Department for Business Innovation & Skills

ESTATE AGENTS MARKET REGULATORY REFORM

Impact Assessment

SEPTEMBER 2012

Contents

Title: **Estate Agents market regulatory reform** **IA No:** BIS 0375 **Lead department or agency:** BIS **Other departments or agencies:** HMT, OFT	**Impact Assessment (IA)** **Date: 16 August 2012** **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** David Rawlins 020 7215 6536 David Miller 0207 215 6576

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

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**
£0.0m	£0.0m	£0.0m	Yes	zero net cost

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

Regulation in the home buying and selling sector has been indentified by an OFT market study in 2010 as one of the factors hindering innovation. The Estate Agents Act (EAA)1979 has been in place for 30 years but market and technological developments, notably the development of online property portals, have made the definition of “estate agency work” in the legislation inappropriate. It potentially hinders the development and introduction of new business models, limits the choice for consumers and dampens price competition in the market, which the OFT described as “weak”. Government intervention is required to amend or repeal existing legislation and to ensure consumer protection remains adequate where risks are identified.

What are the policy objectives and the intended effects?

The aim is to make regulation in the estate agency sector proportionate and targeted to the risk involved in the particular service being offered. An amendment will restrict the definition of businesses in scope of the legislation, exempting low risk activities. This will remove uncertainty and regulatory burdens and improve the confidence of affected businesses and prospective new entrants, thus potentially stimulating innovation. In parallel, the Property Misdecriptions Act (PMA) 1991, which relies on the EAA definition, will be repealed in order to eliminate unnecessary regulation, as there is significant overlap between the PMA and the Consumer Protection from Unfair Trading Regulations (CPRs) 2008.

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

0. Do nothing. This would perpetuate the status quo denying consumers the benefits that increased innovation could bring.
1. Amend the Estate Agents Act to restrict its scope to exempt low risk activities and repeal the Property Misdescriptions Act. This should help reduce the costs of compliance for a “passive intermediary” business and remove any perception of illegal trading from such businesses. This should encourage innovation in businesses affected and also new entrants into the market, including well known brands that may be deterred from entering for fear of bad publicity.
2. Repeal the PMA alone This would reduce the costs of compliance as in Option 1 but would not solve the problem of passive intermediaries being caught by other estate agency legislation
Option 1 is preferred as it tackles the regulatory problems identified in the OFT report in an holistic way, while providing adequate protection for consumers in higher risk areas, and minimising cost to business.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 04/2018

Does implementation go beyond minimum EU requirements?			N/A		
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:** n/a	**Non-traded:** n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis & Evidence — Policy Option 1

Description: Amend the EAA to restrict its scope to exclude low risk activities where the intermediary is not acting as an agent for the seller and repeal the PMA.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0.0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	£0.0m		£0.8m	£6.9m

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

Currently, costs to estate agents are mainly due to the PMA because that is the legislation that is used most often by enforcers. If the PMA is repealed, the CPRs will become the sole legislation involved with similar costs as before These costs are estimated at £0.8m including £680k to estate agents in providing information to Trading Standards Officers in relation to offences under the PMA and providing information in defence of such charges and £106k to estate agents in training new entrants on the PMA.

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

There are no non monetised costs.

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	£0.0m		£0.8m	£6.9m

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

Repealing the PMA will bring savings to traditional estate agents estimated at £0.8m:

- £680k to estate agents in providing information to Trading Standards Officers in relation to offences under the PMA and providing information in defence of such charges.
- £106k to estate agents in training new entrants on the PMA.

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

- A reduction in the cost of compliance for non-estate agency businesses in the sector as they will be complying with the (more proportionate) CPRs rather than the PMA.
- Removing the uncertainty about the legal status of passive intermediaries should increase confidence for new entrants and existing businesses giving more innovation in the market and leading to greater consumer choice and lower prices.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

There is a risk that the repeal of the PMA in favour of the CPRs may lead to some confusion about how property descriptions are regulated. The OFT are publishing guidance on the CPRs to address this. There is the risk that this limited deregulation may have the unintended consequence of a rise in fraudulent activity, detrimental to the consumer. However, we judge this risk to be low because of the limited nature of the amendment and as CPRs become better understood by consumer and businesses alike.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.8	**Benefits:** 0.8	**Net:** 0.0	Yes	zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Repeal the PMA alone.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0.0

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	£0.0m		£0.8m	£6.9m

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

As option 1 The smaller scope of changes in option 2 means the costs would be somewhat smaller than those related to option 1.

