

IMPACT ASSESSMENT

Enhancing consumer confidence -
Generic set of consumer law powers

MARCH 2012

Title: Enhancing consumer confidence : Generic set of consumer law powers IA No: BIS0338 Lead department or agency: Department for Business, Innovation & Skills Other departments or agencies: Office of Fair Trading; Local authority Trading Standards Services; DETINI; District Authorities Northern Ireland; IPO; NMO; Regulators under the Enterprise Act	Impact Assessment (IA)		
	Date: 24/01/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Suzanne Redding suzanne.redding@bis.gsi.gov.uk Tel: 0207 215 0439			
Summary: Intervention and Options		RPC Opinion: GREEN	

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, Measure qualifies as One-Out?
£0	£0	£0	Yes OUT

What is the problem under consideration? Why is government intervention necessary?
 Consumer law investigatory powers, such as powers of entry and inspection and seizure, are scattered in around 60 different pieces of consumer legislation. Whilst many of the powers are similar across this body of legislation, there are also many differences. Respondents to the Consumer Law Review felt that this variation was confusing making it difficult for businesses and enforcers to know what these investigatory powers were in every circumstance.

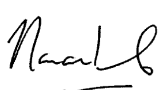
What are the policy objectives and the intended effects?
 The objectives of Government policy in consolidating and simplifying consumer law investigatory powers are to improve the effectiveness and efficiency of enforcement; reduce the regulatory burden on businesses; and roll back state intrusion and protect civil liberties. In aligning these powers, a number of powers will be slightly amended to ensure consistency across the legislation, e.g. powers of entry, enhanced seizure powers and the power to request information. Consolidating and simplifying these powers will make them more transparent for businesses and enforcers so that businesses don't waste time in dispute with officers as to what their powers are in any given circumstance.

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

The following options have been considered compared to 'do nothing':
 Option 0: Do nothing (consumer law investigatory powers remain unchanged in around 70 pieces of legislation);
 Option 1: Consolidating and simplifying consumer law investigatory powers into a generic set.
 The preferred Option is 1: to consolidate and simplify consumer law investigatory powers. This approach is preferred by businesses and enforcers alike.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2019					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 28/03/12

Summary: Analysis & Evidence

Policy Option 1

Description: Consolidating and simplifying consumer law powers into a generic set

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

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

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

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

For businesses costs may arise through extending enhanced powers of seizure.

For enforcers costs may arise through the requirement to give reasonable notice; and seeking warrants to exercise power of entry for wholly or mainly private dwellings.

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

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

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

For businesses: Savings on the cost of inspections; less time checking officers' powers. The requirement for officers to give reasonable notice of inspections, subject to certain exemptions, means more convenience for business to accommodate these inspections. Officers' powers are less likely to be disputed where officers' powers are simpler and more transparent.

Enforcers will benefit from less time checking of their powers; and reduced training costs.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Throughout the text we have used a number of assumptions to underpin the initial estimates of cost and benefits associated with this policy. Initial estimates are set out for illustrative purposes only. We do acknowledge they are not totally robust, given that precise and reliable information is not available in these areas. Further evidence is required of enforcers' costs of giving reasonable notice, and seeking warrants, and the costs to business of enhanced seizure powers. Evidence of reduced officer training costs, and reduced inspection costs. The consultation might help us refine costs and benefits estimates.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	OUT

Evidence Base (for summary sheets)

Introduction

1. This impact assessment considers proposed changes to the investigatory powers of consumer law enforcers, such as Trading Standards professionals. The Government's preferred Option is to consolidate and simplify consumer law investigatory powers into a single generic set, whilst ensuring that they are fit for the modern trading environment, including the internet.

Background

2. A number of public bodies enforce consumer law: e.g. Local Weights and Measures Authorities (also known as Trading Standards Services), Office of Fair Trading, Department of Enterprise, Trade and Investment Northern Ireland (DETINI), and Consumer Protection Cooperation (CPC) enforcers,¹ such as the Office of Communications, the Financial Services Authority and the Civil Aviation Authority.²
3. Consumer law investigatory powers include the powers of entry, investigation and seizure of goods and documents.
4. Under the European CPC Regulation³ the UK is required to offer such assistance as is reasonably requested by enforcement bodies in other EU countries.

Problem under consideration

5. Consumer law investigatory powers are scattered in around 60 different pieces of legislation. Whilst many of these powers are similar across this body of legislation, there are also differences. This means that businesses and enforcers need to check each piece of relevant legislation in order to ascertain exactly what officers' powers are in each circumstance. Respondents to the Consumer Law Review⁴ felt that this variation in investigatory powers was confusing to business and enforcers making it difficult for businesses and enforcers to know what these powers were in every circumstance.

6. In their response to the Consumer Law Review in 2009, the Confederation of British Industries said:⁵

"For instance at the moment the powers of entry and investigation vary considerably according to the legislation under which they are exercised; there is significant variation between the powers to enter premises, to inspect and seize goods or documents with or without a warrant under the [Consumer Protection from Unfair Trading Regulations 2008] (CPRs) and under the Consumer Protection Cooperation Regulation (CPC). This is confusing for businesses and enforcers."

7. There was wide agreement amongst respondents to the Consumer Law Review that these investigatory powers should be clarified and made more consistent.

8. In its response to the Consumer Law Review, the British Retail Consortium said:⁶

".....the enforcement powers of the TSS and OFT should be clarified along the lines of the CPRs and brought together in one Act.The Act should set out the Acts to which those powers apply, and include powers of search and entry and the circumstances in which they may be used together with associated the protections and safeguards."

