

IMPACT ASSESSMENT

Enhancing consumer confidence :
Encouraging more proportionate
enforcement by removing barriers to
civil enforcement

MARCH 2012

Title: Enhancing consumer confidence : Encouraging more proportionate enforcement by removing barriers to civil enforcement IA No: BIS0339 Lead department or agency: Department for Business, Innovation & Skills Other departments or agencies: Ministry of Justice, Local authority Trading Standards Services	Impact Assessment (IA)		
	Date: 24/01/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
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Summary: Intervention and Options	RPC Opinion: AMBER
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0	£0	£0	No
			Zero Net Cost

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

Enforcement action needs to be able to respond to breaches of consumer law in a way which is proportionate to the nature of the breach. This means using a variety of enforcement tools and enforcers not being over-reliant on criminal law prosecutions. Whilst officers employed local authority Trading Standards in England and Wales can present criminal prosecutions they bring in Magistrates' Courts, they are unable to present civil cases in County Courts. This lack of officers' ability to present cases in County Courts is considered by Trading Standards as one of the causes of the relatively low number of civil court cases taken under the Enterprise Act compared to the number of criminal prosecutions.

What are the policy objectives and the intended effects?

Government policy in this area is to reduce recourse to the criminal law for relatively minor breaches as it would be more proportionate to pursue them through civil law. It is also intended to support the objectives of improving the effectiveness of enforcement whilst reducing the regulatory burden on businesses. The intended effects are to encourage more proportionate enforcement through making it easier for Trading Standards to use civil enforcement remedies, by seeking rights of audience for Trading Standards so that they can present cases in County Courts. This serves the public interest as a whole better in that more effective and appropriate action can be taken.

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

The following policy options have been considered, in comparison to a 'do nothing':

- 0: Do nothing: Local authority Trading Standards rights of audience remain unchanged;
- 1: Develop a class of membership for Trading Standards by an existing Approved Regulator;
- 2: Introduce a statutory provision to enable Trading Standards to present civil cases.

The Government's preferred approach is Option 1 in order to seek rights of audience for Trading Standards as there would be assurance that officers' competency to present cases in civil courts is adequately monitored and effectively maintained by a respected and trusted Approved Regulator. There would be no costs to business and it provides a cost-effective model, which is flexible to meet the differing needs of individual local authorities.

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

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

Signed by the responsible SELECT SIGNATORY: 

Date: 28/03/12

Summary: Analysis & Evidence

Policy Option 1

Description: Develop a class of membership for Trading Standards by an existing Approved Regulator

FULL ECONOMIC ASSESSMENT

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

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

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

Approved Regulator costs include a one-off cost of £2,000 for application to the Legal Services Board. This cost would be recouped their membership fees.

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

The initial qualification opportunity cost.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£250,000	£2.15m

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

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

Local authorities which use the ability to present cases in civil courts will save the costs of hiring external lawyers and double handling cases.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Throughout the text we have used a number of assumptions to underpin the initial estimates of cost and benefits associated to this policy. Initial estimates are set out for illustrative purposes only. We do acknowledge they are not totally robust, given that precise and reliable information is not available on these areas. The consultation might help us refine costs and benefits estimates. We will seek further evidence of the savings for local authorities which use the ability to present cases in County Courts.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce a statutory provision to enable Trading Standards to present civil cases

FULL ECONOMIC ASSESSMENT

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

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

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

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

Total cost to local authorities which wish to obtain civil rights of audience for their officers.

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

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

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

Total savings to local authorities using the civil right of audience. to present cases in County Courts.

