Department for Business Innovation & Skills

ENHANCING CONSUMER CONFIDENCE: GENERIC SET OF CONSUMER LAW POWERS

Impact Assessment: Final

JANUARY 2014

Contents

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:** 19/12/2013 **Stage:** Final **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, One-Out?**	**Measure qualifies as**
£47.95m	£45.52m	-£5.29m	Yes	OUT

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

The investigatory powers of consumer law enforcers, such as the OFT and LATSS[1] are scattered in around 60 different pieces of consumer legislation. These powers include powers of entry and inspection and seizure. Whilst many of the powers are similar across this body of legislation, there are also differences. Respondents to the Consumer Law Review in 2008[2] felt that this variation was confusing, making it difficult for businesses and enforcers to know what these investigatory powers were in every circumstance. Government intervention is required to consolidate the powers and set them out in one place in statute.

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; roll back state intrusion and protect civil liberties. In aligning these powers, a number of powers will be slightly amended to ensure consistency across consumer law, 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 there is no dispute as to what officers' powers are in a 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 were considered:

Option 0: Do nothing (consumer law investigatory powers remain unchanged in around 60 pieces of legislation); Option 1: Consolidating and simplifying consumer law investigatory powers into a generic set.

The vast majority of respondents to the consultation supported the proposed approach. Therefore, Government has decided to consolidate and simplify consumer law investigatory powers into a generic set (Option 1).

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** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	

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

Signed by the responsible Minister: Jo Swinson Date: 19 December 2013

[1] Office of Fair Trading and local authority Trading Standards Services

[2] Consumer Law Review: Call for Evidence, Department for Business, Enterprise and Regulatory Reform (BERR), May 2008, **Error! Main Document Only.**, 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

Summary: Analysis & Evidence

Policy Option **1**

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

FULL ECONOMIC ASSESSMENT

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £46.47	**High:** £49.36	**Best Estimate: £47.95**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0		0.3	**2.3**
High	0.0		0.5	**4.1**
Best Estimate	0.0		0.4	**3.2**

Description and scale of key monetised costs by 'main affected groups' (best estimates)

For business - Production of information - £0.3m.

For LATSS - Production of information - £0.13m; Restricting entry to wholly or mainly private dwellings - £0.8m; Giving reasonable notice - £2.1m.

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

For LATSS & businesses – Familiarisation costs; alignment of powers of entry; power to inspect products and seizure powers; entry to premises with a warrant are all negligible.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0		£5.9	£50.6
High	£0		£6.0	£51.6
Best Estimate	£0		£5.9	**£51.2**

Description and scale of key monetised benefits by 'main affected groups' (best estimates)

For business – Checking officers' powers - £0.7m; Savings in Inspection costs - £35.3m; Automatic exemption for small bakers – £9.8m.

For LATSS – Checking officers' powers - £2.8m, Reduction in costs of inspections - £1.8m; Savings in training costs - £0.2m; Savings in administering exemptions for small bakers - £0.6m.

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

For business – will benefit from 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' actions are less likely to be disputed where officers' powers are simpler and more transparent.
For LATSS and businesses – repealing powers for banking documents – negligible.

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

In the text we have used a number of assumptions to underpin our estimates of cost and benefits associated to this policy. We have used our survey of LATSS to strengthen our estimates. We will use the Post Implementation Review to 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:** £5.3	**Net: £5.3**	Yes	OUT

Evidence Base (for summary sheets)

Strategic overview

1. Consumer empowerment is an important part of developing and sustaining competitive markets,[3] and in reducing the detriment consumers suffer over problems with the purchase of goods and/or services.[4] It is also key to supporting the Government's growth strategy. Government can help to support and empower consumers, and thus help drive competition, by raising compliance with consumer law through effective enforcement.[5] However, the large body of consumer law which has built up piecemeal over time adds complexity to the enforcement regime, reducing the effectiveness and efficiency of consumer law enforcers, such as local authority Trading Standards Services.

2. In March 2012, the consultation on Consolidating and modernising consumer law enforcement powers[6] sought views on a package of measures for improving the effectiveness and efficiency of the consumer law enforcement regime and reducing burdens on business and enforcers in accordance with the Government's objectives. The main measure in this package is to consolidate and simplify consumer law investigatory powers and set them out in a generic set.

3. Other measures include making it easier for Trading Standards Services to tackle rogue traders operating across local authority boundaries. These measures are a key response to the Retail theme of the Government's Red Tape Challenge in July 2011 to reduce the stock of regulation. They also take account of the Government drive to protect civil liberties[7] as outlined in the Protection of Freedoms Act 2012, by reviewing and consolidating powers of entry and improving safeguards to their use.

4. Three other measures were consulted upon. The first was to enable Trading Standards Officers to present cases in County Courts, thereby encouraging more use of civil enforcement as an alternative to criminal enforcement thereby reducing over-reliance on criminal prosecutions. Encouraging the use of civil enforcement supports the Government's commitment to prevent a proliferation of unnecessary new criminal offences.[8] Responses to the consultation indicated broad support for this proposal being taken forward through an Approved Regulator authorised under the Legal Services Act 2007. It will therefore be for the National Trading Standards Board to take this forward by making an application to the Legal Services Board with an Approved Regulator. No legislation is now needed to pursue this option.

5. The second was the proposal to remove the restrictions in statute whereby only the National Measurement Office (NMO) can calibrate local authority Trading Standards Services' measurement standards. In their responses Trading Standards Services estimated that this would result in a net cost to local authorities, so this proposal can no longer be justified on economic grounds and has been dropped.

6. The third was the proposal to repeal the statutory weights and measures qualification requirement and introduce a generic competency requirement. However, this measure is being taken forward through the statutory Regulator's Code, which subject to Parliamentary approval is due to replace the Regulators' Compliance Code. Enforcers, such as Trading Standards, must have regard to this Code. The Code requires regulators, including local authorities, to ensure their officers have the necessary knowledge and skills to support those they regulate to enable enforcers to choose proportionate and effective approaches. So this proposal has been dropped.

---

[3] See, for example, Consumer Law and Business Practice, Consumer Law and Business Practice, Drivers of compliance and non-compliance, June 2010, OFT http://www.oft.gov.uk/shared_oft/reports/Evaluating-OFTs-work/OFT1225.pdf

[4] OFT found that around one-third of consumers reported at least one problem in the last 12 months with goods or services purchased, leading to a total value of consumer detriment of £6.6 billion across the economy; Consumer Detriment, OFT, April 2008

[5] For example, OFT estimates that action on unfair trading practices by LATSS in 2007 led to consumer detriment savings of £228 million per year, including £7 million through disrupting the activities of rogue traders, http://www.oft.gov.uk/shared_oft/about_oft/oft1085.pdf

[6] Enhancing consumer confidence through effective enforcement, A consultation on consolidating and modernising consumer law enforcement powers, Department for Business, Innovations and Skills, March 2012, http://www.bis.gov.uk/Consultations/consultation-on-consumer-law-enforcement-powers

[7] The Coalition: our programme for government, page 11, HM Government, May 2010, http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

[8] The Coalition: our programme for government, page 11, HM Government, May 2010, http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

Introduction

7. This Impact Assessment covers the consolidation and simplification of the investigatory powers of consumer law enforcers, mainly Trading Standards Services and the Office of Fair Trading, into a single generic set, to ensure they are fit for the modern trading environment, including the internet. The vast majority of the responses to the consultation supported our approach so Government has decided to consolidate and simplify consumer law powers (Option1).

Background

8. 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), Consumer Protection Cooperation (CPC) enforcers[9] which have powers under the Enterprise Act 2002,[10] such as the Office of Communications (Ofcom), the Financial Services Authority (FSA), and also other designated enforcers which have access to limited powers under the Enterprise Act such as the Office of the Gas and Electricity Markets (Ofgem).[11] Under the European CPC Regulation[12] the UK is required to offer such assistance as is reasonably requested by enforcement bodies in other EU countries.

