the adoption of Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis <sup>(3)</sup>, 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 or clarified, in order to prevent the development of products aiming at circumventing this Directive.

(2) The existing regulatory gaps create appreciable distortions of competition and cause serious problems

for consumers, thus hindering the smooth functioning of the internal market. Directive 94/47/EC should therefore be replaced by a new up-to-date directive. Since tourism plays an increasingly important role in the economies of the Member States, greater growth and productivity in the timeshare and long-term holiday product industries should be encouraged by adopting certain common rules.

(3) In order to enhance legal certainty and fully achieve the benefits of the internal market for consumers and businesses, the relevant laws of the Member States need to be approximated further. Therefore, certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as the exchange of rights deriving from timeshare contracts should be fully harmonised. Member States should not be allowed to maintain or introduce in their national legislation provisions diverging from those laid down in this Directive. Where no such harmonised provisions exist, Member States should remain free to maintain or introduce national legislation in conformity with Community law. Thus, Member States should, for instance, be able to maintain or introduce provisions on the effects of exercising the right of withdrawal in legal relationships falling outside the scope of this Directive or provisions according to which no commitment may be entered into between a consumer and a trader of a timeshare or long-term holiday product, nor any payment made between those persons, as long as the consumer has not signed a credit agreement to finance the purchase of those services.

(4) This Directive should be without prejudice to the application by Member States, in accordance with Community law, of the provisions of this Directive to areas not within its scope. Member States could therefore maintain or introduce national legislation corresponding to the provisions of this Directive or certain of its provisions in relation to transactions that fall outside the scope of this Directive.

(5) The different contracts covered by this Directive should be clearly defined in such a way as to preclude circumvention of its provisions.

<sup>(1)</sup> OJ C 44, 16.2.2008, p. 27.

<sup>(2)</sup> Opinion of the European Parliament of 22 October 2008 (not yet published in the Official Journal) and Council Decision of 18 December 2008.

<sup>(3)</sup> OJ L 280, 29.10.1994, p. 83.

- (6) For the purposes of this Directive, timeshare contracts should not be understood as covering multiple reservations of accommodation, including hotel rooms, in so far as multiple reservations do not imply rights and obligations beyond those arising from separate reservations. Nor should timeshare contracts be understood as covering ordinary lease contracts since the latter refer to one single continuous period of occupation and not to multiple periods.
- (7) For the purposes of this Directive, long-term holiday product contracts should not be understood as covering ordinary loyalty schemes which provide discounts on future stays in the hotels of a hotel chain, since membership in the scheme is not obtained for consideration nor is the consideration paid by the consumer primarily for the purpose of obtaining discounts or other benefits in respect of accommodation.
- (8) This Directive should not affect the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(1)</sup>.
- (9) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive) <sup>(2)</sup> prohibits misleading, aggressive and other unfair commercial business-to-consumer practices. Given the nature of the products and the commercial practices related to timeshares, long-term holiday products, resale and exchange, it is appropriate to adopt more detailed and specific provisions regarding information requirements and sales events. The commercial purpose of invitations to sales events should be made clear to consumers. The provisions concerning pre-contractual information and the contract should be clarified and updated. In order to give consumers the possibility to acquaint themselves with the information before the conclusion of the contract, it should be provided by means which are easily accessible to them at that time.
- (10) Consumers should have the right, which should not be refused by traders, to be provided with pre-contractual information and the contract in a language, of their choice, with which they are familiar. In addition, in order to facilitate the execution and the enforcement of the contract, Member States should be allowed to determine that further language versions of the contract should be provided to consumers.
- (11) In order to provide consumers with the opportunity of fully understanding their rights and obligations under the contract, they should be allowed a period during which they may withdraw from the contract without having to justify the withdrawal and without bearing any cost. Currently the length of this period varies between Member States, and experience shows that the length prescribed in Directive 94/47/EC is not sufficiently long. The period should therefore be extended in order to achieve a high level of consumer protection and more clarity for consumers and traders. The length of the period, the modalities for and the effects of exercising the right of withdrawal should be harmonised.
- (12) Consumers should have effective remedies in the event that traders do not comply with the provisions regarding pre-contractual information or the contract, in particular those laying down that the contract should include all the information required and that the consumer should receive a copy of the contract at the time of its conclusion. In addition to the remedies existing under national law, consumers should benefit from an extended withdrawal period where information has not been provided by traders. The exercise of the right of withdrawal should remain free of charge during that extended period regardless of what services consumers may have enjoyed. The expiration of the withdrawal period does not preclude consumers from seeking remedies in accordance with national law for breaches of the information requirements.
- (13) Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(3)</sup> should apply to the calculation of the periods set out in this Directive.
- (14) The prohibition on advance payments to traders or any third party before the end of the withdrawal period should be clarified in order to improve consumer protection. For resale contracts, the prohibition of advance payment should apply until the actual sale takes place or the resale contract is terminated, but Member States should remain free to regulate the possibility and modalities of final payments to intermediaries where resale contracts are terminated.
- (15) For long-term holiday product contracts, the price to be paid in the context of a staggered payment schedule could take into consideration the possibility that subsequent amounts could be adjusted after the first year in order to ensure that the real value of those instalments is maintained, for instance to take account of inflation.
- (16) In the event of a consumer withdrawing from a contract where the price is entirely or partly covered by credit granted to the consumer by the trader or by a third party on the basis of an arrangement between that third party and the trader, the credit agreement should be terminated at no cost to the consumer. The same should apply to contracts for other related services provided by the trader or by a third party on the basis of an arrangement between that third party and the trader.

