

**EU CONSUMER RIGHTS
DIRECTIVE: PROVISIONS ON
DELIVERY, PASSING OF RISK,
COMMUNICATION BY TELEPHONE
AND CONSENT FOR ADDITIONAL
PAYMENTS**

Impact assessment

AUGUST 2012

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Title: EU Consumer Rights Directive: Provisions on Delivery, Passing of Risk, Communication by telephone and Consent for additional payments

IA No: RPC12-BIS-1438

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

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 | YES | IN |

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

Traders and consumers are not making the most of the opportunities and choices offered in the Single Market. The compliance costs of trading across EU borders have meant that small enterprises, in particular, have been more reluctant to explore export opportunities. Concerns around delivery of goods, passing of risk, and the potential costs of contacting a supplier post-contract have adverse effects on Single Market growth. And hidden costs, where consumer must take an action to avoid a cost (e.g. pre-ticked boxes), are detrimental to consumer welfare and competition.

What are the policy objectives and the intended effects?

Clarifying and harmonising (1) rights and responsibilities on delivery of goods, (2) requirements regarding additional payments to be made by the consumer, and (3) requirements regarding charges for post-contract help lines, will mean businesses are clear about what they must do, irrespective of how they sell, who they sell to or where in the EU they sell. Reduced compliance costs, increased legal certainty and enhanced consumer confidence should facilitate cross-border trade and increase competition, whilst striking a good balance between consumer and business rights, so as to incentivise trade.

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

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

Apply the following provisions to all contracts within the scope of the CRD (i.e. on-premises, off-premises and at a distance):

- delivery of goods should be without undue delay and generally be within 30 days¹,
- consumer need not pay more than basic rate telephone charge to contact trader post-contract, and
- consumer must expressly consent to additional payments

Option 2: As for Option 1 and, in addition, apply the provisions to commercial social services and healthcare² services, package travel and timeshare contracts.

Option 2 is our preferred option to best meet Government policy objectives to encourage growth whilst minimising burdens on business and maintaining high levels of consumer protection where needed. It provides clarity and certainty for both traders and consumers with regard to delivery, and costs, in areas where hidden costs can be prevalent. Enhanced transparency will help consumers make good choices and support genuinely competitive businesses.

where hidden costs can be prevalent. Enhanced transparency will help consumers make good choices and support genuinely competitive businesses.

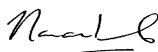
Existing laws on distance selling and doorstep selling apply to commercial social and healthcare services and to package travel and timeshare contracts³ []. The Government prefers to have universal consumer law with as few exemptions or special cases as possible and therefore to apply the new European rules also to these sectors.

Option 1 could lead to market distortions for example between providers of stand alone travel services and providers of travel services as part of a package . It could also lead to disputes around the definition of the exemptions, which could be expensive to resolve.

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 | Small 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 But in most cases with a second chance to deliver before the consumer can terminate the contract. 30 day restriction will not be applicable where a specified date for delivery is required. The trader and consumer can agree to an alternative date. The trader is generally responsible for the goods until delivered to the consumer.

² By 'commercial' we mean those goods and services provided under a contract of sale, whereby the seller agrees to provide to the consumer, for an agreed price, the goods and/or services laid out in the contract. Services provided by the NHS and local authorities are not, therefore, covered. For further detail on coverage of the 'healthcare and social services' definition see foot notes 5 and 6 on page 10

³ Although many of the DSR provisions are not applicable to timeshare contracts

Apply the following provisions to all contracts within the scope of the CRD:

- delivery of goods should be without undue delay and generally be within 30 days⁴,
- consumer need not pay more than basic rate telephone charge to contact trader post-contract, and
- consumer must expressly consent to additional payments

FULL ECONOMIC ASSESSMENT

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|--|--|-------------------|---|----------------|--------------------------------------|
| | | | Low: Optional | High: Optional | Best Estimate: |
| COSTS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | | Total Cost (Present Value) |
| Low | Optional | | Optional | | Optional |
| High | Optional | | Optional | | Optional |
| Best Estimate | NA | | NA | | NA |
| Description and scale of key monetised costs by 'main affected groups' | | | | | |
| NA | | | | | |
| Other key non-monetised costs by 'main affected groups' | | | | | |
| - The compliance cost where business must 'untick' boxes and amend any text which implies consent to additional payments, is expected to be small, with up-front costs for some businesses adjusting websites to meet new rule. The limitation to basic rate calls should have no direct costs for most businesses, beyond some possible administrative set up costs. There will be loss of income for those traders who gain revenue by charging customers to contact them by phone, or who have arrangements with telecoms providers to offer customer contact services funded through revenue generating numbers. However we expect traders to recoup at least a proportion of this lost revenue by altering headline prices. Familiarisation and transition costs are overall expected to be small. We plan to use the consultation and resultant responses to improve our understanding of the size of these effects. | | | | | |
| 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 | | | | | |

⁴ But in most cases with a second chance to deliver before the consumer can terminate the contract. 30 day restriction will not be applicable where a specified date for delivery is required. The trader and consumer can agree to an alternative date. The trader is generally responsible for the goods until delivered to the consumer.

