

**EU CONSUMER RIGHTS
DIRECTIVE: INFORMATION
REQUIREMENTS AND EXTENSION
OF THE RIGHT TO WITHDRAW FOR
OFF-PREMISES CONTRACTS**

Impact assessment

AUGUST 2012

Content

Impact Assessment (IA).....	2
Summary: Intervention and Options.....	2
RPC Opinion: Amber	2
Summary: Analysis & EvidencePolicy Option 1	4
Summary: Analysis & EvidencePolicy Option 2	6
Evidence Base (for summary sheets)	8

Title: EU Consumer Rights Directive: Information requirements and extension of the right to withdraw for off-premises contracts IA No: RPC12-BIS-1437 Lead department or agency: Department for Business, Innovation and Skills	Impact Assessment (IA)	
	Date: 08/06/2012	
	Stage: Consultation	
	Source of intervention: EU	
	Type of measure: Secondary legislation	
Contact for enquiries: Stella D'Italia		
Summary: Intervention and Options		RPC Opinion: Amber

Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as		
NA	NA	NA	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">IN</td> </tr> </table>	YES	IN
YES	IN				

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

Fragmentation of national laws regulating consumer transactions across the EU has meant that business, in particular small and medium enterprises have been more reluctant to explore export opportunities offered in trading across EU borders. This is due in great part to the additional costs of compliance when trading cross-border. Consumers too are reluctant to take part in cross-border shopping, demonstrating lower levels of confidence, thus diminishing their access to wider choice and lower prices. Sales effected off-premises (e.g. in the home or at exhibitions/fairs) offer potential for cross-border growth because businesses breaking into new sales markets can use such techniques to offset their relative lack of established physical retail premises. For the same reason they tend to support new market entry and promote competition. The proposed harmonisation of rules around information and withdrawal rights for such sales will reduce compliance costs, increase legal certainty and help boost trader and consumer confidence. Consumers buying at their doorstep are likely to have less time to consider their decisions and shop around, enhancing potential for consumer detriment. Consumers may also be subjected to pressure-selling techniques (e.g. time-limited offers). Research by the OFT (2012) also shows that consumers buying at their doorstep rely on this channel as alternative sources may be limited, further highlighting the potential for consumer detriment.

What are the policy objectives and the intended effects?

Clarifying and harmonising pre-contractual information and withdrawal rights will mean businesses know what information they must provide, irrespective of who they sell to or where in the EU they sell. Consumers have clear information to ensure they make good choices. The provisions on withdrawal (cancellation) rights will give consumers time to make a genuinely considered judgment with regard to their purchases, thus reducing the potential for disputes. In addition traders will be paid for reduction in value of used returned goods, or for services delivered before cancellation, and businesses can expect return of goods before they refund monies paid. Reduced compliance costs, increased legal certainty and enhanced consumer confidence should facilitate cross-border trade, and a fairer balance between consumer and business rights, should incentivise trade.

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

Chapter III of the Consumer Rights Directive (CRD) contains provisions applicable to off-premises contracts. As a maximum harmonisation measure, there is very little flexibility in implementation, but there are some options in a few areas, for example to only apply the obligations to contracts worth more than €50. Given the maximum harmonisation requirement, the do-nothing option is not available.

- Option 1 (minimum level of implementation that we must effect to meet our Community obligations)

- Taking advantage of the derogation offered in article 3(4), apply pre-contractual information requirements, and withdrawal provisions, only to contracts exceeding 50 Euros in value and within scope of the CRD.

- Option 2: Apply pre-contractual information requirements, and withdrawal provisions, to contracts, exceeding 50 Euros in value, both within the scope of the CRD and, in addition, to healthcare and social services sold in the home. These are covered by the current consumer protection legislation for off-premises contracts (Cancellation of Contracts made in the Consumer's home, or place of work etc.Regulations 2008,¹), which the CRD is intended to replace.

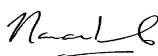
: In addition, to option 1 or 2, article 7(4) allows us to reduce the pre-contract information requirements on traders where the value of the transaction does not exceed 200 Euros, and relates to an explicit request by the consumer for repairs or maintenance in the home, which is then effected immediately. We are proposing to include this derogation within both options 1 and 2.

Option 2 would best meet UK Government policy objectives to encourage growth, and minimise burdens on business whilst maintaining high levels of consumer protection for vulnerable consumers. Older, disabled, and otherwise vulnerable people are often the targets of off-premises marketing, and option 2 covers healthcare and social services, where protection is particularly needed. Option 1 would reduce existing levels of consumer protection in these two sensitive sectors and would leave consumers in the position of having greater protection when buying a vacuum cleaner than when committing to more economically significant purchases such as long-term care.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** July 2019

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

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 SELECT SIGNATORY:

Date: 13/08/2012

¹ Known as the 'Doorstep Selling or Off-Premises (OP) Regulations'

Summary: Analysis & Evidence

Policy Option 1

Apply pre-contractual information requirements and withdrawal provisions to all off-premises contracts within the scope of the CRD, and which normally and regularly sell goods and services off-premises. **Exclude** off-premise transactions with value of less than 50 Euros. Urgent home repair and maintenance services, costing less than 200 Euros, will be subject to lighter information requirements

FULL ECONOMIC ASSESSMENT

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

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	NA	NA	NA

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

NA

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

- Business compliance costs, including familiarisation and transition costs, as a result of the information requirements, should not be significant, given that those in the CRD have notable overlaps with information obligations contained in other legislation.² Many of the withdrawal provisions replicate those in existing off-premises legislation and will not lead to increased costs. Preliminary views indicate that the extension of the cancellation period from 7 to 14 days should not result in markedly more cancellations and therefore costs. However, starting the cancellation period when the goods are received (rather than from when contract is agreed) is a new provision, which could result in more returns. The consultation will seek information on the likely impact of these provisions.

