

EXPLANATORY MEMORANDUM TO
THE CANCELLATION OF CONTRACTS MADE IN A CONSUMER'S
HOME OR PLACE OF WORK ETC. REGULATIONS 2008

2008 No. 1816

1. This explanatory memorandum has been prepared by the Department for Business Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations provide a consumer with the right to cancel a contract for goods or services made during a visit by a trader, whether unsolicited or solicited, to the consumer's home, place of work, the home of another person, or on an excursion organised by the trader away from his business premises. This right is exercisable during a cooling-off period of 7 days from receipt of notice of the right to cancel from the trader. These Regulations replace the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987 ("the current Regulations").
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 These Regulations make first use of powers under section 59 of the Consumers, Estate Agents and Redress Act 2007 ("the 2007 Act"). The Regulations are subject to the affirmative resolution procedure as provided for in section 62(3)(f) of that Act.
 - 3.2 The Department draws attention to an issue relating to the ambit of section 2(2) of the European Communities Act 1972 ("the 1972 Act"). Directive 85/577/EEC to protect the consumer in respect of contracts concluded away from business premises ("the Directive") is a minimum harmonisation directive: article 8 provides that the Directive shall not prevent member states from adopting or maintaining more favourable provisions to protect consumers in the field which it covers. Article 1.2 provides that the Directive shall not apply to contracts for the construction, sale or rental of immovable property but goes on to provide that contracts for the supply of goods and their incorporation in immovable property or contracts for repairing immovable property fall within scope.
 - 3.3 Schedule 3 paragraph 1(a) of these Regulations provides cancellation rights for contracts for the construction of extensions, patios, conservatories and driveways. The Department contends that this additional consumer protection is within the vires of section 2(2)(b) of the 1972 Act as falling within the natural meaning of "arising out of or related to" being protection that applies to contracts made away from business premises and in relation to unsolicited visits to the consumer, the link to the Directive being in no way tenuous.

Article 8 also establishes a connection with the implementation of a Community obligation.

- 3.4 In terms of policy, as there is domestic vires under section 59 of the 2007 Act in respect of such construction contracts made during solicited visits and since the consultation response has strongly urged the need for cancellation rights in respect of these kinds of construction contracts where vulnerable consumers at home are liable to be significantly disadvantaged, there would be a lacuna if a higher level of protection was afforded to such contracts made during solicited visits while there was none for those made during unsolicited visits. This would not be a consistent approach.

4. Legislative Background

- 4.1 The current Regulations implement the Directive. The Directive provides cancellation rights within a cooling off period of a minimum 7 days, to a consumer who enters into an agreement with a trader to buy goods and services during an unsolicited visit by the trader to the consumer's home, place of work, the home of another consumer or during an excursion organised by the trader away from his business premises.
- 4.2 The 2007 Act includes a power to enable the Secretary of State to make regulations entitling a consumer, who is party to a contract made during a solicited visit by a trader, to cancel the contract.
- 4.3 These Regulations will (under the vires of the 2007 Act and section 2(2) of the 1972 Act) revoke the current Regulations; implement the requirements of the Directive in relation to contracts concluded as a result of unsolicited visits; extend those requirements, including the cooling off period and cancellation rights to contracts made during solicited visits by traders.
- 4.4 A transposition note is included at Annex A

5 Territorial Extent and Application

- 5.1 These regulations apply to all of the United Kingdom.

6 European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State with responsibility for consumer and competition policy, Gareth Thomas MP has made the following statement regarding human rights:

“In my view the provisions of the Cancellation of Contracts Made in a Consumer's Home or Place of Work etc Regulations 2008 are compatible with the European Convention on Human Rights.”

7 Policy Background

- 7.1 In 2002 Citizens Advice published a report, 'Door to Door' which looked at a wide range of goods and services sold at the door and problems reported to Citizens Advice. The Report was submitted to the Office of Fair Trading(OFT) as a super-complaint. In response to the super-complaint, the OFT launched a market study of doorstep selling. In May 2004, the OFT published a report which included a number of recommendations for improving consumer protection in the area of doorstep sales.
- 7.2 Between July and October 2004, the Government carried out a public consultation based on the recommendations included in the OFT Report. In September 2006, the Government published its response to the consultation. It announced that it would take forward measures to (a) extend the cooling off period and cancellation rights, which applied to contracts made during unsolicited visits by traders, to contracts made during solicited visits by traders (of the 350 responses received 343 were in favour of this measure), (b) require a notice of the right to cancel the contract be prominently and clearly displayed within the contract, where the contract is completed wholly or partly in writing (of the 372 responses received 365 were in favour of this measure) and (c) encourage greater transparency on prices and greater willingness to provide written quotes (of 343 responses received 333 were in favour of this measure).
- 7.3 Measures to encourage greater transparency on prices and greater willingness to provide written quotes (measure (c) above) are being taken forward via voluntary industry self regulation and in line with the Office of Fair Trading's Consumer Codes Approval Scheme.
- 7.4 Measures to extend the cooling off period and cancellation rights, which currently apply to contracts made during unsolicited visits by traders, to contracts made during solicited visits by traders (measure (a) above) required primary legislation. In November 2006, the Government introduced the Consumers Estate Agents and Redress Bill. The Bill gained Royal Assent in July 2007 and included a power to enable the Secretary of State to make regulations entitling a consumer, who is party to a contract concluded as a result of a solicited visit by a trader, to cancel the contract.
- 7.5 On 29 January 2008, the Government published a formal consultation on these draft regulations. The Consultation sought the views of businesses, consumers, enforcement authorities and other interested parties on provisions to take forward measures (a) and (b) in paragraph 7.2 above. The Consultation closed on 22 April 2008.
- 7.7 The Government believes that these regulations will make the law simpler and clearer for consumers, businesses and enforcement agencies. Consumers will be less at risk from disreputable traders exploiting the different treatment of solicited and unsolicited visits; businesses will, in general, be able to work with one contract for both unsolicited and solicited visits, reducing ongoing costs in training sales staff; and enforcers will not have to use valuable

resources determining whether a visit was solicited or not as the same rules will apply.