<sup>(1)</sup> OJ L 158, 23.6.1990, p. 59.

<sup>(2)</sup> OJ L 149, 11.6.2005, p. 22.

<sup>(3)</sup> OJ L 124, 8.6.1971, p. 1.

- (17) Consumers should not be deprived of the protection granted by this Directive where the law applicable to the contract is that of a Member State. The law applicable to a contract should be determined in accordance with the Community rules on private international law, in particular Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) <sup>(1)</sup>. Under that Regulation, the law of a third country may be applicable, in particular where consumers are targeted by traders whilst on holiday in a country other than their country of residence. Given that such commercial practices are common in the area covered by this Directive and that the contracts involve considerable amounts of money, an additional safeguard should be provided in certain specific situations, in particular where the courts of any Member State have jurisdiction over the contract, to ensure that the consumer is not deprived of the protection granted by this Directive. This concept reflects the particular needs of consumer protection arising from the typical complexity, long-term nature and financial relevance of the contracts falling within the scope of this Directive.
- (18) It should be determined in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(2)</sup> which courts have jurisdiction in proceedings which have as their object matters covered by this Directive.
- (19) In order to ensure that the protection afforded to consumers under this Directive is fully effective, in particular as regards compliance by traders with the information requirements both at the pre-contractual stage and in the contract, it is necessary that the Member States lay down effective, proportionate and dissuasive penalties for infringements of this Directive.
- (20) It is necessary to ensure that persons or organisations having, under national law, a legitimate interest in the matter have legal remedies for initiating proceedings against infringements of this Directive.
- (21) It is necessary to develop suitable and effective redress procedures in the Member States for settling disputes between consumers and traders. To this end, Member States should encourage the establishment of public or private bodies for settling disputes out of court.
- (22) Member States should ensure that consumers are effectively informed of the national provisions transposing this Directive and encourage traders and code owners to inform consumers about their codes of conduct in this field. With the aim of pursuing a high level of consumer protection, consumer organisations could be informed of, and involved in, the drafting of codes of conduct.
- (23) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to eliminate the internal market barriers and achieve a high common level of consumer protection.
- (24) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention on Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.
- (25) In accordance with point 34 of the Interinstitutional agreement on better law-making <sup>(3)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public,
- HAVE ADOPTED THIS DIRECTIVE:
- Article 1*
- Purpose and scope**
1. The purpose of this Directive is to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection, by approximating the laws, regulations and administrative provisions of the Member States in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts.
2. This Directive applies to trader-to-consumer transactions.
- This Directive is without prejudice to national legislation which:
- (a) provides for general contract law remedies;
- (b) relates to the registration of immovable or movable property and conveyance of immovable property;
- (c) relates to conditions of establishment or authorisation regimes or licensing requirements; and

<sup>(1)</sup> OJ L 177, 4.7.2008, p. 6.

<sup>(2)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(3)</sup> OJ C 321, 31.12.2003, p. 1.



- (d) relates to the determination of the legal nature of the rights which are the subject of the contracts covered by this Directive.

## Article 2

### Definitions

1. For the purposes of this Directive, the following definitions shall 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;
- (e) 'trader' means a natural or legal person who is acting for purposes relating to that person's trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;
- (f) 'consumer' means a natural person who is acting for purposes which are outside that person's trade, business, craft or profession;
- (g) 'ancillary contract' means a contract under which the consumer acquires services which are related to a timeshare contract or long-term holiday product contract and which are provided by the trader or a third party on the basis of an arrangement between that third party and the trader;
- (h) 'durable medium' means any instrument which enables the consumer or the trader to store information addressed personally to him in a way which is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

- (i) 'code of conduct' means an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;

- (j) 'code owner' means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.

2. In calculating the duration of a timeshare contract or a long-term holiday product contract, as defined in points (a) and (b) of paragraph 1 respectively, any provision in the contract allowing for tacit renewal or prolongation shall be taken into account.

## Article 3

### Advertising

1. Member States shall ensure that any advertising specifies the possibility of obtaining the information referred to in Article 4(1) and indicates where it can be obtained.
2. Where a timeshare, long-term holiday product, resale or exchange contract is to be offered to a consumer in person at a promotion or sales event, the trader shall clearly indicate in the invitation the commercial purpose and the nature of the event.
3. The information referred to in Article 4(1) shall be available to the consumer at any time during the event.
4. A timeshare or a long-term holiday product shall not be marketed or sold as an investment.