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	NA	NA	NA

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

NA

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

Greater consumer protection in an area where the potential for consumer detriment is significant, since consumers may be subjected to pressure selling techniques and have limited shopping options. Reduced compliance costs and legal uncertainty for traders selling across EU. Trader will be entitled to retain money for any diminished value of product returned, beyond the use necessary to check it is fit for purpose, and will be able to retain monies until goods returned. Consumers will be able to inspect goods purchased. Clarity and certainty for consumers and businesses on minimum information requirements, and cancellation rights will be a key benefit. Traders can in future require the consumer to bear the cost of returns³ and burden of proof for return will be on the consumer. Enhanced clarity and certainty is likely to mitigate the need for extensive enforcement action and reduce the cost of dispute resolution.

Key assumptions/sensitivities/risks

Discount rate (%)

² Consumer Protection from Unfair Trading Regulations 2008, The Provision of Services Regulations 2009..

³ Although where an item is delivered at the time the contract was concluded, and is not normally returnable by post, the trader must at their own expense collect the item

We do not have data on the specific impact resulting from the information and withdrawal requirements. Given that the information requirements have notable overlap with information requirements in other applicable consumer legislation, we do not expect costs to be significant. Neither do we expect the increase in the cancellation period from 7 to 14 days, based on initial feedback, to raise costs significantly. The impact that the clarification of the start of the withdrawal period will have, is uncertain. Clarity that the consumer must bear the cost of returns should reduce business costs but the impact has not been quantified. Our consultation will include questions on all these issues to help inform us about likely impact.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as	
Costs:	NA	Benefits: NA	Net: NA	NO	IN/OUT/Zero net cost

As for option 1, apply pre-contractual information requirements and withdrawal provisions to all off-premises contracts, excluding transactions with value of less than 50 Euros, and apply lighter information requirements for urgent home repair and maintenance services, costing less than 200 Euros. In addition, apply the information and withdrawal provisions to social services and healthcare contracts concluded off-premises. These are currently covered by the off-premises regulations which the CRD is intended to replace.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: NA
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	NA		NA		NA
Description and scale of key monetised costs by 'main affected groups'					
NA					
Other key non-monetised costs by 'main affected groups'					
Costs are not expected to diverge substantially from those in option 1. The cost per trader will not increase, although more traders who normally operate off-premises will be subject to the requirements. However, as these traders are already covered by information and withdrawal provisions in the Off-Premises Regulations, and in the Consumer Protection from Unfair Trading Regulations, they will be familiar with the broad nature of these obligations. The extension of the cancellation period from 7 to 14 days may have some impact in the healthcare and social service sector, but it is not expected to be substantial. We will use the consultation to gather evidence on the potential impact on this sector.					
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	NA		NA		NA
Description and scale of key monetised benefits by 'main affected groups'					
NA					
Other key non-monetised benefits by 'main affected groups'					
Benefits are in line with option 1. In addition, this option will ensure that vulnerable consumers in the home continue to retain important protections, currently given by the Off-Premises Regulations with regard to social services and healthcare provided on a commercial basis.					
Key assumptions/sensitivities/risks					Discount rate (%)

Currently, we do not have firm data on the market size for sales of social services and healthcare in the home. We can expect, however, that whatever the size, it will certainly increase with the forthcoming Government plans to allow greater choice and control in how people obtain social and health care. This will give consumers much more freedom and choice, and traders many more opportunities. However, with this enhanced opportunity, will come enhanced risk, for a category of consumers who are particularly vulnerable. Our consultation will seek to draw further evidence on the size of this market and on the impact of the proposed changes.

BUSINESS ASSESSMENT (Option 2)

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

Evidence Base (for summary sheets)

This IA is part of a bundle .The bundle consists of a covering IA which sets out the general context, scope and aims of the CRD as a whole, followed by four 'sub-IA's, one on each of the key areas covered by the CRD (bar article 19 on payment surcharges¹), and which are highlighted in the bullets below.

The CRD provisions covered in this bundle are as follows:

Chapter II:

- pre-contractual information requirements where traders sell on-premises

Chapter III:

- pre-contractual information requirements and cancellation rights for consumers where traders sell at a distance, and
- Pre-contractual information requirements and cancellation rights for consumers where traders sell off-premises

Chapter IV:

- 3 additional requirements applicable to all sale and services contracts, however sold.

This IA relates to Chapter III provisions for off-premises consumer contracts.