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

Harmonisation of requirements across the EU reduces compliance costs and legal uncertainty for traders selling across EU. There is enhanced clarity over delivery rights and responsibilities, traders selling at a distance are given additional flexibility, and all traders retain the flexibility to agree alternative dates. Consumer responsibilities are also clarified on when they assume risk for goods. Express consent should ensure consumers only buy what they genuinely need, help reduce 'hidden' costs and so level the playing field for competitors, as well as reducing potential dispute resolution costs for both traders and consumers. Prohibiting excessive call charges should also facilitate competition and enhance consumer confidence.

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

We have assumed that the clarification of delivery responsibilities, and the requirement to obtain the specific consent of the consumer to additional payments, will not incur significant costs for business. The former will not require action by business, and the latter will be a one-off (reprinting or reformatting) cost for those who use 'pre-ticked' boxes and wording requiring action or a tick to disapply payment obligations. Regarding restrictions on premium rates for post-contract telephone queries, we have assumed that the majority of premium rate users comply with the OFCOM agency regulated code of practice, which requires a non-premium rate number for customer service lines. As part of the Consultation, we will seek evidence on the validity of these assumptions.

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 |

Summary: Analysis & Evidence

Policy Option 2

As for option 1, extending to social and healthcare services, package travel and timeshare contracts

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 significantly from option 1. The cost per trader will not increase, although more traders will be covered. As for option 1, it is expected that the main costs will stem from the lost revenue where existing customers must currently pay premium rates to telephone the trader. However we expect traders to recoup at least a proportion of this lost revenue by altering headline prices. Familiarisation and transition costs are overall expected to be small. We plan to use the consultation and resultant responses to improve our understanding of the size of these effects.

| 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, with the added benefit that, by extending the new provisions to all sectors covered by existing law on distance selling, consumer protection remains coherent and aligned whilst compliance costs and legal uncertainty are further reduced for traders. Difficult disputes about what constitutes a healthcare or social care service will be avoided. Consumers, particularly the vulnerable, purchasing healthcare and social care at home, and those spending financially significant sums for holidays and timeshares, will be able to contact the trader quickly and at a cost which is reasonable to the consumer, but which the trader does not need to subsidize.

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

As for option 1.

BUSINESS ASSESSMENT (Option 2)

| | | | | | | | |
|--|-----------|------------------|--------------------------|-----------------------------|-----------|-----|----|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OIOO? | Measure qualifies as | | | |
| Costs: | NA | Benefits: | 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 IV provisions, (except those relating to payment surcharges)

Problem under consideration;

1. UK businesses and consumers are not fully reaping the benefits of the Single Market. 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 reluctance primarily stems from the additional costs of compliance when trading cross-border. Consumers are also reluctant to take part in cross-border shopping, demonstrating lower levels of confidence, thus diminishing their access to wider choice and lower prices. In particular, concerns around delivery of goods, passing of risk, and the potential costs of contacting a supplier post-contract have adverse effects on consumer confidence, especially for shopping across borders, and therefore on Single Market growth. Furthermore, hidden costs, in particular through pre-ticked boxes, are detrimental to consumer welfare and to competition, and increase the risk of disputes and associated costs for both consumers and traders.

Rationale for intervention;