## Article 4

### Pre-contractual information

1. In good time before the consumer is bound by any contract or offer, the trader shall provide the consumer, in a clear and comprehensible manner, with accurate and sufficient information, as follows:
- (a) in the case of a timeshare contract: by means of the standard information form as set out in Annex I and information as listed in Part 3 of that form;
- (b) in the case of a long-term holiday product contract: by means of the standard information form as set out in Annex II and information as listed in Part 3 of that form;

(c) in the case of a resale contract: by means of the standard information form as set out in Annex III and information as listed in Part 3 of that form;

(d) in the case of an exchange contract: by means of the standard information form as set out in Annex IV and information as listed in Part 3 of that form.

2. The information referred to in paragraph 1 shall be provided, free of charge, by the trader on paper or on another durable medium which is easily accessible to the consumer.

3. Member States shall ensure that the information referred to in paragraph 1 is drawn up in the language or one of the languages of the Member State in which the consumer is resident or a national, at the choice of the consumer, provided it is an official language of the Community.

#### Article 5

#### **The timeshare, long-term holiday product, resale or exchange contract**

1. Member States shall ensure that the contract is in writing, on paper or on another durable medium, and drawn up in the language or one of the languages of the Member State in which the consumer is resident or a national, at the choice of the consumer, provided it is an official language of the Community.

However, the Member State in which the consumer is resident may require that in addition:

(a) in every instance, the contract be provided to the consumer in the language or one of the languages of that Member State, provided it is an official language of the Community;

(b) 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.

The Member State on whose territory the trader carries out sale activities may require that, in every instance, the contract be provided to the consumer in the language or one of the languages of that Member State, provided it is an official language of the Community.

2. The information referred to in Article 4(1) shall form an integral part of the contract and shall not be altered unless the parties expressly agree otherwise or the changes result from

unusual and unforeseeable circumstances beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised.

These changes shall be communicated to the consumer on paper or on another durable medium easily accessible to him, before the contract is concluded.

The contract shall expressly mention any such changes.

3. In addition to the information referred to in Article 4(1), the contract shall include:

(a) the identity, place of residence and signature of each of the parties; and

(b) the date and place of the conclusion of the contract.

4. Before the conclusion of the contract, the trader shall explicitly draw the consumer's attention to the existence of the right of withdrawal, the length of the withdrawal period referred to in Article 6, and the ban on advance payments during the withdrawal period referred to in Article 9.

The corresponding contractual clauses shall be signed separately by the consumer.

The contract shall include a separate standard withdrawal form, as set out in Annex V, intended to facilitate the exercise of the right of withdrawal in accordance with Article 6.

5. The consumer shall receive a copy or copies of the contract at the time of its conclusion.

#### Article 6

#### **Right of withdrawal**

1. In addition to the remedies available to the consumer under national law in the event of breach of the provisions of this Directive, Member States shall ensure that the consumer is given a period of 14 calendar days to withdraw from the timeshare, long-term holiday product, resale or exchange contract, without giving any reason.

2. The withdrawal period shall be calculated:

(a) from the day of the conclusion of the contract or of any binding preliminary contract; or

(b) from the day when the consumer receives the contract or any binding preliminary contract if it is later than the date referred to in point (a).



3. The withdrawal period shall expire:

- (a) after one year and 14 calendar days from the day referred to in paragraph 2 of this Article, where a separate standard withdrawal form as required by Article 5(4) has not been filled in by the trader and provided to the consumer in writing, on paper or on another durable medium;
- (b) after three months and 14 calendar days from the day referred to in paragraph 2 of this Article, where the information referred to in Article 4(1), including the applicable standard information form set out in Annexes I to IV, has not been provided to the consumer in writing, on paper or on another durable medium.

In addition, Member States shall provide for appropriate penalties in accordance with Article 15, in particular in the event that, on expiry of the withdrawal period, the trader has failed to comply with the information requirements set out in this Directive.

4. Where a separate standard withdrawal form as required by Article 5(4) has been filled in by the trader and provided to the consumer in writing, on paper or on another durable medium, within one year from the day referred to in paragraph 2 of this Article, the withdrawal period shall start from the day the consumer receives that form. Similarly, where the information referred to in Article 4(1), including the applicable standard information form set out in Annexes I to IV, has been provided to the consumer in writing, on paper or on another durable medium, within three months from the day referred to in paragraph 2 of this Article, the withdrawal period shall start from the day the consumer receives such information.

5. In the event that the exchange contract is offered to the consumer together with and at the same time as the timeshare contract, only a single withdrawal period in accordance with paragraph 1 shall apply to both contracts. The withdrawal period for both contracts shall be calculated according to the provisions of paragraph 2 as they apply to the timeshare contract.

#### Article 7

##### **Modalities for exercising the right of withdrawal**

Where the consumer intends to exercise the right of withdrawal the consumer shall, before the expiry of the withdrawal period, notify the trader on paper or on another durable medium of the decision to withdraw. The consumer may use the standard withdrawal form set out in Annex V and provided by the trader in accordance with Article 5(4). The deadline is met if the notification is sent before the withdrawal period has expired.

