

## **Enhancing Consumer Confidence through effective enforcement: Consultation on consolidating and modernising consumer law enforcement powers**

### **Response Form**

A copy of the consultation on Enhancing Consumer Confidence through effective enforcement Consultation on consolidating and modernising consumer law enforcement powers can be found at:

<http://www.bis.gov.uk/consultations>

You can email, post or fax this completed response form to the following official at the Department for Business, Innovation and Skills (BIS):

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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **20 June 2012**

## Your details

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Please tick the boxes below that best describe you as a respondent to this call for evidence:

- Individual
- Charity or social enterprise
- Consumer body
- Regulator
- Local Government
- Central government
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Medium business (50 to 250 staff)
- Large business (over 250 staff)
- Business representative organisation and/or trade body
- An organisation that offers consumer alternative dispute resolution services
- Other (please describe):

If you are responding on behalf of an organisation, please explain how the views of the members of that organisation were assembled:

## Your responses to the consultation

**Question 1:** Is there any consumer legislation that you think we should repeal and replace which is missing from our list? If so, please specify.

No.

**Question 2:** Are you content with our proposal to extend the power to make test purchases to businesses, such as estate agents, and clarify that it covers digital content?

Yes.

**Question 3:** Do you agree that a power to request information should be included in the generic set? If not, please explain why.

Not without more precise definition of the type of information to be sought and what would be exempt – this is too vague a proposal with inadequate provision of safeguards.

**Question 4:** Do you agree that the impact of this change will be small? If not, please provide evidence of what the impacts might be.

No. Without precise definitions of the information to be sought under specific legislation it is not possible to assess the impact that such a generic requirement might have.

**Question 5:** Are the powers of entry and proposed safeguards adequate? If not, please use examples to justify your comments.

No. The suggested default position is that enforcers would have automatic powers of entry as long as notice is given, with no requirement for any prior suspicion of wrongdoing. If they have the option to enter without notice (and without a warrant) when they suspect wrongdoing why do they need additional powers? If they do not suspect wrongdoing they have no reason to seek entry without express permission and in that case no justification for seeking entry without notice. There seems no reason why a business would not agree to waive this notice period in certain circumstances but they should not be forced to do so.

**Question 6:** Do you foresee any issues with requiring officers to provide evidence of their identity and authority, even if not requested?

No.

**Question 7:** Do the powers in relation to inspection of goods strike the right balance? If not, please explain why.

Yes.

**Question 8:** Do you agree that the definition of ‘document’ is wide enough to cover digital content? If not, please provide evidence.

Yes.

**Question 9:** Do you agree that the definition of ‘trader’ is wide enough to cover all businesses from which an officer may require information? If not, please explain why.

Yes.

**Question 10:** Do you agree that the prescriptive requirements regarding the inspection of banking documents contained in estate agents and consumer credit laws should be revoked? If not, please explain why.

No. We would not wish to see bank documents being demanded in all circumstances by reason of them being subsumed into a generic “documents” classification. It is quite clear that financial information will always be sensitive information and should only be sought where it is clearly necessary for that information to be provided. We do not believe that the Data Protection Act 1988 alone can offer adequate safeguards.

**Question 11:** Do you agree that powers are sufficient to cover business-specific information held in Cloud computers? If not, please provide evidence.

Yes

**Question 12:** Do the powers to require production of documents strike the right balance? If not, please use examples to explain.

We would support retaining the distinction between documentation used to support declarations of compliance and other documentation.

**Question 13:** Do you have any evidence of where this change might have an impact on business? Do you support the proposal to enable the enhanced powers of seizure to be used across consumer law? If not, please give reasons.

Powers of seizure should be strictly limited. If the purpose of amending this legislation is to reduce burdens on business it is not acceptable to add costs or indeed retain goods for longer than necessary. An unintended consequence would be companies seeking to claim damages from enforcement bodies.

**Question 14:** Do you foresee any problems with extending the power clarifying that officers can investigate and prosecute outside their own local authority area across consumer law? If so, please explain why.