Delivery

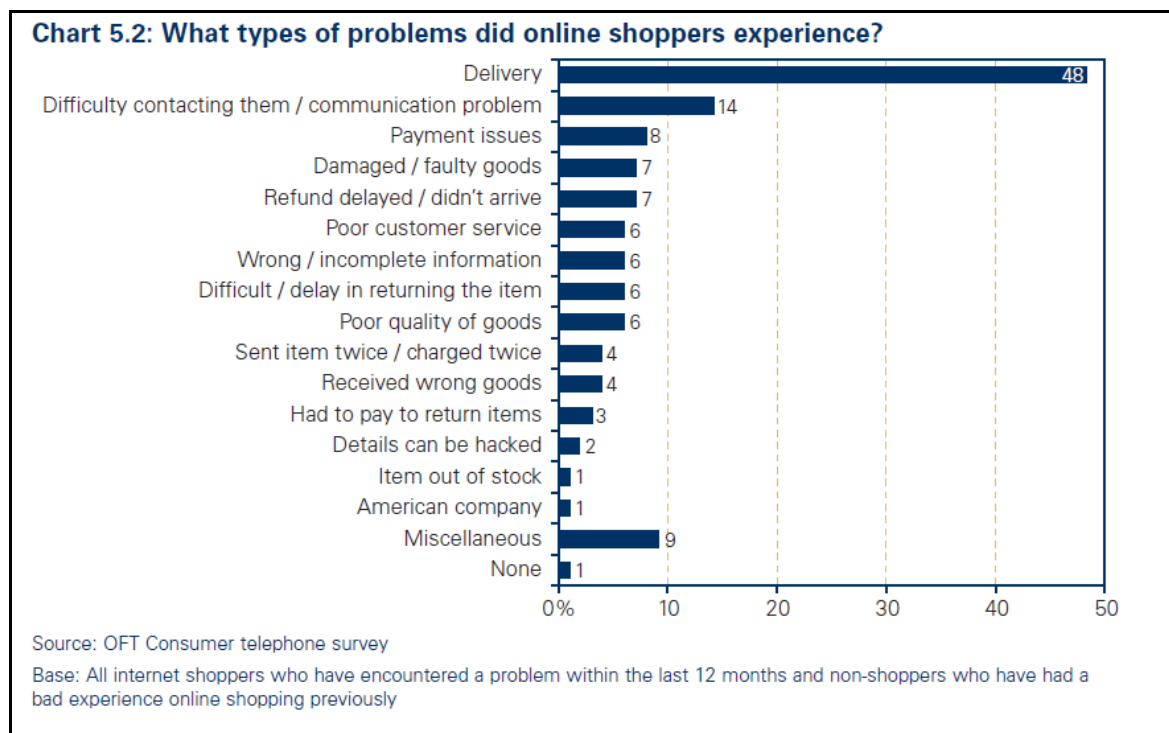
2. Concerns around delivery affect consumer confidence and can be costly for traders, both in terms of reduced trade, and in dealing with subsequent disputes which may arise. A 2011 report² showed that many EU consumers were reluctant to make cross-border purchases because they were worried that difficulties could arise if there would be a need to resolve problems, such as returning products (32% said they "totally agreed") and about half of respondents were worried about the delivery of products purchased in another country (24% said they "totally agreed"). Delivery concerns are also prevalent when buying nationally. The same report found that one sixth of EU consumers (18%) – who used the Internet, postal service or phone to buy products or services **from a national seller or provider in the past 12 months – had experienced a delay** in the delivery of their order and 6% said that the product or service was not delivered at all.

3. An OFT study of internet shopping found that consumers had concerns relating to purchases, particularly around issues with delivery, with 23 percent of respondents to the survey stating that they were concerned about late or non-delivery of orders.³ While these concerns may be somewhat overstating the extent of problems with delivery⁴, 48 percent of those reporting a problem with their orders, reported to have faced problems with delivery (see Figure 1 below). The OFT estimated that the annual detriment arising from unresolved issues with delivery, amounted to between £25m and £55m

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

annually.⁵ The OFT also found that that all types of remote purchasing raised uncertainty and concern about risks of such purchasing, including around issues with delivery.⁶

Figure 1: Problems with internet orders



Additional payments and default options

4. Ensuring that consumers only buy what they want, and are clear about total costs, is clearly of benefit to both consumers and traders, reducing compliance costs and potential disputes, and stimulating a more competitive market.

5. Behavioural biases play an important role in the consumer's decision making and research has shown that consumers may not make the best decisions, depending on how options are presented.⁷ An example of this is the preference for maintaining the status quo, whereby loss aversion preferences mean that consumers can opt for more expensive options if these are the default option, even if their cost to the consumer exceeds any benefit that they may raise through their consumption.⁸ This effect can become even more potent if consumers face complex information and the existence of default options simplifies the decision-making process.⁹ This default bias in consumer choice, typically arises because consumers assume that the default option is the one most recommended.¹⁰ Inertia and indecision can also inhibit making a positive choice for an alternative. Default biases can be exploited such as through partitioned pricing, whereby consumers are presented with additional charges throughout the purchase process. The OFT has found that this bias can result in consumers underestimating the final price and resulting in higher sales and/or prices for traders using such techniques. This in turn has important implications for competition, since it may adversely impact on consumer choice and affect competitive conditions

² Flash Eurobarometer 299 – Consumer attitudes to crossborder trade – March 2011

³ OFT (2008), 'Internet Shopping: An OFT Market Study', pp. 63.

⁴ Since 23 percent of respondents to the survey had experienced any kind of problem with internet orders and as such there is likely to be overlap between problem types.

⁵ OFT (2008), pp. 67.

⁶ Ibid.

⁷ See for example: OFT (2011), 'Consumer Contracts'.

⁸ Ibid, pp. 47.

⁹ Ibid.

¹⁰ OFT (2010), 'Advertising of Prices', pp. 24.

Telephone communications

6. Ensuring that consumers can contact traders who they have bought from, wherever that trader is based, at a reasonable cost, is important in enhancing consumer confidence. Providing consumers with the certainty that in case of something going wrong with their purchase, they can contact the trader without entailing significant costs, is likely to result in more active consumers, who are certain about their rights in distance and particularly cross-border purchases.

7. High telephone costs can often not be obvious to consumers and constitute a means of surcharging consumers without them actively choosing to incur extra expense.

