

**CIVIL ENFORCEMENT REMEDIES**

Consultation on extending the  
range of remedies available to  
public enforcers of consumer law

NOVEMBER 2012

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# Consultation on extending the range of remedies available to public enforcers of consumer law

## What the consultation seeks to achieve

The consultation sets out proposals to extend the range of remedies available to enforcers of consumer law.

The proposals would allow remedies aimed at achieving one or more of three outcomes:

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

The consultation considers whether implementation of the Regulatory Enforcement and Sanctions Act 2008 or introducing new remedies under Part 8 of the Enterprise Act 2002 would be most appropriate. Part 8 currently allows for court-based Enforcement Orders which can be used to stop a business behaving in a particular way.

The proposals in this consultation form part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. Implementation of the proposals would require primary legislation, which we propose to do via a proposed Consumer Bill of Rights.

<b>Issued:</b>	<b>5 November 2012</b>
<b>Respond by:</b>	<b>31 December 2012</b>
<b>Enquiries and responses to:</b>	<p>civil-remedies@bis.gsi.gov.uk</p> <p>Mary Hammond  Consumer and Competition Policy  Department for Business, Innovation and Skills  1 Victoria Street  London  SW1H 0ET  020 7215 2025</p>

This consultation is relevant to businesses of all sizes, consumers, consumer law enforcers, consumer organisations, legal bodies and academics.



## Foreword

**by Jo Swinson MP, Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs**

Confident consumers help businesses become more competitive and support economic growth. Effective enforcement of consumer law is therefore a key issue underpinning many of the Coalition Government's priorities. This enforcement needs to be coupled with reassurance that there are ways to remedy financial loss. Our proposed Consumer Bill of Rights aims to clarify and simplify consumer law so that businesses can more easily comply, and so that consumers can assert their rights with confidence. This can only be achieved if those that flout the law are effectively challenged.

Enforcers, primarily Local Authority Trading Standards Services, do an excellent job of hunting down the rogues and scammers, and they bring prosecutions wherever necessary. However, many breaches of the law are more technical and not committed by out-and-out rogues. For these breaches, a criminal prosecution is often an inappropriate response. On the one hand it may unduly stigmatise the actions of business people and on the other it may be ineffective in deterring corporate misbehaviour. Too often the result of criminal prosecutions is that the business is condemned and fined, but nothing is done to provide compensation to the consumers who have suffered loss. The enforcement regime should look not just to deterrence, but also to providing restorative justice for consumers, especially vulnerable consumers, who are not easily able to launch their own civil actions in the small claims courts to secure their rights.

In these circumstances, consumers want an enforcement regime that secures compliance and better service. They want an opportunity to know when the law has been broken and make purchasing decisions with this in mind; sometimes continuing with the original trader, sometimes seeking out new suppliers, but always having a choice. Perhaps most of all, they want their position restored as though a purchase had not been made, if necessary by getting their money back.

I believe that the civil enforcement system is already a strong tool for securing an end to breaches of the law, but it could achieve more. Government has recently consulted on technical reforms to Trading Standards powers that would enhance the system. Building on these, I believe we can now also strengthen the remedies available to create an enforcement system that reacts to the needs of consumers and helps ensure that markets operate fairly, without unnecessary recourse to criminal law.

This consultation sets out proposals to extend the range of remedies available under the civil consumer law enforcement regime to place consumer-focussed outcomes at its heart. It proposes to make available to enforcers and possibly the courts a flexible range of remedies aimed at securing compliance with the law; provision of redress for consumers and providing greater openness and transparency to give consumers more choice.

In consulting on these issues I am keen to hear the views of those affected. I hope that you will respond constructively to these proposals and I look forward to your comments.



**Jo Swinson MP**

## Executive Summary

1. When purchases of goods or services go wrong, individual remedies for consumers are limited. For many breaches of consumer law, the main formal sanction is criminal prosecution of the trader by the enforcer. That benefits consumers generally, because it prevents the spread of instances of illegal trading, but often provides no direct remedy to victims of the breach nor secures any guarantee that the trader will not reoffend (although many enforcement officers do work to secure this informally).
2. As an alternative to criminal prosecution, certain enforcers can seek injunctive relief against infringements of consumer protection legislation. The key power is an Enforcement Order. Through an Enforcement Order, a court can order that the infringer stop engaging in the conduct in question. It can also order that the infringer publish the Enforcement Order and a corrective statement with a view to eliminating the continued effect of an infringement. Alternatively, an enforcer may accept an undertaking from the person in question that he will not engage in conduct that involves an infringement. Such an approach is proportionate for minor and inadvertent consumer law infringements. However, it still does not give remedies to individual consumers or always secure positive action by businesses.
3. The Government considers there is a clear gap between this limited injunctive power and a full prosecution. It also wishes to develop a public enforcement system that serves consumers directly, by directing traders to take positive action.
4. The Government believes the public enforcement regime could be modified with the aim of achieving the following outcomes:
  - increased business compliance with the law;
  - improved redress for consumers affected by the breach; and
  - more confident consumers who are empowered to exercise greater consumer choice.
5. The previous Government introduced civil administrative powers through the Regulatory Enforcement and Sanctions Act 2008 (the 'RES Act'). The current Government has reviewed the scope for use of the RES Act powers for consumer law and are not convinced it will be effective in consumer law. Firstly, much of the focus of the RES Act is on the use of penalties as an ultimate sanction, which, while effective, do not in themselves secure remedies for individual consumers. Secondly, the Government has concerns that a purely administrative approach does not guarantee sufficient right to respond for businesses who are innocent. Under the RES Act, the business must appeal against a decision of the enforcer, and the Government believes that in disputed cases it should be for the enforcer rather than the business to bring the first legal challenge.
6. Therefore, the Government is consulting on an option of extending the range of remedies covered by Enforcement Orders and undertakings in consumer law. This would enable a court to impose an Enforcement Order – or for parties to agree an undertaking where a breach of the law is not disputed – aimed at securing one or more of the above outcomes of redress, compliance or a better functioning market, in addition to stopping the infringing practice.
7. The consultation sets out detailed examples of how Enforcement Orders or undertakings can provide for these objectives.