#### Article 8

##### **Effects of exercising the right of withdrawal**

1. The exercise of the right of withdrawal by the consumer terminates the obligation of the parties to perform the contract.

2. Where the consumer exercises the right of withdrawal, the consumer shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed before withdrawal.

#### Article 9

##### **Advance payment**

1. Member States shall ensure that in relation to timeshare, long-term holiday product and exchange contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the end of the withdrawal period according to Article 6, is prohibited.

2. Member States shall ensure that in relation to resale contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the actual sale takes place or the resale contract is otherwise terminated, is prohibited.

#### Article 10

##### **Specific provisions relating to long-term holiday product contracts**

1. For long-term holiday product contracts, payment shall be made according to a staggered payment schedule. Any payment of the price specified in the contract otherwise than in accordance with the staggered payment schedule shall be prohibited. The payments, including any membership fee, shall be divided into yearly instalments, each of which shall be of equal value. The trader shall send a written request for payment, on paper or on another durable medium, at least fourteen calendar days in advance of each due date.

2. From the second instalment payment onwards, the consumer may terminate the contract without incurring any penalty by giving notice to the trader within fourteen calendar days of receiving the request for payment of each instalment. This right shall not affect rights to terminate the contract under existing national legislation.

#### Article 11

##### **Termination of ancillary contracts**

1. Member States shall ensure that, where the consumer exercises the right to withdraw from the timeshare or long-term holiday product contract, any exchange contract ancillary to it or any other ancillary contract is automatically terminated, at no cost to the consumer.

2. Without prejudice to Article 15 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers<sup>(1)</sup>, where the price is fully or partly covered by a credit granted to the consumer by the trader, or by a third party on the basis of an arrangement between the third party and the trader, the credit agreement shall be terminated, at no cost to the consumer, where the consumer exercises the right to withdraw from the timeshare, long-term holiday product, resale or exchange contract.

3. The Member States shall lay down detailed rules on the termination of such contracts.

#### Article 12

##### **Imperative nature of the Directive and application in international cases**

1. Member States shall ensure that, where the law applicable to the contract is the law of a Member State, consumers may not waive the rights conferred on them by this Directive.

2. Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum if:

— any of the immovable properties concerned is situated within the territory of a Member State, or,

— in the case of a contract not directly related to immovable property, the trader pursues commercial or professional activities in a Member State or, by any means, directs such activities to a Member State and the contract falls within the scope of such activities.

#### Article 13

##### **Judicial and administrative redress**

1. Member States shall ensure that, in the interests of consumers, adequate and effective means exist to ensure compliance by traders with this Directive.

2. The means referred to in paragraph 1 shall include provisions whereby one or more of the following bodies, as determined by national law, shall be entitled to take action in accordance with national law before the courts or competent administrative bodies to ensure that the national provisions for implementing this Directive are applied:

(a) public bodies and authorities or their representatives;

(b) consumer organisations with a legitimate interest in protecting consumers;

(c) professional organisations with a legitimate interest in taking such action.

#### Article 14

##### **Consumer information and out-of-court redress**

1. Member States shall take appropriate measures to inform consumers of the national law transposing this Directive and shall encourage, where appropriate, traders and code owners to inform consumers of their codes of conduct.

The Commission shall encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the implementation of this Directive, in conformity with Community law. It shall also encourage traders and their branch organisations to inform consumers of any such codes, including, where appropriate, by means of a specific marking.

2. Member States shall encourage the setting up or development of adequate and effective out-of-court complaints and redress procedures for the settlement of consumer disputes under this Directive and shall, where appropriate, encourage traders and their branch organisations to inform consumers of the availability of such procedures.

#### Article 15

##### **Penalties**

1. Member States shall provide for appropriate penalties in the event of a trader's failure to comply with the national provisions adopted pursuant to this Directive.

2. Those penalties shall be effective, proportionate and dissuasive.

#### Article 16

##### **Transposition**

1. Member States shall adopt and publish, by 23 February 2011, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 23 February 2011.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

<sup>(1)</sup> OJ L 133, 22.5.2008, p. 66.

*Article 17***Review**

The Commission shall review this Directive and report to the European Parliament and the Council no later than 23 February 2014.

If necessary, it shall make further proposals to adapt it to developments in the area.

The Commission may request information from the Member States and the national regulatory authorities.

*Article 18***Repeal**

Directive 94/47/EC shall be repealed.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

*Article 19***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 20***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 14 January 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

A. VONDRA

## ANNEX I

## STANDARD INFORMATION FORM FOR TIMESHARE CONTRACTS

## Part 1:

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product (e.g. description of the immovable property):  Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:  Date on which the consumer may start to exercise the contractual right:  If the contract concerns a specific property under construction, date when the accommodation and services/facilities will be completed/available:
Price to be paid by the consumer for acquiring the right(s):  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual fees, other recurrent fees, special levies, local taxes):
A summary of key services available to the consumer (e.g. electricity, water, maintenance, refuse collection) and an indication of the amount to be paid by the consumer for such services:  A summary of facilities available to the consumer (e.g. swimming pool or sauna):  Are these facilities included in the costs indicated above?  If not, specify what is included and what has to be paid for:
Is it possible to join an exchange scheme?  If yes, specify the name of the exchange scheme:  Indication of costs for membership/exchange:
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

**Part 2:**

## General information:

- The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later.
- During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.
- The consumer shall not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.