9. Consumer law investigatory powers include the powers of entry, investigation and seizure of goods and documents.

Problem under consideration

10. Consumer law investigatory powers are scattered in around 60 different pieces of legislation. Whilst many of these powers are similar in form across this body of legislation, they differ slightly in application. These existing variances do not seem based on any sound rationale. 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 Department for Business, Enterprise and Regulatory Reform (BERR) Consumer Law Review Call for Evidence in 2008[13] felt that this variation in investigatory powers was confusing to businesses and enforcers making it difficult for them to know what these powers were in every circumstance. In their response to the Consumer Law Review, the Confederation of British Industries said:[14]

"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 Co-operation Regulation (CPC). This is confusing for businesses and enforcers."

Rationale for intervention

11. 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 amongst enforcers and businesses causing disputes between enforcers and business when investigating potential breaches.

[9] 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)
[10] Sections 225-227F of the Enterprise Act 2002
[11] Sections 225-227 of the Enterprise Act 2002
[12] EC Regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws 2006/2004 (the Regulation on consumer protection cooperation)
[13] 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
[14] Response by Confederation of British Industries, Responses to the Consumer Law Review C-L, page 109, http://www.berr.gov.uk/files/file51998.pdf

12. There was wide agreement amongst respondents to the Consumer Law Review that these investigatory powers should be clarified and made more consistent. In its response to the Consumer Law Review, the British Retail Consortium (BRC) said:[15]

"…….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 the associated protections and safeguards."

13. Changing this situation requires Government intervention.

Policy objective

14. The Government's aims in this area have been guided by three objectives: to improve the effectiveness and efficiency of consumer law enforcement; whilst reducing the regulatory burden on businesses; and rolling back state intrusion and protecting civil liberties. In aligning these powers, a number of powers will be slightly amended to ensure consistency across consumer legislation, for example, on the one hand applying the enhanced seizure powers across consumer law and, on the other hand adding more safeguards to enforcers' powers of entry and the power to require production of information. Consolidating and simplifying these powers will make them more transparent for businesses and enforcers and ensure that there is no dispute as to what officers' powers are in a given circumstance, thereby reducing burdens on businesses.

Consolidating and simplifying investigatory powers (Option 1)

15. Government has decided to consolidate and simplify consumer law investigatory powers, based on the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs introduced a general duty not to trade unfairly and to ensure that traders act honestly and fairly towards their customers. This requirement is general in nature, so the CPRs are the biggest single area of consumer law which is enforced by Trading Standards and apply to all businesses covered by the generic set. Officers may in many situations use investigatory powers either under CPRs, or in more specific legislation which may be different, to investigate breaches. The CPRs are also 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. All these reasons mean that it makes sense to use the CPRs set of investigatory powers as our model for the generic set.

16. The majority of respondents to the consultation agreed with our approach. In their response to the consultation, the BRC confirmed that it:

"…supports the stated aim of the Government – to simplify the law, facilitate efficient organisation of enforcement resources and reduce burdens on honest businesses and enforcers, where possible."

17. Citizens' Advice said in their response:

"We agree that it is important that enforcers and business have a clear understanding of inspection powers. The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) are a good starting point for generic enforcement powers because they are designed to apply to all business to consumer transactions."

18. In consolidating and simplifying these powers we will align them and remove overlapping and inconsistent powers and set them out in one place as a generic set. In devising the generic set of investigatory powers we have looked to strike a balance between enabling effective and proportionate investigation of potential breaches of legislation on the one hand whilst on the other hand supporting Government's aim of rolling back state intrusion and protecting civil liberties, and not unnecessarily hindering complaint businesses. The powers will be subject to increased safeguards to reduce the impact on businesses. Micro-businesses are not exempt from these changes, because they will benefit businesses.

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

The changes being made

Alignment of investigatory powers

19. The investigatory powers will be aligned, as far as possible, across consumer law. Subject to a few exceptions, equivalent powers in the legislation will be repealed and replaced with the ones in the new generic set. This will reduce any potential for confusion and dispute regarding what powers are being used. The list of consumer legislation to which the generic powers will apply is detailed in Table A.

20. 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.[16]

21. Some specific powers contained in weights and measures and product safety legislation will be retained alongside the new generic set. As this maintains the status quo in relation to these powers, this will have no impact on business. However, 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, i.e. powers to take measurements and photographs.[17] Lastly, a number of new safeguards will be introduced before enforcers can exercise their powers.

22. The powers making up the new generic set are detailed in Annex 1.

Changes to enforcement sanctions

23. As a result of responses to the consultation from enforcers, Government has decided to make a number of changes to enforcement sanctions contained in Part 8 of the Enterprise Act 2002 and also to align the offences and penalties for the obstruction and impersonation of officers which currently exist in consumer law. These changes will have no impact on compliant businesses or enforcers. Changes to enforcement sanctions only affect non-compliant businesses so the impacts are outside the scope of this impact assessment. These changes are detailed in Annex 2.

COSTS

24. This section considers the costs which are likely to arise for businesses and for enforcers as a result of the changes. Where no costs are expected, either because the substance of the law is not changing or because the change is not expected to have any impact, the policy is not considered in this section, except where our assessment of no change is based on assumptions. Changes which are expected to be cost-neutral are set out in Annex 2 and changes which are expected to bring only benefits are set out in the section on benefits below. A summary of the estimated costs is given in Table 1 below.

1. Familiarisation costs associated with the new generic set of powers

For businesses

25. Large businesses will need to familiarise themselves with the new generic set of powers, but the response from small business indicated that they would not read the legislation, but refer to any guidance instead. The powers in the generic set are largely based on those available under the CPRs, which already apply to all consumer facing businesses. 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 concerning officers' powers are very rare 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 negligible. Responses from businesses did not highlight any disagreement with this assumption.

[16] This derives from S.225(2) Enterprise Act 2002, 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), 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

[17] See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

For enforcers

26. Enforcers will need to familiarise themselves with the new generic set, but since the powers will be largely based on those already available under the CPRs and in some cases the Enterprise Act, these costs are thought to be negligible. Responses to the consultation did not highlight any disagreement with this assumption.

2. Power to require production of information

For businesses

27. Government has decided to include in the generic set a power to require production of information, based on the power contained in section 225(2) of the Enterprise Act 2002. A new safeguard will be added requiring that an officer must have reasonable suspicion of a breach or reasonable suspicion that there is a need to investigate the operation of a market or sector further given all the circumstances, before he can use this power. OFT will continue to be able to use this power when carrying out their market investigations.

28. Currently this power can only be used for civil enforcement. However, in future it will be possible to use the power in our generic set for civil or criminal enforcement. In order to use the power there will be a requirement to issue a notice to the business, based on the notice provisions in section 226-227 of the Enterprise Act 2002.

29. The OFT uses this existing power most frequently as it is their primary information gathering tool when carrying out investigations. They use it to request documentation or data or explanations of processes that businesses use. Based on the number of Undertakings and Enforcement Orders they have obtained over the last couple of years, the OFT estimate that they issue in the region of 40-50 notices per year to request this information. OFT's use of this power is not expected to change at all as a result of the change.

30. Feedback from Trading Standards indicates they use this power less frequently as they mainly use criminal rather than civil enforcement powers and so often request information in person or use their other powers to seize incriminating documents. Also, businesses tend to offer the information voluntarily so that it is unnecessary for officers to send a formal notice. Trading Standards estimate that they currently issue approximately 5 -10 notices per local authority per year (based on 198 local authorities this amounts to approximately 990 -1,980 notices issued by local authorities across the country). Trading Standards professionals indicate that they would find this a useful power for investigating criminal offences, if the power is extended, as we propose, to enable it to be used for criminal investigations, Trading Standards suggest that the number of notices they issue may increase to 1,980-3,960 notices per year across the country.

31. The time taken for a business to respond to a request for information is likely to vary depending on the nature of the information requested, whether the business has it to hand and how quickly it can gather the information. Feedback from businesses indicates that they are likely to spend up to 1 hour dealing with legal queries from Trading Standards. If we assume it takes a business between 30 minutes to 1.5 hour to respond to such a request, it is estimated that it will cost businesses an extra (0.5 - 1.5) x (980 - 1,980) x £20.4[18] = £9,996 - £60,588 per annum or **£0.1m – £0.5m over 10 years**.

32. Trading Standards professionals explained that this power may be used to reduce the need to exercise a power of entry, or to use a power to seize documents. Therefore, any impact on businesses as a result of extending this power is likely to be offset by the reduction in the burden on business through fewer visits to premises by enforcers and fewer seizures. The additional safeguards which we are putting in place before this power can be used will help ensure that the power is only used when necessary to investigate potential breaches.

