EXPLANATORY MEMORANDUM TO

THE TIMESHARE, HOLIDAY PRODUCTS, RESALE AND EXCHANGE CONTRACTS REGULATIONS 2010

2010 No. 2960

1. This explanatory memorandum has been prepared by the Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations simplify and extend measures for the protection of consumers. They simplify and address additional shortfalls in the current regime as it applies to the sale, marketing and content of timeshare contracts. The regulations extend measures to the sale of long-term holiday product, resale of timeshare, and timeshare exchange contracts the marketing and sale of which have emerged as problematic.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Regulations transpose into UK law the Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts Directive 2008/122/EC (the Directive) which was adopted in February 2009. The Directive is a maximum harmonisation Directive which means that Member States are obliged to implement in a way that accurately reflects, does not exceed or fall below its provisions.

4.2 The European Commission's proposal for a revised Directive was the subject of a short enquiry by sub committee 'G' of the House of Lords Select Committee of the European Union on 18 October 2007 to which BIS provided written and oral evidence. Written and oral evidence was provided to the Commons Select Committee on European Scrutiny on 17 October 2007.

4.3 The Regulations will replace entirely the current regime in the UK by repealing the Timeshare Act 1992 and revoking the Timeshare Regulations 1997, rendering redundant subsequent Orders[1].

4.4 A transposition note is included at Annex A

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Consumer Affairs, Edward Davey MP, has made the following statement regarding Human Rights:

[1] The Regulations also make consequential amendments to primary legislation which have been cleared by Parliamentary Counsel.

In my view the provisions of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 Timeshare and other long-term holiday product contracts often involve substantial advanced payment by the consumer, followed by payments linked to later actual use of relevant accommodation (either on its own or in combination with travel). Typically, the marketing and/or conclusion of the contract takes place in a country other than the consumer's home country, or in a country other than where the property or services are located. This separation – in terms of time and geography – between purchase and consumption creates the potential for consumer harm in that the seller of the contract will have more information than the purchaser who is not in a position to properly judge the true value of the contract. In addition, these contracts are legally complex, with division of responsibilities between parties not always entirely clear to consumers. This can potentially further impede consumer understanding of what they are signing up to.

7.2 The minimum harmonisation nature of the previous Directive in this policy area has led to discrepancies between levels of consumer protection in different Member States, such as differences in the cooling-off period for timeshare transactions. These differences cause fragmentation and legal uncertainty which can be considered a significant legal barrier to conducting business cross-border in the EU.

7.3 The development of new products which fall outside the scope of the previous Directive has also led to gaps in the regulatory framework. In particular, rogue traders have sought to take advantage of the desire of timeshare owners to sell their timeshares by either hugely inflating the chances of arranging a sale on their behalf, or simply asking for fees up-front and then not delivering the promised service. Unilateral action by Member States to address these regulatory gaps further increased fragmentation and legal inconsistency. The new Directive therefore sets the markets for these products on an equal footing across the EU by providing consumers with the same levels of protection throughout. UK consumers form the biggest market in the EU for these products.

7.4 The Regulations will ensure that consumers are provided with important key information to be provided in advance of a contract being agreed and in a standardised form in good time before entering into contracts. Contracts must include all of the pre-contractual promises and information and consumers have 14 days during which they may withdraw from contracts at no cost. Traders are not permitted to take any money in advance of the end of the withdrawal period and resale agents must not accept payment in advance of a sale or purchase of a consumer's timeshare, or before the contract is otherwise terminated. Payment for long-term holiday product contracts is restricted to equal annual instalments and there is an additional right to withdraw from a long-term holiday product contract when payment of each annual instalment becomes due. This enables consumers to assess the ongoing value of the services rendered. The regulations contain provisions on the advertising and marketing of contracts and ban contracts from being marketed as investments. Requirements designed to ensure that consumers receive the key information and contracts in a language they understand are also included. Any related credit agreements or other ancillary contracts are automatically terminated if the consumer chooses to withdraw from the contract during the 14 day withdrawal period.

7.5 By transposing into UK law the requirements of the Directive the regulations will: update and simplify the coverage of the current UK legislative regime as it applies to timeshare agreements; protect consumers and businesses whose choices and business activities are affected by the marketing of products that are economically broadly similar to timeshare, in the sense that there is a substantial advance payment, followed by payments linked to later actual use of holiday accommodation; and protect consumers in the timeshare aftermarket

7.6 In more detail, in relation to each contract type to be covered the regulations are intended:

Timeshare

- to extend existing consumer protection by adjusting the definition so that it no longer refers to agreements relating to "immovable property", but to wider "overnight accommodation" and by reducing the minimum period of agreements caught by the regime to 1 year;

- to standardise the length of the cooling-off period at 14 days, during which the taking of deposits or any payment is banned (the consumer is entitled to withdraw from the contract without giving any reason and at no cost during the cooling off period);

- to clarify and extend the existing information requirements, including ongoing payments and conditions under which contracts may be terminated.