Policy objective;

8. The Government supported the Consumer Rights Directive when it was being negotiated because it supports the European Commission's aim to enhance single market growth opportunities for business, and choice for consumers whilst maintaining high levels of consumer protection. By harmonising and clarifying parts of the consumer protection regime, with regard to delivery responsibilities, consent around additional payments and telephone costs for contacting a trader a consumer has bought from, we aim to reduce compliance costs for business who export or wish to export in the EU, and give traders and consumers greater certainty and clarity over respective obligations and entitlements. This should benefit business overall by reducing the number of disputes. The new practices which are being outlawed are not widespread in the UK so the new law will only have a negative impact on a small number of businesses, whereas the benefits will be spread across all companies, in particular SMEs, who wish to trade cross-border. Standardising these consumer protection measures across the EU should make it easier to trade across boundaries and boost competition. The measures should also raise consumer confidence and thus stimulate export opportunities for UK traders. Traders and consumers will be clear about their delivery responsibilities, consumers will be confident that they can contact the trader at reasonable cost, and the express consent provision reduces the likelihood of dispute.

Key requirements relating to delivery of goods

9. Article 18

- Unless otherwise agreed, the trader shall deliver the goods to the consumer without undue delay but no later than 30 days from the conclusion of the contract.
- Where the trader fails to deliver within time agreed or within the above limit, the trader must be given an additional amount of time appropriate to the circumstances. Only after this can the contract be terminated by the consumer.
- This will not apply where the trader has refused to deliver, or where delivery within the agreed period is essential taking account of all the circumstances or where it has been made clear prior to the conclusion of the contract that delivery within an agreed period, or on a specified day is essential. In those cases the consumer can terminate immediately upon the trader's first failure.
- The trader must then reimburse the consumer without undue delay following termination of the contract by the consumer.

Under current distance selling regulations, in most cases there is automatic termination of the contract [see DSR 19(5)], if there is failure to deliver within 30 days (unless otherwise agreed.). For other deliveries, current legislation requires only that delivery is within a reasonable amount of time, unless otherwise agreed. These provisions have given rise to disputes, the incidence of which the proposed new law is designed to reduce.

Passing of risk

10. Article 20

- Consumer assumes risk for good on receipt of good unless consumer has selected a carrier not offered by the trader, in which case consumer assumes risk when item passes to carrier.

This effectively clarifies but does not substantively change existing law.

Key requirements relating to post-contract communication by telephone

11. Article 21

Where a trader operates a telephone line for the purpose of contacting him by phone in relation to contracts concluded, the consumer is not bound to pay more than the basic rate.

This does not affect the right of the telecoms provider to charge for such calls.

Requirements on additional payments

12. Article 22

Before a consumer is bound by the contract, the trader must seek the express consent of the consumer to any extra payment in addition to the remuneration for the trader's main obligation. The consumer is not bound to pay any additional payments where express consent is not received.

Description of options considered (including do nothing):

13. As an agreed European Directive, the 'do nothing' option is not available.

Option 1: Apply the requirements detailed above to all contracts within the scope of the CRD. In summary, these are:

- Where the contract is for a sale of goods – the delivery of goods should generally be within 30 days, unless the parties otherwise agree, but in some cases with a “second chance” (to avoid termination of the contract) given to trader once 30 days have elapsed.
- For all consumer contracts, the consumer need not pay more than basic rate telephone charge to contact trader with regard to an agreed contract, and
- the consumer must expressly consent to additional costs (e.g. no pre-ticked boxes or requirement to tick a box or take some other action to avoid additional payment)

Option 2: Apply the provisions in Option 1 to consumer contracts within the scope of the CRD, **and** to social services¹¹ and healthcare services¹², package travel and timeshare contracts

¹¹ Where there is a contract between the business and the consumer for the provision of 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

¹² Healthcare services exempt from the CRD are narrowly defined and refer only to sellers who are *regulated healthcare providers as defined in Directive 2011/24/EU*, ie those services (and any goods) sold by qualified regulated healthcare professionals (doctors, nurses, pharmacists etc.). By extending coverage of the CRD, we, therefore, aim to cover goods and services provided by qualified professionals (those sold by non-professionals being already covered). Where there is no business-consumer contract, e.g. for NHS services, the provisions will not apply. 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. Extending the provisions to all sellers of healthcare will help ensure clarity and consistency for both providers and consumers.

Discarded policy options

14. The Government does not propose to exempt low value off-premises transactions from the CRD provisions. Although the drafting of the Directive is such that off premises contracts with a value of less than 50 Euros might be read to be excluded from these requirements, it would not in our view make sense to follow such an interpretation. The derogation for low value off-premises sales, is targeted at the provisions on information and cancellation rights in chapter 3 on off-premises selling [see IA in bundle relating to off-premises provisions] and carries forward the current exemption for low value contracts in the existing off premises (doorstep selling) legislation. The threshold in the off-premises regulations is based on the assessment that the lower level of consumer risk for such contracts would make the burden on business from the cancellation requirements potentially disproportionate.