[18] Based on Managers and senior officials median basic Hourly pay - Excluding overtime (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

For enforcers

33. Requiring officers to have reasonable cause to suspect a breach will reduce the likelihood of enforcers using this power to conduct 'fishing expeditions', but if the power can be used for criminal investigations as well as civil ones, use of the power is nevertheless expected to increase. Feedback from Trading Standards indicates that 980 - 1,980 extra notices per year across the country could be expected. If we assume it takes approximately 15 - 30 minutes to produce a notice, the cost to Trading Standards is estimated as (0.25 - 0.5) x (£20.6 x 980) – (£20.6 x 1,980) = £5,047- £20,394 per annum or **£0.05m to £0.2m over 10 years**.[19] However, Trading Standards expect that the power will be used to reduce the need to invoke other powers such as the power of entry, which are much more expensive to exercise, so the net result for them should be positive. If they find it more expensive to use the new power to request information in criminal cases, they will stop using it. We therefore expect that the overall impact on Trading Standards will be neutral.

3. Alignment of powers of entry

For businesses

34. Government has decided to apply a consistent power of entry across consumer law, even where such powers do not presently exist. Such powers do not currently exist in relation to the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010. However, this is not expected to result in new burdens for companies in these sectors, given that the power of entry would be available to enforcers anyway under the CPRs for suspected breaches of this legislation.

35. This will also mean that there will be no need for officers to have reasonable cause to suspect a breach before being able to exercise the power of entry, as is currently the case in relation to the Estate Agents Act 1979.[20] The power of entry will, however, be subject to the enhanced safeguard of reasonable notice discussed below.

36. 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 cent[21] of estate agents were not in full compliance with the law on the first visit.[22] 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.[23]

37. The practical effect of this change will be to allow Trading Standards powers of entry, subject to the added safeguards, in a small number of cases where the '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. The OFT's survey of Trading Standards[24] respondents indicated that 984 inspections were made to estate agents premises in 2008. In the same year there were 965 investigations conducted into estate agent businesses. It is likely that each investigation led to an inspection, so this means that only 19 inspections were conducted where there was some intelligence of a problem, but which may not have amounted to reasonable cause to suspect a breach under the Estate Agents Act. Moreover, an enforcer can usually gain access to estate agents' premises using their powers under the CPRs, in cases where they have intelligence of potential wrongdoing. So even in these small numbers of cases where this change might theoretically have an impact in practice it is highly unlikely to do so.

[19] 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

[20] Except, as already mentioned, in relation to investigations under the Enterprise Act

[21] Home buying and selling - A Market Study, paragraph 5.16, page 104, Office of Fair Trading, February 2010, http://www.oft.gov.uk/shared_oft/reports/property/OFT1186.pdf

[22] 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.

[23] In its response to the market study, Government agreed to review the power of entry under the Estate Agents Act 1979, Government Response to the Office of Fair Trading (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/g/11-504-government-response-to-study-home-buying-selling

[24] Home Buying and Selling Market Study- Survey of local authority Trading Standards Services, page 8, Office of Fair Trading, OFT1140c, February 2010, http://www.oft.gov.uk/shared_oft/reports/property/Trading-Standards-Survey.pdf

For enforcers

38. The majority of responses to the consultation from enforcers confirmed the view that this change would have very little impact in relation to inspections of estate agent businesses. Therefore, it is estimated that this change will have no impact on enforcers 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.

4. Restricting powers of entry to wholly or mainly private premises

For enforcers

39. In order to protect civil liberties, Government has decided to apply a restriction on powers of entry to premises that are wholly or mainly private dwellings, so that a court warrant will be required before an officer can exercise a power of entry to these premises. This will apply where officers want to inspect a business being run from home, for example, an internet-based company or small scale manufacturing or construction business run from the proprietor's home. This will ensure that in these cases civil liberties are protected from unwarranted enforcement. However, where there are grounds for suspecting breaches of consumer law are taking place enforcers will be still able to gain entry to investigate. There will be no new burdens on business from this change, if anything it should lead to fewer inspections. However, there may be an impact on enforcers.

40. It is extremely difficult to estimate how many extra court orders will be sought per year by Trading Standards as it will vary from authority to authority and will depend on a number of factors such as the nature of the businesses in their area and the intelligence Trading Standards have received about any non-compliance. Feedback from Trading Standards professionals indicates that it is already common practice for them to obtain a warrant to enter private dwelling premises in circumstances where there is reason to believe there is relevant evidence at the premises. A warrant ensures that there is no dispute as to their power of entry and prevents relevant evidence being lost or destroyed. However, not all inspections of these types of 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 business to inspect the premises.

41. We have used the results from our survey of members of the Association of Chief Trading Standards Officers and the Society of Chief Trading Standards Officers in Scotland to improve our estimates of the number of warrants required.[25] In the survey respondents were asked how many additional warrants they are likely to seek in their local authority in order to exercise a power of entry to wholly or mainly private dwellings per year. 33% of respondents considered that this would not lead to any increase in the number of warrants sought by their local authority per year. However, extrapolating from the rest of the data obtained from the survey, this indicates that a maximum of 1,400 additional warrants are likely to be sought per year by local authorities across the country. 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. Therefore, the extra impact across the country is estimated as (2 – 4) x (20.6 x 1,400) = £57,680 - £115,360 per annum.[26] This amounts to costs of **£0.5m - £1m over 10 years**.

5. Requirement to give reasonable notice to business of inspections

For businesses

42. Government has decided to introduce a requirement for enforcers to give reasonable notice to businesses before exercising a power of entry. Government recognises that exercising a power of entry can impose significant disruption on businesses; staff need to be available and daily business operations can be disrupted. In order to reduce the burden on businesses, the requirement to give notice will apply where an officer requires access to a back office of business premises, manufacturing or storage facilities which are not open to the public, to inspect weighing and

[25] Non-response weighting has been applied to the survey responses in order to reduce the risk of non-response bias in our results
[26] 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

measuring equipment behind a counter in a shop or a manufacturing operation in a factory. The exemptions to giving notice are detailed in Annex 1 and include where giving notice would reasonably be supposed to defeat the purpose of the entry.

43. The cost to business of this new notice provision is limited to receiving the notice and making plans for the visit. This is considered by businesses to be negligible compared with the cost of handling unannounced visits.

For enforcers

44. In their responses to the consultation, OFT, consumer groups and the majority of Trading Standards Services indicated concern about the burden that a requirement to give reasonable notice to businesses will have on enforcers. However, Trading Standards professionals indicated that on many occasions they already make appointments to inspect premises. Responses to the consultation from Trading Standards also indicated that sometimes they need to carry out on-the-spot checks where they have some intelligence about non-compliance. Enforcers also sought clarification of the exemptions. Government will therefore clarify the scope of the exceptions to giving notice, for example, where giving notice would defeat the purpose of the entry.

45. It is difficult to be precise as to how many notices are likely to be issued, as this will vary from local authority to local authority and will depend on a number of factors, such as the nature of the businesses in their area and the intelligence Trading Standards have received about any non-compliance. We have used data from our survey of Trading Standards Services to improve our estimates.[27] Extrapolating from the results of the survey across the country indicates that 83% of Trading Standards Services currently give advanced notice of inspections to businesses for fewer than 20% of their inspections, whereas only 2% of Services indicated they would currently give notice at least 60% of the time. The data indicates that in future, just 33% of Services would give notice for fewer than a 20% of their inspections, and 41% of Services indicated notice would be given at least 60% of the time. This indicates that Trading Standards Services expect to give notice much more often in the future as a result of this change.

46. Extrapolating from the results of our survey across the country, the proportion of consumer law inspections where notice will be given will be in the range of 36% - 57% of visits (on average 46%). This means that the number of consumer law inspections per year where notice will be given is estimated to be 69,173.