Long-term holiday products

- to apply substantially the same legislative regime to selling long-term holiday products as is applied to timeshare sales, that is:

a 14 day cooling-off period, during which no money may be taken,

specific information requirements in advance of the contract

specific information requirements to be included in the contract.

- in addition, via regulating payment, to provide dissatisfied consumers with the opportunity to withdraw from the contract each year.

Resale of timeshare:

- to extend the ban on taking payment for this type of intermediary/agency activity, until a sale has been completed or the contract is otherwise terminated;

- to require relevant information to be provided both in the agency contract and in advance of agreeing the contract.

Timeshare exchange schemes

- to make selling membership of a timeshare exchange scheme subject to essentially the same regime as selling a timeshare agreement i.e. a 14 day cooling-off period, during which no money may be taken, and requiring specific information to be provided both in the contract, and in advance of agreeing the contract.

8. Consultation outcome

8.1 On 9 July 2010, BIS published a formal consultation on its website, seeking the views of businesses, consumers, enforcement bodies and other interested parties on the best way in which to meet the requirements of the Directive and to provide improved consumer protection in a way that is workable and practical for business. The formal consultation was open for a period of 12 weeks closing on 1 October 2010.

8.2 The main outcomes from the consultation were to finalise where specific criminal offences were necessary in the regulations and where other regulations, for example, the Consumer Protection from Unfair Trading Regulations 2008 would provide adequate coverage. We also concluded that insurance contracts should be specifically excluded from coverage so as to ensure that life insurance investment products which include access to holiday accommodation on a timeshare-like basis continue to be treated as investment products and can be marketed as such. These products are already subject to the extensive regulation which applies to the sale of financial services.

8.3 Respondents to the consultation also approved of the proposal that the current regime should be completely replaced (as opposed to amended), including that the limited coverage of the former regime in respect of business to business transactions were not needed. A formal Government response to the consultation is available via the BIS website.

9. Guidance

9.1 BIS will work with the Office of Fair Trading to develop and implement a communication strategy to help raise consumer awareness of the rights and responsibilities of the Regulations. BIS will be publishing and circulating to stakeholders Guidance for Business on the new Regulations in December 2010, as soon as possible after the Regulations are made.

10. Impact

10.1 There is likely to be a beneficial impact on business resulting from an overall increase in consumer confidence in purchasing the products covered by the Regulations. An increase in consumer confidence may lead to an increase in sales. It is, however, pertinent to point out that some of the benefits from higher sales would flow to businesses based outside the UK, as UK consumers are more likely to purchase timeshare products outside the UK. By extending coverage to long-term holiday products and resale contracts it is likely that a number of rogue traders will be squeezed out of the market. Unfair competition for legitimate timeshare businesses will be removed as operators of long-term holiday products and bogus resale services will be subject for the first time to specific regulation. There is an associated negative impact on businesses arising as a result of increased administrative costs, particularly in relation to newly regulated businesses. Administration costs relate to the preparation of pre-contractual information, contracts and translation costs and are as such one-off and may amount to £6,300 per active business in the UK (or a total of £441k).

10.2 We estimate estimated an average annual benefit to consumers of £27.7 million (constant prices), totalling £233 million over 10 years.

10.3 The impact on the public sector, including the enforcement bodies and the Courts, is expected to be minimal as there are comparatively few UK businesses operating in the sector. The enforcement authorities confirmed that the Regulations would add nothing to their current costs.

10.4 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to acknowledge the responses to our consultation that the new regime would be unlikely to affect the way in which small businesses in the sector operate, although the few businesses in the timeshare resale business will need to adapt their processes to account for the requirement that they must now be paid on delivery, rather than in advance. Although the potential increased costs (a one-off cost of up to £6,300) was identified as a possible additional barrier to entry, it was also acknowledged that the increased ability to better deal with rogue traders in the sector, particularly in relation to long-term holiday products and bogus resale agents, would be generally beneficial for the whole sector, including small businesses.

11.3 The basis for the final decision on what action to take to assist small business, i.e. not to make special provision for small businesses, was the need to ensure the application of the provisions in the Directive to all traders and that we believe the overall effect of the new regime will be beneficial to the legitimate businesses in the sector of all sizes.

12. Monitoring & review

12.1 Article 17 of the Directive provides that the Commission shall review the Directive and report to the European Parliament and the Council by no later than 23 February 2014. If necessary, the Commission shall make further proposals to adapt the Directive.

12.2 In order to inform the Commission, BIS will ensure that we are in a position to contribute to the Commission's review by reference to information from businesses, consumer representatives, the enforcement bodies and other interested parties in order to be able to establish that the provisions are operating as expected i.e. that the benefits to consumers, business and enforcers set out in the Impact Assessment attached to this Memorandum are being achieved and to identify opportunities for further improvement. BIS will also use this engagement to check that costs have not generally exceeded what was expected in the Impact Assessment (average one-off costs of up to £6,300 per business).