15. The Government fully supports this derogation for low value contracts concluded off-premises, from information and cancellation requirements as set out in Chapter 3. (See Off-Premises IA in this bundle). However, we do not think that the same rationale for exempting low value contracts applies in relation to the chapter 4 provisions considered here, and we think that it could be inconsistent with the intent of the Directive if we were to interpret the derogation so as to apply it to these provisions. Exempting such transactions would not relieve a burden on small businesses in the same way as applying the derogation to chapter 3. Indeed it would probably result in higher burdens for small business and larger businesses selling low value items since the Government believes that the clarifications on delivery terms are more beneficial to business than the current law. It would also introduce significant complexity and risk for consumers relating to pre-ticked boxes and telephone help-lines. By excluding low value off-premises transactions we would open up a potential loophole whereby unscrupulous traders could circumvent the Directive by, for instance, offering a good or service at an up-front deflated price, but attach hidden costs which would considerably raise the price. This would not only create consumer detriment, it would also distort competition, undermining rival businesses that refuse to mislead consumers in this way and damaging consumer confidence. For these reasons we do not propose to exempt low-value off-premises contracts.

16. The Government has also discarded the option of extending the provisions to business-to-consumer contracts generally (i.e. including all the exempted sectors such as financial services, gambling, items sold by vending machines, one-off telecomms contracts) as such an extension does not appear necessary to meet any identified need or problem. Provisions in this chapter would either not be appropriate to the nature of those contracts or the sectors would be better served through sector specific legislation.

- **Monetised and non-monetised costs and benefits of each option (including administrative burden);**

Costs and benefits of option 1

Delivery and passing of risk

17. The Distance Selling Regulations currently require traders selling at a distance to deliver within 30 days, unless otherwise agreed, and to refund payments if this deadline is not met. The changes introduced in the CRD, will in most cases allow such traders a further chance to deliver once the 30 day limit is reached, thus reducing costs from cancelled sales, allowing traders more time to sort out possible problems in their delivery chains - problems which may be out of their immediate control. As part of the of the consultation process, BIS will try to identify how many such cancelled sales exist and, therefore, what the savings might be to business. Those traders selling on their own premises or at the customer's home, and who have, until now, been required only to deliver within a reasonable period, will still have the flexibility to agree an appropriate delivery date with the consumer, should the 30 day limit not be appropriate. The clarification of when responsibility for goods transfers, should also reduce costs by reducing the number of disputes about who carries the risk to goods damaged or lost at various points in the delivery process.

18. The EC Impact Assessment considers that the main impact of the proposals on delivery and passing of risk are likely to be on consumer confidence, particular with regard to the Single Market.^{13,14} UK

¹³ Annex to the EC Impact Assessment on the CRD, pp. 71-76, Available here: http://ec.europa.eu/consumers/rights/docs/proposal_annex_en.pdf

business representatives too have expressed the view that common rules around delivery and passing of risk will be of benefit¹⁵. Consumers will be aware of when they can reasonably expect to receive deliveries – either within 30 days or by an agreed date. Furthermore, the streamlining of the legislation across Member States is likely to result in improved incentives for cross-border trading and shopping, reducing transaction and operation costs for consumers and business.

19. In order to reliably estimate the impact of these changes, we would measure the consumer detriment arising from consumer issues with delivery problems and assess the proportion of these which are likely to be addressed by the proposals. Looking only at online sales for instance, as described above, the OFT has previously estimated that annual consumer detriment arising from unresolved problems with delivery in online sales, amounts to between £25m and £55m. Assuming that problem incidence (the likelihood of something going wrong with delivery) between domestic and cross-border trade is the same, we would expect cross border detriment from delivery problems in online orders to be between £4m and £8.8m.¹⁶ These figures refer to all detriment associated with delivery. The proposals will not address all such detriment (e.g. where there is fraud, and rogue traders simply do not send items paid for) and it is difficult to assess what proportion of this total detriment would be addressed. We might assume a reduction in detriment, for online sales, of around 10%, and test this assumption in the consultation.

Rules on pre-ticked options

20. The requirement to obtain express consent for additional payments should incur little or no administrative costs for most businesses. Even for those who will be affected, it is likely to be a relatively simple process for traders selling through websites to uncheck any tick-box function within the software programme. (Removing the ticks from pre-ticked boxes is likely to be a case of setting the checked checkbox attributes to 'yes' or 'no'). There may be some text to amend online or on printed documentation to ensure that customers are not required to tick a box or take some other specific action to avoid payment. Evidence of the extent of any such costs will be requested through the consultation process. The requirement for express consent to additional payments should mean that consumers are fully aware of what they are committing to, before they agree to the contract, resulting in fewer disputes, and reducing distortions in competition which can result from hidden pricing.