47. Suffolk Trading Standards estimated that an officer will spend on average 30 minutes 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.[28] On this basis it is estimated that the impact will be 20.6 x (0.5-1) x 69,173 = £712,482 - £1.4m per year. However, if a notice is simply sent to a business by email or by post, this would reduce administrative time and therefore costs of providing notice. If we assume that producing the notice and sending it to the trader takes around 10 -15 minutes per premises, it is estimated that the costs are in the range (0.167- 0.25) x 20.6 x 69,173 = £237,969 - £356,240 per annum.

48. The Government has estimated that the budget for Trading Standards allocated by the various local authorities across the country is likely to fall by 20% to 30% in total between 2010 and 2015.[29] This is likely to result in Trading Standards Services relying more on an intelligence-led approach to inspections and thereby reducing the number of routine inspections. This means that the number of Trading Standards inspections is likely to decrease by the same proportion during this period. This will in turn reduce the need for notices thereby reducing the costs to enforcers of issuing notices.

49. Assuming a 20% reduction, the costs are estimated to be in the range 0.8 x (237,969 – 356,240) = £190, 375 – £284,992 per annum or **£1.6 - £2.5m over 10 years**.

---

[27] Non-response weighting has been applied to the survey responses in order to reduce the risk of non-response bias in our results

[28] 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

[29] Empowering and Protecting Consumers: Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement, Department for Business, Innovation and Skills, page 54, June 2011, http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf

6. Power to inspect products

For businesses

50. Government has decided to include a power to inspect products in the generic set. This is wider than the power to inspect goods as proposed in the consultation. In their response to the consultation the OFT highlighted that the power to inspect did not appear to cover services, for example, timeshare and package holidays. Government agrees that powers to inspect goods and services should be consistent.

51. In response to requests from enforcers, we will clarify in law that where an inspection of products occurs in an area where the public already has access, this can be performed without exercising a power of entry. This is not an intrusive power for businesses and of itself imposes no cost on the business. Enforcers already use a similar power to test purchase to check compliance of services, so no increase in inspections or tests is likely. There will be negligible impact on businesses as a result of this change.

52. Enforcers will need to exercise a power of entry to inspect products in non-public areas of premises, subject to the requirement to give reasonable notice. Once a power of entry has been exercised, the new power to inspect services is not likely to impose any further marginal costs on the business given the suite of other powers available to the enforcer at that point (see Annex 1 for details, but includes power to request information, power to require production of documents, power to seize and detain goods, and documents and power to break open a container (including a computer). The power to inspect products will not give enforcers the right to intercept communications data, unless the specific conditions attaching to such an exercise of power are met.

For enforcers

53. As stated above this change will not increase the number of inspections for enforcers and so will not impact on enforcers.

7. Powers of seizure

For businesses

54. Government has decided to include a power to seize goods and documents based on the powers contained in the CPRs. The power of seizure applies 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 legal proceedings. For the avoidance of doubt, Government will clarify in statute that the power to seize and detain documents includes the inspection of documents or files which the enforcer has reasonable cause to suspect he can seize. We will also clarify that enforcers can take reasonable steps to ensure documents are in a legible format. This is similar to a provision that already exists in section 227B of the Enterprise Act. As these are simply clarifications of existing powers, there is no impact on business.

55. We will also include a provision similar to that currently contained in the CPRs which means that goods or documents seized may not be detained for more than 3 months. Where the goods or documents are reasonably required by the enforcer in connection with the enforcement of the consumer legislation (to be used in evidence), they can be kept for as long as they are so required. This ensures that businesses are not deprived of these items for longer than necessary.

56. In response to a request from business in their response to the consultation, we will add a requirement that, if requested, enforcers should allow a trader to take copies of seized documents. This is consistent with the Police and Criminal Evidence Act 1984 (PACE). This will enable businesses to retain copies of documents which may be important to continue running their businesses.

57. We will also add a new requirement in statute on officers to issue a receipt to businesses for the items seized. This is currently best practice and is consistent with the requirements of PACE. The cost to business of this provision is limited to receiving the receipt, which is negligible, as it does

not involve any interaction on the part of the business other than receiving the receipt and as this is already current practice, it is quantified as zero here.

For enforcers

58. The main statutory change for enforcers is addition of the requirement that, if requested, enforcers should allow a trader to take copies of seized documents. As this is consistent with the current requirement in PACE, which enforcers are already obliged to follow, there will be negligible impact on enforcers.

8. Enhanced powers of seizure

For businesses

59. Government has decided to apply enhanced powers of seizure across consumer law. These powers are currently contained in Section 50 of the Criminal Justice and Police Act 2001 and are currently applied to most consumer law, except 20 pieces of legislation (mainly detailed weights and measures regulations). Annex 3 lists the legislation not currently subject to section 50. The section provides a power to take items away from premises where the enforcer 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.

60. This means that the power will only be enhanced under the 20 pieces of legislation, but there will be no change for the remaining 40, which include the CPRs and most other broad horizontal consumer laws which give rise to the vast majority of investigations where seizures are likely. Some seizure or forfeiture powers already exist in relation to the 20 laws, notably the 15 weights and measures regulations, where enhanced seizure is unlikely to have material impact, and in the other cases, the provisions either do not lend themselves to seizure (for example the distance selling and doorstep selling regulations mainly focus on giving consumers information and the short term right to withdraw from contracts, whereas the Sunday Trading and Christmas Day Acts focus on opening hours) or 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 other provisions will often constitute breaches of the CPRs too. Having examined the legislation in question, the Government is confident that enhanced seizure powers are highly unlikely to make any difference in practice and this was not contested by business groups in the consultation on this point.

61. Powers of seizure will only be used by officers where necessary, for example, where goods or documents are likely to be required for evidence. The enhanced powers of seizure under section 50 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. These powers are therefore only likely to be used when an officer believes a breach has been committed to secure the evidence for legal proceedings. We see no reason why seizure powers shouldn't apply consistently to all consumer law.[30]

62. In the very small number of potential cases where the new seizure powers might have an impact, the cost to business will vary significantly depending on the size of the business, what is being seized and its impact on the particular business and the reasons for the seizure. 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. It may introduce some costs to businesses as a result of loss of sales, but these are hard to estimate. However, due to the nature of the additional legislation to be covered, it will only affect a very small number of investigations.

63. We consulted on the basis of the estimates put forward in the consultation stage Impact Assessment. We used the number of Trading Standards prosecutions per year as a proxy for the use of the seizure powers. At consultation, we estimated that using these powers might cost businesses £3m per annum, or £26.3m over 10 years (see footnote for details of calculations).[31]

[30] subject to the exception in relation to investigations under the Enterprise Act

[31] Assuming it costs businesses £10,000 per seizure. Using data from Hertfordshire Trading Standards Service, which brought a total of 3 prosecutions for breaches of this legislation over the last year, based on 3,352 front line staff employed in GB in April 2008; 33 Trading Standards staff employed at Hertfordshire Trading Standards Service i.e. 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 have attempted to strengthen these estimates using the consultation and also by surveying businesses and Trading Standards. Responses from businesses have not contradicted our estimates. More than 75% of Trading Standards respondents to our survey indicated that they would expect either no extra seizures as a result of this change or at most 3 more seizures, suggesting that our consultation estimate of impact was, if anything, too high.

64. However, it is important to note, that businesses only incur costs where officers seize items they have no powers to seize or where seizure is unnecessary in order to investigate the breach or where it subsequently emerges that there is no breach; these situations can be categorised as wrongful seizures. Respondents to our Trading Standards survey indicated that there had been no wrongful seizures in the past 5 years. We have no reason to believe that this change would in fact lead to an increase in the number of wrongful seizures, so we now estimate that there will be no impact on compliant business as a result of this change. All the impact would be on businesses subsequently found to have broken the law.

For enforcers

65. 41% of respondents to our Trading Standards Services survey estimated that the change would not lead to any extra seizures, whereas 35% estimated that there would be 1-3 additional seizures per year, compared with 11% who estimated that this would lead to more than 10 extra seizures per year.[32] However officers 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. Therefore, we do not believe there will be any additional costs for enforcers in using these new powers.

9. Power to break open containers

For businesses and enforcers

66. Government has decided to include a power to break open a container in the generic set. This enables an officer when seizing goods or documents to require a person to break open a container or if this is not complied with, break it open himself if it is reasonable and proportionate to do so.