Signature of the consumer:

**Part 3:**

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

**1. INFORMATION ABOUT THE RIGHTS ACQUIRED**

- conditions governing the exercise of the right which is the subject of the contract within the territory of the Member States(s) in which the property or properties concerned are situated and information on whether those conditions have been fulfilled or, if they have not, what conditions remain to be fulfilled,
- where the contract provides rights to occupy accommodation to be selected from a pool of accommodation, information on restrictions on the consumer's ability to use any accommodation in the pool at any time.

**2. INFORMATION ON THE PROPERTIES**

- where the contract concerns a specific immovable property, an accurate and detailed description of that property and its location; where the contract concerns a number of properties (multi-resorts), an appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities,
- the services (e.g. electricity, water, maintenance, refuse collection) to which the consumer has or will have access to and under what conditions,
- where applicable, the common facilities, such as swimming pool, sauna, etc., to which the consumer has or may have access and under what conditions.

**3. ADDITIONAL REQUIREMENTS FOR ACCOMMODATION UNDER CONSTRUCTION (where applicable)**

- the state of completion of the accommodation and of the services rendering the accommodation fully operational (gas, electricity, water and telephone connections) and any facilities to which the consumer will have access,
- the deadline for completion of the accommodation and of the services rendering it fully operational (gas, electricity, water and telephone connections) and a reasonable estimate of the deadline for the completion of any facilities to which the consumer will have access,
- the number of the building permit and the name(s) and full address(es) of the competent authority or authorities,
- a guarantee regarding completion of the accommodation or a guarantee regarding reimbursement of any payment made if the accommodation is not completed and, where appropriate, the conditions governing the operation of such guarantees.

#### 4. INFORMATION ON THE COSTS

- an accurate and appropriate description of all costs associated with the timeshare contract; how these costs will be allocated to the consumer and how and when such costs may be increased; the method for the calculation of the amount of charges relating to occupation of the property, the mandatory statutory charges (for example, taxes and fees) and the administrative overheads (for example, management, maintenance and repairs),
- where applicable, information on whether there are any charges, mortgages, encumbrances or any other liens recorded against title to the accommodation.

## 5. INFORMATION ON TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

## 6. ADDITIONAL INFORMATION

- information on how maintenance and repairs of the property and its administration and management are arranged, including whether and how consumers may influence and participate in the decisions regarding these issues,
- information on whether or not it is possible to join a system for the resale of the contractual rights, information about the relevant system and an indication of costs related to resale through this system,
- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to management decisions, increase of costs and the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

\_\_\_\_\_

## ANNEX II

## STANDARD INFORMATION FORM FOR LONG-TERM HOLIDAY PRODUCT CONTRACTS

## Part 1:

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product:  Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:  Date on which the consumer may start to exercise the contractual right:
Price to be paid by the consumer for acquiring the right(s), including any recurring costs the consumer can expect to incur resulting from the right to obtain access to the accommodation, travel and any related products or services as specified:  The staggered payment schedule setting out equal amounts of instalments of this price for each year of the length of the contract and the dates on which they are due to be paid:  After year 1, subsequent amounts may be adjusted to ensure that the real value of those instalments is maintained, for instance to take account of inflation.  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. annual membership fees):
A summary of key services available to the consumer (e.g. discounted hotel stays and flights):  Are they included in the costs indicated above?  If not, specify what is included and what has to be paid for (e.g. three-night stay included in annual membership fee, all other accommodation must be paid for separately):
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

**Part 2:**

## General information:

- The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later.
- During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.
- The consumer has the right to terminate the contract without incurring any penalty by giving notice to the trader within 14 calendar days of receiving the request for payment for each annual instalment.
- The consumer shall not bear any costs or obligations other than those specified in the contract.
- In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.

Signature of the consumer:

**Part 3:**

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

## 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- an appropriate and correct description of discounts available for future bookings, illustrated by a set of examples of recent offers,
- information on the restrictions on the consumer's ability to use the rights, such as limited availability or offers provided on a first-come-first-served basis, time limits on particular promotions and special discounts.