## a. How to respond

8. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
9. Responses must be submitted by 31 December 2012. A Consultation Response form is available at Annex E. A copy of this form is also available electronically at <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/12-1193rf-civil-enforcement-remedies-consultation-on-extending-form> (until the consultation closes). If you decide to respond this way, the form can be submitted by letter, fax or preferably by email to:

[civil-remedies@bis.gsi.gov.uk](mailto:civil-remedies@bis.gsi.gov.uk)

Alternatively, please send to  
Mary Hammond  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET  
  
Tel: 020 7215 2025  
Fax: 020 7215 0357

10. A list of those organisations and individuals consulted is at Annex D. We would welcome suggestions of others who may wish to be involved in this consultation process.

## b. Additional copies

11. You may make copies of this document without seeking permission. This consultation can be found at: [www.bis.gov.uk/consultations](http://www.bis.gov.uk/consultations) and further printed copies of the consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
[www.bis.gov.uk/publications](http://www.bis.gov.uk/publications)

## c. Confidentiality & Data Protection

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



which public authorities must comply and which deals, amongst other things, with obligations of confidence.

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

#### **d. Help with queries**

14. Questions about the policy issues raised in the document can be addressed to Mary Hammond (contact details above).
15. A copy of the Code of Practice on Consultation is at Annex C, including details of who to contact if you wish to comment on the conduct of this consultation.

#### **e. What happens next?**

16. Following closure of the consultation, the Government will fully analyse and consider all responses. If appropriate, the Government will bring forward final proposals arising from these for inclusion in the proposed Consumer Bill of Rights. The Government will also issue a full summary of views expressed and reasons given for decisions finally taken. This will be published on the BIS website.

# Chapter 1 – Issue and purpose of these proposals

## Key Points

- **Ensuring effective remedies drives consumer confidence and, ultimately, competition.**
- **Current criminal and civil public enforcement does not provide remedies to individual consumers.**
- **Available remedies could achieve a number of outcomes:**
  - **Ensuring business compliance with the law;**
  - **Redress for consumers affected by the breach; and**
  - **More confident consumers who are empowered to exercise greater consumer choice.**

- 1.1. Successful transactions for goods and services depend heavily on consumer confidence in the trader, and in the quality of goods and services provided. Usually, such issues are not in question; the concern arises when things go wrong.
- 1.2. If goods or services are not up to standard, or if the trader has otherwise broken the law, the consumer will expect some sort of remedial action, be that a replacement, refund, or some other form of remedy. The Government has recently on measures to improve and streamline this process.<sup>1</sup>
- 1.3. The best traders will be keen to help consumers in this situation. They will ensure that the consumer's own position is not adversely affected by the problem, and that obligations under consumer law are fully met thereby safeguarding their own reputation as lawful traders. This will encourage the individual consumer, and others, to continue to trade with them rather than switching to a competitor. The ability of consumers to freely choose providers based on a range of factors including experience and reputation is a crucial factor in ensuring a functioning competitive marketplace, but markets also work best when they are open to new market entrants and this implies consumers who are willing to experiment with new suppliers and try new products or services. Adventurous consumers do best in a climate of strong consumer confidence where there is a robust framework of law allowing consumers to defend their own rights where possible and providing support and protection where not. This encourages enterprise, innovation and efficiency, and helps reduce prices and improve quality, ultimately creating conditions that support economic growth.
- 1.4. Within this context certain minimum standards for traders, the goods and services they provide, and the way in which they are provided are necessary. For example, there are

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<sup>1</sup> [www.bis.gov.uk/Consultations/consultation-rationalising-modernising-consumer-law?cat=closedawaitingresponse](http://www.bis.gov.uk/Consultations/consultation-rationalising-modernising-consumer-law?cat=closedawaitingresponse)

regulations aimed at ensuring the safety and standard of goods, or their presentation to ensure consumers can make this choice without being intentionally or inadvertently misled. These need to be enforced effectively, but consumers also need to feel that the enforcement regime serves them directly. In particular, research has shown that UK consumers consider it difficult to seek and obtain redress for breach of consumer law.<sup>2</sup>

- 1.5. Where traders fail to comply with consumer law and fail to satisfactorily meet consumer expectations with regard to remedies, they may be subject to enforcement action. Enforcers (primarily Local Authority Trading Standards Services (LATSS) and the Office of Fair Trading (OFT)) will usually, in the first instance, seek to work informally with the trader to secure remedial actions to amend its behaviour. Examples of such remedial actions may include introducing employee training, improved record-keeping, collecting (and acting on) customer feedback or signing up to an Alternative Dispute Resolution (ADR) scheme. Where this fails to satisfactorily address the issues, more formal action may be taken. Formal enforcement action, be it criminal or civil, does not usually include any remedies that benefit individual consumers:
- When a criminal prosecution takes place, the courts tend to issue a fine punishing past behaviour and/or a prison sentence. There is no scope to secure commitments from the business not to break the law again and compensation is rarely awarded.
  - The civil system – Enforcement Orders and undertakings under Part 8 of the Enterprise Act 2002 – provides for injunctive relief against certain infringements of consumer protection legislation. It can be used to stop a business behaving in a particular way. However, it cannot generally be used to require a business to take particular remedial action to address the broader issues.
- 1.6. The key issue that needs to be addressed, therefore, is the lack of remedies available under the current public enforcement regime. While public enforcement can stop a trader behaving in a particular way, it is an inflexible tool as it cannot generally be used to direct traders to take positive action.
- 1.7. Any remedies should be aimed at addressing the breach and be proportionate, appropriate and achievable. Relating to this, the Government believes that any remedies should be aimed at achieving one or more of the following outcomes:
- increased business compliance with the law;
  - improved redress for consumers affected by the breach; and
  - more confident consumers who are empowered to exercise greater consumer choice.
- 1.8. The option of achieving remedies of this type may only be appropriate where there is no wider public interest in criminal prosecution. For some cases, the public interest will be best served by a prosecution and enforcers should continue to recognise this.