¹ Article 19 on payment surcharges is the subject of a separate IA and consultation

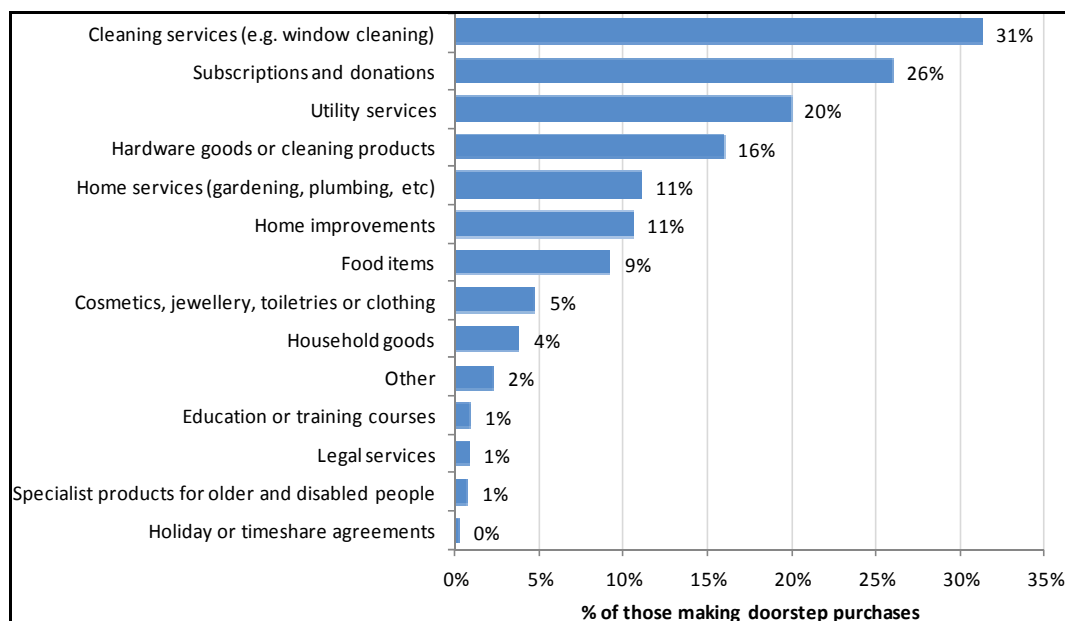
Problem under consideration;

1. Clear, relevant information is key if consumers are to make informed choices, appropriate to their needs.. Information,(and the ability to change one's mind) is extremely important where transactions take place away from the trader's premises. Not only is the consumer more vulnerable to pressure-type sales techniques, and unsolicited visits, but evidence shows that those purchasing at home are often more vulnerable than the average consumer, and are more likely to be less mobile or in some way infirm. And of course, transacting away from the trader's premises, means the consumer cannot easily track down the trader should they subsequently need to.

Size of the market and consumer detriment

2. An OFT market study into doorstep² selling³ conservatively estimated that the value of doorstep sales was circa £2.4 billion in 2004. A recent report by GHK for the OFT⁴ into doorstep selling practices and the impact of the OFT intervention in the sector, found that doorstep sales had grown in real terms by 19 percent to circa £3.3 billion. Including small and medium transactions in the calculation, the report found that the sector was worth around £4.7 billion in 2010. Figure 2 below shows a breakdown of doorstep products and services, according to the frequency with which they were purchased by respondents to the GHK survey.

Figure 1: Main doorstep selling products and services (according to frequency of purchase)



3. The figures on the size of the doorstep sales market suggest that there is potential for significant consumer detriment in the area, not least because consumers may be subjected to pressure selling techniques, such as time-limited offers and artificially high starting prices followed by heavy discounting (see Figure 2 below). The survey for the OFT by GHK found that, while consumers were broadly happy with their shopping experiences, 15 percent were subjected to such pressure selling techniques.⁵

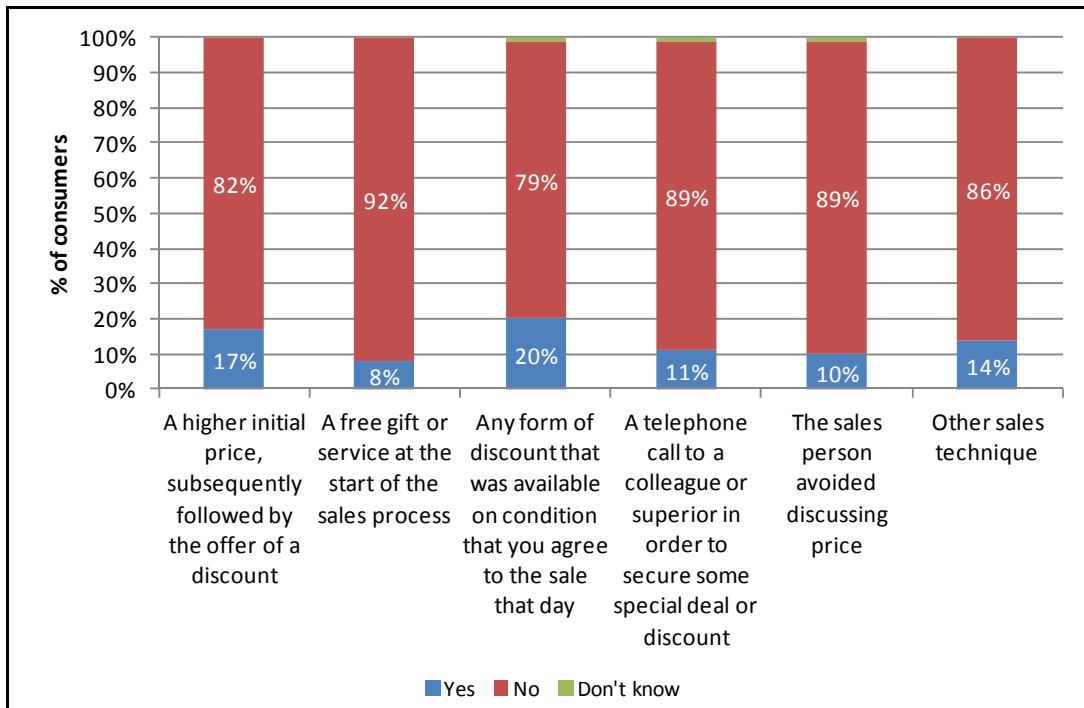
Figure 2: Proportion of consumers reporting pressure selling techniques