21. However, it is likely that a small number of businesses will lose revenue as a result of these provisions. Such businesses are those which gain that revenue as a result of opacity in the process or inertia by the buyer. Those businesses that currently pre-tick boxes may hope that consumers don't notice what they are agreeing to or can't be bothered to or forget to untick the box and thereby pay for goods and services that they don't want or need. In such cases the consumer may not actively tick the box in future and the business may lose sales as a result.

22. We do not currently have data on the number of on-line businesses generating revenue from pre-ticked boxes, or wording which the consumer is required to reject in order to avoid additional payment, nor what proportion of such sales could be expected to be lost following this change. Any such lost sales may of course be replaced by alternative purchases of the relevant goods or services (e.g. a sale of travel insurance by pre-ticked box related to an airline ticket purchase may be replaced by a purchase of a similar service from an alternative insurance provider). But the consumer may be better able to assess competing offers and avoid paying a commission to the provider of the main service (the airline in the above example) where the ancillary service is provided separately. It seems clear to the Government that the change will tend to make markets work better, which should be to the benefit of business, as well as consumers, in the long run, but there will be short term negative effects for some businesses and costs and benefits may not be distributed equally. We will use the consultation process to gather further information on this.

Rules on telephone charges for contacting the trader

23. With regard to the basic rate call provision, its intention is that traders should not use high charges to deter existing customers with legitimate queries, complaints or withdrawal requests, from contacting them or to derive revenue benefit from such contacts. Customers should not be made to pay extra for

¹⁴ Based on surveys of consumer and business groups.

¹⁵ Consultation on CRD proposal Nov 2009

¹⁶ Assuming 16 percent of consumer detriment is from border online trades. EC Consumer Eurobarometer finds that cross-border online trades (excluding countries outside the EU) account for 16 percent of purchases. See pp. 13 here: http://ec.europa.eu/public_opinion/flash/fl_299_sum_en.pdf.

attempting to rectify problems which are not their fault. This principle is already reflected in the UK's Phonepayplus¹⁷ code of conduct which requires the premium lines services they regulate to offer a non-premium rate number for complaints. The basic rate principle does not mean that calls will always be cheap – consumers understand that the time they make a call, the telephone package (bundle) they are on, whether they call from a landline or mobile, and where they call from, all dictate the ultimate price of the call, and these factors will continue to be relevant. Nor does this provision require the trader to subsidise such calls in any way. The cost to the trader of this provision will be zero for the vast majority of businesses which do not use premium or revenue generating telephone services for their customer services functions. For those that do currently use such services, the cost will be more substantial and consist of the administrative cost of moving to a non-revenue generating telephone plan. The provision will not affect the charges the telecoms provider can make for providing telecom services to the trader. Thus, there is no expectation that calls to or from mobile phones, or from another member state, should be cheaper than might be the case for calls made for non-commercial purposes.

24. This provision does not affect the trader's ability to use premium lines for pre-contract enquiries (sales etc.) or for those services which are specifically paid for through the cost of the call e.g. horoscopes, weather lines, directory enquiries, television voting, charity donations etc. In these cases, the caller does not have a contract with the provider at the time the call is made, and the call will not concern an existing contract. However, should a caller to, for instance, a horoscope line, subsequently have a complaint about that service, a separate, non-revenue generating number should be given for the customer to call.

25. Traders can continue to offer post-contract helplines relating to advanced uses of complex products, for example (e.g. technical support) at a premium rate provided they make clear that this is a separate service which is offered, payment for which the consumer must expressly consent to. Such helplines must be distinct from those which customers can use to make a complaint or to arrange delivery terms, for example, which can never be premium rate.

26. The cost to business from the loss of revenue from revenue-generating or revenue sharing arrangements for customer service lines will be mitigated by the fact that the Phonepayplus Code of Conduct¹⁸ applicable to regulated premium rate lines, already requires that customers have access to non-premium rate numbers for customer support. Some codes of practice, such as the one operated by 'SafeBuy' for online retailers, also require that the customer should be charged at 'the normal rate for UK inland calls for queries relating to a transaction'. Most customer-orientated businesses therefore already offer basic rate or even freephone numbers for customers to use.

27. PhonepayPlus regulates most premium rate numbers but there are revenue sharing non-geographic numbers i.e. 084/087 numbers which are not subject to PhonePayPlus regulation, and so not covered by any obligation to provide a non-premium rate support service. 084/087 numbers can be low cost to the consumer¹⁹, with some telephone companies charging calls to 0845/0870 numbers at the same or lower rate than a standard geographic (01,02 or 03) numbers. These calls do, however, involve some kind of revenue-sharing and therefore, the extent to which they can be considered to fulfil the basic rate criteria has to be looked at more closely²⁰. OFCOM estimates that there are around 30,000 firms using such numbers, and that the cost of transferring to another number range (or adding a number) is estimated on average to be around £1000 with some larger organisations estimating costs as high as £500,000 once the costs of reprinting all sales literature is taken into account. Re-routing options should reduce such costs, meaning that businesses can make the relevant changes in the next scheduled update of promotional literature. The provisions come onto the statute books in December 2013, but do not come into force until June 2014, giving traders more time to prepare and so mitigate costs. There will be costs for those companies using the same number for pre-contractual contact and other (post-contract) services – in such cases they may need to fund additional system development to allow their contact centres to distinguish between the call types. We will use the consultation process to gather further