¹ Enforcers of the EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation)

² Sections 225-227F of the Enterprise Act 2002

³ EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation)

⁴ Consumer Law Review: Call for Evidence, Department for Business, Enterprise and Regulatory Reform (BERR), May 2008, <http://www.bis.gov.uk/files/file45196.pdf>, and Consumer Law Review: Call for Evidence: Summary of Responses, pages.58-59, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.bis.gov.uk/files/file52071.pdf>

⁵ Response by Confederation of British Industries, Responses to the Consumer Law Review C-L, page 109,

<http://www.berr.gov.uk/files/file51998.pdf>

⁶ Response by British Retail Consortium, Responses to the Consumer Law Review A-B, Page 232, <http://www.berr.gov.uk/files/file51997.pdf>

Rationale for intervention

9. The current investigatory powers that consumer law enforcement bodies have available to them are determined by individual pieces of legislation, which have been made in a piecemeal manner over a period of time. This had led to variances in the investigatory powers across consumer law and confusion. These existing variances do not seem based on any sound rationale. Changing this situation requires Government intervention. The Government is also committed to rolling back state intrusion and protecting civil liberties. In order to meet these commitments, officers' investigatory powers need to be made more transparent and strike a balance between enabling effective enforcement whilst containing suitable safeguards.

Policy objective

10. The objectives of Government policy in consolidating and simplifying consumer law investigatory powers are to improve the effectiveness and efficiency of enforcement; reduce the regulatory burden on businesses; and roll back state intrusion and protect civil liberties. In aligning these powers, a number of powers will be slightly amended to ensure consistency across the legislation, e.g. powers of entry, enhanced seizure powers and the power to request information. Consolidating and simplifying these powers will make them more transparent for businesses and enforcers so that businesses don't waste time in dispute with officers as to what their powers are in any given circumstance.

Options identification

11. In considering options for reform, the following potential options were identified:

Option 0: Do nothing;

Option 1: Consolidate consumer law investigatory powers into a generic set.

Options analysis

Option 0: Do nothing

12. Doing nothing would maintain the status quo which would mean consumer law investigatory powers would remain in around 60 pieces of consumer law, leaving the picture inconsistent and confusing for businesses and enforcers. Given the Government's desire to roll back state intrusion and protect civil liberties, doing nothing, would not achieve these desired objectives. In particular, where officers have powers of entry these would continue to be unclear and the opportunity would be lost to improve safeguards to the use of officers' powers.

Option 1: Consolidating and simplifying investigatory powers

13. This Option involves consolidating and simplifying investigatory powers and aligning them, as far as possible, across around 60 pieces of consumer law. Removing overlapping and inconsistent investigatory powers and consolidating them into a generic set will make the powers simpler, more consistent and transparent for businesses and enforcers. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) will be used as the basis for the new generic set. The CPRs are relatively new, reflect current business practices and provide a flexible and proportionate set of investigatory powers that will enable enforcers to investigate breaches whether they occur in the traditional business environment or on-line.
14. In devising the proposed generic set of investigatory powers we have looked to strike a balance between enabling effective and proportionate investigation of potential breaches of legislation whilst protecting civil liberties and not unnecessarily hindering law-abiding businesses. The powers will be subject to increased safeguards to reduce the impact on businesses.

The main changes we are making

15. The CPRs introduced a general duty not to trade unfairly and to ensure that traders act honestly and fairly towards their customers. As this requirement is general in nature, officers may in many situations use investigatory powers either under CPRs, or in more specific legislation which may be different, to investigate breaches. But variation in officers' powers under different legislation can lead to disputes between enforcers and business when investigating potential breaches. For the sake of simplicity, clarity and consistency for enforcers and business, investigatory powers will be aligned, as far as possible, across around 60 pieces of consumer law within the scope of this consultation. Subject to a few exceptions, equivalent powers in the legislation will be repealed and replaced with the ones in the new proposed generic set. This will reduce any potential for dispute regarding what powers are being used.
16. In aligning the investigatory powers, a number of powers will be slightly amended to ensure consistency and transparency across consumer legislation, e.g. powers of entry and enhanced seizure powers, and the power to request information from a person where there is reasonable suspicion of a breach.⁷ Unlike the rest of consumer law, the current requirement that CPC enforcers must have reasonable suspicion before exercising any of their powers under the Enterprise Act 2002 will need to be maintained to comply with the CPC Regulation which is implemented by the Enterprise Act.⁸ In addition, it is proposed to align the penalties for the obstruction of officers.
17. Some specific powers contained in weights and measures and product safety legislation will be re-enacted alongside the new generic set. But a number of other specific powers will be repealed altogether and not repeated in the generic set, e.g. powers in the Sunday and Christmas Day Trading laws.⁹ Lastly, a number of new safeguards will be introduced before enforcers can exercise their powers.
18. Detailed changes are outlined in Annex 1 and the elements making up the proposed generic set of investigatory powers is outlined in Annex 2.

Costs

Familiarisation costs associated with the new generic set of powers

19. Large businesses and enforcers will need to familiarise themselves with the new generic set, but since the powers will be based on those already available under the CPRs, which already apply to all consumer facing businesses, these costs are thought to be negligible. They also do not relate to compliance with consumer law itself, but to the powers of enforcement officers, which are not a compliance issue for businesses, rather an issue to be considered only in the event of a potential dispute. Since such disputes are few in number and those businesses involved in such disputes will almost certainly already have familiarity with the powers under the CPRs, familiarisation costs are estimated to be zero. However, this assumption will be tested in the consultation.