² Throughout this Impact Assessment, we refer to transactions which take place at a consumer's home as doorstep sales and use the term inter-changeably with 'off-premises' transactions.

³ OFT (2004), 'Doorstep selling: A report into the market study', Available here: http://www.of.gov.uk/shared_of/reports/consumer_protection/of716.pdf.

⁴ GHK report for the OFT (unpublished): 'Evaluating the impact of the 2004 OFT market study into doorstep selling'.

⁵ Ibid.



Source :GHK for the OFT⁶

4. The importance of the doorstep sales market is even more significant for certain members of society which are dependent on the sales channel for their purchases. For example, the GHK survey carried out for the OFT found that around one third of the respondents were unable to purchase the product through an alternative method easily (because for example the product had to be customised to the consumer's home). For respondents over 70 years of age, this figure was over 50 percent, meaning that consumers in this group are even more dependent on doorstep sales and as such susceptible to significant consumer detriment.

5. The OFT carried out a market study into the mobility aids sector⁷, which found that while the majority of consumers were satisfied with their purchases, complaints to Consumer Direct were highest among those who had purchased their product through doorstep channels. The report also found that unfair sales practices, which were targeted at the elderly and vulnerable, were prevalent in the mobility aids sector, particularly in transactions concluded at the consumer's doorstep.⁸ As well as pressured sales techniques, the study found that consumers reported that they were subjected to wrong or deceiving information about the sales visit, the product characteristics and its price.⁹

6. Therefore, consumer detriment in the doorstep sector arises from unfair commercial practices, particularly around those affecting the consumer's decision making, such as high-pressure selling and misleading information provided at the point of sale.

Rationale for intervention;

7. Harmonising and clarifying information and withdrawal rights for off-premises regulations, will help ensure that this sector benefits from the opportunities for growth provided by the Single Market, whilst maintaining a high level of consumer protection. Information before buying, and the ability to change one's mind, are particularly important in sales concluded away from a trader's premises. The consumer is often unable to inspect the goods before agreeing to purchase, and cannot compare offers from several suppliers as is often the norm in a shop or when buying on-line, and may be unable to contact

⁶ Ibid.

⁷ OFT (2011), 'Mobility Aids: An OFT Market Study', Available here: http://www.offt.gov.uk/shared_offt/market-studies/oft1374.

⁸ Ibid.

⁹ Ibid.

the supplier post-contract without contact information being given. Where a service is to be provided, the consumer must judge whether the supplier is appropriately qualified and reputable. They are unlikely to have much to go on to form a view when the contract is concluded in their home or away from business premises. Particularly in the case of sales in the home, they may not have the time or opportunity to check credentials or ask for advice from family members or advisers, and may be more vulnerable to high pressure selling techniques. Clarification of rights and responsibilities should also reduce the number of disputes (and associated costs) which traders must deal with.

Policy objective;

8. The policy aims to enhance single market growth opportunities for business and choice for consumers for off-premises transactions (e.g. sales in the home), whilst maintaining high levels of consumer protection. By harmonising and clarifying information and withdrawal provisions where consumers buy away from the trader's premises, we aim to give business and consumers greater certainty and clarity over respective obligations and entitlements, thus reducing burdens on business, in particular SMEs, who wish to trade cross-border. Standardising these consumer protection measures across the EU makes it easier to trade across boundaries and boosts competition. The measures should also raise consumer confidence and stimulate export opportunities for UK traders. Consumers will be armed with clear information on the product or service they wish to buy, and on any withdrawal rights and obligations they may have before they commit to buy. The Directive means consumers will have key information, at point of sale, to make good choices.

Key requirements relating to Off-premises contracts¹⁰

9. Information provisions:

To give information to the consumer in a clear and comprehensible manner, before the consumer is committed to the contract, on:

- Main characteristics of product or service if appropriate
- Contact details of trader
- Total price and additional costs, or indication of how will be calculated
- Arrangements for payment, performance and delivery (and any available complaints procedure)
- Withdrawal rights and obligations on consumer and any restrictions on those rights (plus model form)
- Reminder of legal guarantee of conformity of goods
- Existence of any after-sales care, and of any codes of conduct
- Duration of contract, and ways to terminate the contract
- Any deposit or financial guarantees to be paid
- Functionality and interoperability of any digital content
- Existence of any ADR scheme

- This information, and any subsequent contract, to be provided on paper, or, with consumer agreement, on another durable medium.
- This information shall form part of the contract¹¹
- Where the trader fails to inform the consumer of additional costs, the consumer is not bound to pay those costs.
- Where the consumer wishes a service to begin during the cancellation period (14days), the consumer must expressly consent. Without such consent, the consumer is not bound to pay for any usage of goods, or proportion of service delivered, if they subsequently withdraw during the cancellation period.