13. Contact

Kevin Davis at the Department for Business, Innovation and Skills Tel: 020 7215 0329 or email: kevin.davis@bis.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Transposition Note –

Directive 2008/122/EC of 14 January 2009 to protect the consumer in respect of certain aspects of timeshare, long-term holiday products, resale and exchange contracts

Articles	Objectives	Implementation	Responsibility
1(1)	Sets out the purpose and scope of the Directive which is to improve the functioning of the internal market and to address shortfalls in consumer protection in relation to Timeshare, Long Term Holiday Products, Resale and Exchange contracts.	The Timeshare Holiday Products, Resale and Exchange Contracts Regulations 2010 will implement the Directive in the UK.	Secretary of State
1(2)	Applies the Directive to trader to consumer contracts.	Regulations 7(1),8(1),(9), and 10(1).	Secretary of State
2(1)	Contains definitions of 'timeshare contract'; 'long-term holiday product contract'; 'resale contract'; 'exchange contract'; 'trader'; 'consumer'; and 'ancillary contract'	Relevant definitions have been included in regulations 7, 8, 9, 10, 11, and 22(6),	Secretary of State
2(2)	Provides that the calculation of the duration of a timeshare contract or a long-term holiday contract shall take into account any provision in the contract allowing for tacit renewal or prolongation.	Regulations 7(1)(b) and 8(1)(b) – (see definition of timeshare contract and definition of long-term holiday product contract)	Secretary of State
3(1)	Requires the trader to ensure that any advertising specifies the possibility of obtaining the pre-contractual information (as referred to in Article 4(1)) and indicates where the pre-contractual information can be obtained.	Regulation 14(1)	Secretary of State
3(2)	Requires that where any contract, within the scope of the Directive, is offered to a consumer in person at a sales event, the trader shall clearly indicate in the invitation the commercial purpose of the event.	Regulation 14(2)(a)	Secretary of State
3(3)	Requires that the pre-contractual information (as referred to in Article 4(1)) shall be available to the consumer at any time during a sales event.	Regulation 14(2)(b)	Secretary of State
3(4)	Provides that a timeshare or long-term holiday product shall not be sold as an investment.	Regulation 14(3)	Secretary of State
4(1)	Requires that the trader shall provide the pre-contractual information in good time before the consumer is bound by any contract or offer; that the information provided shall be clear, comprehensible and accurate and provided by means of the relevant standard information form at Annexes I – IV, and as listed in Part 3 of those forms.	Regulations 12(2) to 12(5) and 13(2), and Schedules 1-4.	Secretary of State
4(2)	Requires that the pre-contractual information shall be provided free of charge by the trader on paper or on another durable medium which is easily accessible to the consumer	Regulation 12(5).	Secretary of State
4(3)	Requires the trader to ensure that the pre-contractual information is in the language, or one of the languages, of the Member State in which the consumer is resident, or a national, at the choice of the consumer provided it is an official language of the Community	Regulation 12(6) and (7)	Secretary of State

5(1)	Requires that the contract is in writing, on paper or another durable medium, and that the contract is drawn up in the language, or one of the languages, of the Member State in which the consumer is resident, or a national, at the choice of the consumer provided it is an official language of the Community. The Member State on whose territory the trader carries out sale activities, may require that the contract be provided to the consumer in the language, or one of the languages, of that Member State, provided it is an official language of the Community	Regulations 15(2) and (3) and 17(2) Regulation 17(4)(b)	Secretary of State Secretary of State
5(1)(a)	Provides that the Member State, in which the consumer is resident, may require the contract to be provided to the consumer in the language, or one of the languages, of that Member State, provided it is an official language of the Community	Regulation 17(4)(a)	Secretary of State
5(1)(b)	Requires that in the case of a timeshare contract, concerning one specific immovable property, the trader shall provide the consumer with a certified translation of the contract in the language, or one of the languages, of the Member State in which the property is situated, provided it is an official language of the Community	Regulation 18	Secretary of State
5(2)	Provides that the pre-contractual information (referred to in Article 4(1)) shall form an integral part of the contract The pre-contractual information shall not be altered unless the parties expressly agree otherwise or the changes result from unusual or unforeseeable circumstances beyond the trader's control, the consequences of which could not have been avoided even if all due care had been exercised. The changes shall be communicated to the consumer on paper or on another durable medium easily accessible to the consumer before the contract is concluded. The contract shall expressly mention any such changes.	Regulations 15(3) to (6)	Secretary of State
5(3)(a)	Requires that in addition to the pre-contractual information (referred to in Article 4(1)) the trader shall provide the identity, place of residence, and signature of each of the parties	Regulation 15(2)(a)	Secretary of State
5(3)(b)	Requires that in addition to the pre-contractual information (referred to in Article 4(1)) the trader shall provide the date and place of conclusion of the contract	Regulation 15(2)(b)	Secretary of State
5(4)	Requires that, before conclusion of the contract, the trader shall explicitly draw the consumer's attention to the existence of the	Regulation 16(1)	Secretary of State