7.8 A consumer will be able to receive goods, or the provision of services before the end of the cooling off period if that is what they want. These regulations provide a balance of rights and responsibilities on the part of consumers as well as traders to help ensure that cooling off periods are effective and are not undermined, and that traders are not reluctant to provide goods or services within the cooling off period for fear of non payment by the consumer.

7.9 These regulations include measures to:

- **Extend the cooling-off period and right to cancel under the Regulations to contracts made during a solicited visit by a trader.**
- **Set the threshold at which the Regulations apply at a total payment value of £35.** The majority of respondents wanted the £35 threshold to stand. There is little evidence of consumer detriment for contracts with a value below £35 limit. However, we appreciate the argument put forward by the majority of business representatives that the limit is too low and have recommended that the Commission should consider raising the threshold in its review of the Doorstep Selling Directive.
- **Set the cooling off period at 7 calendar days.** Responses to the consultation reflected a broad range of opinion on the appropriate length of the cooling-off period. On balance, the arguments put forward for an increase in the length of the cooling off period were not persuasive as they provided insufficient quantifiable evidence of any potential reduction in consumer detriment. Maintaining the cooling-off period at 7 days minimises the length of time that a consumer will be required to take reasonable care of any goods to be returned to the trader and should have the least impact on business in terms of additional costs incurred through damaged goods. Setting the same length of cooling off period for contracts resulting from unsolicited visits and for contracts made from solicited visits will make the law simpler and clearer for consumers, businesses and enforcement agencies. The majority of respondents felt that the cooling off period should be set in ‘calendar’ days rather than ‘working’ days as it makes it easier for the consumer and the trader to calculate the end of the cooling off period.
- **Require that the notice of the right to cancel be prominently displayed in the same document, where the contract is completed wholly or partly in writing.** BERR considered a broad range views and suggestions with regard to the appropriate format of the notice of the right to cancel. It is important that the notice should be sufficiently prominent to attract the attention of the consumer but not overly prescriptive in terms of format and layout. These Regulations require that the notice must be ‘easily legible’ and where incorporated in a contract or another document must be set out in a separate box with the heading ‘Notice of the Right to Cancel’.

- **Require that where a consumer has agreed to performance of the contract beginning before the end of the cooling off period, the trader must include in the notice of the right to cancel, a statement that payment may be required to be made if the contract is subsequently cancelled.** For a consumer to make an informed decision to consent to performance of the contract beginning before the end of the cooling off period, it is reasonable to expect that a trader should provide the consumer with adequate and clear information regarding the consumer's liability to pay for goods and services provided up to the point of cancellation.
- **Require that the consumer must record his agreement in writing to performance of the contract beginning before the end of the cooling off period if that is what the consumer wishes.** A clear majority of respondents to the consultation agreed that for certain specified contracts the consumer should be required to provide written agreement for performance of the contract to begin before the end of the cooling off period. In agreeing to work beginning before the end of the cancellation period the consumer would retain the right to cancel the contract. However, the consumer would also be under a duty to pay in accordance with the 'reasonable' requirements of the cancelled contract for any goods or services supplied before the cancellation.

The Government recently introduced the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs will complement these regulations by prohibiting all unfair (mainly marketing and selling) practices. The CPRs will help to ensure that consumers are able to make free and informed choices before, during and after a purchasing decision: free and informed, because they have not been misled (either by action or omission) treated aggressively or otherwise dealt with unfairly.

- **Provide that failure to include a statement regarding liability to pay or other required information in the notice of the right to cancel will constitute an offence, at level 5 of the standard scale, relating to failure to provide notice of the right to cancel.** Data provided by Consumer Direct for 2006 and 2007 showed that, where the purchase method was doorstep selling, the average value of products / services complained about to Consumer Direct in those years was in the region of £4,000. We have been persuaded by the arguments put forward by a number of enforcement bodies that the maximum penalty for the failure to provide a proper notice of a right to cancel should be increased to the statutory maximum of level 5 (£5000).
- **Extend the scope of the Regulations to apply to contracts for building of extensions, conservatories, patios, and driveways.** According to data provided by Consumer Direct, home improvements and maintenance are the most complained about aspects of doorstep sales, and the potential for consumer detriment is high because of the value of the goods or services provided.

- **Provide for the automatic cancellation of a related credit agreement where a cancellation notice which cancels a contract for goods or services is served on a trader.** When a consumer serves a cancellation notice on a trader to cancel a contract for goods or services to which these Regulations apply, any related credit agreement will automatically be cancelled, with no further action required by the consumer.

Guidance to Business on Compliance with these Regulations

- 7.10 BERR and the Office of Fair Trading have developed a joint communication strategy to ensure that consumers are aware of their rights and new protections, and that businesses understand the changes in consumer law and are aware of their responsibilities under the new regulations in time for the commencement date of 1 October 2008. Guidance for business will be available as soon as the Regulations are approved by Parliament

8 Impact

- 8.1 An Impact Assessment is attached at Annex B.
- 8.2 Government expects these measures to deliver a net benefit to the economy of £53 million over the next 7 years. The majority of the benefit will result from an estimated £90m reduction in consumer detriment. Consumers will now have the right to cancel a contract for goods or services they do not want, or were pressured into buying, regardless of whether the contract resulted from an unsolicited or solicited visit by a trader to their home. Government expects the cost to business of making sales that are subsequently cancelled by the consumer to be £36 million over 7 years. Government estimates a one off administration burden to business of £770k to cover the cost of incorporating the notice of the right to cancel in the written contract. This cost will be offset in the net reduction programme identified in BERR's 2007 simplification plan. We do not expect the measures to have any significant impact on the costs of the public sector. However, the policy will be reviewed in October 2011 to establish the actual costs and benefits and the achievement of the desired effects.