¹⁰ **'Costs and benefits of option 1' section below outlines which of these are material changes to existing regime**

¹¹ Both parties must expressly agree to any alteration to these terms

- These requirements are also applicable to service contracts for the supply of water, gas and electricity, district heating and digital content whether or not supplied on a tangible medium (such as a disk).

10. Provisions on rights and obligations in relation to cancellation of contract:

- Consumer has 14 (rather than current 7) days from receipt of good, or when contract for a service signed, or from notification of withdrawal rights, whichever is the later, to change mind
- If trader does not inform consumer of withdrawal rights, the right expires only after 12 months
- Trader must supply model withdrawal form (provided in Directive) which consumer may use
- Withdrawal by consumer within the period, terminates obligations under the contract
- Ancillary contracts are automatically terminated where the consumer withdraws from the main contract

Contracts where cancellation not possible: –

- Fully performed service contracts (provided the consumer consented, acknowledging they would lose the right to withdraw)
- Goods delivered sealed, subsequently unsealed, for health or hygiene reasons, or because they are CDs, DVDs or software.
- Newspapers, magazines, periodicals (not including subscriptions)
- Goods and services subject to fluctuations in financial market and which would affect price in withdrawal period
- Goods which after delivery cannot be separated from other materials
- Personalised goods made to consumer's particular specification
- Perishable goods
- Supply of alcohol where price agreed but value may fluctuate after contract concluded
- Contracts concluded at public auctions
- Provision of accommodation, transport of goods, car rental, catering or leisure activities, where the contract is for a specific date or period
- Digital downloads (where consumer expressly consented and knew of loss of withdrawal right)
- Contracts whereby consumer specifically requested visit from trader to effect urgent repairs

11. Rights and obligations of trader:

Trader must reimburse all payments no later than 14 days after receipt of withdrawal, and in manner paid, unless consumer agrees otherwise. However, where the consumer is to return goods, trader may await return or proof of return.

Trader need not reimburse the additional cost of delivery where the consumer specifically elected to have express delivery

Trader must tell consumer if consumer is to bear the cost of any return

Where goods are delivered at the time of the contract, the trader must collect, if by their nature such goods would not normally be delivered by post

12. Rights and obligations of consumer:

Unless items being collected, consumer must return goods within 14 days of withdrawal

Where the consumer has expressly requested the commencement of service within 14 day period, consumer must pay for proportion of service delivered.

However, where there was not express consent, or where the consumer was not told of their withdrawal rights, or that they would have to pay a proportionate amount for services delivered, then no cost is payable.

Consumers are liable for diminished value of any items, beyond usage necessary to test that it works (and provided they have been told of their withdrawal rights)

Description of options considered (including do nothing):

13. As an agreed European Directive, the 'do nothing' option is not available. As a maximum harmonisation Directive, there is little flexibility in how we implement.

Option 1: Apply pre-contractual information and withdrawal provisions to all goods and service providers, within the scope of the CRD, and which sell goods and services off-premises. Exclude off-premises transactions with value of less than 50 Euros (around £43) is broadly in line with exemption under current off-premises regulations (under £35). Services for urgent home repairs and maintenance below 200 Euros (equivalent to around £174), will be subject to lighter information requirements.

Option 2: Apply pre-contractual information and withdrawal provisions to all goods and service providers, as in option 1, and lighten information requirements for contracts relating to urgent home repairs and maintenance below 200 Euros, **but also include social¹² and healthcare¹³ services** which are outside the scope of the CRD but currently covered by the off-premises regulations which the CRD will replace.

14. **Option 2** would best meet UK Government policy objectives to encourage growth, and minimise burdens on business whilst maintaining high levels of consumer protection in areas of particular consumer vulnerability. Older, infirm, and otherwise vulnerable people are often the targets of off-premises marketing, and option 2 covers healthcare and social services, where protection is particularly needed. Option 1 could leave consumers in the position of having greater protection when buying a vacuum cleaner than when committing to more economically significant purchases such as long-term care.

Discarded policy options

15. As a maximum harmonisation Directive, there is little scope for flexibility in implementation. However, as well as the options outlined above, three further options have been considered and discarded.

16. The first is to apply the off-premises provisions to all transactions currently covered by the off-premises regulations, but exempted from the scope of the CRD¹⁴. A review of the exempted sectors has suggested that, with the exception of healthcare and social services, appropriate measures are, or can be more appropriately put in place, through alternative legislation. For instance, financial services are covered by existing off premises (OP) regulations, but excluded from the CRD. However, appropriate and tailored protection already exists in many cases through other legislation such as the Consumer Credit Act, the Financial Services and Markets Act, and Distance Selling of Financial Services Regulations. As a result we have discarded this option. Similarly, timeshare regulations already provide for a longer cooling off period and for information requirements.