67. Consultation responses from enforcers suggested clarifying in law what constitutes a container. The existing provision in the CPRs is historical and we consider that the powers need to reflect the modern trading environment. We will clarify in the generic set that a container includes a variety of information and storage facilities (whether used for goods or documents) such as boxes, sea containers, secured storage facilities, filing cabinets, desks and computers. This is not considered to be a change in the law. As this is simply a clarification of the law, this will not impact on businesses or enforcers.

68. We will also include a requirement, based on one contained in the CPRs, for an officer to inform the person from whom goods or documents are seized, and in relation to vending machines, to inform the person whose name and address are stated on the machine as the proprietor, or where no such statement exists inform the occupier of the premises where the machine stands. This power is contained in the majority of consumer law, except for the legislation detailed in Annex 3 and the Enterprise Act 2002, Prices Act 1974 and the Property Misdescriptions Act 1991. As the CPRs are horizontal in their application, officers are already able to use their powers under the CPRs to investigate suspected non-compliance with most of this legislation. Therefore, it is estimated that this will have negligible or no impact on businesses or enforcers.

10. Entry to premises with warrant

For businesses

69. Government has decided to include a power of entry with a warrant, subject to certain conditions which need to be met before a warrant can be issued by a Justice of the Peace. In response to OFT's feedback, we will also include the grounds for issuing a warrant not found in the CPRs, but contained in section 227C(1) of Enterprise Act. This includes the ability of a court to issue a warrant where products or documents would be likely to be concealed or interfered with. This

[32] 41% estimated that this would not lead not any increase in seizures, 24% estimated that it would result in 2-3 extra seizures per year

provision overlaps with the more general provisions in the CPRs and will only be included to provide clarity that it has not been dispensed with. It does not give enforcers any new powers/duties, so will not lead to any increase in the number of warrants. Therefore, there should be no impact on compliant businesses.

70. We will also add a new safeguard requiring enforcers to leave a notice indicating that such an entry has occurred, where the premises are unoccupied or the occupier is absent. This is already best practice amongst enforcers and so this will have no impact on businesses.

For enforcers

71. As stated above, aligning warrant conditions will not result in any increase in the number of warrants sought by enforcers and so this will have no impact on enforcers. Also, as stated above the additional requirement to leave a notice where the premises are unoccupied is already best practice and so this will have no impact on enforcers.

Table 1 – Summary of best estimate costs over 10 years

	For businesses Costs (£m)	**For enforcers** Costs (£m)
1. Familiarisation costs associated with the new generic set of powers	Negligible	Negligible
2. Power to require production of information	Low 0.1 High 0.5 **Best estimate 0.3**	Low 0.05 High 0.2 **Best estimate 0.13**
3. Alignment of powers of entry	Negligible	Negligible
4. Restricting powers of entry to wholly or mainly private premises	Negligible	Low 0.5 High 1.0 **Best estimate 0.8**
5. Requirement to give reasonable notice to business of inspections	Negligible	Low 1.6 High 2.5 **Best estimate 2.1**
6. Power to inspect products	Negligible	Negligible
7. Powers of seizure	Negligible	Negligible
8. Enhanced powers of seizure	Negligible	Negligible
9. Power to break open containers	Negligible	Negligible
10. Entry to premises with a warrant	Negligible	Negligible
Total (best estimate) =	**0.3**	**3.03**

BENEFITS

72. The benefits are considered below for those powers in the generic set which are likely to have an impact on businesses and/or enforcers. A summary of estimated benefits is given in Table 2 below.

1. Setting out powers in one place saving time in checking officers' powers

For businesses

73. As stated above, Government has decided to set out the consumer law investigatory powers in one place as a generic set and repeal the equivalent powers in around 60 pieces of consumer legislation. Some investigatory powers not specifically reproduced in the CPRs will be repealed altogether, for example, powers in the Sunday and Christmas Day Trading laws[33] 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 enforcers[34] to have reasonable suspicion before exercising their investigatory powers under the Enterprise Act will remain.

74. This will mean the powers are more consistent and therefore simpler so that businesses will have a clearer understanding as to what officers' powers are in each circumstance. This will save businesses' time in checking officers' powers in several pieces of overlapping legislation in the event there is a dispute as to officers' powers reducing the need to consult lawyers. Extrapolating from the results of our survey of Trading Standards Services, it is estimated that 149,124 Trading Standards inspections were carried out last year in relation to consumer law of which 2,982

[33] See paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994
[34] Section 227B Enterprise Act 2002 and paragraph 3(d) Schedule 2 of the Sunday Trading Act 1994

inspections were of large businesses and 146,142 inspections were of small and medium-sized businesses.

75. 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. Businesses are only likely to check what officers' powers are when contacted by an officer and there is a dispute as the officer's powers. 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, 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. We assume small and medium enterprises (SMEs) might take only 30 minutes of time. We assume that businesses check officers' powers in 20% of inspections to larger businesses (this amounts to inspections 596) and 10% of inspections to small businesses (14,614 inspections[35]). This amounts to costs to large businesses of (1.5 x 20.4[36] x 596) = £18,250, and cost to small business of (0.5 x 20.4 x 14,614) = £149,062 per annum. Total cost to business amounts to £167,312 per annum.

76. Assuming that the time needed to check officers' powers is reduced by half due to the powers being in one place, the savings to businesses are estimated to be £83,656 per annum. This equates to **£0.7m over 10 years**. We have attempted to improve these estimates through surveys of businesses, but we have not been able to further refine these estimates. Given the very small benefit estimated we do not believe it is proportionate to try to refine them further.

For enforcers

77. Setting out the powers in one place and simplifying them will mean that time is likely to 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.

78. Extrapolating from the data from our survey of Trading Standards Services shows that, of the 56 respondents, 60% indicated that officers currently spend less than 20 hours per year checking their powers and a further 30% indicated officers spend no more than 50 hours per year. This amounts to an average of 32 hours per year. We asked what reduction in time was expected if powers were set out in one place. Three quarters of respondents expect savings of less than 20% and a quarter expect more than 30% savings in time. We estimate that an overall average of 14.5% in time saved.[37] There are about 3,352 Trading Standards professionals employed directly on service provision, [38] so the annual saving in time is estimated as 18,000 hours. Assuming officers costs of £20.6 per hour, we estimate savings of (32 x 14.5% x 3,352 x 20.6) = £320,397 per annum or **£2.8m over 10 years**.

2. Reduction in the cost of an inspection arising from requirement for reasonable notice

For business

79. As stated above, Government has decided to require enforcers to give reasonable notice of inspections, subject to certain exemptions. Feedback to the consultation from businesses indicates that they believe that if officers give notice, this enables 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. In their response to the consultation the Federation of Small Businesses, indicated that they welcomed the requirement on officers to give notice as they believe it helps to create a cooperative relationship between the inspector and the business and will allow the business to make the necessary arrangements, such as ensuring appropriate staff are available on the day in question, so that they get the most out of the inspection. Therefore, giving notice will provide more convenience for business to accommodate these inspections.

[35] 10% of 268,692 inspections
[36] Based Managers and senior officials median basic Hourly pay - Excluding overtime (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
[37] This figure is derived by averaging each time saving option, e.g. 0-10% saving was averaged to 5%, and then weighting these savings by the frequency of responses. For the option 'more than 30% time saving' we have assumed 40% saving
[38] Based on 2008 Chartered Institute of Public Finance and Accountancy statistics 2008 (Cipfa) statistics, the number of inspections to high risk premises is 19,738 and the number of inspections to medium risk premises is 50,334 per annum

80. Based on research conducted in 2005 by Price Waterhouse Coopers,[39] the average cost of an inspection is £598,[40] including the expense to the business of making a person available to accompany the officer. Extrapolating from the results of our survey of Trading Standards Services, used to strengthen our estimates, indicates that an estimated 69,173 notices will be issued to businesses by Trading Standards Services across the country per year. Without notice being given these inspections would cost businesses £598 x 69,173 = £41.4m per annum.

81. We used the consultation to test whether a 10% cost reduction is a realistic estimate. Responses from businesses have not contradicted this estimate. Therefore, using the 10% reduction in the cost of inspections as a result of notice being given, would deliver estimated savings of 10% x £41.4m = £4.1m per annum or **£35.3m over 10 years**.