9 Contact

Steve Hill, Competition and Consumer Policy at the Department for Business, Enterprise and Regulatory Reform, telephone number 0207 215 3134 or email: steve.hill@berr.gsi.gov.uk can answer any queries regarding these Regulations.

Summary: Intervention & Options – ANNEX B		
Department: Business Enterprise and Regulatory Reform (BERR)	Title: Impact Assessment of Proposed, 'Cancellation of Contracts Made in a Consumer's Home or Place of Work e.t.c. Regulations 2008'	
Stage: Final	Version: 1	Date: 1 May 2008
Related Publications: 'Door to Door', September 2002; 'Doorstep Selling', May 2004; Response to Public Consultation & Regulatory Impact Assessment, September 2006		

Available to view or download at:

<http://www.berr.gov.uk/consultations/page44191.html>

Contact for enquiries: Steve Hill

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

Under current Doorstep Selling Regulations a consumer has cancellation rights for a contract made as a result of an unsolicited visit by a trader but no cancellation rights where a contract is a result of a solicited visit by a trader. Government action is necessary to remove opportunities for unscrupulous traders to exploit the distinction between unsolicited and solicited sales, and to simplify consumer rights by making the Regulations easier for consumers, business and enforcement officers to understand.

What are the policy objectives and the intended effects?

To reduce consumer detriment by providing all consumers with the 'safety net' of a cooling off period and cancellation rights whether or not the contract was made during an unsolicited visit or a solicited visit by a trader;

To improve consumers' awareness of their rights by requiring a notice of the right to cancel to be included within the contract where the contract is completed wholly or partly in writing:

What policy options have been considered? Please justify any preferred option.

Following the OFT report, 'Doorstep Selling' (May 2004), the Government consulted on 7 legislative options for improving the protection of consumers purchasing goods and services away from the business premises. These options were fully considered in the RIA, 'Doorstep Selling and Cold Calling' (September 2006) from which (a) extending to solicited visits the cancellation rights and cooling off period that consumers currently enjoy for unsolicited visits, and (b) requiring a notice of the right to cancel the contract to be prominently and clearly displayed in the same document (where the contract is wholly or partly in writing) were announced as options the Government would take forward. In this Impact Assessment 3 options for the financial threshold at which the new legislation would be applicable were considered, as well as 3 options for the length of the cooling off period.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

October 2011

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

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:

Gareth Thomas

Date: 3rd June 2008

Summary: Analysis & Evidence

Policy Option: A1 & B1	Description: A combination of a threshold of £35 and a cooling off period of 7 days
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' <u>Business</u> : Costs of making sales that are later cancelled by consumers.
	One-off	Yr	
	£		
	Average Annual Cost (excluding one-off)		
	£ 5.7m	Total Cost (PV)	£ 36.0m.
Other key non-monetised costs by 'main affected groups' <u>Business/Consumers/Enforcement Agencies</u> : cost of familiarisation with the new legislation. <u>Business</u> : Cost of including cancellation notice in the contract. <u>Enforcement Agencies</u> : Cost of enforcement (more businesses will fall within scope of the regulations)			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' <u>Consumers</u> : potential reduction in detriment
	One-off	Yr	
	£		
	Average Annual Benefit (excluding one-off)		
	£14.22m.	Total Benefit (PV)	£ 90.0m.
Other key non-monetised benefits by 'main affected groups': <u>Business</u> : potential growth of doorstep selling market due to increased consumer confidence/awareness of rights; Reduction in training/printing costs (because business will be able to use same contract for both solicited and unsolicited visits etc). <u>Enforcement</u> : savings in resources – generally no need to distinguish between solicited/unsolicited visits by traders <u>Consumers</u> will be less at risk from unscrupulous traders exploiting the different treatment of unsolicited/solicited visits; easier to make complaints if dissatisfied as all types of visits will be covered			

Key Assumptions/Sensitivities/Risks

A key assumption is that consumers become aware of their rights and exercise them.

Price Base 2006 Year	Time Period Years 7	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 53.92m.
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	October 2008			
Which organisation(s) will enforce the policy?	Trading			
What is the total annual cost of enforcement for these	£ ?			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU	Yes			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas	£ n/a			
Will the proposal have a significant impact on	No			
Annual cost (£-£) per organisation (excluding one-off)				
Are any of these organisations	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)

Increase of	£ 769,362	Decrease of	£	Net Impact	Increase £
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Key: Annual costs and benefits: Constant Prices

(Net) Present Value

Evidence Base (for summary sheets)

A. Strategic Overview

1. The current Regulations, the 'Cancellation of Contracts Concluded Away From Business Premises Regulations 1987' implement Directive 85/577/EEC ('the Directive') to protect the consumer in respect of contracts negotiated away from business premises. The Directive provides cancellation rights to a consumer who enters into an agreement with a trader to buy goods or services during and unsolicited visit (i.e. where the visit did not take place at the express request of the consumer) in their homes or places of work, or the home of another consumer or during an excursion organised by the trader.
2. Those rights provide for a cooling off period of 7 days, during which time the contract may be cancelled by the consumer, and a requirement that the trader provides the consumer with a written notice of cancellation rights. There are various exemptions provided for in the Directive and these are reflected in the current Regulations.
3. The Directive is a minimum harmonisation directive so additional protection may be created for consumers in this field. It is up to member states to decide.
4. In September 2002, the National Association of Citizen Advice Bureaux (NACAB, now Citizens Advice) published a report, 'Door to Door' which looked at a wide range of goods and services sold at the door and problems reported to Citizens Advice Bureaux (CAB).
5. NACAB saw the main problems in doorstep selling transactions as being lack of awareness about consumer rights; consumers being misled and subject to high pressure sales techniques; cancellation rights and cooling off periods being limited to certain types of doorstep sales which can confuse consumers; cancellation rights being ignored by salespersons; and the goods sold to consumers being unsuitable for their needs or not meeting their requirements.
6. The Report was submitted to the Office of Fair Trading (OFT) as a super-complaint within the terms of the Enterprise Act 2002 and in November 2002 the OFT launched a study of the doorstep selling market.