Key assumptions/sensitivities/risks

Discount rate (%)

In the text we have used a number of assumptions to underpin the initial estimates of cost and benefits associated to this policy. The costs and benefits are for illustrative purposes only. We acknowledge they are not robust, given that precise and reliable information is not available. The consultation might help us refine costs and benefits estimates. We will seek further evidence of the number of local authorities and officers who wish to seek accreditation. There is a risk that Judges refuse to hear Trading Standards professionals, if they are not approved by an Approved Regulator, even if they have relevant qualifications.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

Evidence Base (for summary sheets)

Introduction

1. This section of the impact assessment addresses inability of Trading Standards professionals to present cases in County Courts for civil proceedings. The Government's preferred option is to enable Trading Standards professionals to present such cases by extending the scope of an existing Approved Regulator which can authorise Trading Standards professionals to undertake this work. An Approved Regulator will provide assurance that the competency of Trading Standards professionals to undertake this work is adequately monitored and effectively maintained by a respected and trusted body. This Option provides a cost effective model which is flexible to meet the differing needs of individual local authorities. We do not foresee that this would require any legislative changes, but is likely to require a further consultation by whichever Approved Regulator takes on this role. It will then be a matter for the Approved Regulator to determine the details of this change.

Background

2. Enforcement action needs to be able to respond to breaches of consumer law in a way which is proportionate to the nature of the breach. This means using a variety of enforcement tools and not being over-reliant on criminal prosecutions. Consumer legislation can be enforced through either civil proceedings¹ or by criminal prosecution under some specific legislation. For a long time and certainly since 1972, local authorities have had the ability to authorise their officers to present cases for criminal prosecutions in Magistrates' Courts.² But there is no such provision enabling local authorities to present cases in civil courts.
3. In 2007 the Legal Services Board (LSB), the supervisory body for the provision of legal services, was created.³ The LSB oversees Approved Regulators to enable their members to carry out reserved activities such as presenting cases in the courts. The Approved Regulator ensures that persons carrying out reserved activities such as presenting cases in court demonstrate the appropriate competence. Within this regime that Government is seeking to obtain civil rights of audience for Trading Standards professionals. This may be an area of work where expertise could be focussed in Trading Standards regional groups or lead local authorities, and thereby reducing costs for individual local authorities.

Problem under consideration

4. Trading Standards professionals in England and Wales can present criminal cases in Magistrates' Courts, but they are unable to do so for civil cases in County Courts.⁴ Trading Standards often need to hire external lawyers to present civil cases, even for minor ones. This means that the cost of civil enforcement is often higher than it needs to be for local authorities. If Trading Standards professionals have civil rights of audience this will remove the need for the local authority to hire external lawyers for simple civil cases enabling local authorities to reduce their costs if the civil route is pursued, as when appropriate.
5. For the financial years ending March 2010 and 2011, the numbers of civil and criminal actions were as follows:

Table 1: Formal enforcement actions by Trading Standards in England and Wales⁵

Year ending (end March)	Civil actions under the Enterprise Act 2002	Criminal prosecutions
2010	519	1567
2011	445	1258

¹ under the Enterprise Act 2002

² by virtue of Section 223 of the Local Government Act 1972

³ By virtue of the Legal Services Act 2007

⁴ In Scotland, Trading Standards refer matters to the Sheriff, Procurator Fiscal or Lord Advocate to institute legal proceedings

⁵ Notified to the OFT or recorded on the OFT's Consumer Regulations Website (CRW) respectively

6. This lack of ability to present cases in civil courts and local authorities' concerns about retrieving legal costs are considered by Trading Standards to be some of the causes of the relatively low number of Enterprise Act civil enforcement actions compared to the number of criminal prosecutions.⁶ The business community agrees. For example, in the Confederation of British Industries response to Consumer Law Review:⁷

"We recognise that rights of audience in county courts are critical in assisting [Trading Standards Services] to pursue civil cases more efficiently..."

Rationale for intervention

7. There are instances of relatively minor offences where the most efficient and appropriate way to enforce it would be through civil rather than criminal cases, to match the gravity of the offence. But given the additional costs due to the lack of rights of audience in civil cases, there is a tendency of Trading Standards to over-rely on the criminal route.
8. Trading Standards estimate that their costs in civil cases could be reduced by as much as a third.⁸ (This is discussed further under the section on benefits below). This serves the public interest as a whole better in that more cost effective and appropriate civil action could be taken.
9. An informal survey of a range of local authority Trading Standards Services carried out by the Department for Business, Innovation and Skills (BIS) in March 2011 indicated that 17 out of the 40 English and Welsh local authorities which responded presented their own cases in Magistrates' Courts at that time. In the same survey 30 out of the 40 authorities indicated they would be interested in their officers presenting simple civil cases in the County Court.