For enforcers

82. Enforcers are also likely to save costs through the reduction in the duration of inspections. Responses to the consultation from Trading Standards indicate that the duration of an inspection can be from 1 hour for small businesses up to 4 hours for larger or more complex businesses. The majority of inspections are likely to be made to smaller businesses, on this basis we are assuming an average inspection takes 1.5 hours and using the estimated 69,173 inspections per year where notice is given, a 10% saving for enforcers in the cost of an inspection is estimated to be 10% x (1.5 x 20.6 x 69,173) = £213,744 per annum or **£1.8m over 10 years**.

3. Revocation of powers in relation to banking documents

For businesses

83. Government has decided to repeal the powers contained in the Estate Agents (Entry and Inspection) Regulations 1981 and the Consumer Credit (Entry and Inspection) Regulations 1977 and introduce a new power in the generic set, based on the power in regulation 21(1) of the CPRs. This will reduce any duplication in the existing investigatory powers. This is because 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. The CPRs and the Data Protection Act therefore provide a similar level of protection as these sector specific regulations. This will contribute to the simplification of the powers of officers for businesses and contribute to reducing the burden on businesses.

For enforcers

84. Repealing these powers will help simplify them in the generic set for enforcers, whilst this may in itself have little impact on enforcers, it will contribute to the reducing the complexity of the powers.

4. Savings on costs of training of officers

For enforcers

85. Setting the investigatory powers out in one place, and making them more consistent is likely to result in 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.

86. We are using the Product Safety Service delivery module as a proxy. This includes a 5 day Product Safety Law course and 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.[41] Therefore, a total of 3

[39] Price Waterhouse Coopers research identified the burdens on business, 2005, see Consumer Law Review: Call for Evidence: Summary of Responses, page.44, Department for Business, Innovation and Skills (BIS), July 2009, http://www.bis.gov.uk/files/file52071.pdf
[40] Adjusted to take account of the annual Consumer Price Index growth between 2005 and 2011 of 19.6% (£500 x 1.196 = £598)
[41] This assumes a similar course for Weights and Measures, but currently there is no similar Competency certificate available under the TSI qualification framework

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.

87. In future, TSI estimate that the generic 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. 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.

88. There will also be a saving in time of officers spending less time training and more time working. 12 hours saved 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 **£0.2m over 10 years**.

5. Automatic exemption from keeping records for bakers of non-pre-packed bread

For businesses

89. Government has decided to provide an automatic exemption from record-keeping requirements under weights and measures legislation for any bakers of non pre-packaged bread or any non e-marked bread sold on the premises on which it is baked. This will reduce the burden on these businesses by removing the need for these businesses to request an exemption from Trading Standards Services. It will also remove the need for a specific inspection by the officer to ensure the bread complies with average weight requirements before awarding an exemption certificate.

90. Responses to the consultation from Trading Standards highlighted an inconsistent approach in the issuing of exemption notices; some Trading Standards Services have issued exemptions to large retailers with in-store bakeries, whereas others have a policy of not doing so. In their responses some Trading Standards professionals indicated their opposition to an automatic exemption arguing that small bakers are often a source of short weight bread. However, some Trading Standards professionals supported the proposed exemption for micro-businesses, but were concerned that this should not extend to larger businesses where the impact of short weight bread would be proportionately greater.

91. Government agrees with the view expressed by the British Retail Consortium's (BRC) in their response to the consultation in which they indicated that it should be up to bakers to decide what records should be kept. Consumer protection will be maintained as bakers will still have to ensure the quantity of their bread is accurate, within the tolerances permitted. Clearly, if a business maintains adequate records of checks they have made on the bread weights, this will help demonstrate due diligence in the event of alleged non-compliance. If a business holds no records, then this makes demonstrating due diligence more difficult. In these circumstances, there is a risk that officers may consider that they need to perform a reference test on a batch of loaves, which can be a greater time burden on businesses and enforcers. However, such inspections are only likely to be carried out where the officer has reasonable cause to suspect a breach or other intelligence pointing to potential non-compliance.

92. The main savings for businesses will be from a reduction in the number of inspections and in the cost of processing requests for an exemption certificate. Trading Standards estimate that there are currently on average around 30 premises per local authority that qualify for a small baker's exemption (including supermarkets). Evidence from the Local Government Trading Standards Metrology Group indicates that between 90-100% of these premises would have sought and been granted an exemption. There are 198 Trading Standards Services[42] so the total number of premises with an exemption certificate is estimated as198 x (27 – 30) = 5,346 - 5,940 premises. An exemption certificate expires on average at the end of 3 years, at which point they would need to be renewed. This means that on 1,782 - 1,980 premises are granted exemption certificates each year. If it is assumed that each application for an exemption certificate resulted in an inspection, based on the average cost of an inspection of £598,[43] the savings to businesses are estimated to be £598 x (1,782 - 1,980) = £1.07m - £1.18m per annum.

[42] Chartered Institute of Public Finance and Accountancy (Cipfa) Trading Standards statistics 2008/9

[43] Price Waterhouse Coopers research on the burdens on business, 2005, Consumer Law Review: Call for Evidence: Summary of Responses, page.44, Department for Business, Innovation and Skills (BIS), July 2009, http://www.bis.gov.uk/files/file52071.pdf, adjusted to take account of the annual Consumer Price Index growth between 2005 and 2011 of 19.6% (£500 x 1.196 = £598)

93. There may also be very modest savings for businesses not having to contact Trading Standards to request an exemption either in writing, by email or telephone. If we assume it takes a business 15 minutes to contact their local Trading Standards Service to request an exemption certificate, it is estimated this costs businesses 0.25 x 20.4 x (1,782 - 1,980) = £9,088 - £10,098 per annum. Therefore, the total savings are estimated to be in the range £1.08m - £1.19m per annum or **£9.3m - £10.2m over 10 years**.

For enforcers

94. Providing an automatic exemption will mean that Trading Standards Services will save time on inspections carried out before issuing an exemption certificate. Using the average duration length of an inspection as 1.5 hours (as estimated above), it is estimated that Trading Standards across the country will save a total of 1.5 x 20.6[44] x (1,782 - 1,980) = £55,064 - £61,182 per annum.

95. There will also be very modest savings in the time taken by Trading Standards to issue the exemption certificate. Assuming that it takes around 15 minutes for an officer to produce an exemption certificate, the total saving is estimated to be in the range £20.6 x 0.25 x (1,782 - 1,980) = £9,177 - £10,197 per annum. Therefore, the total savings are estimated as £64,241 - £71,379 per annum or **£0.6m over 10 years**.

Table 2 – Summary of best estimate benefits

	For businesses Benefits (£m)	**For enforcers** Benefits (£m)
1.Setting out powers in one place saving time in checking officers' powers	0.7	2.8
2. Reduction in the cost of an inspection arising from requirement for reasonable notice	35.3	1.8
3. Revocation of powers in relation to banking documents	Negligible	Negligible
4. Savings on costs of training of officers	N/A	0.2
5. Automatic exemption from keeping records for bakers of non-pre-packed bread	9.8	0.6
Total (best estimate) =	**45.8**	**5.4**

Risks and assumptions

96. Throughout the text we have used a number of assumptions to underpin our estimates of costs and benefits associated with this policy change. We have used our survey of Trading Standards Services to help strengthen our estimates. We will use the Post Implementation Review outlined, in Annex 3, to help us refine costs and benefits estimates.

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

97. 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. The costs for local authorities are likely to be modest overall and balanced by the benefits. Local authority Trading Standards are supportive of the reform.

98. The costs and benefits are very difficult to calculate with accuracy. Estimates have been used where possible, based on sampling of Trading Standards Services and also using the results from

[44] 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

our survey of Trading Standards Services. We did not receive any contradictory evidence to our estimates from businesses.

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

99. 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. Although consumer law enforcers which are public bodies, may benefit from the consolidation of investigatory powers, these savings are not in scope of OIOO as they are not part of business or civil society.

100. Consolidating and simplifying consumer law powers reduces the burden on businesses. The estimates of the net impact on businesses are likely to be positive and therefore amount to an 'OUT'.