7. The OFT published their doorstep selling market study report in May 2004. The report included 7 recommendations to better protect consumers purchasing goods and services from salespersons in the home.
8. The Government responded to the OFT Report by launching a public consultation in July 2004 (URN 04/1331). The purpose of the consultation was to canvass as wide a range of views as possible on the OFT recommendations from business, consumers, enforcement bodies and other key stakeholders.
9. In September 2006, the Government published a full regulatory impact assessment of the 7 recommendations included in the 2004 OFT Report (URN 06/1807), and announced - in its formal response to the public consultation (URN 06/1802) - that it would take forward measures:
 - (a) Extending the-cooling off period and cancellation rights which currently apply to a contract made during an unsolicited visit by a trader, to contracts made during a solicited visit by a trader;
 - (b) Requiring that a notice of a right to cancel the contract be prominently and clearly displayed in the same document where the contract is completed wholly or partly in writing; and
 - (c) Requiring firms trading via doorstep selling to provide consumers with greater transparency on process for their products and demonstrate greater willingness to provide written quotes
10. The first of these measures ((a)) was taken forward through the Consumers, Estate Agents and Redress (CEAR) Act 2007. The Act includes a power to enable the Secretary of State to make regulations entitling a customer who is party to a protected contract to cancel the contract. A protected contract under the Act is a contract concluded as a result of a solicited visit.
11. We now propose to revoke the current Regulations and make new Regulations (under the vires of the CEAR Act 2007, and section 2(2) of the European Communities Act 1972) that implement both the requirements of the Directive 85/577/ECC in relation to unsolicited visits and measures 'a' and 'b' (above).
12. Measures to encourage greater transparency on prices and greater willingness to provide written quotes (c) are being taken forward via voluntary industry self regulation and in line with the OFT's Consumer Codes Approval Scheme.

B. The Issue

13. Whilst the current Regulations do afford consumers some protection when they purchase goods and services in their home, evidence suggests that the current Regulations are not working as well as they could. The original legislation assumed most problems would occur when the consumer hadn't requested a visit. However, a psychological study, referred to in the OFT 2004 report on Doorstep Selling, showed that consumers are no better prepared to resist pressure selling techniques if they have solicited the visit than if they are cold called. More complaints are made about the doorstep sales of high value products and the majority of those high value sales are made during solicited visits.
14. With the current Regulations providing no cooling off period or cancellation rights for contracts made as a result of a solicited visit by a trader, consumers can find themselves, often inadvertently, locked into contracts they regret making.
15. Consumers are not sufficiently aware of their rights and the extent of protection they have under the law. A survey carried out by the OFT found that only 6% correctly identified that they had more rights when purchasing goods and services in the home. Of those only 7% correctly identified what those rights were. Evidence collected by Citizens Advice suggests many people try to cancel their contracts, but are told they cannot, often as a result of abuse of the current distinction made in the Regulations between unsolicited and solicited calls.
16. A survey carried out by LACORS, and included as an annex to the OFT report, obtained data from authorities that collectively represent 26% of the UK population. In an 18-month period there were over 5,500 doorstep selling complaints recorded. A large number of these complaints related to selling practices. Given the low level of awareness amongst consumers of their rights, this sort of level of complaints might be under-representing the scale of any problem.
17. There are an estimated 15,000 complaints in relation to doorstep sales every year (i.e. the sale of overpriced and/or substandard goods or services). Many more go unreported. OFT estimate that the average amount of money paid in relation to each complaint is £2,000, so it is possible that in excess of £30 million is handed over to rogue traders every year. Consumers lose out of the protection offered by the current regulations and legitimate businesses suffer, as they have to put increased resources into distinguishing themselves from dishonest traders.

C. Objectives

18. Extending the cooling off period and cancellation rights to include contracts made as a result of solicited visits should make the law

simpler and clearer for the consumer, business and the enforcement agencies.

19. All consumers will have the 'safety net of a cooling-off period'. Consumers who at present avoid doorstep selling due to being uncomfortable with the situation may now participate in this market as they may be given greater confidence because of their ability to cancel purchases. There will also be a benefit to business by possibly expanding the number of potential customers.
20. The scope of the Regulations will now extend to apply to extensions, conservatories, patios, and driveways. Home improvements and maintenance are the most complained about aspects of doorstep sales, and the potential for consumer detriment is high because of the value of the goods or services provided.
21. Businesses will generally be able to work with one contract for both solicited and unsolicited visits, reducing ongoing costs in production of contracts and training of sales staff. The simpler rules will ensure that businesses do not need to spend time establishing whether their sales visit is solicited or unsolicited.
22. Enforcement Agencies will not have to use valuable resources on determining whether a visit was solicited or not as in general the same rules will apply, making it easier to follow up complaints and enforce the regulations.
23. Requiring notice of cancellation rights, and how they may be exercised, to be prominently and clearly displayed in the contract will help to make consumers more certain of their rights.
24. The effectiveness of the new Regulations in meeting the objectives can be monitored via the Office of Fair Trading who collate statistics of consumer complaints via local Trading Standards Offices and Consumer Direct. Over time we would expect to see a reduction in the number of complaints about this sales channel.

D. Options Identification

This Impact Assessment will consider options in relation to:

- Extending to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits by traders

Options include:

- the value of sale threshold at which the new Regulations would apply:

Option A1: £35 for both unsolicited and solicited visits;

Option A2: A zero limit for both unsolicited and solicited visits;

Option A3: A higher limit for solicited visits e.g. £500, leaving the limit for unsolicited visits at £35

- the length of the cooling-off period for unsolicited and solicited visits:

Option B1: Extending the 7-day cooling off period to solicited visits;

Option B2: Extending the cooling off period to 10 days for both solicited and unsolicited visits;

Option B3: Extending the cooling off period to 14 days for both solicited and unsolicited visits

E. Analysis of the Options

The Value of Sale Threshold at which the New Regulations would apply to Solicited Visits

25. Under the terms of Directive 85/577/EEC (which applies to unsolicited visits only) Member States can choose to exclude from the Regulations any contract under which the total value of sale does not exceed a value of €60. The current UK Regulations implement that option and set a threshold which excludes any contract under which the total value of sale does not exceed £35 (for unsolicited visits only).