**QUESTION 1.** *Do you consider the Government's proposed outcomes to be valid for remedies to address breaches of consumer law? Will these outcomes address consumer problems?*

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<sup>2</sup> University of East Anglia, ESRC Centre for Competition Policy (2008): Benchmarking the performance of the UK framework supporting consumer empowerment through comparison against relevant international comparator countries [www.bis.gov.uk/files/file50027.pdf](http://www.bis.gov.uk/files/file50027.pdf)

## Chapter 2 – The Government’s proposals

### Key Points

- The Government is not convinced that the approach to civil sanctions contained in the Regulatory Enforcement and Sanctions Act 2008 is appropriate for consumer law.
- An alternative is to amend Part 8 of the Enterprise Act 2002 to allow Enforcement Orders and undertakings to require a wider range of actions aimed at securing the Government’s identified outcomes.

### Regulatory Enforcement and Sanctions Act

- 2.1 The previous Government introduced civil administrative powers through the Regulatory Enforcement and Sanctions Act 2008 (the ‘RES Act’) and proposed pilot projects, involving the OFT and a small number of selected LATSS, to test the use of these. Details were set out in a consultation document issued in March 2010.<sup>3</sup>
- 2.2 The RES Act provides a menu of civil sanctions that could be used by regulators (enforcers) in relation to certain offences. These are:
- A. Fixed Monetary Penalties which could only be imposed where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence.
  - B. Discretionary requirements which could only be imposed where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence. These include:
    - Variable monetary penalties – requiring a person to pay a monetary penalty the value of which is determined by the regulator.
    - Compliance notices – requiring a non-compliant business to undertake certain actions to bring them back to compliance.
    - Restoration notices – requiring a person to undertake certain actions to restore the position to what it had been had the non-compliance not occurred.
  - C. Stop notices requiring a person to cease an activity that is or is likely to cause serious harm and is or is likely to give rise to regulatory non-compliance. As part of the power to serve a stop notice, there must be provision for the regulator to compensate the person for any loss suffered as a result of the service of the notice and for appeal against a decision by the regulator not to award compensation.
  - D. Enforcement undertakings – an agreement offered by a person to a regulator to take specific actions related to what the regulator suspects to be an offence.

<sup>3</sup> [www.bis.gov.uk/assets/biscore/corporate/docs/c/10-706-civil-sanctions-pilot](http://www.bis.gov.uk/assets/biscore/corporate/docs/c/10-706-civil-sanctions-pilot)

- 2.3 The RES Act provides that regulators can only be granted powers to impose such sanctions if Ministers are satisfied that they will act in a way that is compliant with the principles of good regulation as set out in the Hampton Review<sup>4</sup> – transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.
- 2.4 The previous Government’s intention in proposing pilots for new civil sanctions for breaches of consumer law under the RES Act was to encourage compliance and – in the event of a breach – to encourage voluntary restitution by traders. The ‘discretionary requirements’ could be used by enforcers to ensure that businesses compensate consumers who had suffered a loss as a result of the breach of consumer law. An enforcer could impose a Restoration requirement if it had the necessary information to make such an order sufficiently precise. Failing that, a Variable Monetary Penalty could be imposed to ensure that a business did not profit from breaking the law and refusing to offer compensation. Any undertaking to compensate consumers – if accepted by the enforcer – would have mitigated the level of any Variable Monetary Penalty. The reason for proposing pilots rather than to extend the scheme nationally immediately was to gauge how likely consumer enforcers were to use the new procedures and to clarify that the penalties did not become the default main purpose by which enforcers used the powers.
- 2.5 The current Government has some concerns with using civil sanctions in this form with respect to breaches of consumer law. In particular, much of the focus of the RES Act is on the use of penalties as an ultimate sanction, which, while potentially effective in some cases as levers to secure voluntary agreement on positive action, do not in themselves secure remedies for individual consumers.

**QUESTION 2.** *What are your views on the suitability of the RES Act to achieve the proposed outcomes?*

## Alternative option

- 2.6 Part 8 of the Enterprise Act 2002 allows certain enforcers (primarily LATSS and the OFT) to seek injunctive relief in respect of certain infringements of certain consumer protection legislation. It can be used to stop a business behaving in a particular way. However, it cannot usually be used to require a business to take particular remedial action to address the broader issues.
- 2.7 The Enterprise Act 2002 allows enforcers to apply to the Court for an Enforcement Order. An enforcer may not usually apply for an Enforcement Order without first consulting the person or business against whom the Enforcement Order would be made. At this stage the enforcer may opt to accept undertakings from the business that it will not continue or repeat the infringing action. If, however, the business will not give undertakings, or it is a matter of urgency, the enforcer can apply to the court for an Enforcement Order.
- 2.8 A court can only make an Enforcement Order where it finds that the business named in the application has engaged, or in some cases, is likely to engage, in conduct that constitutes an infringement. In an Enforcement Order a court will require the business to stop the

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<sup>4</sup> Sir Philip Hampton’s 2005 review, Reducing administrative burdens: effective inspection and enforcement, considered how to reduce unnecessary administration for businesses, without compromising the UK’s excellent regulatory regime. It proposed a set of principles for enforcers, which have been accepted by Government: [www.bis.gov.uk/files/file22988.pdf](http://www.bis.gov.uk/files/file22988.pdf)

infringing action. It can also order that the business publish the order as well as a corrective statement. Alternatively the court can accept undertakings from the business. As part of the undertaking to the court the business may be required to publish the terms of the undertaking and a corrective statement. Finally, the court may pass the case back to the enforcer to attempt further action to seek an undertaking.

- 2.9 Both Enforcement Orders and undertakings require the business in question not to engage in conduct that involves an infringement; and court undertakings can require steps to be taken to do this. Beyond this, there is very little or no scope for a civil court to make an award or direction that requires a business to take positive measures, for example, to provide redress to affected consumers.
- 2.10 Therefore, the Government is proposing to amend Part 8 of the Enterprise Act 2002 to allow remedies to be attached to Enforcement Orders and undertakings. This will be available for all public enforcers (Trading Standards, OFT and sectoral regulators) but not additional non-public bodies designated as enforcers by the Secretary of State under Section 213 of the Enterprise Act (currently only Which?).
- 2.11 As noted in Chapter 1, any remedies should be aimed at addressing the breach and be proportionate, appropriate and achievable. Furthermore, the Government believes that any remedies should be aimed at achieving one or more of the following outcomes, in addition to stopping the breach from reoccurring:
- increased business compliance with the law;
  - improved redress for consumers affected by the breach; and
  - more confident consumers who are empowered to exercise greater consumer choice.
- 2.12 Linked to these outcomes, it is important that any remedies deter other businesses from also breaking the law. Equally, it is essential that honest businesses do not lose out through being undercut by illegal behaviour. Ensuring no financial gain can be made can be a component of this, as can 'naming and shaming'. However, as the civil law system is principally about reconciling individuals' interests, it would be important that deterrence is not the sole justification for any sanction. Ultimately, criminal sanctions would remain the best option for consumer enforcers when dealing with out-and-out rogues who only respond to the threat of imprisonment. In other cases, this should be the last resort, not the first, as it is too often at present.
- 2.13 Further information about why each outcome is relevant and how the Government thinks it can be achieved is discussed in the next chapter.