Policy objective

10. Government policy in this area is to reduce recourse to the criminal law for relatively minor breaches as it would be more proportionate to pursue them through civil law. It is also intended to support the objectives of improving the effectiveness of enforcement whilst reducing the regulatory burden on businesses. The intended effects are to encourage more proportionate enforcement through making it easier for Trading Standards to use civil enforcement remedies, by seeking rights of audience for Trading Standards so that they can present cases in County Courts.

Options identification

11. In considering options for reform, 3 options were identified:

0: Do nothing;

1: Develop a class of membership for Trading Standards by an existing Approved Regulator;

2: Introduce a statutory provision to enable Trading Standards to present civil cases.

Options analysis

Option 0: Do nothing

12. Maintaining the status quo means that local authority Trading Standards Services which wish to present their own cases will be unable to do so. It also means Trading Standards will be unable to realise the potential savings.

⁶ Consumer Law Review: Call for Evidence, page 42, Department for Business, Enterprise and Regulatory Reform (BERR), May 2008, <http://www.bis.gov.uk/files/file45196.pdf>

⁷ Consumer Law Review: Call for Evidence: Responses C-L, page 108, Department for Business, Innovation and Skills (BIS), July 2009, <http://www.berr.gov.uk/files/file51998.pdf>

⁸ Based on evidence received by BIS from a local authority Trading Standards Service

Option 1: Development of a class of membership for Trading Standards by an existing Approved Regulator

13. Under this Option an existing Approved Regulator, which is already a designated body in respect of rights of audience, could apply to the LSB to change their regulatory arrangements and extend a class of membership to include individual Trading Standards professionals in order to grant the right to present these civil cases in County Courts to those individuals.
14. This would bring Trading Standards professionals under the regulatory control of the Approved Regulator, which would include setting standards that officers must meet before being able to undertake this work. This provides assurance that officers' competency to present cases in civil courts is adequately monitored and effectively maintained by a respected and trusted Approved Regulator.
15. For example, Ilex Professional Standards Ltd (IPS) has recently extended the class of membership to include Associate Prosecutors. This provides a useful model which could be applied to Trading Standards.
16. To ensure officers achieve an appropriate level of competency to undertake this work, they would need to have achieved significant Trading Standards experience and then undergo specific training. Courses could be accredited by the Approved Regulator and provided through a body, such as the Trading Standards Institute (TSI). Officers would also need to ensure their competencies were kept up to date through continual professional development.
17. We do not foresee that taking this Option forward would require any legislative changes, but is likely to require a further consultation by whichever Approved Regulator takes on this role. It will then be a matter for the Approved Regulator to determine the details of this change. This Option provides a cost-effective model.

Costs

Costs to the Approved Regulator

18. The Approved Regulator would recover its costs through charging fees to local authorities seeking accreditation for their staff and charging to accredit and inspect the training courses for those individuals.⁹ These are highlighted below. For the purpose of this Impact Assessment, this is a transfer from Trading Standards to the Approved Regulator. So the proposed change would be cost neutral to the regulator.

Costs to local authorities

19. **Whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the estimate of costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
20. An Approved Regulator states that a one off application fee of around £2,000 would be payable to apply to the Legal Services Board (LSB), for example, for approval to extend their membership to include Trading Standards. Running costs incurred by the Approved Regulator would be recouped their membership fees of around £150 per person per year. The level of fee is determined by the number of officers seeking accreditation and the costs incurred by the Approved Regulator.
21. Based on information from Ilex and TSI, to achieve initial qualification, officers will need to attend a 3 day course accredited by the Approved Regulator and gain 5 hours continuing professional development (CPD) in the first year, and then maintain 5 hours CPD each year after that. The Trading Standards Institute advises that the cost of a 3 day course is likely to be around £1,000 per officer.
22. The costs associated with CPD will vary depending on how the number of hours are achieved, e.g. through attending or making presentations, reading relevant materials, shadowing more experienced

⁹ Costs would include a course accreditation fee of £1,000 for the course for 3 years, plus an inspection fee of £500 for each course (for the first 3 courses) to assure quality

officers, or attending formal courses. If it is assumed that the 5 CPD hours cost just officers' time, it would cost $5 \times £20.6^{10} = £103$ per officer.