26. The provisions of the Directive mean that - at present - the value of sale threshold for unsolicited visits cannot be set any higher than £35, although we do have the option to lower the limit or to remove the limit altogether. As the Directive applies to unsolicited visits only, we do have the option to set a higher threshold for solicited visits in the new Regulations.

Costs and Benefits of Option A3 - A higher limit for solicited visits e.g. £500, leaving the limit for unsolicited visits at £35

27. Option A3 is the 'do minimum' option as it provides the least protection and therefore is the smallest change to the current situation for solicited visits. Arguably, Option A3 would place the minimum cost of compliance on business as any contract made as a result of a solicited visit, with a value of under £500 would be outside the scope of the regulations. Option A3 would not address consumer detriment up to £500 for contracts made as a result of solicited visits. Option A3 would not fulfil the objective of simplifying the law in this area. Different thresholds for unsolicited and solicited visits would be confusing to business, consumers and enforcement agencies. It would also leave open the possibility of rogue traders attempting to avoid the Regulations by exploiting the different thresholds for solicited and unsolicited visits.

Cost and Benefits of Option A2 - A zero limit for both unsolicited and solicited visits

28. Option A2 would extend the right to cancel contracts to small purchases of any value, making this the most interventionist option. Such purchases form a small part of total sales on the doorstep. The OFT estimated sales of goods with a value of less than £500 to be £200m out of an estimated doorstep total of £2400m although they note that some small sales are likely to be unreported. Sales of cosmetics alone were around £90m and most of these were believed to be under £35.

29. In addition to the small part that they form of total sales, a high proportion of small items are likely to be repeat purchases. Traders will therefore have an incentive to build up a clientele and customers will have the opportunity to avoid those traders or goods that they consider do not offer good value for money. These factors lead us to believe that there is unlikely to be significant consumer detriment in purchases under £35. Business costs of compliance with the legislation on the other hand are likely to be significant relative to the cost of the goods and any consumer detriment on them.

Analysis of Option A1 - A £35 limit for both unsolicited and solicited visits

30. Option A1 is our preferred option. It avoids extending the legislation to areas where consumer detriment is likely to be low. It keeps the law simple for consumers, business and enforcement agencies, and removes the possibility of rogue traders attempting to avoid the Regulations by exploiting the different thresholds for unsolicited and solicited visits.

Costs of Preferred Option (Option A1) - A £35 limit for both unsolicited and solicited visits

31. Under the preferred option, an increase in cancellations from the current situation would be expected. We estimate that cancellations would increase to 8% at the most, i.e. the percentage of consumers that are successful in cancelling unsolicited sales. Businesses will need to do more work to get the same number of sales.
32. It is often the case that where customers cancel a contract they still want the product but decide to go to a different supplier. Alternatively they will be deciding to cancel because they genuinely do not want the goods or services or felt that they were pressured into the sale. Arguably, the risk from greater cost from cancellation could incentivise companies selling in the home to resist pressure selling and ensure the customer really wants their product.
33. The increased number of cancellations would create an opportunity cost i.e. the time that staff spend on securing a sale that is then cancelled, and that could have been spent doing something more productive.
34. Businesses and enforcement bodies will face enforcement costs.

Benefits of Preferred Option (Option A1) - A £35 limit for both unsolicited and solicited visits

35. Consumer detriment will decrease as consumers who wish to cancel a purchase over £35 made from a solicited call will be able to do so.
36. Keeping the minimum threshold of the value of goods sold from solicited calls, above which these regulations will come into play, in line with that of unsolicited goods keeps the law simple for consumers, businesses and enforcement agencies.
37. Keeping the minimum threshold for solicited calls the same as for unsolicited calls removes the possibility of rogue traders attempting to avoid the regulations by exploiting different thresholds for solicited and unsolicited calls.

The Length of the Cooling Off Period for Solicited and Unsolicited Visits

38. Cooling off periods in which a contract can be cancelled can provide clear benefits to consumers. They are important to discourage the excesses of high pressure selling and give consumers the opportunity to shop around. At present, the current regulations only provide a cooling off period and cancellation right to those sales made following an unsolicited visit.
39. The length of cooling off period in the current regulations (which apply to unsolicited visits only) is 7 calendar days from the date the contract is made.

40. Responses to the formal consultation on the proposed Regulations suggest that stakeholder groups have different opinions on the appropriate length of the cooling off period. Consumer Groups generally support a longer cooling off period - up to 14 days. A number of enforcement bodies favour retention of the 7 day period while other enforcement bodies recommend an increase to either 10 or 14 days. Some business stakeholders argue that a 14 day cooling off period would be too long and would increase the risk of abuse by the consumer and increase the period of time that the consumer needs to take care that the product stays as new (in the event that the consumer returns the goods to the trader following cancellation of the contract).
41. We recognise that there is an argument for extending the cooling off period (possibly to 10 or 14 calendar days) in order to ensure that consumers have sufficient time in which to consider whether or not to cancel the contract. However, we received no quantifiable evidence on the question, although many responses provided anecdotal evidence. On balance we do not consider that an overwhelming case has been made with convincing evidence to extend the length of the cooling off period. We have therefore decided to set the cooling-off period at 7 days.

Costs and Benefits of Option B2 and Option B3 - Extending the cooling off period to 10 days (Option B2) or 14 days (Option B3) for both solicited and unsolicited visits

42. Option B2 and Option B3 would both have the benefit of providing the consumer with a longer period of time (than the current 7 days) to shop around, and to cancel any contract they regret making. However both Option B2 and Option B3 would increase the period of time that the consumer would need to take care that any product, delivered before cancellation of the contract, would need to be kept as new (in the event that the products had to be returned to the trader on cancellation of the contract).