⁷ which derives from S.225(2) Enterprise Act 2002

⁸ Article 4 of the EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation)

⁹ See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

Powers of seizure

20. Currently, where an officer has reasonable cause to believe that a breach has been committed, he may seize and detain any goods to ascertain whether the breach has been committed. An officer also has the power to seize and detain goods or documents which he has reason to believe may be required as evidence in proceedings. Enhanced powers of seizure are currently contained in Section 50 of the Criminal Justice and Police Act 2001. This provides a power to take items away from premises where the officer suspects it may be something that he could seize but he cannot determine whether it is or not or where the item he has a right to seize is contained within something else that he would not have the power to seize. These enhanced seizure powers are currently applied to most consumer legislation, but with a number of exceptions. Out of the 60 pieces of consumer legislation within scope of this review, 20 pieces of legislation are not currently included (15 of which are weights and measures regulations which ensure the accuracy of measuring equipment). Since we are proposing to establish a single power of seizure across all consumer law, powers will be enhanced under these 20 pieces of legislation, but will remain the same under the remaining 40. This may introduce some costs to businesses. The cost for business of enhanced seizure powers is hard to estimate. Some seizure powers already exist in relation to the 20 laws and in many cases enforcers could use the enhanced seizure powers under the CPRs or other 'horizontal' legislation which applies across sectors, anyway as breaches of 5 of these laws will often constitute breaches of the CPRs too. Where more seizures are made as a result of enhanced powers, the cost may be zero, if it is only copies of documents which are seized or a substantial sum if stock is seized, for example.
21. **We are not able to monetise the impact of this proposal at this stage as we do not currently have evidence as to the cost to business of the enhanced seizure powers. Therefore, the estimate of costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
22. These seizure powers are only likely to be used when an officer believes a breach has been committed to secure the evidence for a prosecution. In order to try to provide an initial ballpark figure of the impact of the proposal we are therefore using the number of prosecutions as a proxy for the use of the seizure powers. Hertfordshire Trading Standards Service, which is one of the larger Trading Standards Services in the country, advised that they have brought a total of 3 prosecutions in relation to breaches of this legislation over the last year in relation to legislation in this list. In April 2008 there were 3,352¹⁰ staff employed directly on service provision in Great Britain. Hertfordshire Trading Standards Service employs 33 Trading Standards staff¹¹ and so has just under 1% of the country's Trading Standards staff and can be expected to bring just under 1% of the cases. We would therefore, expect 300 cases of this type per year across the whole country. We will use this as proxy for the use of seizure powers under section 50. The cost to a business of the use of the enhanced seizure powers will vary significantly depending on the size of the business, what is being seized and the reasons for the seizure. For illustrative purposes, if we assume that it costs business an average of £10,000 each time the new enhanced seizure powers are exercised, this equates to $300 \times £10,000 = £3\text{m}$ per annum for businesses, or £26.3m over the life of the policy. This estimate is not very reliable and so we will test this assumption in the consultation. We do not believe there will be any additional costs for enforcers in using these new powers, as they may be seizing goods anyway using other powers, and in those cases where they cannot, seizure is likely, if anything, to cut the length of investigations by offering easy access to evidence.

Giving reasonable notice

23. Officers will be required to give reasonable notice to businesses, subject to certain exemptions, outlined in Annex 1, before exercising a power of entry. An example of where they won't be required to give notice is where giving notice would reasonably be supposed to defeat the purpose of the entry such as where evidence may be lost or destroyed.

¹⁰ Based on 2008 Chartered Institute of Public Finance and Accountancy statistics 2008 (Cipfa) statistics

¹¹ As above

24. **Whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the estimate of costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
25. For illustrative purposes, we are using information from Suffolk Trading Standards Service which has estimated the impact that the requirement to give notice will have on their local authority. Officers in Suffolk estimate that 800 inspections per year are likely to require a notice to be served, and estimate that an officer will spend on average 0.5 hour per premises trying to contact a trader; and that 1 or 2 attempts may be required to make contact, e.g. for factory premises. An officer's hourly rate is £20.6 per hour.¹² Therefore for Suffolk it is estimated that the impact will be $£20.6 \times 800 \times (0.5-1) = £8,240 - £16,480$. Suffolk has $(31 / 3,352 \times 100) = 0.92\%$ of the country's Trading Standards staff so might reasonably expected to conduct on average 0.92% of inspections in the UK. The cost for Trading Standards as a whole is likely to be $(£8,240 / 0.92\% - £16,480 / 0.92\%) = £895,652 - £1.79m$. However, Norfolk Trading Standards said they would inspect 105 high risk premises per year. If it is assumed that all of these inspections would require a notice to be given and allowing 0.5 to 1 hour per premises, the impact to Norfolk would be $105 \times £20.6 \times (0.5-1) = £1,082 - £2,163$. Norfolk has $(58 / 3,352 \times 100) = 1.7\%$ of the country's Trading Standards staff, and so the estimated cost to Trading Standards across the country on this basis is $(£1,082 / 0.017 - £2,163 / 0.017) = £63,647 - £127,235$ per annum.
26. Government believes that the Suffolk estimate is probably at the high end of the spectrum, but is nevertheless proposing to use this as a proxy that will be tested during consultation. For illustrative purposes the total impact across the country will be £895,652 to £1.79m. This amounts to £7.7m to £15.4m of net present value.¹³
27. The cost to business of receiving the notice is negligible, and quantified in this IA as zero, as it does not involve any interaction on the part of the business other than receiving the notice.

Restricting entry to wholly or mainly private premises

28. This will restrict officers' powers of entry to premises that are wholly or mainly private dwellings, so that a warrant will be required before an officer can exercise a power of entry at these premises.
29. **Again, whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the estimate of costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
30. Norfolk Trading Standards Service estimated that out of the 105 high risk businesses' premises due for inspection per year, 13 operate from premises which would fall within the description of wholly or mainly private dwellings, and so are likely to require a warrant to exercise a power of entry. This is a rate of 12% of inspections to high risk premises per year. In the case of Suffolk, this would amount to 96 inspections per year. For illustrative purposes, Norfolk has 1.7% of the country's Trading Standards staff, and Suffolk has 0.92%, so they might reasonably expected to issue on average 1.7% and 0.92% of warrants respectively in the UK. For illustrative purposes, the number of warrants sought across the country would be in the range of $(13 / 0.017) - (96 / 0.0092) = 764 - 10,434$.
31. However, not all inspections of these premises will require a warrant. In most cases if the enforcer issues reasonable notice to the trader, this is likely to be sufficient to arrange a time with the trader to inspect the premises. For illustrative purposes, if we assume that half of the inspections of high risk businesses' premises which are wholly or mainly private dwellings require a warrant, across the country this would amount to a range of $(764 \times 0.5) - (10,434 \times 0.5) = 382 - 5,217$ warrants per annum.