	right of withdrawal, the length of the withdrawal period (referred to in Article 6) and the ban on advance payments during the withdrawal period (referred to in Article 9). The corresponding contractual clauses shall be signed separately by the consumer. The contract shall include a separate standard withdrawal form, as set out in Annex V of the Directive, included to facilitate the right of withdrawal (as set out in Article 6)	Regulation 16(2) Regulation 15(7) and Schedule 5	Secretary of State Secretary of State
5(5)	Requires that the consumer shall receive a copy or copies of the contract at the time of its conclusion	Regulation 16(3)	Secretary of State
6(1)	Requires that the consumer is given a period of 14 calendar days to withdraw from a regulated contract without giving any reason	Regulations 20(1) to 20(3)	Secretary of State
6(2)	Provides that the withdrawal period shall be calculated (a) from the day of the conclusion of the contract or any binding preliminary contract or (b) from the day when the consumer receives the contract or any binding preliminary contract if it is later than the date referred to in (a)	Regulation 21(1) and (2)	Secretary of State
6(3)(a)	Provides that the withdrawal period shall expire after one year and 14 calendar days from the day referred to in Article 6(2) where a standard withdrawal form (as required by Article 5(4)) has not been filled in by the trader and provided to the consumer in writing, on paper, or on another durable medium	Regulation 21(3) and (4)(a)	Secretary of State
6(3)(b)	Provides that the withdrawal period shall expire after 3 months and 14 calendar days from the day referred to in Article 6(2) where the pre-contractual information referred to in Article 4(1), including the applicable standard information form (set out in Annexes I to IV), has not been provided to the consumer in writing, on paper, or on another durable medium	Regulation 21(5) and (6)(a)	Secretary of State
6(3)	Requires Member States to provide appropriate penalties (in accordance with Article 15) in particular in the event that, on expiry of the withdrawal period, the trader has failed to comply with the information requirements set out in the Directive	Regulation 15(8)	Secretary of State
6(4)	Provides that where a standard withdrawal form has been provided by the trader in accordance with Article 5(4), the withdrawal period shall start from the day the consumer receives that form. Where the information referred to in Article 4(1) has been provided, in accordance with the requirements of the Directive, within 3 months of the day referred to in Article 6(2) the withdrawal period shall start from the day the	Regulation 21(4)(b) Regulation 21(6)(b)	Secretary of State Secretary of State

	consumer receives such information		
6(5)	Provides that in the event that the exchange contract is offered to the consumer together with and at the same time as the timeshare contract, only a single withdrawal period in accordance with Article 6(1) shall apply to both contracts. The withdrawal period for both contracts shall be calculated according to the provisions of Article 6(2) as they apply to the timeshare contract	Regulations 21(8) to (10)	Secretary of State
7	Requires that where the consumer intends to exercise the right of withdrawal the consumer shall, before the expiry of the withdrawal period, notify the trader on paper or on another durable medium of the decision to withdraw. The consumer may use the withdrawal form set out in Annex V of the Directive. The deadline is met if the notification is sent before the withdrawal period has expired.	Regulations 20(1). Regulation 20(4) Regulation 20(2)	Secretary of State Secretary of State Secretary of State
8(1)	The exercise of the right of withdrawal by the consumer terminates the obligation of the parties to perform the contract.	Regulation 22(2)(a)	Secretary of State
8(2)	Where the consumer exercises the right of withdrawal, the consumer shall neither bear any cost nor be liable for any value corresponding to the service which may have been performed before withdrawal	Regulations 22(4) and (5)	Secretary of State
9(1)	Provides that in relation to timeshare, long-term holiday product and exchange contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the end of the withdrawal period are prohibited	Regulation 25(2) and (3)	Secretary of State
9(2)	Provides that in relation to resale contracts any advance payment, provision of guarantees, reservation of money on accounts, explicit acknowledgement of debt or any other consideration to the trader or to any third party by the consumer before the actual sale takes place or the resale contract is otherwise terminated, is prohibited	Regulation 25(4) and (5)	Secretary of State
10(1)	Provides that for long-term holiday product contracts, payment shall be made according to a staggered payment schedule. Any payment of the price specified in the contract otherwise than in accordance with the staggered payment schedule shall be prohibited. The payments, including any membership fee, shall be divided into yearly instalments, each of which shall be of equal value. The trader shall send a written request for	Regulation 26(1)	Secretary of State