Analysis of Option B1- Extending the 7-day cooling off period to solicited visits

43. The length of the cooling off period was not one of the issues included in the scope of the OFT, market study on doorstep selling (May 2004), and at this stage, whilst we have anecdotal evidence from a number of stakeholders to support an increase in the length of the cooling off period we do not have sufficient statistical evidence to support such a change.
44. The Direct Selling Association (DSA) represents a number of companies with average order values of between £500 and £1500 - almost all these transactions result from solicited visits. The companies involved all offer a 14 day cancellation period in line with the DSA's code of practice. Data provided by these companies show that the majority of cancellations are within 7 days. The DSA data suggests that the majority of consumer detriment can be captured within a 7-day cancellation period.
45. Our preferred option is Option B1 to leave the cooling off period at 7 days for unsolicited visits and extend its application to include solicited visits. Setting the same length of cooling off period for contracts made as a result of unsolicited visits by traders, and for contracts made as a result of solicited visits by traders will help to keep the law simple and make it much easier for consumers and business to understand. However, we will be pleased to consider any views and evidence put forward in support of an increase in the length of the cooling off period before Ministers make a final decision.

Costs of the Preferred Option (Option B1) - Extending the 7-day cooling off period to solicited visits

46. Assessing the impact on business of an extension of the 7 day cooling off period to solicited visits is difficult because there is no reliable data available on how many companies engage in doorstep selling.

The costs involved in adopting this measure are:

- Re-printing contracts
- Informing/training salespeople of the cooling-off period
- Potential additional cancellations

47. At the current time, doorstep salespeople may use different contracts depending on whether their visit was solicited or unsolicited. This measure would allow salespeople to use the same contracts. Costs involved are likely to be negligible for this reason and probably outweighed by the ongoing benefits of using the same contracts.

48. There is an administrative burden attached to incorporating the notice of cancellation into the contract. We estimate the total cost to be approximately £770,000. This is based on an estimated industry size of 341,894 sellers from evidence received from the Consultation.
49. Doorstep salespeople will need to be informed about the changes to procedures, but as the procedure will not be new to them, this will again be negligible.
50. The major impact on firms of introducing a cooling-off period for solicited sales visits would be in time spent on sales subsequently cancelled, for example the salesperson's time, administration time, potentially work by designers/technicians - time that the firm could have spent on pursuing other sales. Under the preferred option an increase in cancellations would be expected.
51. Time spent by salespeople in people's homes can result in a sale, a sale that is later cancelled or no sale at all. Success rates vary across different types of doorstep selling. Cold calling yields roughly 1 sale in 10-12 visits, whilst professional salespersons with a pre-arranged appointment might achieve 1 in 2-3¹. Extending cancellation rights therefore might have the effect of slightly reducing the success rate of doorstep sales. As a result, additional sales and administration time may be spent on achieving the same number of sales.
52. The OFT report (para 5.22) shows that roughly 8% of consumers were successful in cancelling unsolicited sales, compared with a figure of 4% for solicited sales (4% of customers of high value solicited sales attempted to cancel their purchase and we are assuming here that they were all successful in cancelling) - this figure is quite variable, and often cancellation can result due to failure to qualify for credit facilities. Double-glazing accounts for the majority value of doorstep sales. The extension of this right to solicited visits might be expected to result in a similar or higher percentage of cancellations. An estimate for what this might cost conservatory and double glazing doorstep sellers is £5.74 million² per year. However, there are many reasons to believe that the costs will not be so high. Often, work on the customer's order will not commence in the seven-day cooling-off period, in which case costs incurred are just the salesperson's time and potential foregone sales. In addition, many companies in this area already offer cancellation rights on solicited visits, so for them

¹ Doorstep Selling: A Report on the Market Study, OFT 2004, excludes switching energy supplier.

² This is based on sales of £1.85bn (estimate of annual value of double glazing and conservatory doorstep sales from OFT report), an average purchase price of £4,000, which suggests 462,500 sales visits concluding in a sale. OFT report estimates that 62% of high value doorstep sales result from solicited visits, suggesting 286,750 successful solicited sales visits. Assuming an additional 4% of solicited sales are cancelled, this leads to 11,500 additional cancelled visits. Taking a generous assumption of each unsuccessful visit costing £500 leads to a range of additional costs in double glazing and conservatory sales of £5.74 million.

there would be no additional costs, further limiting the impact on them of this measure.

53. The total cost of making sales that are later cancelled by consumers calculated above for businesses involved in the construction of conservatories and in replacement double glazing will be used as a proxy for the total cost to all doorstep sales companies. The OFT's doorstep selling report points out that conservatories and double glazing make up a significant share of high value doorstep sales. Also, the Report states that 'Many of the same firms which supply double glazing and conservatories also supply a range of related roof-line products such as replacement guttering and fascia panels. For a wide range of other home improvement products the proportion of doortsep sales is much smaller than for double glazing or conservatories'.
54. The measure will not impose costs on enforcement agencies beyond informing officers of the changes.

Benefits of the Preferred Option (Option B1) - Extending the 7-day cooling off period to solicited visits

55. The main benefit will be to consumers. All consumers will have the 'safety net of a cooling-off period' and the opportunity to cancel a contract that they regret entering into.
56. The first time that a consumer has any specific information about the product or the price is often when the salesperson has called and is making a sales pitch. The pressure to buy 'there and then' is often difficult for the resist, particularly if the consumer is being offered a discount to sign on the spot. OFT evidence suggests that such discounts are not always a good deal. For example, research commissioned by the OFT found that double-glazing companies offering the highest discount in fact also offered the highest priced final quote. This indicates that, while discounts approaching 50 per cent of the initial price may look attractive, they offer no guarantee that the final price will be low in absolute terms.
57. The OFT report (paragraph 5.22) shows that roughly 8% of consumers were successful in cancelling unsolicited sales. 4% of customers of high value solicited sales attempted to cancel their purchase. On total solicited double glazing sales of approximately £1,147m. (£1850m. x 62%). Assuming that the 4% of customers of solicited sales that attempted to cancel were successful, and the new regulations lead to the percentages of successful solicited cancellations equalling the unsolicited ones and that consumers were successful in achieving

the shop price, a reduction in consumer detriment of £14.22m³ would be achieved.