¹⁷ Phonepayplus is an agency of OFCOM, and which regulates most premium rate phone lines

¹⁸ Overseen by Phonepayplus, an agency of OFCOM

¹⁹ Costs range from 1p – 13p a minute from a landline, which compares well with geographic (01/02/03) numbers which charge 1-9p per minute from a landline. However, the key differences are in calls from mobiles where the minimum from a mobile to a geographic number is 5p per minute compared with a minimum 20p per minute from 087 or 084 number, and 40p to an 0800/0808 number.

²⁰ Premium rate services are defined in section 120 of the Communications Act 2003 as services which are provided via an electronic communications service (such as a telephone call) and for which a charge is made as part of the charge made for that call. The telephone numbers on which this occurs are: 08x, 09 and 118 ranges. The Phonepayplus requirement for a access to non-premium complaints line would therefore exclude 084 and 087 numbers.

information on these issues and on the impact of the introduction of the basic cost requirement. Our consultation will seek further evidence about costs and impact.

28. Requiring that consumers can contact the trader about a product they have purchased, at a reasonable cost, will help ensure that consumers are not deterred from exercising their legitimate rights, nor made to pay an excessive price for exercising them. This will raise consumer confidence when purchasing remotely, or across borders, and will enhance transparency in the market, preventing any post-contract hidden costs specific to certain traders, so stimulating competition.

Overall impacts of the provisions

29. The standardisation of consumer legislation is expected to result in an increase in trade between Member States. These benefits would arise for both business (higher revenues/profits) and consumers (improved product/price offering). We do not assess these benefits further in this section, since they are derived from the CRD package as a whole, and assigning a proportion of these benefits to any one specific part of the CRD would be extremely difficult, particularly as these benefits are anticipated (are yet to occur). The proposals are likely to result in familiarisation and transition costs. For example, the requirement for traders to provide basic rate telephone numbers for customers is likely to require the reconfiguration of telephone services by some traders. We will use the consultation to assess more clearly what these will be.

Costs and benefits of Option 2

30. The costs and benefits highlighted in option 1 will also be applicable for this option. Costs remain the same per trader, although a slightly larger number of traders will be covered, namely regulated²¹ professionals providing healthcare services, providers of private social services (care homes etc.) package travel and timeshare traders.²² In addition to extending the benefits described to more traders, (some “second chance” deliveries, reduced potential for disputes, and greater transparency with regard to prices and therefore competitiveness of business offers) this option has very important benefits for consumers. It will help ensure that consumers, including many who are more likely to be considered as vulnerable consumers, often buying health and social care services at home, will have the same protections from excessive call charges, and hidden costs as the Directive gives to consumers buying other products. Purchasers of healthcare and social services may be more likely to be house bound and/or old and more reliant on phone contact. They may not be so aware or attuned to the presence of pre-ticked boxes, and may be more likely than some other categories of consumers to rely on the telephone to contact the trader.

31. Option 2 would also avoid costly disputes about the scope of the exemptions that would apply in Option 1. Consumers would not be expected to understand that their rights are dependent on who they buy from, nor that they will have less rights with regard to delivery, helpline costs, and transparency regarding additional payments, when buying from a regulated professional rather than from a regular trader. There seems no robust reason why a consumer contacting a gym about a personal fitness programme sold to them, should have more favourable protection (as regards the provisions addressed here) than a consumer contacting a private medical practice about a similar programme.

32. Since the delivery and risk provisions simplify the law and probably reduce burdens on business overall and in order to keep the implementing law as simple as possible, we intend to apply these rules equally to the four optional sectors cited here.

33. With regard to package travel, whilst the delivery provisions will not be relevant, pre-ticked boxes and premium rate call lines are particularly prevalent and can be problematic in this industry. The provisions would ensure important protection and clarity. A recent survey of nearly 200 travel companies by Which? found that 20% were using automatic opt-ins for items such as insurance, car hire, and upgrades, and that 53% were using 087 or 084 numbers. Changes could result in loss of revenue for some package travel operators who currently rely on consumer inertia of lack of understanding not to untick pre-ticked boxes and thereby purchase additional products or services that they may not otherwise have chosen to

²¹ As defined in *Directive 2011/24/EU*, i.e. *qualified doctors, nurses, pharmacists etc.*

²² Healthcare products sold by non-professionals will be covered within the CRD and therefore within option 1.

buy, to generate sales. Those operators who do not use such tactics, on the other hand, will benefit from fairer competition and pricing will be more transparent, improving competition and consumer confidence.