	payment, on paper or on another durable medium, at least 14 calendar days in advance of each due date	Regulation 26(2) Regulation 26(4)	Secretary of State Secretary of State
10(2)	Provides that from the second instalment onwards, the consumer may terminate the contract without incurring any penalty by giving notice to the trader within 14 calendar days of receiving the request for payment of each instalment. The right shall not affect the rights to terminate the contract under existing national legislation	Regulation 24(2) and (4) Regulation 24(3)	Secretary of State Secretary of State
11(1)	Ensures that where the consumer exercises the right to withdraw from the timeshare or long-term holiday product contract, any exchange contract ancillary to it or any other ancillary contract is automatically terminated, at no cost to the consumer	Regulation 22(2)(b) and (3) to (5)	Secretary of State
11(2)	Ensures that where the price is fully or partly covered by a credit agreement, the credit agreement shall be terminated at no cost to the consumer, where the consumer exercises the right to withdraw from the regulated contract	Regulation 23	Secretary of State
11(3)	Requires Member States to lay down detailed rules on the termination of such contracts	Regulation 23(3)	Secretary of State
12(1)	Requires Member States to ensure that consumers may not waive the rights conferred on them by the Directive	Regulation 19	Secretary of State
12(2)	Requires Member States to ensure that where the law is that of a third country, consumers shall not be deprived of the protection offered by the Directive.	Regulations 5(3) and (4)	Secretary of State
13(1)	Requires Member States to ensure that adequate and effective means exist to ensure compliance by traders with the Directive	Regulations 12(8), 14(5), 15(8), 16(4), 17(5), 18(5), 25(7) and 26(5) and regulations 5 and 6 of the Consumer Protection from Unfair Trading Regulations 2008	Secretary of State
13(2)	Details the bodies entitled to take action in national law before the courts or competent administrative bodies to ensure that the national provisions implementing the Directive are applied	Regulation 32.	Secretary of State
14(1)	Requires Member States to take appropriate measures to inform consumers of the national law transposing the Directive and encourage traders to inform consumers of their codes of conduct	n/a – actions to raise awareness will not be taken forward through legislation	
14(2)	Requires Member States to encourage (a) the setting up of effective out of court complaints and redress procedures, and (b) traders to inform consumers of the availability of such procedures	n/a – actions to encourage the establishment of complaints and redress procedures, and to raise awareness of these procedures will not be taken forward through legislation	
15(1)	Requires Member States to provide appropriate penalties in the event of a trader's failure to comply with the national provisions implementing the Directive	Regulation 27 and regulation 13 of the Consumer Protection from Unfair Trading Regulations 2008 set out the penalties for criminal offences. There are also civil	Secretary of State

		sanctions in regulations 15(8)(b), 16(4)(b), 17(5).	
15(2)	Requires that the penalties shall be effective, proportionate and dissuasive	Regulation 27 and regulation 13 of the Consumer Protection from Unfair Trading Regulations 2008 set out the penalties for criminal offences. There are also civil sanctions in regulations 15(8)(b), 16(4)(b), 17(5).	Secretary of State
16	Requires Member States to adopt and publish by 23 February 2011, the laws regulations and administrative provisions necessary to comply with the Directive	Regulation 1	Secretary of State
17	States that the Commission shall review the Directive and report to the European Parliament and the Council no later than 23 February 2014	n/a	
18	States that Directive 94/47/EC shall be repealed	n/a	
19	States that the Directive shall enter into force on the 20th day following its publication in the Official Journal	n/a	
20	Addresses the Directive to Member States	n/a	

Title:	Impact Assessment (IA)
Impact Assessment of the proposed Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011	**IA No:** BIS0007
	Date: 12/11/2010
Lead department or agency: BIS	**Stage:** Final
	Source of intervention: EU
Other departments or agencies: N/A	**Type of measure:** Secondary legislation
	Contact for enquiries: Kevin Davis 020 7215 0329

Summary: Intervention and Options

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

Since the adoption of Directive 94/47/EC, timeshare has evolved and new holiday products similar to it have appeared on the market. These new products and certain transactions related to timeshare, such as resale contracts and exchange contracts do not fall within the scope of Directive 94/47/EC. These regulatory gaps create distortions of competition and cause serious problems for consumers in that the seller of the contract is likely to have more information than the purchaser, creating the potential for consumer detriment due to information asymmetry. New, unregulated and miss-sold holiday products hinder the smooth functioning of the internal market. In order to address these issues, Directive 94/47/EC has now been replaced with Directive 2008/122EC, which was adopted in February 2009. Member States have until 23 February 2011 to introduce legislation to comply with Directive 2008/122/EC.

What are the policy objectives and the intended effects?

To (a) modernise and simplify the current legislative regime (b) help improve the functioning of the internal market by clarifying and harmonising the regulatory regime across the EU (c) provide adequate and proportionate protection for consumers (d) protect business by squeezing out rogue traders in this market and creating the conditions to foster legitimate business across the UK and (e) introduce a level playing field for timeshare sales and other long term holiday sales, providing greater certainty for consumers. .