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

There are no non monetised costs.

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	£0.0m		£0.8m	£6.9m

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

Repealing of the PMA will bring saving to business estimated at £0.8m:

- £680k to estate agents in providing information to Trading Standards Officers in relation to offences under the PMA and providing information in defence of such charges.
- £106k to estate agents in training new entrants on the PMA.

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

A reduction in the cost of compliance for non-estate agency businesses in the sector as they will be complying with the (more proportionate) CPRs rather than the PMA.

Key assumptions/sensitivities/risks | **Discount rate (%)** | 3.5

There is a risk that the repeal of the PMA in favour of the CPRs may lead to some confusion about how property descriptions are regulated. The OFT are publishing guidance on the CPRs to address this. There is the risk that this limited deregulation may encourage more fraudulent activity. This is not perceived to be a significant risk by enforcement agencies.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0.8	**Benefits:** 0.8	**Net:** 0.0	Yes	zero net cost

Evidence Base (for summary sheets)

Introduction

The Estate Agents Act (EAA) 1979, the Property Misdescriptions Act (PMA)1991 and the Money Laundering Regulations (MLRs) 2007 regulate businesses in the home buying and selling sector and overlay the more general consumer protection legislation such as the Consumer Protection from Unfair Trading Regulations (CPRs) 2008.

The OFT published a market study into the home selling and buying market in February 2010.[1] It found that the market was dominated by traditional estate agents, whose business practices and charging structures had remained largely unchanged over the years. Price competition between traditional estate agents remained weak and commission rates were sticky – as property prices rise during booms, in real terms, so too do estate agents fees.

The OFT believed that the best way to tackle the lack of price competition was to encourage new business models which may provide choice and put pressure on traditional models. The market study argued that the very broad definition of "estate agency work" in the EAA meant that a wide range of activities were potentially in scope (although the precise scope was unclear) which meant that they were also in scope for the PMA and MLRs. Businesses wishing to offer a trimmed down service with low risk to consumers therefore had to comply with the same requirements as those offering the full traditional estate agency service. The OFT argued that the burden of regulation and the uncertainty that this caused potential new entrants or existing businesses wishing to expand may be a deterrent and hinders innovation.

The OFT therefore recommended to Government that the legislation be updated.

As part of the Red Tape Challenge process, the decision was taken to consult on whether EAA should be amended to clarify the scope of the legislation in terms of the types of businesses that are affected by it. The amendment would exempt, for example, internet property portals which act only as a vehicle for contact between seller and buyer, and which neither provide advice nor handle money (so-called "passive intermediaries").[2] Changing the definition would also bear on the PMA and the MLRs which rely on it.The definition of 'estate agency work' is also incorporated in other legislation. The Money Laundering Regulations 2008 require estate agents to guard against and report any suspicion of money laundering. The Terrorism Act 2000 and the Proceeds of Crime Act 2002 incorporate the definition from the EAA in applying particular standards to 'regulated sectors' which include estate agents. The limited amendment in respect of private sales portals would also apply to these pieces of legislation.

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[1] Home Buying and Selling: A Market Study - http://www.oft.gov.uk/shared_oft/reports/property/OFT1186.pdf/

[2] In this IA, the term "passive intermediary" is used to refer to business models which offer an intermediary service to enable prospective parties to contact each other and access property details, but without being actively involved in the sales process.

A targeted consultation of interested parties was launched on 8 June 2012, and closed on 10 August 2012. Over the period discussions have been held with traditional estate agents, private sale portal businesses, consumer bodies, the ombudsman and Trading Standards officers and other interested parties. The consultation raised some 400 responses. A high volume of these came from estate agents who were against a change that they felt would create an unlevel playing field, increase competition and give rise to consumer detriment .

In 2011, BIS consulted on repealing the PMA on the grounds that it is largely superseded by the CPRs. In the context of the proposed amendment of the EAA, BIS intends to announce the Government response to that consultation at the same time. The proposed amendment and repeal would complement one another in that the CPRs allow a more proportionate approach to the description of properties depending on the type of business offering that information to prospective buyers.