¹² Based on Inspectors of factories, utilities and trading standards median Hourly pay - Excluding overtime (£). Source: ASHE 2010; plus 21% non-wage labour costs, in order to get total labour costs as suggested by Eurostat

http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/labour_costs/main_tables, see table tps00113

¹³ Assuming 10 years as a default period of the policy

32. Feedback from Trading Standards Officers indicates that it is common practice already for them to seek a warrant, to enter private dwelling premises if they believe a business is being run from it and there may be evidence of breaches of consumer law. A warrant ensures that there is no dispute as to the power of entry and helps to prevent evidence being destroyed. For illustrative purposes if we assume that any extra costs of seeking warrants is limited to at most half of these cases, the maximum number of new warrants is likely to be in the range of 191 – 2,609 per annum across the country.
33. Officers in Hertfordshire Trading Standards Service estimate that it takes between 2 – 4 hours of officers' time to obtain a Magistrates' warrant depending on officers' experience and the legislation under which the warrant is sought. Again, for illustrative purposes if we assume it takes on average 4 hours to obtain a warrant, the extra impact across the country would range from $(4 \times 20.6 \times 191) - (4 \times 20.6 \times 2,609) = \text{£}15,738 - \text{£}214,981$ per annum. This amounts to costs in the range of £0.23m to £1.7m of net present value.¹⁴ We are discussing with Ministry of Justice any potential impacts on the court system using the Justice Impact Test, but we believe this is negligible. Again, these estimates will be tested in the consultation.

Question: Do you have any evidence that could help to refine the cost estimates presented above?

Benefits

Savings for businesses in checking officers' powers

34. With consumer law investigatory powers set out in one place, this will achieve simplification of the powers. Businesses will be clearer as to what officers' powers are in each circumstance. Benefits will come from not having to check officers' powers in several pieces of overlapping legislation in the event there is a dispute as to the powers, and the enhanced safeguards designed to reduce burdens. This will bring improved business understanding of officers' investigatory powers and fewer occasions when lawyers have to be consulted. Clearer powers will mean fewer time consuming and expensive disputes for businesses as to what officers' powers are in any given circumstance.
35. Some very specific powers will be repealed in favour of the powers proposed in the generic set. E.g. powers contained in the Sunday and Christmas Day Trading laws.¹⁵ This will help reduce the complexity of the powers and thus reduce the burden on business.
36. **We are not able to monetise the impact of this proposal at this stage as we do not currently have evidence as to the savings to businesses in checking officers' powers. Therefore, the estimate of benefits indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
37. Businesses are only likely to check what officers' powers are when contacted by an officer and there is a dispute as to the officer's powers. There are approximately 1,138,495 enterprises which are affected by consumer law (an estimate based on the number of retail, wholesale, hotel and restaurant, automotive, travel, and personal services enterprises),¹⁶ of which about 99% are small businesses. If we make a series of assumptions, based on knowledge on the ground from businesses and Trading Standards representatives, it is possible to estimate the savings to businesses in checking officers' powers.
38. For illustrative purposes, we are assuming that Trading Standards inspect all their high risk and half their medium risk premises on average once per annum. Based on 2008 Cipfa data this equates to 271,406 inspections per annum.¹⁷ It is likely that inspections will be focussed on high risk premises, which may include larger businesses on the basis that they can affect a larger number of consumers. Again for illustrative purposes, we are assuming that 2% of these inspections are to larger businesses (5,428).

¹⁴ Assuming 10 years as a default period of the policy

¹⁵ See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

¹⁶ Business population estimates for the regions, 12 October 2011. It is not possible to precisely estimate the number of businesses affected, therefore this analysis has focused on sectors which are most likely to contain businesses engaging in business-to-consumer transactions and some wholesale businesses (from UK Divisions: 10, 45,46, 47, 55, 56, 59, 68, 79, 95, 96 – 1,138,495 enterprises, 1% of enterprises (approx 50) employs more than 50 people and are more likely to employ legal advisors or use in-house legal teams to advise them on regulatory matters

¹⁷ Based on 2008 Chartered Institute of Public Finance and Accountancy statistics 2008 (Cipfa) statistics

39. Larger businesses may take longer to check officers' powers than smaller businesses and are likely to refer to legal advisers or in-house legal teams. Therefore, for illustrative purposes, we are assuming that it may take 1.5 hours of a manager's time to check officers' powers on the basis that a number of pieces of legislation may need to be consulted. Again for illustrative purposes, we assume small and medium enterprises (SMEs) might take only 30 minutes of time. For illustrative purposes, we assume that businesses check officers' powers in 20% of inspections to larger businesses (this amounts to 1,086 inspections) and 10% of inspections to small businesses (26,598 inspections). This amounts to costs to large businesses of $(1.5 \times 20.4^{18} \times 1,086) = \text{£}33,232$, and cost to small business of $(0.5 \times 20.4 \times 26,598) = \text{£}271,300$ per annum. Total cost to business amounts to $\text{£}304,532$ per annum.
40. For illustrative purposes, assuming that the time needed to check officers' is reduced by half due to the powers being in one place, the savings to businesses are likely to be around 152,266 per annum. This equates to $\text{£}1.31\text{m}$ of present net value.¹⁹

Reduction in the cost to businesses of an inspection

41. Simpler powers and the requirement for officers to give reasonable notice of inspections, subject to certain exemptions, means more convenience for business to accommodate these inspections. **We are not able to monetise the impact of this proposal at this stage as we do not currently have evidence as to the savings to businesses of the reduced duration of inspections. Therefore, the estimate of benefits indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
42. Government commissioned research by Price Waterhouse Coopers in 2005 found that the cost of an average inspection is $\text{£}500$, including the expense to the business of making a person available to accompany the officer.²⁰ Based on 86,957 inspections per annum, this costs businesses $\text{£}43\text{m}$ per annum. Giving notice may enable businesses to more easily make an appropriate person available to speak to the officer to facilitate the inspection which should help to reduce the duration and the cost of an inspection.
43. For illustrative purposes, if we assume a reduction of 10% in the cost of inspections as a result of the notice, this would deliver an estimated saving of $\text{£}4.3\text{m}$ per annum. This amounts to $\text{£}37\text{m}$ over the life time of the policy. The consultation will test whether a 10% cost reduction is a realistic estimate.