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The options that have been considered are (1) Introducing new UK regulations and amending the existing UK regulatory regime (2) Introducing new UK regulations and replacing the existing UK regulatory regime (3) Self Regulation and (4) Do Nothing. Option 1 would achieve policy objectives (b), (c), (d) and (e) above. but would UU<u>not</u> achieve policy objective (a). Option 3, Self regulation is not likely to achieve the policy objectives (c) of ensuring adequate and proportionate protection for consumers or (e) of levelling the competitive playing field between timeshare sales and other long-term holiday product sales as required by Directive 2008/122/EC. Option 4, a 'do nothing' approach is not a viable option at this stage as the market failure described above would not be resolved and none of the policy objectives would be achieved. The Government's preferred option is Option 2, to introduce new regulations and replace the existing UK regulatory regime. Option 2 is considered to be the most effective way to implement Directive 2008/122/EC and to simplify the UK legislative regime thus achieving all policy objectives (a), (b), (c), (d) and (e).

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 02/2014
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

<u>Ministerial Sign-off</u> For consultation 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: Edward Davey MP, Minister for Consumer Affairs Date: 14/11/10

Summary: Analysis and Evidence Policy Option 1

Description:

Modernise and Simplify the Current Legislative Regime

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £233

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	1	Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	£0.44		zero	**£0.44**

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

Calculation of the one-off transition cost to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business in the industry approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business

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

There may be costs to business related to a ban on deposits on new products during the cooling-off period. However, respondents to the Government's formal consultation (URN10/500) have been unable to provide any quantifiable evidence of the costs associated with a ban on deposits. The cost of enforcement under Option 1 is likely to be higher than Option 2 as retention of the business to business provisions would make the law more complicated to interpret.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		£23.0	**£191.9**
High	Optional		£32.4	**£275.1**
Best Estimate			£27.7	**£233.4**

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

The average annual benefit figure of £27.7 million relates to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products from the UK regulations. The EU Directive is expected to reduce UK consumer detriment related to long term holiday products by £162.1 million per year. This has been calculated against the baseline, that consumer detriment in this area would remain unchanged if this regulation was not implemented .We would also expect a reduction in consumer detriment related to timeshare resale and timeshare exchange contracts. However, we have not included an estimate of this likely benefit as respondents to the consultation have been unable to provide any quantifiable evidence to indicate the current level of consumer detriment related to timeshare resale and timeshare exchange. In addition, we would also expect a benefit to business in the form of an increase in sales resulting from increased consumer confidence.

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

A number of rogue traders will be squeezed out of the market and the unfair competition element for legitimate businesses will be removed. There will be clarity over operations across the EU. There may be unsubstantiated benefits of retaining the business to business elements of the UK regime. There may be a small positive impact in terms of output and employment for specific regions in the UK..

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

In calculating the cost and benefits we have made the assumptions that (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market, so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement will ever be 100 per cent effective (we have made a conservative assumption that the regulations will between 20-50% effective, with the best estimate being 35%). There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce. There is also a risk that UK businesses will not be aware of the new regulations in advance of the planned commencement date of February 2011

(Further details of risks and mitigating actions are provided at page 20)

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			23/02/2011		
Which organisation(s) will enforce the policy?			Trading Standards & OFT		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the $CORR_2$ equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** n/a	**Non-traded:** n/a	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** n/a	**Benefits:** n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** 0	**< 20** 0	**Small** 0	**Medium** 0	**Large** 0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality dutiesPPPP[1]	No	23
Economic impacts		
Competition	Yes	21
Small firms	Yes	22
Environmental impacts		
Greenhouse gas assessment	No	n/a
Wider environmental issues	Yes	23
Social impacts		
Health and well-being	No	n/a
Human rights	Yes	23
Justice system	Yes	23
Rural proofing	No	n/a
Sustainable development	Yes	23

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence Policy Option 2

Description:

Introduce new UK regulations and replace the exisiting UK regulatory regime (preferred option)

Price Base Year 2009	PV Base Year 2009	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: £233**

COSTS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	£0.44			**£0.44**

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

Calculation of the one-off transition cost to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business.

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

There may be costs to business related to a ban on deposits on new products during the cooling-off period. However, respondents to the Government's formal consultation (URN 10/500) have been unable to provide any quantifiable estimate of costs related to the ban on deposits. We do not expect any increase in the cost of enforcement.

BENEFITS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		£23.0	**£191.9**
High	Optional		£32.4	**£275.1**
Best Estimate			£27.7	**£233.4**

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

The average annual benefit figure of £27.7 million relates to an estimate of the potential average annual reduction in consumer detriment related to long term holiday products from the UK regulations. The EU Directive is expected to reduce UK consumer detriment related to long term holiday products by £162.1 million per year. This has been calculated against the baseline, that consumer detriment in this area would remain unchanged if this regulation was not implemented We would also expect a reduction in consumer detriment related to timeshare resale exchange contracts. However, we have not included an estimate of this likely benefit as respondents to the consultation have been unable to provide any quantifiable evidence to indicate the current level of consumer detriment related to timeshare resale and timeshare exchange. In addition, we would also expect a benefit to business in the form of an increase in sales resulting from increased consumer confidence.