17. A second discarded option is to follow option 1 but include those contracts with value of less than 50 Euros. This was discarded on the basis that it would place a significant new burden on business, in particular smaller traders, The current Off-Premises Regulations exempt contracts for less than £35 from

¹² Services for particularly disadvantaged or low income persons, services for persons and families in need of assistance in carrying out routine, everyday tasks, and services for all people who have a special need for assistance, support, protection or encouragement in a specific life phase. (include services for children, youths, families, single parents, older persons, migrants, both short-term and long-term home care services, or assisted living facilities and residential homes or 'nursing homes'.

¹³ Under current UK legislation, all healthcare which is the subject of a contract between the business and the consumer, is covered by the off-premises regulations. Under the CRD, there is an exemption for healthcare services (and goods) sold by **regulated healthcare professionals** as defined in the Directive 2011/24/EU on patient rights in crossborder healthcare. (doctors, nurses, dentists, pharmacists etc.) .(For both the existing legislation, and the forthcoming CRD, where there is no business-consumer contract, e.g. for NHS services, the provisions will not bite). It is clear that the narrow definition of the healthcare exemption in the CRD means that **commercial traders (rather than regulated professionals)** selling healthcare products and services (e.g. mobility aids, vitamin supplements, diet plans etc.) do not fall within the exemption but are squarely within the scope of the CRD.

¹⁴ Social services, healthcare by professionals, gambling, financial services, passenger transport, package travel, timeshare, contracts requiring involvement of public officer holder

its application. We do not have evidence of any notable benefit to consumers from removing this threshold or keeping it at £35 rather than raising it to the maximum level permitted by the Directive.

18. The third discarded option relates to the option, permitted under the Directive, to allow Member States to ban the taking of payments by the trader within the withdrawal period. Again, this would impose a new burden on business, and possibly have significant cost and cash flow implications, without evidence that this would significantly reduce consumer detriment.

Costs and benefits of Option 1

19. In the sections which follow, we highlight the key changes which the CRD will bring, describing the impacts and the channels through which these work, as far as is possible. We have not been able to reliably quantify the size of these impacts, in particular because benefits such as the impact of the provisions on consumer confidence and business certainty are inherently difficult to measure with any certainty (more specifically the marginal impact of the provisions on these aspects). However we plan to use the consultation to seek views from both consumers and business, on the impact of the changes, particularly on the proposals to extend the scope of the CRD provisions under option 2 (such that consumers in the affected sectors can enjoy existing levels of protection).

20. Traders are already subject to information and withdrawal provisions for off-premises sales¹⁵, and the requirements in articles 6 and 7 of the Directive are to a large extent similar to these, and to more general existing requirements.

21. The key changes introduced by the CRD are as follows:

-Pre-contractual information requirements are made more extensive and explicit, including information on the duration of the contract where applicable, on total cost including existence of deposits or financial guarantees which may be payable, and the any responsibility for cost of returns;

-Such information must be provided on a durable medium, and in plain language

-The period during which the consumer may cancel is increased from 7 working days to 14 calendar days;

-The withdrawal period is set at one year where the consumer has not been informed of their withdrawal rights, (currently a failure to inform of withdrawal rights means the contract is unenforceable by the trader). The withdrawal period commences when goods are received or the service contract is concluded.

The above measures are likely to impose some costs on businesses, both in terms of familiarising themselves with the new law and in terms of more information needed to be provided and possibly more sales cancelled. No data is available at present on the extent of such new costs. It will be sought through the consultation

-The consumer must return the goods, and bear the cost of the return, unless otherwise agreed with the trader, or, where the trader has delivered the goods at the time of the contract, must make the goods available for collection within 14 days of cancellation. Under the current regime, the consumer is bound to make the goods available (i.e. for collection) but not to return them themselves

-Traders must refund costs within 14 days of receiving notice of withdrawal, but, unless they are collecting the goods, they are entitled to wait for return (or evidence of return) of goods before doing so.

-A further change, in the trader's favour, is that there is no right of withdrawal by the consumer where they have called the trader to effect urgent repairs or maintenance work

22. These measures should result in savings for businesses. Business groups advise that the most important saving will arise from being able to withhold refunds until proof of return of goods has been supplied. No data is available at present on the value of these savings. It will be sought through the consultation.

Benefits

23. Option 1 is the baseline option since the UK has a duty under EU law to implement the CRD as a maximum harmonisation Directive and with minimal scope for changes to the way it is transposed into UK law.

24. Benefits to business include reduced compliance costs when trading across the EU. The central aim of the CRD is to standardise consumer law in a number of areas across Member States, including off-premises contracts, such that European businesses can operate across EU borders freely and at

¹⁵ Provision of Services Regulations 2009, Consumer Protection from Unfair Trading Regulations 2008, Cancellation of contracts made in the Consumer's home ...regulations 2008

minimal cost. In order to ensure the potency of this impact, the CRD is designed as a Maximum Harmonisation Directive, meaning that divergence from the central aim of standardisation is minimised.

The GHK 2008 survey also revealed the importance of withdrawal rights for consumer confidence. Based on its survey responses, it estimated the value of solicited purchases by UK households that would not have been made in the absence of such rights to be in the region of £57 million per annum¹⁶.