Savings for enforcers on checking powers

44. Time will be saved by officers having less need to check whether their powers apply in a particular case by looking at the different legislation to understand their powers, or receiving legal advice.
45. **We are not able to monetise the impact of this proposal at this stage as we do not currently have evidence as to the savings to officers in checking their powers. Therefore, the estimate of benefits indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
46. If we make some assumptions based on knowledge on the ground from Trading Standards representatives, we can estimate the savings to enforcers' time in checking their powers. For illustrative purposes, assuming, conservatively, that each officer currently spends 2 hours per month checking their powers, and assuming that with the generic set of powers, the need to check powers is reduced to 0.5 hour per month, the saving would be estimated at $(3,352 \times 1.5 \times 12 \times \text{£}20.6) = \text{£}1.24\text{m}$ per annum.²¹ This amounts to $\text{£}10.7\text{m}$ over the life time of the policy.²²

¹⁸ Based Managers and senior officials median basic Hourly pay - Excluding overtime ($\text{£}18.51$). Source: ASHE 2010; plus 21% non-wage labour costs, in order to get total labour costs as suggested by Eurostat

http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/labour_costs/main_tables, see table tps00113

¹⁹ Assuming a default of 10 years

²⁰ Price Waterhouse Coopers undertook research to identify the burdens placed on business by legislation, 2005

²¹ The number of staff employed directly on service provision is 3,352 in Great Britain Based on Chartered Institute of Public Finance and Accountancy (Cipfa) statistics 2008

²² Assuming a default of 10 years

Savings on training of officers

47. There are likely to be modest savings in the costs of training new officers. The Trading Standards Institute (TSI) provides the Trading Standards Qualification Framework (TSQF) which provides awards in subject specific areas through training modules. Each module will cover the powers of officers under legislation relevant to the module. The total savings will depend on how many subjects and therefore the number of modules that an officer achieves an award.
48. **Whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate of savings to local authorities in relation to officers' training costs.**
49. For illustrative purposes, we can use the example of the Product Safety Service delivery module which includes a 5 day Product Safety Law course and which costs £750. At least 1 day of this course is spent on training on officers' powers in relation to product safety at a cost of £750 x 0.2 = £150 per day. Similar training modules exist for Fair Trading, Product Safety and Weights and Measures.²³ Therefore, a total of 3 days is spent on powers training for these courses. For all three courses the total cost of powers training is therefore, currently £150 x 3 = £450 per officer per course.
50. In future, TSI estimate that the generic, simplified powers could be covered in 1.5 days across all 3 subject areas. The cost would be £225 per officer. So the total savings will be £450 - £225 = £225 per officer for the 3 areas. TSI confirmed that 40 officers sat exams in 2011. For illustrative purposes, if it is assumed that the same number take the exams when the new generic set of powers is implemented, this will generate savings of 40 x £225 = £9,000 per annum.
51. Maintaining the opportunity costs of the training of 1.5 days (assuming an 8 hour day, this is 12 hours) for 40 officers is estimated at (40 x 20.6 x 12) = £9,888 per annum. Total quantified saving is estimated at around £9,000 + £9,888 = £18,888 per annum. This equates to £163,000 over the life of the policy of 10 years.²⁴

Question: Do you have any evidence that could help to refine the benefits estimates presented above?

Risks and assumptions

52. Throughout the text we have used a number of assumptions to underpin the initial estimates of cost and benefits associated to this policy. Initial estimates are set out for illustrative purposes only. We do acknowledge they are not totally robust, given that precise and reliable information is not available on these areas. The consultation might help us refine costs and benefits estimates.
53. We will seek further evidence of enforcers' costs of giving reasonable notice, and seeking warrants when exercising powers of entry to wholly or mainly private dwellings, and further evidence on the costs to business of the extension to officers' enhanced seizure powers. Further evidence will also be sought of the reduction officers' training costs, and evidence of reduced inspection costs to businesses.

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

54. The costs for businesses arising out of these changes are likely to be negligible and considerably outweighed by the benefits. Business groups support the changes and the change agenda was instigated following business requests in the Consumer Law Review.

²³ This assumes a similar course for Weights and Measures, but currently there is no similar Competency certificate available under the TSI qualification framework

²⁴ As above

55. The costs for local authorities are likely to be modest overall and despite these costs local authority Trading Standards are supportive of the reform.
56. The costs and benefits are very difficult to calculate with accuracy. Estimates have been used where possible based on sampling of Trading Standards Services. Further estimates will be developed during the consultation based on responses from businesses and enforcers.