58. The OFT also looked at the variability in doorstep prices of mobility products and the price difference between that and two other sales channels namely: advertised prices in shops; and prices on the internet. The data showed a substantial and statistically significant difference between prices across the 3 sales channels. These amounted to home purchasers paying nearly one third (31%) more than shop prices and nearly two thirds (63%) more than internet prices. The proposed Regulations mean that a home purchaser would be able to cancel a contract, within the 7 day cooling off period, if he finds a more competitive price for the same product through a different sales channel.
59. Amending the doorstep selling regulations may improve competition in markets that utilise doorstep selling. This will benefit legitimate businesses, protecting them against unfair competition from rogue traders and reducing the costs of distinguishing themselves from such traders.
60. Consumers who at present avoid doorstep selling may now participate in this market as they may be given greater confidence because of their ability to cancel purchases. This may be a benefit to business by possibly expanding the number of potential customers.
61. Businesses will generally be able to work with one contract for both solicited and unsolicited visits, reducing ongoing costs in production of contracts and training of sales staff. The simpler rules will ensure that businesses do not need to spend time establishing whether their sales visit is solicited or unsolicited.
62. Enforcement Agencies will not have to use valuable resources on determining whether a visit was solicited or not as in general the same rules will apply, making it easier to follow up complaints and enforce the regulations.

F. Risks

Risk 1

63. The Directive (85/577/EEC) is one of the 8 Directives covered by the Commission's ongoing review of the consumer regulatory framework (the Consumer Acquis). As part of the Review, in October 2007, the Commission published a discussion paper on the Directive to take stock of its effectiveness in the current market place. Depending on

³ £1,147m x 4% = £45.88m of solicited sales cancelled. If the consumers were then successful in achieving the shop price, the fall in consumer detriment would be £45.88m x 31% = £14.22m

the Commission's timetable for amending the Directive, there is a risk that UK business, consumers, and enforcement agencies may have to adapt to two amendments of the UK regulations in a relatively short space of time.

Mitigating Action - Risk 1

64. We are in touch with Commission officials to establish their timeline for review of the Directive. We sought (in our consultation document) stakeholders' views on the timing of the new Regulations in light of the Commission's review of the Directive. We realise that we would have to consider the burden on business, consumers and enforcement agencies to have to adapt to two changes to UK regulations in a relatively short space of time. On the other hand, Government has a long standing commitment to amend the UK regulations and would not want to delay this, should the Commission's review take a number of years.

Risk 2

65. There is a risk that business will not be made sufficiently aware of the requirements of the new regulations in advance of the planned commencement date.

Mitigating Action - Risk 2

66. We shall issue guidance on the new regulations, and how they are likely to impact on business at least 12 weeks before the new regulations come into force. We will try to make sure that businesses, likely to be affected by the regulations, know in advance that guidance on the new regulations will be available 12 weeks prior to the new regulations coming into force, and where they can obtain it. We will seek assistance from representative bodies to help disseminate guidance effectively. We will develop a communications strategy and use publicity and marketing opportunities to deliver key messages to target audiences during the implementation period for the new doorstep selling regulations.

Risk 3

67. There is a risk that consumers will not be sufficiently aware of the rights provided by the new regulations.

Mitigating Action - Risk 3

68. OFT to run an awareness raising campaign and BERR Communication Strategy.

G. Enforcement

69. The proposed new Regulations would be enforced by Trading Standards - as with the current Regulations. Failure to provide the consumer with a written notice of cancellation, which contains all the relevant information requirements [as detailed in Schedule 3 of the proposed new Regulations] makes the contract unenforceable. A trader guilty of the offence of failing to provide the consumer with a notice of cancellation is liable on summary conviction to a fine not exceeding level 4 (£2,500) on the standard scale.
70. Enforcement will be compliant with the Hampton Code, and will be conducted in a fair, open and transparent manner.

H. Recommendation and Summary Table of Costs and Benefits for the Options

Recommendation on the value of sale threshold at which the new regulations would apply to solicited visits: £35 for both solicited and unsolicited visits

Benefits	Costs
Removes consumer detriment for consumers who wish to cancel a purchase over £35 made from a solicited call	Opportunity cost from increased cancellations - lost work and time on goods or services over £35, which have then been cancelled
Keeps the law simple for consumers, businesses and enforcement agencies	Increased cancellations - need to do more work to get the same number of sales
Removes the possibility of rogue traders attempting to avoid the regulations by exploiting different thresholds for unsolicited and solicited visits	Familiarisation costs (business and enforcement bodies)

Recommendation on the length of the cooling off period for solicited and unsolicited visits: 7 day cooling off period for solicited goods

Benefits	Costs
Removes consumer detriment for consumers who wish to cancel a purchase made from a solicited call within 7 days - Direct Selling Association figures suggests this will be quite high	Increased business costs from reprinting contracts to include cancellation notices
Possible reduction in high pressured selling techniques used in sales due to risk of greater costs from cancellation. - better for consumer satisfaction - prices could fall as the OFT has noted that the highest prices were most strongly associated with pressure selling	Opportunity cost from increased cancellations - lost work and time on goods or services over £35, which have then been cancelled. Estimated to be £2.9-11m in the double-glazing market.
	Increased cancellations - need to do more work to get the same number of sales
	Familiarisation Costs (business and enforcement bodies)

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	Yes	Yes
Rural Proofing	No	No

Annexes

Consultation with Small Business: the Small Firms' Impact Test

During initial consultation we contacted a number of small firms in the building and double-glazing sectors. All the firms contacted said that they did not undertake unsolicited visits and instead relied upon their local reputation and private recommendations to obtain business. This has made it difficult to identify additional costs to small business.