23. Only those officers who register with the Approved Regulator will be able to achieve civil rights of audience. From feedback to a BIS informal survey indicated 30 out of the 40 English and Welsh local authorities which responded indicated they might be interested in their officers being able to present cases in civil courts. None of the 4 Scottish local authorities which responded were in favour. This gives a response rate of 68%. However, given that the more enthusiastic authorities are more likely to have responded to the survey than those which had no interest in the issue, the number of local authorities that would seek to accredit their officers across the country may not be as high as the survey suggests. For illustrative purposes, if a third to a half of the 197 local authorities seek to accredit their officers, but a few might accredit more than one officer, a reasonable estimate of the number of accredited officers would be around 65 - 100.
24. For a 3 day course for an officer to obtain the initial qualification, the opportunity cost of training, in terms of lost output, is in the range £32,136 - £49,440 per annum.¹¹
25. Running costs incurred by the Approved Regulator would be recouped their membership fees of around £150 per person per year.¹² Again for illustrative purposes, assuming 65 to 100 officers become accredited, that would amount to £9,750- £15,000 per annum.
26. Therefore, the total opportunity costs of the qualification is estimated to be in the range of £116,000 to £177,000 per annum,¹³ which represents a present value of £0.98m to £1.50m over the life of the policy.¹⁴

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

Benefits

27. **Whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the estimate of benefits indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate.**
28. If Trading Standards are able to present cases in County Courts, this will reduce the enforcement costs for local authorities of bringing cases before the civil courts. Under Option 1 local authorities will not need to incur costs in hiring external lawyers to present simple cases. Brent Trading Standards provided costs of an example civil case. The case cost is around £3,375, including £1,800 on preparation before the court hearing, £1,125 on Counsel's fee, and £450 Court fees. The Council indicates that if they had rights of audience they would have saved £1,125 in Counsel's fees. London Borough of Brent Council has brought just one civil case so far.
29. In 2010-11, 445 civil cases were undertaken by Trading Standards. Details of all of these cases are not known. For illustrative purposes, if it is assumed that Counsel's fees were on average similar to that in the Brent case, and that all cases would in future be brought by Trading Standards without using Counsel, this would amount to savings of around $445 \times £1,125 = £500,000$ for these cases. However, this out-of-pocket saving would be offset by Council staff having to spend more time preparing and presenting cases instead. Also not all of the 445 cases would be in a local authority which had an accredited officer to present the case. Even if, as we expect, accredited officers would be loaned to other authorities wishing to bring a case within a region, for example, there will probably be some cases where an accredited officer is not available and in the largest and most complex

¹⁰ 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

¹¹ For 65 officers is $(65 \times (8 \times 3 = 24 \text{ hours}) + 5 \text{ hours CPD} = 29 \text{ hours}) \times £20.6$ - for 100 officers is $(100 \times (8 \text{ hours} \times 3 = 24 \text{ hours}) + 5 \text{ hours CPD} = 29 \text{ hours}) \times £20.6$ 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

¹² The fee is determined by the number of officers seeking accreditation and the costs incurred by the Approved Regulator

¹³ For 65 officers is (£1,103+£71,695+£6,695+£32,136+£9,750) for 100 officers is (£1,103+£110,300+£10,300+£49,440+£15,000). Rounded to nearest thousand