Problem under consideration;

The market is still dominated by traditional estate agents

In 2007 there were 1.6 million residential property transactions in the UK with a total value of £361 billion. The economic downturn has seen a sharp decline in the number of homes being bought and sold. Transactions fell considerably up to 2009 and have only recovered slightly to 884,000 in 2011[3].

There are approximately 14,000 traditional residential estate agent offices in the UK[4]. The traditional estate agency market, excluding fees for ancillary services, was worth approximately £4.2 billion in 2007, falling to £2.1 billion in 2008, mainly because of the large drop in transactions. Virtually all have an online presence and most also market their property details through one of the major property marketing portals which allow buyers to search for properties and contact the estate agents involved. Rightmove is the largest property market portal, with a market share in excess of 80 per cent by some measures.[5]

The market for home buying and selling is still dominated by traditional estate agents. Research carried out for the OFT market study found that 87 per cent of sellers used a traditional estate agent, a similar proportion to those surveyed in an earlier 2004 study. This proportion had increased from the position in 1979, when the then Price Commission surveyed sellers and found that just 73 per cent used an estate agent, while 25 per cent of homes were sold privately. In their more recent work, the OFT found that 11 per cent of sellers sold privately while auctions were very rarely used (at least for private individuals selling their own home). Online-only estate agents were still at the fringe of the market, with only two per cent of sellers choosing to use one. There now appear to be approximately 20 online-only estate agents and less than 30 businesses providing platforms for private sellers; from feedback received, the number of private sale platforms is decreasing and their geographical reach is rather limited.

There is a lack of innovation in business models, price structure and charges

The OFT report found "surprisingly little innovation" in relation to the substantive model of selling property. The OFT noted, however, that this may reflect the preferences many consumers express for personal, face-to-face contact with an estate agent.

As above, the dominant model was the traditional estate agent with a high street presence retained by the seller and paid a fee on completion based on a percentage of the achieved price. The OFT expected to see estate agents putting more emphasis on the internet to cut costs. While some traditional estate agents had set up virtual offices, it was not yet common practice.

[3] HM Revenue & Customs National Statistics – Table 16-2, Property Transactions in the UK

[4] From the OFT market study and feedback from consultation respondents

[5] http://www.estateagenttoday.co.uk/

Another striking feature of the market was the homogeneity of the service offering – most estate agents offered broadly the same package of services (valuation, production and distribution of marketing material, accompanied viewings, and negotiation) at broadly the same price (one to two per cent of the achieved sale price).

Given the heterogeneity of sellers, the market study found it surprising that there was not greater variety in terms of service offered, or greater use of menus of services, with the buyer deciding which parts of a package to buy. Similarly, it was surprising that a single form of contract – flat percentage commission – dominated the market.

There are some indications that innovation has proceeded faster in other countries. In the US in 2007, 80% of the market was served by traditional real estate agents and brokers and more appeared to offer a menu of services than in the UK with fees varying in line with the level of service provided. That gave consumers more control over pricing and enabled them to manage their costs, which in turn encouraged competition in the market and drove down the fees charged. Despite this, fees overall were still higher than in the UK – commissions were normally between 5-6% of the sale price[6] (the level of commission paid in different countries is not directly comparable, however, not least because it involves comparing property prices which is difficult).

It is impossible to make an objective assessment of whether there is enough innovation in a market. However, given the emergence of factors which might be expected to trigger changes (for example greatly improved access online to local pricing information), the OFT felt that it was surprising that even straightforward innovation appeared muted.

Evidence from the consultation broadly supports the OFT's findings. Most traditional estate agents charge a commission on the sale price of between 1-2.5% for sole agency contracts or up to 3% or more for multiple agency contracts. Online-only estate agents usually offer three levels of service for a flat fee (£250 to £500) or a flat fee plus commission if the sale is successful (either as a fixed amount or a percentage of the sale price amounting to £400 to £1000). Online estate agents tend to offer multi-agency rather than sole agency contracts and offer services such as premium listing on the portal sites or for-sale signs at extra cost. Private sale portals are cheaper (or in one case, free) and charge fixed fees (up to £300) with some offering a "For Sale" board either within a fixed fee or as an optional extra.