**QUESTION 3.** *Do you think that amending Part 8 of the Enterprise Act 2002, to extend Enforcement Orders and undertakings, would be an appropriate way to mandate one or more actions by businesses to address breaches of consumer law?*

- 2.14 Under the amended Enterprise Act 2002 mechanism, where an enforcer accepts an undertaking from a business, the remedies to be attached would be agreed between the parties. Where there is a dispute over remedies, the case would proceed to court.
- 2.15 Where an enforcer applies to the court for an Enforcement Order, they would propose remedies but the ultimate decision as to what remedies are required would lie with the court.

- 2.16 As is currently the case, any breach of undertakings and Enforcement Orders could be addressed by further action. Currently, if a person breaches an Enforcement Order or undertakings given to the court by repeating the infringement of the law, he or she is in contempt of the court and can be issued an unlimited fine and/or imprisoned for up to two years. If the breach is of undertakings to an enforcer, this can be drawn to the attention of the court which would have regard to this and any failure to comply with the undertaking, when determining whether to make an Enforcement Order. A similar process would apply to the terms of an Enforcement Order or undertaking which had remedies attached to it.
- 2.17 Use of these expanded Enforcement Orders and undertakings would be limited to designated public enforcers under the Enterprise Act 2002, that is the OFT (or its proposed replacement, the Competition and Markets Authority), LATSS, the Department for Enterprise, Trade and Investment in Northern Ireland and designated sectoral regulators. In order to apply for these sanctions, an enforcer must be compliant with the 'Hampton principles' and, where applicable, the terms of the Primary Authority scheme.<sup>5</sup>

**QUESTION 4.** *Do you agree with the Government's proposed enforcement mechanisms?*

**QUESTION 5.** *Do you agree that only Hampton-compliant enforcers should have access to these extended remedies?*

## Burden of proof

- 2.18 One issue raised by a number of stakeholders during informal consultation is the standard and burden of proof. In general, civil cases are decided on the balance of probabilities while the criminal standard is higher; the enforcer must prove beyond reasonable doubt that a trader has broken the law. Additionally, the level of evidence required to support a criminal case is higher; including signed witness statements and often testimony under oath.
- 2.19 Business stakeholders in particular have indicated that they consider that if a wider range of remedies (which could potentially lead to costs on business) is available then a higher level of proof should be required than in ordinary civil cases. They note in particular that some of the consumer choice-oriented remedies, which may not be directly linked to the original breach, may be unsuitable for a lower burden of proof. At this stage the Government notes these concerns but feels the civil standard probably remains the more appropriate. The compliance and consumer choice remedies are aimed at delivering a market that functions normally and efficiently while the redress elements are designed to balance the interests of different parties, rather than be punitive. A higher standard of proof for cases involving multiple consumer detriment than would apply to cases brought by individual consumers (especially when individual cases may be able to access wider indirect compensation) would be perverse and may render the proposals ineffective. Nevertheless, we would welcome views from stakeholders about this issue.

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<sup>5</sup> Primary Authority schemes enable businesses operating across the boundaries of two or more local authorities to form a statutory partnership with a single local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance.  
[www.bis.gov.uk/brdo/primary-authority](http://www.bis.gov.uk/brdo/primary-authority)

2.20 In relation to the standards of evidence, the Government is also minded to remain at the civil level. Potentially requiring individual consumers to make witness statements or appear under oath to show they have suffered (often a small amount of) harm would be unlikely to be workable. Additionally, there may not be sufficient incentive on interested parties to engage where the proposed remedy is simply seen as ensuring compliance with the law (which the trader should do anyway) or to increase competition for others. Therefore, the Government believes that, as in the current civil regime, an enforcer's report (subject to reasonable scrutiny/challenge) should be admissible as sufficient evidence.

**QUESTION 6.** *Do you think the burden of proof should be at the criminal or civil level?*

**QUESTION 7.** *Do you agree that the evidence requirements should be at the civil level and that an enforcer's report should be admissible in lieu of formal witness statements?*

## Micro-Businesses

2.21 One issue is whether the changes should be applied to micro-businesses. Generally, Government policy is to exempt micro-businesses from the burden of new legislation. For this proposal, however, there are two potential benefits from the inclusion of micro-businesses. Firstly, any variation in basic consumer law applied to different sizes of business would probably be counter-productive for micro-businesses. Consumers could choose to avoid buying from firms which they perceived as having fewer obligations to treat them fairly in the event that something goes wrong. Secondly, it may be unfair to deny micro-businesses access to the ability to offer and enter undertakings and, where appropriate, be addressed under the civil process rather than the criminal system.

**QUESTION 8.** *Do you consider that micro-businesses should be exempt from the new proposals?*



## Chapter 3 – The proposed remedies

### *Key Points*

- The exact remedies will be decided on a case-by-case basis.
- It is hoped that businesses and enforcers will be able to agree remedies between them but where this is not possible the enforcer would be able to take the matter to court.

3.1. As noted in both Chapter 1 and Chapter 2, remedies should be aimed at achieving one or more of the Government's proposed outcomes relating to increased business compliance with the law; improved redress for consumers; and more confident consumers who are empowered to exercise greater consumer choice.

### **Increased business compliance with the law**

#### *Background*

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

#### *Proposal*

- 3.3. Possible remedies to secure greater business compliance with the law could include one or more of:
- Signing up to a Primary Authority scheme;
  - Appointing a compliance officer;
  - Providing training/preparing guidance to staff;
  - Undertaking internal spot checks (and maintaining records of these);
  - Improving record-keeping;
  - Collecting (and acting on) customer feedback;
  - Introducing a robust customer complaints-handling scheme; or
  - Signing up to an ADR scheme for future complaints and committing to be bound by decisions of an independent ADR provider.
- 3.4. When determining the best-suited remedy to address the breach and ensure it does not continue, the Government's aim is that businesses would liaise with the enforcer and come to an agreement (with failure to comply being a matter for consideration by a court choosing to apply an Enforcement Order and ultimately a factor to be taken into account if an Enforcement Order is not followed).