25. There is also enhanced clarity of respective obligations (business and consumer), and enhanced legal certainty. There is a new obligation on consumers to return goods and not simply to make them available for collection (and to pay for those returns), and consumers will no longer have withdrawal rights where urgent repairs are requested, or where the contract is for accommodation, transport, car rental, catering and leisure services required for a specific date or period.

26. Benefits to consumers include clarity of respective responsibilities and rights, a reasonable time to consider and make an informed choice, by for example comparing products or services with alternative offers, and the opportunity to see and inspect goods before deciding whether to keep them.

27. The option to reduce the pre-contractual information requirements where transactions are for maintenance and home repairs, where the value does not exceed 200 Euros (around £175), the consumer has explicitly requested the service, and the work is carried out immediately should also be, on balance, of benefit to traders. Under the lighter regime, the trader should set out on paper¹⁷, their name, contact details, and price, and also provide information on the work to be carried out, rights and restrictions with regard to withdrawal. These latter need not be on a durable medium if the consumer expressly agrees.

28. In practice, it is unlikely that the lighter information option will significantly decrease costs for business who take advantage of it, and the information, must in any case be provided on durable medium post-contract. However, we consider that traders should be given the option of using this lighter regime, and this option still affords the consumer adequate protection given the nature of the transaction (it is obvious for instance that the service will be carried out straight away and issues such as digital interoperability, and duration of the contract, are unlikely to be relevant), and the additional protections given by other consumer protection legislation should ensure no material information is omitted.

Costs

29. . The evidence available suggests that the increase in returns as a result of a longer withdrawal period may not be substantial. There is evidence from the European Commission's research and from the UK that suggests that withdrawal rates may not increase much as a result of an extended withdrawal period. In the UK, the Direct Selling Association (DSA) represents a number of companies with average order values of between £500 and £1500 - almost all these transactions result from solicited visits. DSA members represent 51% of all direct sales in the UK¹⁸. The companies involved all offer a 14 day cancellation period in line with the DSA's code of practice¹⁹. Data provided by these companies show that the majority of cancellations are within 7 days despite the longer withdrawal period. It is estimated that 10-20% of withdrawals occur after 7 days (0.5 to 1% of an overall cancellation rate of 4.6%).

30. The DSA has suggested that, of the changes to the starting point for the withdrawal period may impose burdens on business. Under current legislation, cancellation rights start from the receipt of the notice of the right to cancel. Since the trader is under no obligation to supply within the 7 day cancellation period, the trader has control over whether to accept the risk of delivery and other diminution in value costs by delivering within the period. Under the CRD, the cancellation clock does not start ticking until the goods are received, so the trader cannot 'wait out' the cancellation period for goods before delivering. Industry representatives contend that items, once delivered, will automatically reduce in value, even where there is no usage by the consumer. In addition, the cost of delivery to the consumer (and for which the consumer must be reimbursed) can be substantial. It is however, expected that, if such delivery costs **are** substantial, the analogous cost of the return (which will be borne by the consumer) will ensure that consumers only effect withdrawals after strong consideration, and in a small

¹⁶ Evaluating the impact of the 2004 OFT market study inot doorstep selling – GHK for OFT April 2012

¹⁷ Or other durable medium if the consumer agrees

¹⁸ <http://dsa.org.uk/about/dsa>

¹⁹ See paragraph 12.1 here: <http://dsa.org.uk/assets/resources/consumer-code-plain-as-amended-agm-nov2010.pdf>

number of cases. Our proposed consultation will seek to draw more information on the extent to which goods are currently supplied within the withdrawal period, on costs, and the subsequent impact of this provision.

31. There are also likely to be a one-off transition cost for businesses trading off-premises. These are likely to be costs of familiarisation to the new legislation, such as staff training costs and other tangential costs such as the cost of re-printing information material

Costs and benefits of Option 2

32. The costs and benefits highlighted in option 1, will also be applicable for this option. The cost per trader will not increase, but more traders will be covered, i.e. those off-premises traders operating in the health and social care sectors. This option will help ensure that consumers, who are more likely to be within the vulnerable consumer category, buying at home, will continue to have clear information rights, and rights of withdrawal, when buying social services and healthcare products. Since we would only apply provisions to those businesses already covered by the existing off-premises regulations, which the CRD is intended to replace, the extent of any increased burden on business is unlikely to be notable.

33. Option 1 sets out the key anticipated changes. Since the types of contract option 2 seeks to cover, relate in the main to services, for which the withdrawal period starts at the time the contract is signed, the key concerns around costs for rejected goods will not be relevant and so this option would not increase the costs related to the key area of concern expressed by business. With forthcoming changes in how local authorities will offer citizens access to social services, through for example, vouchers to allow consumers greater choice, the importance of protection in the home will become even more important in the future

34. Healthcare and social services cover areas of particular consumer vulnerability. The exclusions were made to specifically enable Member States to put in place **higher** consumer protections than the maximum harmonisation nature of the Directive would allow. Whilst we are not seeking to put in more onerous measures, neither would we wish to see the exemption used as a loophole to reduce protection where it is particularly needed.