34. It is notable that passenger transport is generally excluded from the scope of the CRD, but the Directive does nevertheless specifically apply the prohibition on pre-ticked boxes to passenger transport contracts. This reflects member States' acknowledgment that pre-ticked boxes are particularly prevalent in this sector and can give rise to confusion and unintended outcomes for the consumer. In this context, package travel sales can be reasonably considered as closely related to transport services in that the sales methods, online, are essentially the same, and that the same rationale for applying this provision to transport services applies to package travel. It could be confusing for both traders and consumers, and possibly enhance compliance costs, if different rules were to apply depending on whether transport is sold separately or within a package. Such regulatory differentiation could distort the market. We intend to argue that European legislation be aligned in this respect in the context of forthcoming negotiations on a new package travel Directive.

35. Timeshare sales and other long-term holiday contracts covered by the timeshare directive can be particularly problematic and it is important that consumers, who often conclude contracts far away from home, should not be deterred by premium rate call costs from contacting the sellers post-contract, in particular where phone may be their only method of contact. Long-term holiday product (holiday club) contracts of the type covered by the Timeshare Directive if operated legitimately invariably require ongoing contact with the consumer over the period of the contract and can include both transport services and package travel-like services.

36. Extending the chapter 4 CRD provisions to package travel, timeshare, social and healthcare seems a consistent approach, in areas where hidden costs can be prevalent. This will involve the imposition of some extra costs (mainly in the form of lost revenue) on those businesses that currently raise revenue from these mechanisms, but there is no rationale for excluding these sectors from these provisions. The reforms will tend to make these markets more transparent and competitive and will reduce consumer detriment.

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

37. 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. Because most of the Directive is "maximum harmonisation", the UK has no discretion over transposing these terms into UK law. We have therefore focused attention on the small number of areas where there is discretion. Whilst, we have attempted to estimate the impacts of the proposals on business and consumers, having regard to the proportionality approach in drafting Impact Assessments, we have not sought to fully quantify the costs and benefits of the proposals at this stage. The proposals are aimed at addressing specific examples of consumer detriment, the impacts of which would be difficult to quantify with any great certainty. We plan to use the consultation period to improve our understanding of these effects, in time for the final stage assessments.

Risks and assumptions:

38. We have assumed that the clarification of delivery responsibilities will be beneficial to business overall because it clarifies current law, and gives the trader more time to deal with problematic deliveries. This assumption will be tested in the consultation.

39. Regarding the restrictions on premium rates for post-contract telephone queries, we have assumed that the majority of premium rate users comply with the Phonepayplus regulated code of practice, which requires a non-premium rate number for customer service lines. We assume that those businesses which do currently accrue income by charging for these interactions will account for this expense in the normal way

by reflecting the costs of running their business in the headline price for the goods and services they provide. As part of the Consultation, we will seek evidence on the validity of this assumption.

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

40. The costs and benefits arising out of those provisions in the Directive which are mandatory do not count for the purposes of OIOO. The Government must assess, however, the costs and benefits arising out of the proposed extension of these rules to the four sectors, whose inclusion is not mandatory under European law. The Government does not expect the direct benefits to business to be substantial in these sectors, since the delivery rules will not affect services. The direct costs of removing pre-ticked boxes and premium rate customer service phone lines could be material for a relatively small number of companies in these sectors and this would therefore constitute an “IN” for OIOO purposes. The size of the “IN” will be assessed following the consultation, at which point a corresponding “OUT” will need to be identified. The wider benefits of improved transparency, stronger competition, reduced consumer detriment and improved consumer confidence would probably be too indirect to count for OIOO purposes.

Summary and preferred option with description of implementation plan.

41. Clarity over when goods are to be delivered, over what consumers are agreeing to pay, and clarity over how much it might cost to contact a trader over a product, all boost consumer confidence, reduce the potential for disputes, and allow greater transparency in the market, thus aiding competition. **Option 2**, we believe, meets our policy objectives of enhancing cross-border trade whilst maintaining high levels of consumer protection, at minimum cost to business. The delivery provisions give traders more flexibility to deliver, the express consent requirements ensure fewer disputes and greater opportunity for the most competitive businesses to shine. The provision regarding customer service calls should allow consumers fair access to traders, whilst bearing the full cost of the call, and remove any incentives to prolong calls or deter legitimate contact.

42. Option 1, would, in our view, deprive consumers, particularly vulnerable ones buying social and healthcare services, of consumer protections which are available for far less significant purchases. In addition, its application would complicate rather than simplify applicable rules in the travel sector, leading to potentially more disputes, and would offer a lower level of protection for consumers in the timeshare sector where the potential for economic detriment is high.

43. Implementation is likely to be effected by the copying out of the relevant provisions of the Directive (provided of course that we are satisfied that copying out is sufficiently clear), through section 2.2. of the European Communities Act 1972. (We will need to confirm that it will be possible to use section 2.2 in the case of extensions to sectors outside the scope of CRD , on the basis that these are sufficiently closely related to the UK’s obligation to implement the relevant provisions of the CRD.) 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.

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