101. A review of these measures will be carried out as part of the Post Implementation Review in 2017-2019, outlined in Annex 5. As these proposals contribute to the improved enforcement effectiveness and efficiency which feed into the new consumer landscape reforms, any review will take account of these landscape changes. The review will incorporate stakeholders' views that will include consumer groups, business groups, Trading Standards and the other consumer law enforcers. We will use the evidence from this review to firm up our understanding and quantification of the impacts.

Statutory Specific Impact Tests

102. 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, or have an effect on rural proofing. It will benefit small firms.

Justice Impact Test

103. The Ministry of Justice has cleared the final Justice Impact Test.

Summary and preferred option with description of implementation plan

104. Government has decided to consolidate and simplify the investigatory powers which are currently scattered across around 60 pieces of consumer legislation. Evidence indicates that the variation in different legislation is confusing for businesses and enforcers. The vast majority of responses to the consultation from businesses, enforcers and consumer groups show broad support for our approach to base the powers on the CPRs. However, there was some concern from enforcers about the added safeguards, in particular the need to reasonable notice before carrying out routine inspections and limiting powers to wholly or mainly private dwellings.

105. The generic powers will provide flexible and proportionate tools for investigating breaches whether they occur in the traditional business environment or on-line. Setting the powers out in one place will ensure that officers' powers are more consistent and transparent for businesses and enforcers. Enhancing the safeguards attached to the powers supports the Government's commitment to rolling back state intrusion and protecting civil liberties and strikes a balance between that and enabling effective and efficient enforcement. Enhancing the safeguards and providing an automatic exemption for small bakers will reduce the burden on compliant businesses by reducing the duration and number of inspections respectively. Enforcers will similarly benefit.

106. Simplifying the powers will reduce compliance costs for businesses by removing the need to look in numerous pieces of legislation to check what officers' powers are in each circumstance. It will also reduce the training costs for Trading Standards. The impact on enforcers as a result of the requirement to give reasonable notice to businesses will be offset by the savings made in enforcement and training costs and the increased convenience for businesses.

Annex 1: Powers making up the new generic set

1. 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. **Power to observe the carrying on of a business**;
    2. **Power to make test purchases**;
    3. **Power to require production of information** where there is reasonable suspicion of a breach;
    4. **Power of entry to premises**, **excluding wholly or mainly private dwellings**, and investigation (without a warrant) which include:

        i. **Reasonable notice** to be given before exercising powers of entry, subject to the following exceptions: where the enforcement authority is a market surveillance authority for the purposes of EU law; where the requirement for notice has been waived by the occupier; where the enforcer has reasonable cause to suspect a breach; where giving notice would reasonably be supposed to defeat the purpose of the entry, for example, where there is reasonable suspicion that evidence may be lost or destroyed; where it is not practical in all the circumstances to give notice including circumstances where there is reasonable cause to suspect that there is imminent risk to public health or safety;

        ii. **Production of evidence of officer's identity and authority**, except where it is impractical to do so;

        iii. **Power to inspect products** (this is wider than under the current CPRs);

        iv. **Power to require production of documents** where there is reasonable suspicion of a breach – we also intend to clarify that this power applies to third parties;

        v. **Power to seize and detain goods, and documents**, where there is reasonable suspicion of a breach, or where reasonable suspicion they may be required as evidence, we now intend clarifying that this includes explanations of documents, and will include a power for an enforcer to take reasonable steps to put information into a legible format;

        vi. **Power to break open a container or vending machine** if it is reasonable and proportionate to do so, clarifying that containers includes storage facilities whether used for goods or documents such as boxes, sea containers, secured storage facilities, filing cabinets, desks and computers;

        vii. **Power to take other persons and equipment into premises**, if it is reasonable in the circumstances, and includes the existing safeguard of legal privilege.

    5. **Power of 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;
    6. **Power to investigate and bring proceedings outside a local authority area**;
    7. **Powers with specific application**, e.g. product safety, and weights and measures;
    8. **Offence of obstruction of officers** with penalties set at level 3 and including privilege against self-incrimination;
    9. **Offence of impersonating an officer**;
    10. **Injunctive relief** whether consumers are in the UK or abroad (section 211 of the Enterprise Act 2002);
    11. **Subsequent enforcement of a court order** by an enforcement body irrespective of which enforcement body brought the original order (section 220 of the Enterprise Act 2002).

2. The following existing safeguards will also be applied to officers' powers:
    1. **Notice of test and intended proceedings** - an officer must inform occupiers whose goods are seized of the results of any tests on the goods seized. If the results of the tests lead to legal proceedings being taken, then the officer shall allow the person whose goods were seized, the opportunity to also test the products (if it is practicable to do so);
    2. **Compensation for loss or damage** where goods have been seized, if there has been no breach;
    3. **Legal professional privilege** – It will be made clear that nothing in the powers will allow enforcers to require a person to produce or seize from any person any document that the person would be entitled to refuse on the grounds of legal professional privilege.

3. Power exercisable by the Secretary of State to bring enforcement of additional legislation within the scope of the new generic set, subject to the affirmative procedure.

Annex 2: Details of other changes to powers forming the generic set

1. The changes to the powers detailed below do not impact on compliant businesses as they either clarify existing investigatory powers, or they relate to enforcement sanctions which will only impact on non-compliant businesses. Therefore, the changes are not discussed under the costs and benefits.

Clarification of certain powers for the generic set

2. Government has decided to include a **power to observe the carrying on of a business.** This allows an officer to observe the operation of a business. This includes situations where an officer enters premises open to the public and to carry out actions which a member of the general public could take. These actions may include the officer looking at prices or marketing materials whether on-line or in person, checking products on the shelves or by using their test purchase power (i.e. mystery shopping). Initially we considered it unnecessary to include a specific power in legislation. However, OFT in their response to the consultation, highlighted the need to include the power for the purposes of enforcing Part 8 of the Enterprise Act 2002. Where the officer's activities simply mirror what an ordinary consumer can do, it has no impact on business, and so for simplicity we will apply this power across consumer law.[45]
3. Where an officer intends to enter premises or parts of premises not open to the public, they will need to exercise a power of entry and give reasonable notice, subject to the exemptions set out here. Theses costs and benefits are discussed under the headings aligning powers of entry and giving reasonable notice.
4. Government has decided to include a requirement on enforcers **to produce evidence of their identity and authority** when exercising a power of entry. This is an existing requirement contained in regulation 21(6) in the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). Following comments from the OFT and Trading Standards, we will amend the requirement for identity to be shown where it is impractical to do so. It will be clear in statute that an officer failing to provide identity can be refused entry. However if he is allowed entry and gathers relevant evidence, proceedings should not be invalid simply because the officer failed to comply with this requirement at the investigation stage. This provides an appropriate balance between effective enforcement and enabling businesses to know who they are dealing with.
5. Government has decided to extend the **power to make test purchases** across consumer law and clarify that it covers digital content. Responses to the consultation from enforcers indicates that this will not have any impact as it is just a clarification and this power enables enforcers to carry out mystery shopping as a consumer and will only be used where there is a need to gather evidence. Therefore, it is estimated that there will be no impact on businesses or enforcers.
6. Government has decided to make it clear in the generic set of powers that **the power of enforcers to require production of documents** applies to third party traders, including financial institutions. Government considers that there are strong legal arguments that the power to require production of documents (contained in Regulation 21(1)(b) of the CPRs) means third party traders, including financial institutions, must provide documents to enforcers investigating alleged breaches under this legislation as is currently the case across consumer law. BIS recently produced a joint note with OFT and Trading Standards setting out their position. However, responses to the consultation from OFT and Trading Standards indicated that there have been cases where third parties have resisted disclosure on the basis that it is not clear that they are covered by this provision. Therefore we will ensure that the position is absolutely clear in the new generic set of powers.
7. We will clarify that this power includes requiring an explanation of documents. We will also maintain the power, which currently exists, for officers to require production of certain documents required in existing legislation to be held by businesses, without officers requiring reasonable suspicion. We will make it clear that this includes access to data in digital form (digital content) and any documents held by or accessible to the business, even if they are stored on a 'cloud' or a server hosted by a third party.