35. Following reforms under the Health and Social Care Act, consumers will have more choice regarding healthcare and social services, and with increased opportunities and freedom will come increased risk, in particular for this group where the demographic is likely to be made up of older, infirm or otherwise vulnerable consumers. Whilst the Act seeks to ensure that customers receive quality of care, it does not address the issue of how contracts are concluded. Other consumer protection measures which prohibit material or misleading omissions, or contracts concluded under duress, will continue to apply. But none of these will address the circumstances where, for instance, an older person signs up to a homecare service following an unsolicited visit and where the sale was not aggressive but the consumer was persuaded of something which, afterwards, or in discussion with family members, they no longer want. Without the cancellation protection within the CRD, the vulnerable consumer may remain bound to the contract. The GHK survey indicated that 44% of consumers aged 70+ did not have easy access to alternatives to doorstep sales when purchasing goods or services. In this age range, the most common purchases included those for **home services** and mobility aids.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach):

36.. The CRD is an EU negotiated Directive and its final form is the result of significant consultation and stakeholder engagement to ensure that it recognises and addresses the key concerns of business and of consumer groups. The result is a Directive which is focused on clarification and harmonisation, and changes to the existing regime are limited. We do not expect new requirements to impose significant additional costs for business and there will be offsetting savings. Both costs and benefits will be researched further through and during the consultation period.

37. The CRD is also a maximum harmonisation Directive, meaning that Member States, including the UK have very limited scope for affecting the way it is implemented into national legislation. Where available the UK has decided to take advantage of exemptions, so that additional business burdens are

minimised. The UK is proposing to go beyond minimal implementation, is by extending the off-premises transactions, to the health and social care sectors in order to maintain current level of consumer protections and ensure that vulnerable consumers are protected from unfair business practices.

38. This is a consultation stage impact assessment and having regard to the proportionality approach in impact assessments, we have not been able to reliably quantify the expected impacts of the proposals. Furthermore, the UK has minimal scope in implementing the proposals and the proposals are expected to only have a marginal impact on businesses and consumers (in addition to existing legislation). Throughout the impact assessment we have sought to highlight and describe the expected impacts of the legislation, as far as possible.

Risks and assumptions:

39. It is too early to quantify the impact of the reforms in the provision of healthcare and social services. However, we can reasonably expect that consumers will be faced with greater choice, and may be subject to increased marketing in their homes.

Direct costs and benefits to business calculations (following OIOO methodology):

40. Since most the provisions are mandatory under binding EU maximum harmonisation legislation, the costs and benefits to business are not to be counted for One In One Out (OIOO) purposes. However, where the Government makes use of an option which results in an increase or decrease in business burdens compared with the current situation, such costs or benefits should be counted for OIOO purposes.

41. In this case the Government is proposing to take up two options which might reduce existing business burdens an 'OUT' for OIOO purposes and one which might increase them, an 'IN' for OIOO purposes:

OUT

- The increase in the threshold below which information requirements will not apply will be raised from £35 to the maximum allowed (around £43).
- Where the total cost does not exceed 200 Euros (around £167), the consumer has explicitly requested the service, and the work is carried out immediately, the trader need not give all the pre-contractual information.

IN

- The information requirements and longer withdrawal period in the CRD (as compared with existing legislation) will be applied to healthcare and social services sold off premises.

42. The Government does not expect the impact of any of these measures to be substantial. It would expect the direct costs and benefits to business arising out of these three choices to result in a small IN with possibly overall zero net cost to business. During the Consultation we will seek to verify this expectation and to establish a sound basis for estimating the size of these costs and benefits.

Summary and preferred option with description of implementation plan.

43. Off-premises selling is currently regulated by the Cancellation of Contracts made in the Consumer's home or Place of Work etc Regulations 2008, with relevant, and sometimes overlapping provisions also present in the Consumer Protection from Unfair Trading Regulations, Provision of Services Regulations 2009 and sector specific regulations such as the Consumer Credit Act and the Financial Services and Markets Act 2000. Off-premises sales present particular issues in that consumers are often older, may be house bound or in some other way vulnerable. Consumers are unable to check credentials easily, may not be able to inspect goods, or compare prices and may be subject to high pressure selling techniques. Our preferred approach is to implement in line with option 2, covering a limited number of sectors outside the scope of the CRD but within the existing legislation which the CRD is intended to

replace, and recognising that such exemptions were intended to allow us to ensure that strong and appropriate protections remained in place for these sectors. In addition we would want to offer traders the flexibility to provide reduced pre-contract information for small home repairs and to increase the threshold below which information requirements and the withdrawal period are not obligatory. These options, we believe, ensure an appropriate level of information and withdrawal rights, whilst maintaining a fair balance of responsibilities between the trader and the consumer. Option 1, would, in our view, deprive vulnerable consumers buying social and health services, of consumer protections which are available for far less significant purchases in the home. We would wish to see these consumers protected at least to the same degree when they are committing to potentially expensive or long-term products such as home care, as when they are purchasing double glazing or a fitted kitchen.

44. Implementation is likely to be effected by the copying out of the relevant provisions of the Directive, through section 2.(2) of the European Communities Act 1972. Accompanying guidance will help businesses and consumers ensure that they clearly understand any new obligations which may apply. Legislation must be adopted and published by 13 December 2013, and should come into force on 13 June 2014.

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.bis.gov.uk

Any enquiries regarding this publication should be sent to:

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

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/1001