## 2. INFORMATION ON THE TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

## 3. ADDITIONAL INFORMATION

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

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## ANNEX III

## STANDARD INFORMATION FORM FOR RESALE CONTRACTS

**Part 1:**

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the services (e.g. marketing):
Duration of the contract:
Price to be paid by the consumer for acquiring the services:  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. local taxes, notary fees, cost of advertising):
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

**Part 2:**

<p>General information:</p> <ul style="list-style-type: none"><li>— The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later.</li><li>— Any advance payment by the consumer is prohibited until the actual sale has taken place or the resale contract otherwise is terminated. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.</li><li>— The consumer shall not bear any costs or obligations other than those specified in the contract.</li><li>— In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.</li></ul> <p>Signature of the consumer:</p>
---

**Part 3:**

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination,
- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

\_\_\_\_\_

## ANNEX IV

## STANDARD INFORMATION FORM FOR EXCHANGE CONTRACTS

**Part 1:**

Identity, place of residence and legal status of the trader(s) which will be party to the contract:
Short description of the product:  Exact nature and content of the right(s):
Exact period within which the right which is the subject of the contract may be exercised and, if necessary, its duration:  Date on which the consumer may start to exercise the contractual right:
Price to be paid by the consumer for the exchange membership fees:  Outline of additional obligatory costs imposed under the contract; type of costs and indication of amounts (e.g. renewal fees, other recurrent fees, special levies, local taxes):
A summary of key services available to the consumer:  Are they included in the costs indicated above?  If not, specify what is included and what has to be paid for (type of costs and indication of amounts; e.g. an estimate of the price to be paid for individual exchange transactions, including any additional charges):
Has the trader signed a code/codes of conduct and, if yes, where can it/they be found?

**Part 2:**

General information:  — The consumer has the right to withdraw from this contract without giving any reason within 14 calendar days from the conclusion of the contract or any binding preliminary contract or receipt of those contracts if that takes place later. In cases where the exchange contract is offered together with and at the same time as the timeshare contract, only a single withdrawal period shall apply to both contracts.  — During this withdrawal period, any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt etc. It includes not only payment to the trader, but also to third parties.  — The consumer shall not bear any costs or obligations other than those specified in the contract,  — In accordance with international private law, the contract may be governed by a law other than the law of the Member State in which the consumer is resident or is habitually domiciled and possible disputes may be referred to courts other than those of the Member State in which the consumer is resident or is habitually domiciled.  Signature of the consumer:
---

### Part 3:

Additional information to which the consumer is entitled and where it can be obtained specifically (for instance, under which chapter of a general brochure) if not provided below:

## 1. INFORMATION ABOUT THE RIGHTS ACQUIRED

- explanation of how the exchange system works; the possibilities and modalities for exchange; an indication of the value allotted to the consumer's timeshare in the exchange system and a set of examples of concrete exchange possibilities,
- an indication of the number of resorts available and the number of members in the exchange system, including any limitations on the availability of particular accommodation selected by the consumer, for example, as the result of peak periods of demand, the potential need to book a long time in advance, and indications of any restrictions on the choice resulting from the timeshare rights deposited into the exchange system by the consumer.

## 2. INFORMATION ON THE PROPERTIES

- a brief and appropriate description of the properties and their location; where the contract concerns accommodation other than immovable property, an appropriate description of the accommodation and the facilities; description of where the consumer can obtain further information.

### 3. INFORMATION ON THE COSTS

- information on the obligation on the trader to provide details before an exchange is arranged, in respect of each proposed exchange, of any additional charges for which the consumer is liable in respect of the exchange.

#### 4. INFORMATION ON THE TERMINATION OF THE CONTRACT

- where appropriate, information on the arrangements for the termination of ancillary contracts and the consequences of such termination,
- conditions for terminating the contract, the consequences of termination, and information on any liability of the consumer for any costs which might result from such termination.

## 5. ADDITIONAL INFORMATION

- indication of the language(s) available for communication with the trader in relation to the contract, for instance in relation to the handling of queries and complaints,
- where applicable, the possibility for out-of-court dispute resolution.

Acknowledgement of receipt of information:

Signature of the consumer:

## ANNEX V

## SEPARATE STANDARD WITHDRAWAL FORM TO FACILITATE THE RIGHT OF WITHDRAWAL

## Right of withdrawal

The consumer has the right to withdraw from this contract within 14 calendar days without giving any reason.

The right of withdrawal starts from ..... (to be filled in by the trader before providing the form to the consumer).

Where the consumer has not received this form, the withdrawal period starts when the consumer has received this form, but expires in any case after one year and 14 calendar days.

Where the consumer has not received all the required information, the withdrawal period starts when the consumer has received that information, but expires in any case after three months and 14 calendar days.

To exercise the right of withdrawal, the consumer shall notify the trader using the name and address indicated below by using a durable medium (e.g. written letter sent by post, e-mail). The consumer may use this form, but it is not obligatory.

Where the consumer exercises the right of withdrawal, the consumer shall not be liable for any costs.

In addition to the right of withdrawal, national contract law rules may provide for consumer rights, e.g. to terminate the contract in case of omission of information.

## Ban on advance payment

During the withdrawal period any advance payment by the consumer is prohibited. The prohibition concerns any consideration, including payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt, etc.

It includes not only payment to the trader, but also to third parties.

## Notice of withdrawal

— To (Name and address of the trader) (\*):

— I/We (\*\*) hereby give notice that I/We (\*\*) withdraw from the contract,

— Date of conclusion of contract (\*):

— Name(s) of consumer(s) (\*\*\*):

— Address(es) of consumer(s) (\*\*\*):

— Signature(s) of consumer(s) (only if this form is notified on paper) (\*\*\*):

— Date (\*\*\*):

(\*) To be filled in by the trader before providing the form to the consumer.