Rationale for intervention

Uncertainty surrounding the regulation is of itself a concern and it may also be hampering innovation

Despite the innovations in many sectors due to the use of the internet, estate agency legislation has not changed. The definition of an estate agent which triggers a raft of regulation is over 30 years old and does not easily accommodate new business models which may not, in fact, pose risks for consumers.

Currently, the EAA applies to any person that "effects the introduction of a third party to the client" for the purposes of buying and selling properties. It requires businesses to, among other things, be transparent in the way they handle information about offers on properties and to disclose any self interest or the interests of third parties who may benefit from a sale. The PMA, which relies on the definition of estate agency work in the EAA, places an obligation on estate agents not to publish particulars that are false or misleading. The MLRs require estate agents to guard against and report any suspicion of money laundering. An amendment to the EAA in 2008 added the requirement that all estate agents be members of an approved redress scheme.

Responses to the consultation showed that there was a range of views about the meaning of the definition of estate agency work and uncertainty about whether the activities of private sale portals fell within the strict legal scope of the EAA. This uncertainty was acknowledged by some respondents including estate agents and trade bodies and some thought that clarity would be welcome. The consequences of this uncertainty include the following:

- If the business model was in scope, the intermediary would either need to comply with the EAA (and PMA) with the costs involved or to operate without complying and potentially be open to

[6] US Federal Trade Commission and Department of Justice (2007) Competition in the real estate brokerage industry

enforcement action for acting illegally. The private sale portals consulted considered they were out of scope but agreed that the uncertainty of the situation was a deterrent to them wishing to expand their activities and to potential new entrants.

- The major property marketing portals do not allow private sale portals to post details on their sites and private sales portals felt this restricted their ability to compete with traditional estate agencies. This may be because of concerns that property details being provided by businesses not complying with the PMA might be inaccurate.
- Private sales portals and LATSS referred to cases where consumers had been charged commission by estate agents under sole selling or sole agency contracts, for selling property through private sales portals. Guidance was issued by the OFT, Trading Standards Institute and Local Authorities Coordinators of Regulatory Services (LACORS) in around 2009, following such cases, to provide clarity as to whether internet portals were estate agents. Private sales portal respondents commented that their business is still affected by suggestions that private sales portals may be considered to be estate agents (under the EAA) and thus may conflict with estate agents' sole agency contracts.

The Government's favoured approach to remedying this situation is a limited amendment of the EAA to remove this uncertainty by excluding from the legislation passive intermediaries engaging in activities of low risk to consumers. At the same time, the Government will repeal the PMA, which in many ways duplicates the protections of the CPRs. The MLRs will continue to apply to estate agencies.

Policy objective

The objectives are to clarify the scope of home buying and selling legislation to remove uncertainty, ensure the regulatory regime is proportionate in terms of costs of compliance and targeted to the nature and level of risks involved, provide adequate protection for consumers in higher risk areas, minimise the cost to business and promote innovation.

This is consistent with the principles of better regulation. Removing unnecessary regulatory burdens may facilitate market forces and lead to economic growth in this sector.

Options

Option 0: Do nothing.

The consultation demonstrates that, if anything, there are fewer businesses offering alternatives to traditional home buying and selling business models now than there were in 2010. Doing nothing will perpetuate the status quo and deny consumers the benefits that increased innovation could bring.

Option 1: Amend the EAA to restrict its scope to exempt lower risk activities and repeal the PMA.

This should have two effects:

a. Remove uncertainty about the scope of the legislation. Businesses that are clearly outside the scope of the amended legislation would be confident in operating, knowing what they are required to do and what not. It would remove any perception of illegal trading from such businesses and increase the likelihood that more players including brand names would enter the market for providing such services.

b. Reduce the cost of compliance for "passive intermediary" businesses, in particular by avoiding the need explicitly to check the accuracy of property details, as specified by the PMA,. This should encourage new entrants into the market.

Option 2: Repeal the PMA alone

Repealing the PMA would reduce the costs of compliance as in Option 1 but would not solve the issue that passive intermediaries may be acting outside the scope of estate agency legislation and therefore less legitimate than traditional estate agents. This might deter new entrants for fear of bad publicity.

Costs and benefits of each option;

Option 0: Do nothing.

This option has not been analysed separately as it is the reference against which all other options are being assessed.