- 3.5. Where the business and enforcer are unable to reach agreement and the business is unwilling to give undertakings, the enforcer would be able to apply to the court for an Enforcement Order. The court would then be required to determine the most appropriate remedy and whether to accept undertakings or issue an Enforcement Order.

**QUESTION 9.** *Do you agree with the Government's proposed remedies to increase business compliance with the law? Do you have any additional remedies to be considered?*

**QUESTION 10.** *Do you agree with the Government's proposed mechanisms for enforcement via undertakings and Enforcement Orders?*

## Improved redress for consumers affected by the breach

### Background

- 3.6. Consumers wishing to obtain redress when things go wrong currently have a number of routes they can follow, depending on the availability of mechanisms. Generally the first step is through direct representation to the business concerned. Should the business not redress the harm satisfactorily, and if any enforcement activity also fails to provide redress, then consumers must typically pursue remedies individually either through an ADR scheme, where it exists, or through a civil court case. Evidence suggests that while going to court may be a viable option, many consumers find this too onerous in terms of money, time, and anxiety.
- 3.7. Research completed by the Lincoln Law School (2008)<sup>6</sup> has shown that consumers generally benefit from public enforcement through prevention of the spread of malpractice, but consumers seldom obtain compensation. The report highlights that consumers wanting to obtain redress are obliged to pursue separate action through the civil courts but they often do not do so, due to the perceived complexity, risk or cost of the process. Legal fees are often seen as high, and legal advisors often cannot give clear advice that a consumer is likely to win a case, when losing would put them at a risk of being liable for the other party's costs. Behavioural thinking shows that many people actively try and minimise the risk of losses rather than seek gain, which encourages them not to act. Additionally, the low individual value of some losses (although in aggregate, consumer detriment can be great) deters court action.
- 3.8. Furthermore, in 2008 the University of East Anglia published a comparative analysis of the UK consumer regime as compared to a group of other leading countries.<sup>7</sup> On the whole the UK regime was found to be reasonably well-performing but one of the three relative weaknesses identified was that it is somewhat difficult for consumers to seek and obtain redress for breach of consumer law.
- 3.9. The Government and others, including the European Commission, have considered a number of mechanisms relating to redress, including both ADR and collective redress, where a named or unnamed group of consumers can join their claims together into a single case. Government has made membership of ADR schemes compulsory in some sectors

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<sup>6</sup> University of Lincoln, Lincoln Law School (2008): Representative Actions and Restorative Justice [www.bis.gov.uk/files/file51559.pdf](http://www.bis.gov.uk/files/file51559.pdf)

<sup>7</sup> See above

such as energy, legal services, residential estate agency and financial services where consumer detriment was high, and it encourages businesses to use ADR as a cost-effective alternative to litigation in other sectors, but it does not feel it is appropriate to make it compulsory across the board at this stage.

- 3.10. Collective private redress is another mechanism for addressing the unwillingness of individual consumers to go to court, and the Government is planning to develop mechanisms to allow this in cases where competition law has been broken.<sup>8</sup> In other cases the Government is concerned about the scope for such mechanisms to create incentives for intermediaries, the economic cost of such intermediation and the very heavy burden which a proliferation of such cases may impose on businesses. In particular, in the consumer law area, much of the law is based on general principles rather than detailed provisions, and private collective redress could lead to abundant litigation on fine points of law, creating high costs for business, which would then raise prices for consumers as a whole. By contrast, public enforcers would only take action under the Enterprise Act 2002 in the public interest and would only generally prioritise action if the breach were both significant and clear. Businesses would be given the opportunity to resolve any complaint informally, before court action would be considered.
- 3.11. Other elements of the proposed consumer Bill will also be relevant for consumer redress. Clarification of the law should make it easier for individual consumers and their legal advisers to judge when they have a strong case and thus make it easier for some to have the confidence to pursue litigation (most likely if a significant sum is at stake). In particular the Government is also considering the report of the Law Commission and the Scottish Law Commission on reforming the law on misleading and aggressive practices.<sup>9</sup> An important part of the Law Commission's report recommends much clearer law on consumer redress when consumers are the victims of such practices.

### *Proposal*

- 3.12. The Government seeks to encourage businesses to put in place schemes aimed at providing redress to collective consumers when a breach of consumer law arises and causes consumers significant losses. These schemes would normally be time-limited but a business may see merit in an open ended scheme where it would also benefit their reputation. Box 1 provides examples of the sort of redress schemes that businesses might put in place.
- 3.13. Where individual consumers can be identified, such schemes will aim to provide redress directly to those individuals, for instance by contacting all affected consumers and paying an agreed sum or a sum mandated by a court. For example, if an energy company was found to have mis-sold a particular payment plan, all customers signing up to that plan in the affected timeframe could be contacted and if they reply within a given timeframe provided a set sum of money in recognition of their loss.

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<sup>8</sup> [www.bis.gov.uk/Consultations/consultation-private-actions-in-competition-law?cat=closedawaitingresponse](http://www.bis.gov.uk/Consultations/consultation-private-actions-in-competition-law?cat=closedawaitingresponse)

<sup>9</sup> <http://lawcommission.justice.gov.uk/publications/Consumer-redress.htm>

3.14. Where individual consumers cannot be identified, however, alternative measures may be effective, such as advertising that consumers (who can prove they were affected by the issue) can claim an agreed sum of money from the company or from an appointed ADR provider or offering discounts to all future consumers for a fixed period of time to mitigate against any financial gain arising from the breach.<sup>10</sup> For example, if an electrical store was found to have mis-sold a product, the store could issue a public notice notifying consumers that could prove they purchased the product within a certain timeframe that they were entitled to a set sum of money in recognition of the mis-selling. Alternatively, the price of the product could be reduced for future consumers for a set period of time.