Direct costs and benefits to business calculations (following “One-In, One-Out” OIOO methodology)

57. This impact assessment covers a proposal to amend the investigatory powers of consumer law enforcers in support of their duty to enforce relevant consumer laws. It is concluded that the impacts of the consolidation of investigatory powers so far as the measures affect businesses are ‘IN’ of scope for OIOO purposes. Although consumer law enforcers may benefit from the consolidation of investigatory powers, these savings cannot be ‘banked’ as they are not part of business or civil society.
58. The proposals are deregulatory in the sense that they consolidate and simplify consumer law powers. Whilst the estimates of costs and benefits of these proposals may not be robust, on the basis of these estimates, the net impact on businesses is likely to be positive and therefore amount to an ‘OUT’. Therefore, at this stage no corresponding ‘out’ has been identified as necessary.
59. However, we will undertake further work during the consultation, including seeking views from affected businesses to improve estimates in this regard, so that we will be able to state with more certainty the magnitude of the costs and benefits.

Statutory Specific Impact Tests

60. After screening the potential impact of this proposal on race, disability and gender equality, it has been decided that there will be no impact. It is not expected to have any impact on the Convention Rights of any person or class of persons, it will not particularly affect small firms, or have an effect on rural proofing

Justice Impact Test

61. We are discussing with the Ministry of Justice more fully to ascertain the size of any impacts and will complete a Justice Impact Test by the time of the consultation which is due in January 2012 in relation to the following :
- The costs associated with the requirement for officers to seek a warrant to exercise powers of entry to premises which are wholly or mainly private dwellings are likely to be negligible.
 - The proposal to align the penalties for obstruction offences are likely to have negligible impact on the justice system due to the very small number of obstruction offences prosecuted.

Summary and preferred option with description of implementation plan

62. The current investigatory powers are scattered across around 60 pieces of consumer legislation, and they vary depending on the legislation concerned. Evidence indicates that this is confusing for businesses and enforcers. Ensuring powers are more transparent and strike a balance between enabling effective enforcement whilst containing suitable safeguards will support the Government’s commitment to rolling back state intrusion and protecting civil liberties. This will help reduce the burden on business through modest savings in their compliance costs by removing the need to look in numerous pieces of legislation to check what officer’s powers are in each circumstance. The generic set will provide a flexible and proportionate set of powers for investigating breaches whether they occur in the traditional business environment or on-line. The approach is preferred by businesses and enforcers alike.

63. The impact on enforcers as a result of the increased safeguards attaching to the use of powers will be offset by the improved convenience for law-abiding businesses. This consultation will invite stakeholders to provide more information on the impact associated with consolidating and simplifying consumer law investigatory powers.
64. The proposed Consumer Bill of Rights will be used to make any legislative changes proposed in this impact assessment. All Acts are now subject to post legislative scrutiny 3-5 years after Royal Assent. If the Consumer Bill of Rights is brought forward to Parliament, it is likely to be in 2013 and it could receive Royal Assent in 2014. Therefore, a review of these proposals would be carried out as part of the post-legislative review in 2017-2019.

Annex 1: Detailed changes to consumer law investigatory powers

Alignment of powers

65. For the sake of simplicity and consistency for both enforcers and business, investigatory powers will be aligned, as far as possible. The exception to this is the current requirement that CPC enforcers²⁵ must have reasonable suspicion before exercising any of their powers under the Enterprise Act 2002 will need to be maintained.

Powers of entry

66. Powers of entry will be applied to all consumer law, even where such powers do not presently exist, e.g. the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. We see no reason why the same power of entry shouldn't be applied consistently across all consumer law.²⁶ We believe that the impact is likely to be extremely modest because officers already have powers of entry under the CPRs for the affected businesses and could usually gain entry on this basis in any case.

67. Also, specifically in relation to the Estate Agents Act 1979, it will mean removing the need for officers to have reasonable cause to suspect a breach before being able to exercise the power of entry. In their Home Buying and Selling market study in 2010, the Office of Fair Trading (OFT) reported that their Trading Standards survey indicated 24 per cent²⁷ of estate agents were not in full compliance with the law on the first visit.²⁸ In addition, the OFT's survey of estate agents indicated that 82 per cent of those surveyed considered that possible visits by Trading Standards helped to ensure that other estate agents complied with the law. In its response to the market study, the Government agreed to review the power of entry under the Estate Agents Act 1979.²⁹

68. The Government believes that the power of entry under the Estate Agents Act 1979 needs to be aligned with that of the CPRs. This power is already subject to a number of checks and balances, which we are proposing to strengthen. The practical effect of this change will be to allow Trading Standards powers of entry, subject to all the safeguards, in those cases where 'reasonable cause' test is not or might not be met, but where the enforcer believes there is a high risk of non-compliance and the business refuses access. Since the vast majority of estate agents always allow access to enforcers and in many other cases the 'reasonable cause' test is met, the number of cases where power of entry is required to be used will be very small. Moreover, an enforcer can usually gain access to estate agents' premises using their powers under the CPRs. So even in the small number of cases where this change might theoretically have an impact, in practice it would not. Therefore, Government expects that this change would have no impact on businesses, but this will be tested in the consultation.

Powers of seizure

69. The powers contained in section 50 of the Criminal Justice and Police Act 2001, are currently applied to most consumer legislation, but with a number of exceptions. Out of the 60 pieces of consumer legislation within scope of this review, the following 5 are not currently applied to section 50:

- Cancellation of Contracts made in a consumers Home or Place of Work etc Regulations 2008
- Consumer Protection (Distance Selling) Regulations 2000³⁰
- Package Travel, Package Holidays and Package Tours Regulations 1992
- Sunday Trading Act 1994
- Christmas Day Act 2004

²⁵ Specific powers contained in the weights and measures and product safety legislation will be re-enacted in the new generic set

²⁶ Except, as already mentioned, in relation to investigations under the Enterprise Act

²⁷ Home buying and selling - A Market Study, paragraph 5.16, page 104, Office of Fair Trading, February 2010, http://www.offt.gov.uk/shared_offt/reports/property/OFT1186.pdf

²⁸ However, some of these visits will have been in response to a complaint, so this does not imply that 24 per cent of all estate agents are non-compliant. The survey did not identify what laws were not being complied with.