[45] This is not found in the CPRs

8. Government has decided to include a power making it clear that **enforcers entering any premises may take with them other persons and equipment which they consider necessary** and which is reasonable in the circumstances. We originally proposed limiting the number of persons accompanying officers into premises to a maximum of 4, but in their responses to the consultation the majority of enforcers strongly objected to this limitation, especially when they execute a warrant to enter premises. In particular, Trading Standards professionals argued that before executing a judicial warrant they carry out a health and safety risk assessment to ascertain how many persons should accompany them into the premises and ensure the welfare of officers and persons on the premises. For example, there may be a requirement for other officials, such as police officers to attend, and other officers, such as forensic computing officers, representatives of brand holders for product identification purposes, accredited financial investigators or other officials.

9. So a specific limit on the number of persons that can accompany an officer is likely to hinder joint working between agencies and may compromise the safety of officers. Therefore, rather than specifying in law a maximum number of persons we intend to follow the current approach in the CPRs. We look a the provision of guidance on this matter instead.

10. Government has decided to clarify in the generic set that the **powers to require production and seizure of documents** will apply to access to any documents held by, or accessible, to the business, even if they are stored on an internet server hosted by a third party. In their responses to the consultation, Trading Standards highlighted the need for this clarification, but the Government does not consider that this is a change in the law.

11. Government has decided to include a power for Trading Standards **to investigate and take proceedings outside their local authority area** across consumer law. This power is similar to that currently found in regulation 10(2) of the General Product Safety Regulations 2005. We will widen this power to enable Trading Standards to bring civil proceedings outside their area as well. This measure will apply to local authorities in England and Wales. In Scotland it will apply to investigations only.[46] The majority of responses to the consultation from Trading Standards indicate that including a specific power in the generic set is necessary for clarity and to help reduce the risk of their powers being challenged in court. The impact of this is considered in the Improving Cross Border Authorisation Impact Assessment.

Enforcement sanctions

12. Government has decided to **widen the injunctive regime under Part 8 of the Enterprise Act 2002**[47] to enable enforcers to use it for infringements of domestic legislation that harms the collective interests of consumers whether in the UK or abroad. We will do this by amending section 211 of the Act. This does not provide any new rights for consumers and will not add any extra costs on compliant businesses, but it will enable enforcement officers to tackle businesses based in the UK and breaking UK law, causing harm to consumers overseas. It will facilitate international cooperation against fraud and other breaches of consumer law, particularly conducted by e-commerce and encourage further reciprocal cooperation and effective enforcement within the EU and beyond.

13. Government has decided to **amend section 220 of the Enterprise Act** so that any consumer law enforcer can subsequently enforce a formal undertaking or enforcement order against a business, even where the original undertaking or order was obtained by different enforcer. Currently section 220 does not enable a different enforcer, other than the OFT, to subsequently enforce formal undertakings and enforcement orders obtained under the Act. The OFT has highlighted that since 2005 there have been at least three cases where Trading Standards in one local authority have encountered difficulties in enforcing an undertaking or order against a trader obtained by another local authority.

14. This will facilitate enforcement and reduce the burden on enforcers by enabling them to work more efficiently together, for example, across local authority boundaries to tackle non-compliant businesses. It will mean that enforcers will not have to rely on the same enforcement body to enforce an order and they can deploy their resources in the most efficient cost effective way. This

[46] In Scotland cases are prosecuted by the Procurator Fiscal or Lord Advocate
[47] which implements the Injunctions Directive 98/27/EC

measure relates to situations where a business is already in breach, so there will be no impact on compliant businesses.

15. Government has decided to **align the offences for the obstruction of officers** across consumer law **and set the penalties for the offences at level 3**. In most consumer law the offences include where a person makes a statement which he knows is false, but some legislation also includes an offence where a person recklessly makes a statement which is false.[48] For consistency we will apply this offence across consumer law. In their responses to the consultation the vast majority of enforcers argued that the penalty for obstruction should be aligned with that of the substantive offence, i.e. level 5. A small number of respondents called for the penalties to be set much higher, one respondent suggested level 4. Across consumer law, the penalties for these offences vary from level 3 to 5.[49]

16. However, these offences of obstruction are rarely prosecuted separately or alongside other offences, but act as a deterrent to obstructing officers. We are not aware of any custodial sentences being handed out for obstruction offences prosecuted under the CPRs or other consumer legislation. Prosecutions are reserved for the really egregious cases, which are extremely infrequent (less than one per annum). Also, fines for obstruction have never, in recent years, exceeded the maxima for level 3. Government agrees that there should be no incentive for businesses to obstruct investigators.[50]

17. Nevertheless, Government considers that aligning the level of penalties with those of obstruction of other officials, such as the Police, i.e. level 3, across consumer law is appropriate to provide sufficient deterrent to businesses tempted to obstruct enforcers conducting their legitimate business. This is unlikely to lead to an increase in the number of prosecutions for obstruction and so there will be no impact on enforcers. Also, as this only affects non-compliant businesses, there will be no impact on compliant businesses.

[48] Regulation 24(2) General Product Safety Regulations 2005

[49] In the CPRs and Part 8 of the Enterprise Act, the penalty is up to a maximum of £5,000 (level 5) and/or imprisonment depending on the specific offence. In contrast the penalty for obstructing a police officer, immigration officer or an officer of HM Revenue and Customs is set at a maximum £1,000 (level 3), but Police officers and Customs officers also have the power of arrest. Also the Consumer Credit Act 1974 the penalty is currently £2,500 (level 4) and the Trade Descriptions Act 1968 (level 3). The specific provisions are detailed in the Supplementary Legislative Document to the consultation.
http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/files/file44300.pdfhttp://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/files/file44300.pdfhttp://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/files/file44300.pdf

[50] Implementation of the Unfair Commercial Practices Directive: Government Response to the consultation on the draft Consumer Protection from Unfair Trading Regulations, Department for Business, Enterprise and Regulatory Reform (BERR), page 11, February 2008, http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/files/file44300.pdf

Annex 3: List of legislation to which section 50 does not currently apply

- Christmas Day Act 2004
- Sunday Trading Act 1994
- Cancellation of Contracts made in a Consumers' Home or Place of Work etc Regulations 2008
- Consumer Protection (Distance Selling) Regulations 2000[51]
- Package Travel, Package Holidays and Package Tours Regulations 1992

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:

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

[51] 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

Annex 4: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. The PIR Plan is detailed below. If there is no plan to do a PIR the reasons are given reasons below.

Basis of the review:

The Government is bringing forward a Consumer Rights Bill which will be used to make legislative changes set out in this impact assessment. All Acts are now subject to post legislative scrutiny 3-5 years after Royal Assent. A review of these reforms would be carried out as part of the post–legislative review in 2017-2019.

Review objective:

The review of these reforms is intended to ensure that the measures taken to improve enforcement are achieving the desired objectives: improving the effectiveness and efficiency of enforcement, whilst reducing the regulatory burden on businesses and protecting civil liberties.

Review approach and rationale:

The review of these reforms would evaluate the effectiveness of the proposed changes within this impact assessment. As these changes contribute to the improved enforcement effectiveness and efficiency which feed into the new consumer landscape, any review will take account of these landscape changes. The review will incorporate stakeholders' views that will include consumer groups, business groups, including small businesses, Trading Standards Services, and the other consumer law enforcers. The level of cross local authority boundary consumer detriment will be monitored in the future as part of the consumer landscape changes.

Baseline:

Current costs for businesses:

1. Wrongful use of powers of seizure or enhanced powers of seizure by Trading Standards.
2. Inspections of premises where a power of entry is being exercised to access areas not open to the public.
3. Checking officers' powers in the event of a dispute about their powers.

Current costs for enforcers:

1. Officers' checking their powers.
2. Inspections of premises where a power of entry is being exercised to access areas not open to the public.
3. Trading Standards Services obtaining court warrants.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

All the above costs are reduced.

Monitoring information arrangements:

Feedback from businesses, consumer groups, Trading Standards Services and other consumer law enforcers will be achieved through regular engagement. The Government will monitor the ongoing costs of the new arrangements through evaluation through existing funding arrangements, annual reports and management information.

More general information about the conditions facing consumers can be collected through surveys and the European Commission's Consumer Market Scoreboard, currently published bi-annually.

Reasons for not planning a review: N/A

This publication is also available on our website at www.bis.gov.uk
Any enquiries regarding this publication should be sent to:

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

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

BIS/13/1359