Many companies have a relationship with enforcement officers local to their business. If officers from other areas are to be allowed to take action there

should still be a level of involvement/co-operation with the local officers. There is potential for conflict between the local and the national approach which needs to be taken into consideration when amending powers and responsibilities.

**Question 15:** Do you support removing the duty on small bakers to keep records of checks for average weight purposes? In particular, can you identify any undesirable consequences of the revocation of the duty?

No comment.

**Question 16:** Should the penalties for the offence of obstruction of consumer law enforcement officers be aligned to level 3 or level 5 or perhaps level 4?

Level 4 seems adequate.

**Question 17:** Do you support the revocation of these powers particularly those in section 225-227F of the Enterprise Act 2002, subject to the need to maintain the requirement for officers to have reasonable suspicion before exercising powers?

We do not support the deletion of specific powers in favour of a set of generic ones. There are circumstances in which some powers are appropriate and others are not and we would not wish to see a blanket generalisation of enforcement powers for legislation that has not even been drafted yet.

**Question 18:** Is the balance between the powers and safeguards in the proposed generic set about right? Are there any gaps? Please provide as much evidence as possible to justify your suggestions.

It is difficult to assess a set of powers to be used to enforce legislation that is not in force and indeed has not yet been drafted. It would be more useful to review the powers of enforcement once the new legislation has been drafted. This would allow a more measured assessment of the powers and safeguards. At the moment it is not clear that the proposed safeguards would be adequate.

**Question 19:** Do you agree with our assessment of costs and benefits, particularly to businesses? Please provide any comments or evidence that could help refine our assessment.

It is impossible to assess the costs and benefits given that we do not yet know the content of the new legislation and therefore cannot assess how difficult it might be to demonstrate compliance.

**Question 20:** Do you agree that we should make these changes in order to help make it easier for Trading Standards Services to work across local authority boundaries?

We agree that it should be easier for TSS to work across LA boundaries but this should not undermine the standing of local offices.

**Question 21:** Is our proposal to extend regulation 10(2) of the General Product Safety Regulations to all consumer law sufficient or do you think that amendment of section 222 of the Local Government Act is required as well? Please give reasons.

This would appear to be a question for your lawyers. We would expect the GPSS to deal with safety aspects only so it might be that other consumer issues would need to be addressed by other legislation.

**Question 22:** Do you agree with our assessment of costs and benefits for the options for improving cross boundary authorisation set out in the Impact Assessment? Please provide any comments or evidence that could help to refine our assessment.

See reply to Q19.

**Question 23:** Do you agree that seeking accreditation of Trading Standards professionals from an existing Approved Regulator is the most appropriate way to enable Trading Standards to present civil cases in County Courts? If not, please give reasons.

Yes.

**Question 24:** Are you content with our assessment that enabling Trading Standards professionals to present simple cases in County Courts will result in a net resource saving for those who wish to take up this option? Please provide any comments or evidence that could help refine our assessment.

Your assessment is overly assertive – there may be savings but it is not possible to predict these with any certainty.

**Question 25:** Do you agree that the prescriptive statutory qualification requirement for Trading Standards professionals should be replaced by a more generic competency requirement, backed up by a voluntary code of practice?

No. We fully support training and qualifications but see little value in requiring a generic competency qualification – Local Authorities will already have job specifications for their staff which will include minimum qualification requirements and a code of conduct. We would expect that they also offer training opportunities.

**Question 26:** Do you agree with our assessment that officers' competency standards can be maintained with a more flexible general qualification and competency requirement at the same or lower cost? Please provide any evidence that could help refine the assessment of costs and benefits.

See reply to Q25. Training should be viewed as an investment not a cost to be minimised.

**Question 27:** Do you agree that the Weights and Measures Act should be amended to enable competition in the calibration of local authorities' standards? We welcome comments on any potential impacts on the accuracy of standards or business confidence in the measurement system.

No. This would result in different calibrations being used as a standard – this is unhelpful.

**Question 28:** What further changes are desirable to manage the calibration of standards in future?

No comment.

**Question 29:** Can you identify and estimate any savings or costs arising from the proposal to enable competition in the calibration of measurement standards?

No.

### **In conclusion**

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents and/or calls for evidence?

Yes

No



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