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

A number of rogue traders will be squeezed out of the market and the unfair competition element for legitimate businesses will be removed. There will be clarity over operations across the EU. There may be a small positive impact in terms of output and employment for specific regions in the UK. There will be a simpler and clearer regime for business to comply with and for the enforcement bodies to interpret. The difference between Option 1 and Option 2 (our preferred option) is that, in Option 1, we would retain the Timeshare Act 1992 (and the business to business provisions) whereas in Option 2, in accordance with good regulatory practice, we would repeal the Timeshare Act 1992. The overwhelming majority of respondents to the consultation were in favour of Option 2.

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

In calculating the cost and benefits we have made the assumptions that (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market, so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement will ever be 100 per cent effective (we have made a conservative assumption that the regulations will between 20-50%, with the best estimate being based on 35%). There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce. There is also a risk that UK businesses will not be aware of the new regulations in advance of the planned commencement date of February 2011 (Further details of risks and mitigating actions are provided at page 20)

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			23/02/2011		
Which organisation(s) will enforce the policy?			Trading Standards & OFT		
What is the annual change in enforcement cost (£m)?			0		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** n/a	**Non-traded:**	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:** n/a	**Benefits:** n/a	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro** 0	**< 20** 0	**Small** 0	**Medium** 0	**Large** 0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.
Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	22
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	21
Small firms	Yes	21
Environmental impacts		
Greenhouse gas assessment	No	n/a
Wider environmental issues	Yes	22
Social impacts		
Health and well-being	No	n/a
Human rights	Yes	22
Justice system	Yes	22
Rural proofing	No	n/a
Sustainable development	Yes	22

[2] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
	Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-terms holiday product, resale and exchange contracts http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0122:EN:NOT
	BIS consultation (URN 10/500) on the proposed 'Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2011' http://www.bis.gov.uk/Consultations/timeshare-holidays-exchange-resale
	Resort Development Organisation Report, 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' http://www.rciventures.com/wp-content/uploads/2010/03/The_European_Timeshare_Industry_2008.pdf
	Review of the Timeshare Directive (94/47/EC), a consultation report by the Office of Fair Trading, August 2006 http://www.oft.gov.uk/OFTwork/publications/publication-categories/reports/oft_response/oft859
	OFT Research on Impact of Mass Market Scams (2006) http://www.oft.gov.uk/OFTwork/publications/publication-categories/reports/consumer-

Evidence Base

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	£0.44									
Annual recurring cost										
Total annual costs	£0.44									
Transition benefits										
Annual recurring benefits	£17	£20	£23	£25	£28	£30	£31	£33	£35	£36
Total annual benefits	£17	£20	£23	£25	£28	£30	£31	£33	£35	£36

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Strategic Overview

1. Directive 2008/122/EC (the Directive) was published in the Official Journal of the European Union on 3 February 2009. The Directive addresses shortfalls in consumer protection in relation to Timeshare, Long-term Holiday Product, Resale and Exchange contracts. Intervention at European level was necessary because of the cross-border nature of the sale of these products and the nature of the exposure to detriment which consumers face in this market. The Directive replaces Directive 94/47/EC.

2. Member States have until 23 February 2011 to comply with the Directive. The Directive is a maximum harmonisation Directive which means that Member States are obliged to implement its provisions in national law in a way that accurately reflects, does not exceed (i.e. 'goldplate'), or fall below the requirements of the Directive. On 9 July 2010 the Government published a formal consultation (URN 10/500) seeking the views of businesses, consumers, enforcement authorities and other interested parties on a set of draft regulations proposed to implement the Directive in the UK i.e. the proposed 'Consumer Protection: Timeshare, Long-term Holiday Products, Resale and Exchange Contracts Regulations 2011' (the proposed regulations).

The Issue

3. Directive 94/47/EC which applied just to timeshare contracts provided for the protection of consumers in respect of the pre-contractual information consumers receive, their right to withdraw from the contract within a minimum period of 10 days, and the ban on advance payments during this period. Directive 94/47/EC has been transposed in all EU Member States. Given the minimum harmonisation nature of the Directive, a number of States, including the UK, have adopted national provisions that go beyond the level of consumer protection required by Directive 94/47/EC. Specifically, in implementing Directive 94/47/EC, the UK has adjusted the definition of relevant accommodation by adding timeshare in caravans, and added 4 days to the 10 day cooling-off period (the period of time during which a consumer can withdraw from a contract without giving a reason) is specified in the Timeshare Act 1992 (as amended).