¹⁴ Assuming a default period of 10 years

cases, Trading Standards might choose to continue to appoint Counsel to present their case anyway. So the net saving would be less. BIS does not have the data to account for these factors at this stage, so for illustrative purposes, if it is assumed a net saving of between £500,000 and half of the possible total – therefore £250,000 per annum. Over the life of the policy, this saving amounts to £2.15m.¹⁵

30. If civil cases were much cheaper to bring, Trading Standards would probably respond by using civil procedure instead of criminal law in more cases. Essex County Council estimates that the number of civil cases it would bring might double if not treble if this reform were introduced, and we would anticipate a corresponding reduction in criminal prosecutions. More use of civil cases would enable enforcers to tackle minor and some larger corporate non-compliances more swiftly and cheaply than by using the criminal law. This should therefore deliver further financial savings for Trading Standards, as well as more proportionate sanctions for business. But this gain is difficult to quantify at this stage. We will explore the scope for such savings more fully in the consultation.

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

Option 2: Introduce a stand alone civil right of audience for Trading Standards

31. Under this Option a statutory provision would be introduced to give Trading Standards rights of audience to present cases in County Courts. However, the competency of Trading Standards professionals would still need to be addressed and assured through some form of training and monitoring to the satisfaction of the courts. However, without additional legislative change to the Legal Services Act, an existing Regulator would be unable to provide the competence assurance in this instance because they would have no regulatory reach under that Act. In the absence of assurance from an existing Approved Regulator, Trading Standards professionals may need to obtain a recognised formal qualification to demonstrate competency, otherwise there is a risk is that Judges could refuse to hear officers on the basis of a perceived lack of competence. An example of a suitable qualification is the Ilex Legal Executive lawyer qualification which takes 4 years to acquire.
32. Although, in theory it might be possible to circumvent the requirements of the Legal Services Act through primary legislation in this way, this is considered highly undesirable as the Legal Services Act ensures balance between opening up legal services to competition and ensuring appropriate professional standards.

Costs

33. **Whilst Government has made use of all available evidence, including the knowledge on the ground from Trading Standards professionals, we believe that the evidence available is not robust enough to provide a reliable estimate. Therefore, the estimate of costs indicated here are for illustrative purposes only. We will use the consultation to gather further evidence to refine the estimate of costs to local authorities.**
34. The Ilex Legal Executive lawyer qualification course fees are £5,300 (provided the course is completed by distance learning), exam fees are £888, and subscriptions are £900. Therefore, the total initial qualification costs are £7,088 per officer. Then the ongoing annual subscriptions would be £275 per officer.
35. For illustrative purposes, if 65 -100 officers wished to seek accreditation, they would need to complete an initial qualification course, the total costs would be in the range of $(65 \times £7,088 - 100 \times £7,088) = £461,000 - £709,000$ per annum. To maintain membership, there would be ongoing costs of $(65 \times £275 - 100 \times £275) = £18,000 - £28,000$ per annum in total for local authorities. Therefore these total costs of seeking and maintaining accreditation is in the range $(£461,000 + £18,000) - (£709,000 + £28,000) = £479,000 - £737,000$ per annum.
36. Over 10 years, assuming the same number of officers wish to gain this qualification per year this will cost in the range £4.1m – £6.3m for the life of the policy.¹⁶

¹⁵ Assuming a default period of 10 years and round nearest hundred thousand

¹⁶ Assuming a default period of 10 years and round nearest hundred thousand

37. It would take officers at least 4 years part-time study to qualify before officers could exercise these rights. This also assumes that officers study through distance learning in their own time.

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

Benefits

38. The estimate of the benefits to local authorities will be the same as in Option 1, but would take longer to materialise.

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

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

39. The proposal imposes no costs on business. It is deregulatory in the sense that it proposes to remove barriers to Trading Standards presenting cases in civil Courts which may encourage more proportionate enforcement through the use of civil enforcement. But any benefits to business are impossible to calculate. It places no additional burden on local authorities, as it will be optional for local authorities to make use of the accreditation procedure. It should offer modest savings for local authorities through avoiding hiring external lawyers.
40. The guide on OIOO indicates that specific enforcement action is out of scope for OIOO purposes.¹⁷ Therefore, it is concluded that the measure is OUT of scope for OIOO purposes. Although Trading Standards Services (local government) will financially benefit from this removal of a barrier, the savings cannot be ‘banked’ as they are not part of business or civil society.