3.15. The Government has concerns about setting an amount to be provided as redress, as this would require an assessment of cumulative harm, which may be difficult to agree or subject to further challenge. Such an approach would also potentially risk automatic removal of the right of individual consumers to take their own civil action. However, an individual award under a scheme may come with terms that waive this right, to avoid individual consumers being compensated more than once for the same loss. It would be for those individuals to decide for themselves whether the offer was sufficient.

3.16. When setting up a scheme, the Government's aim is that the business would propose a scheme which they would agree with the enforcer (with failure to comply with the terms of the scheme being a matter for consideration by a court choosing to apply an Enforcement Order and ultimately a factor to be taken into account if an Enforcement Order is not followed).

3.17. Where a business is unwilling to propose a scheme, the Government believes there should be a power for a court to impose one on application by an enforcer (subject to the correct judicial process). This is necessary both to increase the possibility of redress and to ensure an effective sanctions regime by providing greater incentives to encourage businesses to propose agreements. However, this should be seen as the last resort. It is much better for

### **Box 1: Examples of redress schemes**

#### **Where a trader has access to a list of all customers**

The trader could write to all customers informing them of their right to a sum of money if they send back tear-off slip within a set time-period. Terms and conditions should not be complex. The trader would reimburse every consumer who responds within 30 days.

*Enforcers would check that letters had been sent out and all claims answered within 30 days*

#### **Where a trader has no list of customers but there is likely to be take-up if advertised**

The trader could take out adverts in national, regional or specialist press. Advertising would be proportionate, targeted and effective. The advert would operate in a similar way as product recall where if people showed they were affected by the issue they would receive a sum of money. Additionally, the availability of redress could be flagged to consumers complaining to the Citizens Advice consumer helpline.

*Enforcers would monitor that adverts had been placed and compensation paid to claimants*

<sup>10</sup> In such circumstances it would be important to ensure that any such measure does not 'tie' consumers into a further purchase of the offending business's goods or services.

the business and for everyone else if the business commits to an appropriate scheme itself.

**QUESTION 11.** *Do you agree that the Government's proposals will achieve the outcome of improved redress for consumers?*

**QUESTION 12.** *Where individual consumers cannot be identified, how do you think the schemes could operate?*

**QUESTION 13.** *Should businesses be able to offer undertakings to enforcers agreeing to implement consumer redress schemes or should the agreements be 'rubber-stamped' by a court before coming into force?*

**QUESTION 14.** *Should the court have a power to impose a requirement that a business set up a scheme aimed at providing compensation or restitution?*

## More confident consumers who are empowered to exercise greater consumer choice

3.18. NOTE: Without amendment it is uncertain this outcome would be achieved in full using the Regulatory Enforcement and Sanctions Act 2008, although some measures could be included in the scope of Compliance Orders.

### Background

- 3.19. For many consumers, a key element of a purchasing decision is the past performance of a business. Promoting greater consumer choice by better informing them of breaches of consumer law and encouraging switching behaviour is therefore important.
- 3.20. Empowered consumers are an important part of the process of competition. To harness the full benefits of competition both sides of the market (business and consumers) must be active. Therefore, consumers must be empowered and actively prompt rival firms to offer new and better goods and services. Competition is a driver of productivity and economic growth.
- 3.21. The Government has already set out proposals for 'midata', an online platform making personal data available and easy to access.<sup>11</sup> Consumers can use their personal data to help them better understand their own consumption behaviours and patterns, as well as make more informed and appropriate purchasing or consumption decisions.
- 3.22. Linked to this agenda, the Government believes there is a gap in consumer information about where companies have broken the law or failed to offer a good service. If consumers keep using the same businesses, the incentive to improve is lower.

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<sup>11</sup> [www.bis.gov.uk/policies/consumer-issues/consumer-empowerment/personal-data](http://www.bis.gov.uk/policies/consumer-issues/consumer-empowerment/personal-data)

## *Proposal*

3.23. Greater consumer empowerment, enabling enhanced consumer choice, could be encouraged via remedies such as:

- Businesses signing up to an established customer review/feedback site (see Box 2 for further details of such sites);
- Breaches being flagged on some sort of publicly accessible ‘naming and shaming’ database of non-compliant businesses;
- Businesses being required to provide greater consumer information, including linking up with ‘midata’;
- Businesses being required to inform existing customers (either directly or through publicity) of the breach and any remedial action taken – this would be particularly appropriate for long-term or repeat contracts where the consumer and supplier are in some form of ongoing relationship (for example, utilities, telecommunications, gym contracts);
- Allowing consumers to terminate ongoing contracts without penalty - for example, a consumer who has been mis-sold a mobile phone contract which would normally be for a certain amount of time, could be allowed (but under no obligation) to terminate the contract early and seek out a tariff more appropriate for their needs; or
- Businesses in an ongoing relationship with consumers being required to provide details about other suppliers’ products and offers, to more actively promote switching - it would be unlikely this last option would be imposed by a court given the difficulty in proving benefit to consumers but could potentially be offered as an undertaking which would affect the enforcer’s decision over whether to prosecute.

3.24. Promoting switching and providing better information will enable consumers to make better decisions. These better decisions foster the most efficient and productive parts of companies. This can encourage sustainable economic growth by facilitating a ‘race to the top’ by companies in terms of value and service.

3.25. The Government’s aim is that the business and enforcer would come to an agreement on the most suitable remedy to activate confident consumers empowered to exercise greater choice. If this proves impossible, the matter would proceed to court.

3.26. Some of the suggested remedies are more likely than others to be agreed without court involvement and as with all remedies, the chosen remedy should be appropriate to the breach of consumer law.

**QUESTION 15.**     *Do you agree that the Government’s proposals would be workable and appropriate?*

**QUESTION 16.**     *Are there any other measures you think could achieve this objective?*

**Box 2: Customer feedback/review sites**

When consumers are well informed about the choices available to them they can be more effective in their purchasing behaviour. The internet has greatly improved the ability of consumers to make comparisons between products and also to learn from other consumers' experiences.

If used in advance of a purchase, feedback and review sites can help consumers to judge the trustworthiness of a trader and the likely quality of goods and services. Such sites are becoming increasingly popular with consumers: an OFT survey (2009) found that 36 per cent consumers always used consumer reviews before making an online purchasing decision; 48 per cent sometimes used such reviews and just 16 per cent never used these reviews.