Option 1: Amend the EAA to restrict its scope to exempt lower risk activities and repeal the PMA.

The current legislation defines "estate agency work" very broadly and the OFT market study concluded that a way to promote more innovation in the sector would be that businesses wishing to offer low cost, low risk services to home buyers and sellers should not be subject to the same stringent requirements for consumer protection as businesses offering higher risk services.

Examples of low risk services might include:

- Providing a platform for sellers and buyers to exchange information about properties and to communicate with one another
- Signposting to freely available information about sale prices in a particular area
- Providing For Sale boards
- Signposting to other ancillary services and information

Examples of higher risk services might include:

- Preparing property particulars for a seller
- Advising sellers on valuations
- Acting as a seller's agent in negotiations on the sale price
- Accompanying viewings
- Providing advice to sellers and buyers on trusted third party providers such as financial services, surveying or conveyancing.

Feedback to the consultation broadly supports the distinctions above.” Passive intermediary businesses “spoken to agree that the main problem they faced, if they were considering offering services that fell within the current scope of the EAA, was not due to the requirements of the EAA itself but those of the PMA which relies on the EAA definition of “estate agency work” and requires property details to be checked for accuracy. This would result in the need to have procedures in place on the ground to check every set of property details and would likely not be feasible for the relatively low fees that they charged.

Benefits - summary

- Business:
    - Removing regulatory burdens from parts of the estate agency sector where the risk to consumers is low will lower costs for business, remove a barrier to entry and to innovation in the market.
    - Removing any perception of illegal trading from passive intermediaries, which is a reputational risk that acts as a barrier to entry in the market, increases the likelihood that more players including known brands will enter the market for providing such services, which might in turn trigger further entry.
- Consumers:
    - Entry to the market of new business models may increase consumer choice and price competition (as has happened in other sectors such as low cost airlines)
- Economic:
    - A more efficient market better able to match sellers and buyers needs with more innovation should help economic growth

Benefits to businesses

Repealing the PMA

The IA published alongside the consultation on the repeal of PMA in January 2011 identified a total of cost saving of £5.2m itemised as follows:

- £680k to estate agents in providing information to Trading Standards Officers in relation to offences under the PMA and providing information in defence of such charges
- £4.1m to estate agents in preparing property particulars to comply with the PMA
- £106k to estate agents in training new entrants on the PMA
- £83k to Trading Standards Departments in inspection costs
- £165k to Trading Standards Departments in bringing cases to court.

The RPC issued an opinion on the IA above questioning the benefit estimates from reduced court costs associated with the PMA as at least some of those costs will be incurred under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) instead. Also, the RPC considered it questionable to claim full administrative cost savings for all estate agents especially since the majority of them considered the associated compliance costs as “business-as-usual rather than a regulatory burden*”*.

Responses to the consultation also questioned the extent of the savings claimed in the IA. The consensus among estate agents, even amongst the smaller firms who supported repeal of the PMA, was that there would be little in the way of cost savings.

Most responses from Trading Standards officers thought there would not be a reduction in enforcement activity (inspections and court cases) resulting from repeal of the PMA and that existing enforcement work would transfer from the PMA to the CPRs but there were also some contrary views. The Trading Standard Institute (TSI) thought there would be increased enforcement activity because estate agents understand the PMA and it is largely self-policing.

In light of the comments above, we have removed the potential saving related to court cases and inspections. Also, we consider that the proposals will be cost neutral in terms of administration burdens*.* As a result, the quantified benefit estimate from repealing the PMA is reduced to **£0.8m**, as follows:

- £680k to estate agents in providing information to Trading Standards Officers in relation to offences under the PMA and providing information in defence of such charges.
- £106k to estate agents in training new entrants on the PMA.

Amending the EEA definition of estate agency work

An amendment to the EEA in 2008 set out that all residential estate agents be members of an approved redress scheme. Narrowing the scope of the EEA would put “passive intermediaries” outside the scope of the Act. While some of these businesses may decide that they would want to be members of a redress scheme this would be a voluntary choice rather than mandatory.

A significant number of respondents to the consultation, mostly estate agents, felt that not having a mandatory redress scheme such intermediaries may pose a significant risk for consumers. However, the Government believes that such a regulatory change will not result in significant increase in consumer detriment as this is a narrow exemption from the EAA deregulating low risk activities that do not involve the business in the property transaction.