(\*\*) Delete as appropriate.

(\*\*\*) To be filled in by the consumer(s) where this form is used to withdraw from the contract.

Acknowledgement of receipt of information:

Signature of the consumer:

\_\_\_\_\_

## ANNEX VI

**CORRELATION TABLE BETWEEN PROVISIONS OF THIS DIRECTIVE AND DIRECTIVE 94/47/EC**

Directive 94/47/EC	This Directive
Article 1, first paragraph	Article 1(1) and Article 1(2), first subparagraph
Article 1, second paragraph	—
Article 1, third paragraph	Article 1(2), second subparagraph
Article 2, first indent	Article 2(1)(a)
—	Article 2(1)(b) (new)
—	Article 2(1)(c) (new)
—	Article 2(1)(d) (new)
Article 2, second indent	—
Article 2, third indent	Article 2(1)(e)
Article 2, fourth indent	Article 2(1)(f)
—	Article 2(1)(g) (new)
—	Article 2(1)(h) (new)
—	Article 2(1)(i) (new)
—	Article 2(1)(j) (new)
—	Article 2(2) (new)
Article 3(1)	Article 4(1)
Article 3(2)	Article 5(2)
Article 3(3)	Article 3(1)
—	Article 3(2) (new)
—	Article 3(3) (new)
—	Article 3(4) (new)
Article 4, first indent	Article 5(1), first subparagraph, and Article 5(2), first subparagraph
Article 4, second indent	Article 4(3) and Article 5(1)
—	Article 4(2) (new)
—	Article 5(4) (new)
—	Article 5(5) (new)
Article 5(1), introductory sentence	Article 6(1)
Article 5(1), first indent	Article 6(1) and Article 6(2)
Article 5(1), second indent	Article 6(3) and Article 6(4)
Article 5(1), third indent	Article 6(3)
—	Article 6(5) (new)

Directive 94/47/EC	This Directive
Article 5(2)	Article 7
—	Article 8(1) (new)
Article 5(3)	Article 8(2)
Article 5(4)	Article 8(2)
Article 6	Article 9(1)
—	Article 9(2) (new)
—	Article 10(1) (new)
—	Article 10(2) (new)
—	Article 11(1) (new)
Article 7, first paragraph	Article 11(2)
Article 7, second paragraph	Article 11(3)
Article 8	Article 12(1)
Article 9	Article 12(2)
Article 10	Articles 13 and 15
Article 11	—
—	Article 14(1) (new)
—	Article 14(2) (new)
Article 12	Article 16
—	Article 17 (new)
—	Article 18 (new)
—	Article 19 (new)
Article 13	Article 20
Annex	Annex I
Annex, point (a)	Article 5(3)(a), and Annex I, Part 1, first box
Annex, point (b)	Annex I, Part 1, third box, and Annex I, Part 3, point 1, first indent
Annex, point (c)	Annex I, Part 1, second box, and Annex I, Part 3, point 2, first indent
Annex, point (d)(1)	Annex I, Part 3, point 3, first indent
Annex, point (d)(2)	Annex I, Part 1, fourth box, and Annex I, Part 3, point 3, second indent
Annex, point (d)(3)	Annex I, Part 3, point 3, third indent
Annex, point (d)(4)	Annex I, Part 3, point 3, first indent
Annex, point (d)(5)	Annex I, Part 3, point 3, fourth indent
Annex, point (e)	Annex I, Part 1, sixth box, and Annex I, Part 3, point 2, second indent

Directive 94/47/EC	This Directive
Annex, point (f)	Annex I, Part 1, sixth box, and Annex I, Part 3, point 2, third indent
Annex, point (g)	Annex I, Part 3, point 6, first indent
Annex, point (h)	Annex I, Part 1, fourth box
Annex, point (i)	Annex I, Part 1, fifth and sixth boxes, and Annex I, Part 3, point 4, first indent
Annex, point (j)	Annex I, Part 2, third indent
Annex, point (k)	Annex I, Part 2, seventh box, and Annex I, Part 3, point 6, second indent
Annex, point (l)	Annex I, Part 2, first and third indents, Annex I, Part 3, point 5, first indent, and Annex V (new)
Annex, point (m)	Article 5(3)(b)
—	Annex I, Part 1, eighth box (new)
—	Annex I, Part 2, second indent (new)
—	Annex I, Part 2, fourth indent (new)
—	Annex I, Part 3, point 1, second indent (new)
—	Annex I, Part 3, point 4, second indent (new)
—	Annex I, Part 3, point 5, second indent (new)
—	Annex I, Part 3, point 6, third indent (new)
—	Annex I, Part 3, point 6, fourth indent (new)
—	Annexes II to V (new)



## **Annex D: Consultation Response Form**

### **THE PROPOSED 'TIMESHARE, HOLIDAY PRODUCTS, RESALE AND EXCHANGE CONTRACTS REGULATIONS 2011'**

The closing date for this consultation is 1 October 2010

You may find it helpful to set out your responses to the Consultation using this [Response Form](#).