Such sites also have benefits for businesses, driving good behaviour and providing incentives for businesses to improve their performance.

The utility of such sites depends on the reviews reflecting the genuine opinions of consumers. There are a number of risks associated with feedback sites, such as fears that businesses may pay individuals for positive feedback without making this arrangement clear to consumers, or that businesses may attempt to protect their reputation by seeking to remove negative feedback. On the other side of the coin, malicious consumers or competitors may seek to use feedback sites to provide a false negative reputation about a specific trader.

Feedback and review sites are currently unregulated so it is down to enforcers to tackle such practices. The OFT, for example, has taken a range of enforcement cases to set a clear precedent against businesses that pay for, or create, false consumer feedback, for example, Handpicked Media (individuals engaged by Handpicked Media published promotional content, via social media, without sufficient disclosures in place to make it clear that the promotions had been paid for), Groupola (employee published unidentified positive comments on Groupola Facebook page), and MoreNiche (reviews and product endorsements were presented as independent consumer reviews when they were actually commercial promotions).

A number of different strategies are adopted by providers of feedback sites to ensure that feedback is trusted and adds value – for example, although TripAdvisor allows entries to be made without any form of verification, the site has invested heavily in systems, processes and resources to identify and minimise fraudulent content. The site gets a high volume and proportion of repeat visitors suggesting that it is a helpful tool but ultimately it is down to consumers to use judgement and adopt a 'healthy scepticism' in their assessments. Reevoo, on the other hand, only allows verified purchasers to write reviews and businesses are unable to remove or edit the content of any reviews. Other adopted practices include the use of algorithms to track user behaviour and monitor IP addresses.

## Choosing the right remedy

- 3.27. The Government believes that the outcomes could be met by a wide range of individual measures and that it would not be appropriate to set out detailed lists mandating specific actions. This would to some extent be second-guessing the nature of individual cases.
- 3.28. More specifically, the best remedy may not always be clear. Alternatively, there may be a number of ways to achieve the same outcome and a lack of information on what would be

successful. In such a case, discretion would allow flexibility for remedies to be amended (in particular where remedies are agreed by undertakings) on the basis of experience. Flexibility would also allow initial 'tests' or randomised control trials to identify the most appropriate remedy before it is applied on a wider scale.

**QUESTION 17.** *Do you think legislation should list specific actions to be chosen from or simply set out the outcomes while leaving discretion to the parties and ultimately the court as to the best action to address the breach?*



# Annex A: Draft Impact Assessment

An Impact Assessment has been produced to accompany this proposal. This can be obtained at the following URL:

<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/12-1194-civil-enforcement-remedies-impact-assessment>

## Questions on the Draft Impact Assessment

**QUESTION 18.** *Can you provide any additional evidence of:*

- *the cost of criminal enforcement cases?*
- *the cost of civil enforcement cases that involve the courts (Enforcement Orders)?*
- *the cost of undertakings agreed between businesses and enforcers?*

**QUESTION 19.** *Do you agree with the assumptions behind the estimate of the number of cases we anticipate switching from the criminal to the civil route?*

**QUESTION 20.** *What do you see as the likely cost implication (cost or cost saving) of this proposal in terms of court costs?*

**QUESTION 21.** *Do you have any evidence as to the extent of consumer harm caused through lack of access to effective redress?*

**QUESTION 22.** *What costs would businesses and enforcers incur in terms of familiarisation with the new law, if implemented?*

**QUESTION 23.** *What costs would be involved in introducing a complaints-handling scheme? Are you able to provide any evidence of costs incurred?*

**QUESTION 24.** *What costs would be involved in establishing a redress scheme? Are you able to provide any evidence of costs incurred?*

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- the cost of undertakings agreed between businesses and enforcers? .....25
- QUESTION 19.** Do you agree with the assumptions behind the estimate of the number of cases we anticipate switching from the criminal to the civil route? .....25
- QUESTION 20.** What do you see as the likely cost implication (cost or cost saving) of this proposal in terms of court costs? .....25
- QUESTION 21.** Do you have any evidence as to the extent of consumer harm caused through lack of access to effective redress? .....25
- QUESTION 22.** What costs would businesses and enforcers incur in terms of familiarisation with the new law, if implemented? .....25
- QUESTION 23.** What costs would be involved in introducing a complaints-handling scheme? Are you able to provide any evidence of costs incurred? .....25
- QUESTION 24.** What costs would be involved in establishing a redress scheme? Are you able to provide any evidence of costs incurred? .....25
- Do you agree with the Government’s proposed enforcement mechanisms? .....32
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- Do you consider that micro-businesses should be exempt from the new proposals? .....34
- Do you agree with the Government’s proposed remedies to increase business compliance with the law?  
Do you have any additional remedies to be considered? .....34
- Do you agree with the Government’s proposed mechanisms for enforcement via undertakings and Enforcement Orders?34
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- Where individual consumers cannot be identified, how do you think the schemes could operate? .....35
- Should businesses be able to offer undertakings to enforcers agreeing to implement consumer redress schemes or should the agreements be ‘rubber-stamped’ by a court before coming into force? .....35
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- Do you agree that the Government’s proposals would be workable and appropriate in a remedies regime? 36
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## Annex C: The Consultation Code of Practice Criteria

Formal consultation should take place at a stage when there is scope to influence policy outcome.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response. The amount of time required will depend on the nature and impact of the proposal.