The number of such intermediaries is small (20) at the moment and therefore the associated quantifiable benefit is also small.

- *Remove any perception of illegal trading from passive intermediaries and increase the likelihood that more players will enter the market for providing such services,* including brand names

The case of Tesco Property Market (TPM) described in the OFT market study illustrates the potential problems new entrants may currently face as a result of the current EAA definition of estate agency work. In 2007 Tesco launched a residential property search and listings website. This allowed private sellers to post details and photos of their property on its website, as well as receiving a for sale sign for £199. Moreover, TPM offered an online chat room for buyers and sellers to ask questions. Since TPM went beyond being a pure classified advertising space, the OFT found, after careful consideration of the relevant regulations that this meant that TPM fell outside the exclusion applying to publication of advertisements and dissemination of information. To comply with the PMA, Tesco needed to have people on the ground checking property descriptions, and TPM subsequently withdrew from the market.

The case of TPM also points to another potentially important issue. This is the potential value that the involvement of a brand name may have in encouraging consumer trust in online estate agents or other alternative models whose services do not cover the full range of services offered by traditional estate agents, including those providing services to private sellers. A recognised and trusted brand could give consumers, both buyers and sellers, some comfort that the internet based providers in the sector were reputable. Once consumers become used to purchasing services from one online provider this would then facilitate entry by others, thereby greatly enhancing competition among internet-based models and between these and traditional estate agents..

It is worth highlighting that a majority of the estate agents responding to the consultation objected to brand names entering the market saying it created an unlevel playing field i.e. that brand name business will use uncompetitive business practises detrimental to their competitors and consumers. However, there is no evidence that market entry from brand name per se does create an unlevel playing field in the market.

Benefits to consumers

- Entry to the market of businesses with new business plans will increase consumer choice
- Entry to the market of business with low cost business plans will increase price competition.

Economic benefits

- A more efficient market better able to match sellers’ and buyers’ needs as well as more innovation leading to economic growth

A regulatory framework that is more targeted and proportionate while providing adequate support to consumers where risk exists will remove unnecessary burdens from business and allow competition in the sector to thrive.

Competition is a key driver of productivity growth both within and across firms. Competition forces firms to improve management techniques and innovate, and it also encourages improvements in the resource allocation between firms. It ultimately benefits consumers through greater choice, better quality and lower prices. This is particularly important in the context of the current economic climate and the Governments' aim to stimulate growth.

It is difficult to quantify the detriment to consumers from lack of innovation, but we might expect innovation to have some impact, in particular, developments such as the emergence of low cost models could sharpen price competition in this market. Furthermore, the emergence of unbundled or low cost services should reduce the extent to which consumers pay for a gold-plated service that goes beyond their needs.

The OFT market study concluded that price competition in the estate agent market is weak and identified three areas where consumer detriment is likely to arise on a substantial scale:

- potentially substantial detriment to sellers from estate agents not being sufficiently incentivised to achieve the highest possible sale price - it was estimated that this could amount to more than £5 billion annually, albeit that the net detriment across both buyers and sellers would be much less;
- where sellers successfully negotiate lower fees they pay a commission rate of 0.4 percentage points less on average – this implies that the detriment to consumers from failing to shop around and negotiate could be in excess of £280 million, and
- sticky commission rates combined with low barriers to entry may lead to excess entry that is inefficient and so detrimental to productivity.

If the proposed measures result in more new entrants into the market and this partly addresses weak price competition, the consumer detriment avoided could be significant.

Costs

Costs associated to this measure are listed below. More detail is provided further down in terms of description and quantification to the extent that is possible and proportionate:

- Familiarisation costs for existing business in the estate agent sector.

The existing regulatory framework has been in place for a considerable period of time and is well known to the industry. The relaxation or removal of regulations will incur a cost to business to learning the new regulations. These staff training costs and are likely to be low. As a guide, the benefit from not having to train new entrants in the PMA was estimated at £106k. Although the new regulations would have to be learned by all staff not just new entrants which would tend to increase costs.

The lack of any better evidence leads us to conclude that **£106k** is a fair and proportionate approximation of the familiarisation costs and would be cost neutral.