Small Business Service (DTI/SBS) responded to our original consultation and we have liaised further with them. Their view is that many legitimate small businesses in relevant sectors could face increased costs and some loss of business, and that the proposed measure may have limited impact on the real rogues. However, they accept that this measure is more proportionate than the alternatives, which we are not proposing to take forward (such as a ban on cold calling to offer property services).

A short questionnaire on the impact on small business of the preferred option was sent to small businesses that conclude at least some of their business on the doorstep. The replies we received suggested that extending consumers rights to solicited visits was a positive move. However, it was raised that in some cases there could be some cost implications such as handling charges when returning goods to the supplier and associated administrative costs.

It is understood that there could be some loss of business in the future, however we believe this loss will be because consumers did not really want the products in the first place. We believe our proposal gives significant new protection to consumers without placing a disproportionate burden on business.

Competition Assessment

The proposal for change will affect the majority of contracts, which are concluded or agreed in a consumer's home, that of another consumer, or during an excursion organised by the trader. A high majority of contracts concluded in the home are made up of double-glazing, conservatories, other property services, mobility aids and hearing aids. Another high majority of contracts concluded in the home are by electricians, plumbers, carpenters and similar trade persons. This option is unlikely to have a detrimental impact on competition. There may even be a positive impact on competition in the sense that illegitimate traders may find it more difficult to operate, thus making competition fairer.

Some affected markets are more concentrated than others, for example the five-firm concentration ratio for double-glazing is roughly 50%, and other markets have many firms. The proposed change is likely to have a similar effect on all types of firms within markets, be they small, large, new or old, so the structure of markets is likely to remain unaffected.

The majority of markets where sales are made on the doorstep are not characterised by rapid technological change. This option will not affect firms' choices of price, quality and location.

Transposition Note -

Council Directive of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (85/577/EEC)

These Regulations do more than is necessary to implement the Directive because they are also made under powers in section 59 of the Consumers, Estate Agents and Redress Act 2007 to make Regulations allowing a consumer who is a party to a contract made during a solicited visit by a trader to his home or place of work or to the home of another individual or after an offer made by the consumer during such a visit, to cancel the contract.

The Regulations also require a notice of the right to cancel the contract be prominently and clearly displayed in the same document, where the contract is completed wholly or partly in writing.

The Regulations have also been extended to apply to contracts for the construction of extensions, patios, conservatories and driveways.

Articles	Objectives	Implementation	Responsibility
1(1)	Sets out the scope of the Directive and its application to contracts under which a trader supplies goods or services to a consumer and which are <u>concluded</u> during an excursion organised by the trader away from his business premises, or during a visit by a trader (a) to the consumer's home or that of another consumer; and (b) to the consumer's place of work where the visit does not take place at the express request of the consumer (i.e. unsolicited visits).	This has been implemented through regulations 5 and 6 which outline the Regulations' scope of application.	Secretary of State
1(2)	Applies the Directive	This has been	Secretary of State

	to contracts for the supply of goods and services other than those concerning which the consumer requested the visit by the trader (provided that the consumer did not know that the supply of those goods and services formed part of the trader's commercial activities)	implemented through regulation 6(3)(b).	
1(3) and 1(4)	Applies the Directive to contracts where an offer was made by the consumer in conditions similar to those outlined in Articles 1(1) and 1(2).	This has been implemented through regulation 5(1)(c).	Secretary of State
2	Contains definitions for 'consumer' and 'trader'	These definitions of 'consumer' and 'trader' have been included in regulation 2.	Secretary of State
3(1)	Provides Member States with the option to decide to apply the Directive only to contracts for which payment to be made exceeds 60 euros.	This option has been implemented in Schedule 3, paragraph 6 of the Regulations. The Regulations apply only to contracts where the total payments exceed £35.	Secretary of State
3(2)	Provides a list of contracts to which the Directive does <u>not</u> apply.	These exceptions have been implemented in Schedule 3, Paragraphs 1, 2, 3, 4, and 7 with some modifications seen at paragraph 1.	Secretary of State

4	<p>Requires traders to give consumers written notice of the right to cancel. Article 4 also details the information to be provided by the trader in the notice of the right the right to cancel.</p> <p>It also requires that the notice of the right of cancellation must be given to the consumer not later than the conclusion of the contract or (in the case of Article 1(3)) when the offer is made by the consumer.</p> <p>Requires Member States to ensure that their national legislation lays down appropriate consumer protection measures where the information requirements in this article are not met.</p>	<p>This has been implemented in regulation 7 and Schedule 4.</p> <p>This is also implemented in regulation 7.</p> <p>Regulation 17 provides that a trader is guilty of an offence if he enters into a contract to which these Regulations apply but fails to deliver to the consumer a notice of the right to cancel in accordance with regulation 7.</p>	<p>Secretary of State</p> <p>Secretary of State</p> <p>Secretary of State</p>
5	<p>Provides that the consumer may cancel the contract by sending a cancellation notice within seven days from receipt of the notice of the right to cancel. The giving of the cancellation notice by the consumer releases the consumer from any obligations under the cancelled</p>	<p>This has been implemented through regulation 8.</p>	<p>Secretary of State</p>

	contract		
6	Requires that the consumer shall not waive the rights conferred on him by the Directive	Regulation 15 implements this provision.	Secretary of State
7	Requires that if the consumer cancels the contract, the legal effects of cancellation shall be governed by national laws particularly regarding the reimbursement of payments for goods and services provided and the return of goods received	Regulations 9,10, 11, 12, 13, and 14 implement this requirement in relation to cancellation of contracts before the end of the cooling off period, recovery of money paid by the consumer, the automatic cancellation of related credit agreements, repayment of credit and interest, return of goods by the consumer after cancellation and goods given in part exchange.	Secretary of State