²⁹ Government Response to the Office of Fair Trading's (OFT) Market Study on home buying and selling, page 4, July 2011, Department for Business, Innovation and Skills, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/g11-504-government-response-to-study-home-buying-selling>

³⁰ Both the Cancellation of Contracts made in a consumers Home or Place of Work etc Regulations 2008 and Consumer Protection (Distance Selling) Regulations 2000 are amongst 12 pieces of legislation to be repealed and replaced as a result of the implementation of the Consumer Rights Directive

Plus, the following 15 weights and measures regulations made under European Communities Act 1972. These regulations already have forfeiture powers to seize equipment, but they are not exactly the same as the seizure powers in section 50.

- Measuring Container Bottles (EEC Requirements) Regulations 1977
- Alcoholmeters and Alcohol Hydrometers (EEC Requirements) Regulations 1977
- Measuring Instruments (EEC Requirements) Regulations 1988
- Weights and Measures (Non-Automatic Weighing Instruments) Regulations 2000
- Measuring Instruments (Automatic Discontinuous Totalisers) Regulations 2006
- Measuring Instruments (Automatic Rail Weighbridges) Regulations 2006
- Measuring Instruments (Automatic Catchweighers) Regulations 2006
- Measuring Instruments (Automatic Gravimetric Filling Instruments) Regulations 2006
- Measuring Instruments (Beltweighers) Regulations 2006
- Measuring Instruments (Capacity Serving Measures) Regulations 2006
- Measuring Instruments (Cold Water Meters) Regulations 2006
- Measuring Instruments (Liquid Fuel and Lubricants) Regulations 2006
- Measuring Instruments (Material Measures of Length) Regulations 2006
- Measuring Instruments (Liquid Fuel Delivered from Road Tankers) Regulations 2006
- Measuring Instruments (Non-Prescribed Instruments) Regulations 2006

70. For consistency we will apply the section 50 powers to these exceptions. Powers of seizure will only be used by officers where necessary and relevant, e.g. where goods or documents are likely to be required for evidence. The Section 50 power can only be used where there are reasonable grounds for believing that there may be items on the premises which an officer is authorised to seize, which is a high test. We see no reason why seizure powers shouldn't apply consistently to all consumer law.³¹ This change will only affect only a small number of investigations.

Power to request information

71. The power to request information from a person where an officer has a reasonable suspicion of a breach derives from the Enterprise Act 2002.³² Enforcement stakeholders explained that this is a useful power, and indeed it may be used to reduce the need for officers to exercise the power of entry, and potentially the power to seize documents. This power can currently be used to enable an officer to investigate breaches of all consumer law, but only where it is intended to use civil sanctions under the Enterprise Act. In future it should be possible to use this power irrespective of the type of sanction contemplated. The requirement to issue a notice to request information, based on the notice provisions in the Enterprise Act 2002 will also be included in the generic set. Government believes that extending this power will not add any costs to business, and will, if anything, reduce the burden on business and enforcers, but this will be tested in the consultation.

Power to investigate and bring proceedings outside one's local authority

72. As outlined in the Improving Cross border Authorisation Impact Assessment, evidence indicates that 70% of consumer harm is likely to occur across local authority borders.³³ Therefore, local authority Trading Standards Services need to be able to respond to regional and national threats as well as local ones. Ensuring local authorities can easily tackle rogue traders who cause consumer harm across local authority borders benefits law-abiding businesses. However, enforcers are currently confused as to their ability to investigate and bring proceedings outside their own local authority area. In order to help clarify the matter, the power currently found in the General Product Safety Regulations 2005 will be reproduced in the generic set and extended across consumer law.³⁴ In addition, we will widen this power to enable local authorities to bring civil proceedings outside their area as well. This will apply to local authorities in England and Wales. In Scotland this will apply to investigations only.³⁵

³¹ again subject to the exception in relation to investigations under the Enterprise Act

³² Currently found in S.225(2) Enterprise Act 2002

³³ Department for Business, Innovation and Skills, the Office of Fair Trading and Local Authority Trading Standards Services Protecting consumers – the system for enforcing consumer law, Report by the Comptroller and Auditor General, HC 1087SesSIon 2010–2012, page 25, National Audit Office, 15 June 2011, http://www.nao.org.uk/publications/1012/protecting_consumers.aspx

³⁴ Regulation 10(2) General Product Safety Regulations 2005

³⁵ In Scotland cases are prosecuted by the Procurator Fiscal or Lord Advocate

73. This provision will clarify in statute that local authorities do have the power to investigate and take proceedings outside their local authority area. This proposal and its impact is considered in the Improving Cross Border Authorisation Impact Assessment.

Aligning the penalties for obstruction of officers

74. It is proposed to align the penalties for obstruction of officers with those contained in the CPRs which will mean an increase in penalties in some cases. In the Government's response to the consultation on Implementation of the Unfair Commercial Practices Directive, the Government agreed that there should be no incentive to obstruct investigators.³⁶ This level of penalties is also in-line with the obstruction offence in the on-site inspection power under Part 8 of the Enterprise Act 2002.

75. Aligning the obstruction penalties will mean slightly increasing penalties in some cases for other consumer law. If a person intentionally obstructs an officer, intentionally fails to comply with any requirement, or without reasonable cause fails to give such an officer any other assistance or information, the upper limit upon summary conviction would increase from level 3 (currently set at £1,000) on the standard scale to level 5 (currently £5,000). The penalties for a person who makes any statement which he knows to be false, in a material particular, will be increased from level 3 to the statutory maximum on summary conviction or on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

76. These offences are rarely prosecuted on their own or alongside other offences, but act as a deterrent to obstructing officers. Evidence from the Association of Chief Trading Standards Officers indicates that in 2010-11 on average 1 obstruction offence was prosecuted per local authority. The average penalty for these offences was around £150 (ranging from £75 - 200). We are not aware of any custodial sentences being handed out for obstruction offences prosecuted under the CPRs or other consumer legislation and the larger fines are reserved for the really egregious cases, which are extremely infrequent (less than 1 per annum across the whole country). The impact on law-abiding businesses will be zero, but there will be a stronger deterrent effect on businesses which are tempted to obstruct enforcers going about their legitimate business.