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

41. The level of analysis in this Impact Assessment is less than for an Impact Assessment that would have a greater effect on business.

Risks and assumptions

1. Throughout the text we have used a number of assumptions to underpin the initial estimates of cost and benefits associated to this policy. We do acknowledge they are not totally robust, given that precise and reliable information is not available on these areas. The estimates for the costs and benefits are for illustrative purposes only. The consultation might help us refine costs and benefits estimates.
42. We will seek further evidence of the number of local authorities and officers who wish to seek rights of audience in order to present cases in County courts.
43. The fewer the number of local authorities that wish to use Trading Standards staff to present civil cases, the higher will be the cost per person. Also, if local authorities do not present civil cases very frequently, it will become less cost effective for them to maintain officers’ competencies to do this work compared to hiring external lawyers when required. Increased costs will in turn reduce the effectiveness of this option to encourage local authorities to use more proportionate civil law enforcement. Conversely, if Trading Standards increase the use of civil enforcement after acquiring rights of audience, the cost effectiveness will improve.

¹⁷ Paragraph 16 - Measures that are out-of-scope of the OIOO Rule, include: viii. **specific enforcement action** - individual enforcement or inspection activities, or actions to ensure compliance with regulations;” One-In, One-Out (OIOO) Methodology, page 5, July 2011

44. The Impact assessment assumes that the number of local authorities taking up the rights will be in the range of 65-100.
45. The risk that officers wishing to present civil cases will not maintain their competency is mitigated by the fact that officers will be required by the Approved Regulator to demonstrate they have maintained their competency.

Statutory Specific Impact Tests

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

Justice Impact Test

47. We are discussing with the Ministry of Justice to more fully to ascertain the size of any impact with more certainty and will complete a Justice Impact Test before the consultation is published, which is expected in January 2012.
48. A useful example is from Essex County Trading Standards which brought proceedings in 5 civil cases in 2010-11. The Council reported that normally it collates evidence from a large number of complainants (e.g. between 11 – 71 complainants) before bringing civil proceedings due to the costs involved in bringing the proceedings. There are often a number of court attendances to hear the case, due to non-attendance by Respondents. Hearings normally take 45 minutes and there may be around 3 hearings before the case is concluded. However, if officers in Essex Council are able to present civil cases themselves, the Council envisages that it would be able to bring proceedings earlier and 'nip cases in the bud'. They might then bring about up to 10 -15 civil cases per year. But these would be smaller in nature e.g. with evidence from perhaps 4 complainants. It may also lead to a reduction in the number of criminal prosecutions being brought. Therefore, any increases in court time and costs are likely to be negligible, and more than compensated for by a corresponding reduction in costs and court time being used in the Magistrates and Crown courts for criminal trials.

Summary and preferred option with description of implementation plan

49. Evidence suggests that the lack of ability of Trading Standards to present cases in civil courts acts as a barrier to the use of more proportionate enforcement through the civil enforcement route.
50. It is considered undesirable to circumvent the requirements of the Legal Services Act 2007 by inserting a statutory provision in primary legislation (Option 2). The key issue is that the competency of Trading Standards professionals is addressed and assured through some form of training and monitoring, which is more cost effective with the assistance of a trusted, existing Approved Regulator (Option 1). The consultation will invite stakeholders to provide further information on the costs associated with this option.
51. The proposed Consumer Bill of Rights will be used to make any legislative changes proposed in this impact assessment. All Acts are now subject to post legislative scrutiny 3-5 years after Royal Assent. If the Consumer Bill of Rights is brought forward to Parliament, it is likely to be in 2013 and it could receive Royal Assent in 2014. Therefore, a review of these proposals would be carried out as part of the post-legislative review in 2017-2019.

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