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

### *Comments or complaints*

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway  
BIS Consultation Co-ordinator  
1 Victoria Street  
London  
SW1H 0ET

Telephone John on 020 7215 6402  
or e-mail: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

## Annex D: List of Individuals/Organisations consulted

Amazon	International Consumer Protection and Enforcement Network
Association of Chief Trading Standards Officers	Law Commission
Association of Convenience Stores	Law Society
BEUC	Legal Services Board
British Chambers of Commerce	Local Government Association
British Hospitality Association	MoneySavingExpert.com
British Independent Retailers Association	National Consumer Federation
British Retail Consortium	Northern Ireland Executive
Prof Robert Bradgate, Sheffield University	OECD Consumer Committee
Prof Andrew Burrows, Oxford University	Ofcom
Citizens Advice	Office of Fair Trading
Citizens Advice Scotland	Office of Gas and Electrical Markets
Citizens Advice Wales	Office of Rail Regulation
Civil Aviation Authority	Ofwat
Confederation of British Industry	PhonepayPlus
Confederation of Passenger Transport UK	Publishers Association
Consumer Council for Northern Ireland	Scottish Government
Consumer Focus	Retail Motor Industry Federation
Convention of Scottish Local Authorities	Society of Chief Officers of Trading Standards in Scotland
Dr Alan Cunningham, Queen Mary, University of London	Trading Standards Institute
Department of Enterprise, Trade and Investment, Northern Ireland	Prof Christian Twigg-Flesner, Hull University
European Commission	Prof Ian Walden, Queen Mary, University of London
Federation of Small Businesses	Welsh Government
Glass and Glazing Federation	Welsh Heads of Trading Standards
Professor Christopher Hodges, University of Oxford Centre for Socio-Legal Studies	Which?
Dr Julia Hörnle, Queen Mary, University of London	Prof Chris Willett, Essex University
Prof Geraint Howells, Manchester University	

## Annex E: Response form

There is no obligation to use this form when responding, but doing so will make your responses easier to analyse. There is also no obligation to answer all the questions. We look forward to receiving your feedback.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is **31 December 2012**

Please return completed forms to:

Mary Hammond  
Consumer and Competition Policy  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Telephone: 020 7215 2025  
Fax: 020 7215 0357  
email: [civil-remedies@bis.gsi.gov.uk](mailto:civil-remedies@bis.gsi.gov.uk)

Name:

Organisation (if applicable):

Contact details:

*Please select which of the following best describes you as a respondent:*

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Consumer organisation
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

**Question 1 (see paragraph 1.7)**

Do you consider the Government's proposed outcomes to be valid for remedies to address breaches of consumer law?

Yes                       No                       Not sure

Comments:

*Questions 2 (see paragraphs 2.1-2.5)*

What are your views on the suitability of the RES Act to achieve the proposed outcomes?

Suitable       Unsuitable       Not sure

Comments:

*Question 3 (see paragraphs 2.6-2.13)*

Do you think that amending Part 8 of the Enterprise Act 2002, to extend Enforcement Orders and undertakings, would be an appropriate way to mandate one or more actions by businesses to address breaches of consumer law?

Yes       No       Not sure

Comments:

*Question 4 (see paragraphs 2.14-2.16)*

Do you agree with the Government's proposed enforcement mechanisms?

Yes       No       Not sure

Comments:



*Question 5 (see paragraph 2.17)*

Do you agree that only Hampton-compliant enforcers should have access to these extended remedies?

Yes                       No                       Not sure

Comments:

*Question 6 (see paragraphs 2.18-2.19)*

Do you think the burden of proof should be at the criminal or civil level?

Civil level                       Criminal level                       Not sure

Comments:

*Question 7 (see paragraph 2.20)*

Do you agree that the evidence requirements should be at the civil level and that an enforcer's report should be admissible in lieu of formal witness statements?

Yes                       No                       Not sure

Comments:

*Question 8 (see paragraph 2.21)*

Do you consider that micro-businesses should be exempt from the new proposals?

Yes                       No                       Not sure

Comments:

*Question 9 (see paragraph 3.3)*

Do you agree with the Government's proposed remedies to increase business compliance with the law? Do you have any additional remedies to be considered?

Yes                       No                       Not sure

Comments:

*Question 10 (see paragraphs 3.4-3.5)*

Do you agree with the Government's proposed mechanisms for enforcement via undertakings and Enforcement Orders?

Yes                       No                       Not sure

Comments:

*Question 11 (see paragraphs 3.12-3.17)*

Do you agree that the Government's proposals will achieve the outcome of improved redress for consumers?

Yes                       No                       Not sure

Comments:

*Question 12 (see paragraph 3.14)*

Where individual consumers cannot be identified, how do you think the schemes could operate?

Comments:

*Question 13 (see paragraphs 3.16-3.17)*

Should businesses be able to offer undertakings to enforcers agreeing to implement consumer redress schemes or should the agreements be 'rubber-stamped' by a court before coming into force?

Yes, businesses should be able to offer undertakings to enforcers  
 No, agreements should be 'rubber-stamped' by a court  
 Not sure

Comments:

*Question 14 (see paragraph 3.17)*

Should the court have a power to impose a requirement that a business set up a scheme aimed at providing compensation or restitution?

Yes                       No                       Not sure

Comments:

*Question 15 (see paragraphs 3.23-3.26)*

Do you agree that the Government's proposals would be workable and appropriate in a remedies regime?

Yes                       No                       Not sure

Comments:

*Question 16 (see paragraph 3.23)*

Are there any other measures you think could achieve the objective?

Comments:

*Question 17 (see paragraphs 3.27-3.28)*

Do you think legislation should list specific actions to be chosen from or simply set out the outcomes while leaving discretion to the parties and ultimately the court as to the best action to address the breach?

Yes, legislation should list specific actions to be chosen from

No, legislation should set out the outcomes leaving discretion to choose the best action to address the breach

Not sure

*Comments:*

*Question 18 (see Impact Assessment, paragraphs 25-27)*

Can you provide any additional evidence of:

- the cost of criminal enforcement cases?
- the cost of civil enforcement cases that involve the courts (Enforcement Orders)?
- the cost of undertakings agreed between businesses and enforcers?

*Comments:*

*Question 19 (see Impact Assessment, paragraphs 45-48)*

Do you have any refinements to the number of cases we anticipate switching from the criminal to the civil route?

*Comments:*

*Question 20 (see Impact Assessment, paragraphs 51-52)*

What do you see as the likely cost implication (cost or cost saving) of this proposal in terms of court costs?

*Comments:*

*Question 21*

Do you have any evidence as to the extent of consumer harm caused through lack of access to effective redress?

*Comments:*

*Question 22 (see Impact Assessment, paragraph 54)*

What costs would businesses and enforcers incur in terms of familiarisation?

*Comments:*

### *Question 23*

What costs would be involved in introducing a complaints-handling scheme? Are you able to provide any evidence of costs incurred?

*Comments:*

### *Question 24*

What costs would be involved in establishing a redress scheme? Are you able to provide any evidence of costs incurred?

*Comments:*

*Do you have any other comments that might aid the consultation process as a whole?*

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



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