Enabling enforcers to use the injunctive relief regime for infringements of domestic legislation that harms the collective interests of consumers whether in the UK or outside

77. Part 8 of the Enterprise Act 2002³⁷ sets out an injunctive relief regime for the protection of consumers. It does not provide any new rights for consumers, but allows enforcers to seek injunctive relief where there has been a specific community or domestic infringement. A "community infringement" is (in essence) a breach of legislation implementing EU obligations which harms the collective interests of consumers.³⁸ The meaning of "a domestic infringement" is set out in section 211 of the Enterprise Act and in essence means a breach of certain listed UK laws which harms the collective interests of consumers in the UK. We are proposing to remove the reference to "in the UK" in section 211. This amendment will assist enforcers to use the Part 8 regime, where there has been a breach of the listed UK laws which harms the collective interests of consumers, whether they are in the UK or elsewhere. It will not impact on enforcers as they will prioritise their cases according to their respective enforcement policies and the nature of the individual cases. It may encourage further reciprocal cooperation and effective enforcement across borders. This will not add any extra costs on law-abiding businesses, but will simply offer an alternative civil route for tackling breaches and rogue traders.

³⁶ inserted by SI 2006/3363 which implemented the EC Consumer Protection Cooperation Regulations, Implementation of the Unfair Commercial Practices Directive: Government Response to the consultation on draft Consumer Protection from Unfair Trading Regulations, Department for Business, Enterprise and Regulatory Reform, Page 11, February 2008, <http://www.bis.gov.uk/files/file44300.pdf>

³⁷ which implements the Injunctions Directive 98/27/EC

³⁸ See section 212 of the Enterprise Act for the full meaning of a "Community infringement"

New safeguards to be introduced

78. In line with the Government's commitment to protect civil liberties, we are proposing to introduce two main safeguards:

- ***Restrictions on powers of entry*** – Powers of entry will not apply to premises which are wholly or mainly private dwellings. A judicial warrant will be required before officers can exercise powers of entry to these premises.
- ***Requirement to give reasonable notice to businesses*** – reasonable notice will be required to be given before officers can exercise powers of entry, subject to specific exemptions. The exemptions include: where entry is in relation to a provision under EU law which requires inspection without notice, e.g. to carry out market surveillance; where the requirement has been waived by a trader; where reasonable efforts to agree an appointment have failed; where there is reasonable cause to suspect a breach of the relevant legislation; where giving notice would reasonably be supposed to defeat the purpose of the entry, e.g. evidence may be lost or destroyed; or where there is reasonable cause to suspect that there is imminent risk to public health or safety.

Revocation of certain specific powers

79. The equivalent investigatory powers in around 60 pieces of legislation covered by this consultation will be repealed and replaced with the ones in the new proposed generic set.

80. Some investigatory powers not specifically reproduced in the CPRs will be repealed altogether, e.g. powers in the Sunday and Christmas Day Trading laws³⁹ and in the Enterprise Act 2002. These powers will be repealed and will not be included in the new generic set. However, the current requirement for CPC enforcers⁴⁰ to have reasonable suspicion before exercising their investigatory powers under the Enterprise Act will remain.

Powers in relation to banking documents

81. The power of officers to request production of documents under the CPRs, includes banking documents, subject to the requirement for officers to have reasonable cause and the safeguards under the Data Protection Act 1998. However, there are similar specific provisions contained in the Estate Agents (Entry and Inspection) Regulations 1981 and the Consumer Credit (Entry and Inspection) Regulations 1977. The CPRs and the Data Protection Act provide a similar level of protection as these sector specific regulations. To help reduce duplication in investigatory powers, we will repeal these powers, and replace them with a new power based on the provision in the CPRs.⁴¹ This should have no impact on businesses.

Retention of specific powers

82. As far as possible, investigatory powers contained in consumer legislation will be consolidated into the new generic set. However, certain specific investigatory powers contained in the weights and measures and product safety legislation will be re-enacted in the new generic set. These powers will be limited to the enforcement of the respective weights and measures and product safety legislation.

³⁹ See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

⁴⁰ Section 227B Enterprise Act 2002

⁴¹ Regulation 21(1)

Annex 2: Elements making up the proposed generic set of investigatory powers

83. The following elements are proposed for the generic set of consumer law powers which are exercisable at all reasonable hours, with the safeguards outlined below:

1. The duty to enforce;
2. Power to make test purchases;
3. Powers of entry to premises, excluding wholly or mainly private dwellings, and investigation (without a warrant) include:
 - i. Reasonable notice to be given before exercising powers of entry, subject to exceptions;
 - ii. Production of evidence of officer's identity and authority;
 - iii. Power to inspect goods;
 - iv. Power to require production of documents where there is reasonable suspicion of a breach;
 - v. Power to seize and detain goods, and documents, where there is reasonable belief in a breach, or where reasonable belief they may be required as evidence;
 - vi. Power to break open a container or vending machine;
 - vii. Power to take other persons (up to a maximum of 4) and equipment into premises, and includes the existing safeguard of legal privilege.
4. Entry to premises with warrant – a safeguard will be added that officers should leave a notice at the premises if they are unoccupied at the time of entry (this is current best practice);
5. Power to request information where there is reasonable suspicion of a breach;
6. Power to investigate and bring proceedings outside local authority area;
7. Powers with specific application, for example, product safety, and weights and measures;
8. Offences regarding obstruction of officers, and includes the existing privilege against self-incrimination.

84. The following safeguards will also be applied to officers' powers:

1. Notice of test and intended proceedings;
2. Compensation for loss or damage.

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