- Administration cost of CPRs

There is significant duplication of consumer protection under the PMA and the CPR. Providing information and documentation to Trading Standard bodies under the CPRs would incur an administration cost to estate agents. The significant duplication of consumer protection under the PMA and the CPR means much of the information provided under PMA will also be necessary under the CPRs. Local Authority Trading Standard Services felt the level of enforcement work would be unchanged using CPRs. Therefore the estimated £680k annual benefit to estate agents from not providing information under the PMA is likely to be a similar to the annual cost of providing information to Trading Standards officers under the CPRs. The administration cost of the CPRs for estate agents is therefore likely to be cost neutral.

Option 2: Repeal the PMA alone.

The costs and benefits associated to repealing the PMA alone are a subset of those highlighted in option 1. Without the amendment to the EAA,

As highlighted above, amending the EAA to remove this uncertainty by excluding from the legislation passive intermediaries engaging in activities of low risk to consumers.

We believe that will not address the uncertainty problem to the same extent, and therefore it will not fully enable the benefits of competition.

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

The expected costs on business are likely to be low. There are likely to be benefits for business, but these depend on future entry, which is impossible to gauge with any certainty at this stage. The costs of the Government's favoured Option 1 (deregulation) on Trading Standards are also expected to be low. The benefits are likely to be indirect and difficult to measure. Because of the relatively low impact and low risk of the measure the Government has therefore focused on a largely qualitative final Impact Assessment.

Risks and assumptions

- While the main argument for the repeal of the PMA is that it has a large degree of overlap with the CPRs, it is also the case, that the estate agency industry is familiar and understands the PMA. Therefore, there is a small risk that at least in the short term, the industry will fail to fully understand how the CPRs work. However, since CPRs have been in place since 2008 this risk should be small.

- Making regulation more targeted and proportionate, narrowing its scope and making it more light-touch means in theory that some fraudulent behaviour might skip through the net. However, this risk has been mitigated by excluding from the scope only low risk business practices.
- While the OFT market study has identified the regulatory framework as one factor hindering innovation and causing weak price competition it also points to other factors such as consumer preferences and behaviour. These are not being addressed by the proposals above. There is a risk that these other factors might mean that changes to the regulatory framework might not be enough to spur change.

One-in One-out

This is a deregulatory measure, repealing (PMA) and recasting (EEA) existing legislation. It is estimated that all of the monetised benefits from repealing the PMA will be transferred within businesses to train and pay administration costs of the CPR and so are cost neutral. The recasting of the EEA would reduce the obligation on intermediaries to become members of a redress scheme, the monetised benefit is very small and can be considered zero. Therefore although the measure is deregulatory and within scope of OIOO it qualifies as zero net cost.

Micro business exemption

Micro businesses will not be exempt from this deregulatory measure. Micro businesses make up a significant proportion of the home buying and selling market in the UK, accounting for 43 per cent of firms (as a % of total employers). They are likely to be relatively bigger beneficiaries of the deregulation and the expected innovations in the market. Therefore no exemption to this deregulatory measure is being sought.

Wider impacts

Impact on competition

As highlighted throughout the impact assessment, we believe that the proposed option will have the effect of enhancing the competitive environment in the market. By removing regulatory barriers, both in terms if regulatory burdens as well as regulatory uncertainty leading to reputational risk, this will facilitate entry into the market of low risk, low cost innovative business models. This is likely to lead to enhanced price competition in the market, currently deemed as “weak” by the OFT report.

Small and medium sized enterprises (SME)

There is a higher concentration of SMEs among employers in the home buying and selling sector than for the UK private sector as a whole. The proportion of SMEs (as a % of total employers) is 74% in the home buying and selling sector, but only 59% in the UK private sector[7]. Also, it is likely that SMEs will be over represented among new entrants to the sector following deregulation, particularly in the low risk end.

Impact on equality

We have taken into account equality considerations to the proposed changes, and concluded that there are not any implications for equality.

[7] Source: BUSINESS POPULATION ESTIMATES FOR THE UK AND REGIONS 2011. BIS dataset.

Summary and preferred option with description of implementation plan

The Government's preferred approach is to repeal the PMA and re-define the scope of the EAA. Implementation will be to give effect to the legislative changes needed to do this and then to provide guidance to the sector and to enforcement agencies and the public about the changes.

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Any enquiries regarding this publication should be sent to:

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

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

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