**Name:**

**Organisation (if applicable):**

**Address:**

**Email:**

**Return completed forms to:**

Steve Hill  
BIS  
Consumer and Competition Policy  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 3134  
Fax: 020 7215 0357

Email: [steve.hill@bis.gsi.gov.uk](mailto:steve.hill@bis.gsi.gov.uk)

**Please tick the box from the following list of options that best describes you:**

<input type="checkbox"/>	<b>Small to Medium Enterprise</b>
<input type="checkbox"/>	<b>Representative Organisation</b>
<input type="checkbox"/>	<b>Trade Union</b>
<input type="checkbox"/>	<b>Interest Group</b>
<input type="checkbox"/>	<b>Big Business</b>
<input type="checkbox"/>	<b>Local Government</b>
<input type="checkbox"/>	<b>Central Government</b>
<input type="checkbox"/>	<b>Other (e.g. consultant or private individual)</b>

**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.

**Comments**

**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?

**Comments**

**Question 3:** Do you have any comments on the application of the Regulations as set out in regulations 5 & 6?

**Comments**

**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.**

Comments

**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.

## Comments

**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?**

Comments

**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.**

Comments

**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.**

## Comments

**Question 9:** Do you have any comments on the requirements of the advertising and marketing rules as set out in regulation 14?

## Comments

**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.**

**Comments**

**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.

**Comments**

**Question 12:** Do you think that the wording of the requirements in regulation 15 is sufficiently clear? If not, please explain why.

**Comments**

**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.

## Comments

**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.

## Comments

**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.**

## Comments

**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.**

## Comments

**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.

## Comments

**Question 18:** Do you have any comments on the rights of withdrawal?  
(regulations 20 and 21)

## Comments

**Question 19: Do you have any comments on the provisions for exercising the right of withdrawal? (regulation 20)**

## Comments

**Question 20:** Do you have any comments on the consequences of exercising the right of withdrawal? (regulation 22)

## Comments

**Question 21:** Do you have any comments in relation to automatic cancellation of related credit agreements? (regulation 23)

## Comments





**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.**

Comments

**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.

Comments

**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

## Comments

**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.**

## Comments

**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.**

## Comments

**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.**

## Comments

**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.

Comments

**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?**

Comments

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

Comments

**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).

## Comments

**Question 35:** Are the provisions in Regulation 34, relating to civil proceedings clear? If not, please provide reasons.

## Comments

**Question 36:** Do you agree with the amendments relating to enforcement and saving of the implementing Regulations? If not, please explain.

## Comments

**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

Comments

**Question 38:** Do you have any further comments on the draft Regulations?

Comments

**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

Comments

**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

Comments

**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

Comments

**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

## Comments

**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

## Comments



**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

Comments

**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.

Comments

**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, timeshare resale or timeshare exchange? If so, please explain your reasons and where possible, provide supporting evidence.

## Comments

**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

## Comments

**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**

Comments

**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

## Comments

**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.

## Comments

**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.

## Comments

**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.

Comments

**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.**

## Comments

**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.**

## Comments

**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**

## Comments

**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.**

Comments

**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.**

## Comments

**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.**

Comments

**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.**

## Comments

**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.

## Comments

**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.

## Comments

**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.**

Comments

## **Annex E: The Consultation Code of Practice Criteria**

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.



## **Annex F: List of Organisations Consulted**

Age Concern  
Association of Chief Trading Standards Officers  
Azure Resorts Limited  
British Chamber of Commerce  
British Retail Consortium (BRC)  
Confederation of British Industry (CBI)  
Citizens Advice  
Citizens Advice Scotland  
Consumer Focus  
Consumer Focus Wales  
Consumer Focus Scotland  
Convention of Scottish Local Authorities (COSLA)  
Craggenmore Brokerage Services Limited (CBSL)  
De Vere Resort Ownership Limited  
Dial an Exchange Limited  
Equality and Human Rights Commission  
Evencharge  
Federation of Small Business  
Forum for Private Business  
Help the Aged  
Hilton International Grand Vacation Company  
Institute of Directors  
Interval International  
Law Society  
Law Society of Northern Ireland  
Law Society of Scotland  
Local Government Association (LGA)  
Local Government Regulation  
National Consumer Federation  
Nexus Leisure Limited  
Northern Ireland Consumer Council  
Office of Fair Trading (OFT)  
Passage House Club Hotel  
RCI Global Vacation Network (Europe)  
Resort Development Association  
Royal Association for Disability Rights  
Seasons Holidays PLC  
Select Property  
Society of Chief Officers of Trading Standards in Scotland (SCOTSS)  
Timeshare Association (formerly TATOC)  
Timeshare Computer Link  
Timeshare Consumers Association  
Timeshare Sales Limited  
Trading Standards Institute  
Trading Standards Institute Northern (TSINI)  
Travel & Leisure Group  
Visions of the World  
Welsh Local Government Association (WLGA)

Welsh Tourism Alliance  
Which?  
Worldwide Leisure Group Limited  
Worldwide Timeshare  
Worldwide Timeshare Hypermarket

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