4. However, since the adoption of Directive 94/47/EC timeshare has evolved and new holiday products similar to it have appeared on the market. These new holiday products and certain transactions related to timeshare, such as resale contracts and exchange contracts are not covered by Directive 94/47/EC. In addition experience with the application of Directive 94/47/EC has shown that some subjects already covered need to be updated to clarify requirements and to prevent the development of products aimed at circumventing the Directive. The existing regulatory gaps create appreciable distortions of competition and cause serious problems for consumers. For example, research carried out by OFT in 2006, suggests that UK consumers lose about £3.5 billion each year to mass markets scams. OFT estimate that £1.17 billion of that £3.5 billion figure relates to scams involving long-term holiday club products. Existing legitimate timeshare sellers must compete with new unregulated and miss-sold long-term holiday products. Similarly, timeshare owners (consumers) are attracted by bogus promises to sell their timeshare at a high price, to the disadvantage both to the consumer and to legitimate resale businesses. Furthermore, businesses selling timeshare in real property, which has been the subject of the former regime, have needed to compete with businesses selling timeshare in other types of overnight accommodation, for example in boats, which have not been subject to the same level of regulation. As a minimum harmonisation directive the former regime led to variations in implementation across borders. The timeshare and long-term holiday product business operates substantially across borders. The maximum harmonisation nature of the new regime should mean consistency of requirements (and protections) across the EU, facilitating the smooth functioning of the internal market. Directive 94/47/EC has therefore been replaced by Directive 2008/122/EC.

5. For the purposes of Directive 2008/122/EC, and for the purposes of the proposed regulations, the following definitions apply:

(a) 'timeshare contract' means a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation;

(b) 'long term holiday product contract' means a contract of a duration of more than one year under which a consumer, for consideration, acquires primarily the right to obtain discounts or other benefits in respect of accommodation in isolation or together with travel or other services;

(c) 'resale contract' means a contract under which a trader, for consideration, assists a consumer to sell or buy a timeshare or a long term holiday product;

(d) 'exchange contract' means a contract under which a consumer, for consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services, in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer's timeshare contract;

The Timeshare Market in the UK

6. In 2007, the UK had 145 resorts (11.1% of the market share of resorts in Europe) and UK citizens represented the largest number of European timeshare owners[3]. It is estimated that 590,000 UK families own a timeshare, and around 472,000 (80% of them) own timeshares outside the UK[4]. In 2007, the UK industry in terms of timeshare agencies, timeshare developers, sellers and resellers was estimated to be worth around €526 million per year[5].

7. There are a number of factors that explain the appeal of timeshare holidays to buyers[6], including the following:

- Timeshares involve significantly less initial capital outlay than complete ownership;
- Consumer purchasers are limited to the number of holiday weeks they intend to use;
- Consumers purchase at today's prices, potentially saving money on future holidays (depending on use);
- An increasing network of timeshare exchanges is being developed that provides flexibility to consumers; and
- Consumers are able to let their occupation rights to others.

Developments in the TImeshare Market

8. There are four specific problems that have developed in the Timeshare market. These have an effect on competition through businesses circumventing Directive 94/47/EC and on consumer welfare. The specific requirements of the former regime were designed to address particular sales methods and practices affecting, in large part, consumers while they were not in their home State. These practices are not adequately protected against under existing wider protections. The wider remit of the new regime is designed to provide measured levels of protection for consumers who are exposed to potential detriment while they are out of their home State

Development of alternative 'Timeshare' products

9. The definition of timeshare in Directive 94/47/EC is quite restricted and can be easily circumvented. A number of products, such as timeshare in boats and shorter timeshare agreements, do not fall under the scope of the Directive; hence purchasers are not entitled to the benefits (e.g. pre-contractual information, right to withdraw) that Directive 94/47/EC affords to purchasers of 'traditional' timeshare rights.

Development of other Long-term Holiday Products such as Discount Holiday Clubs

10. Consumers joining such a club pay an initial fee, often of several thousand pounds, for joining the club, in return for which they gain access (in some cases in the form of a password to enter a website) to a booking service promising special rates or discounts on flights, accommodation, car hire, insurance and others services. Typically, the contracts for such products extend well into the future. Consumers

[3] RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org
[4] RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org
[5] RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org
[6] *A Time to Share*, TRI Hospitality Consulting, http://www.trihospitality.com/data/publications/dubai/timetoshare.pdf.

experience problems because businesses are often unable to honour the promises made due to the business practices (especially in relation to sales) of the service being sold.

11. According to the OFT, these problems include:[7]

- Gross exaggeration of the benefits of club membership (for instance, Club class flights from UK to Australia for unrealistically low fares);

- Telling the consumer that the discount price quoted for membership is available on that day only to force the sale through;

- Being aggressive towards consumers during the sales process when the consumer has said they are not interested; and

- Advising consumers that they cannot go away and think about whether they want to purchase or not because it is against the law for the sales company to allow the consumer to return to the sales premises within a specified time period, usually quoted as two years.

12. Unlike timeshare there are no underlying real property assets, and there is little evidence of any agreements between holiday clubs and the providers of transport or accommodation services to suggest that the club is likely to be able to continue to provide the promised services for the duration of the contract (often up to 20 years).

<u>Development of timeshare resale market</u>

13. A consumer who wants to sell his or her timeshare could do so on his or her own or involve a resale agent (either affiliated to the resort to which the timeshare is linked or an independent agent). The resale agent will often seek a fee in advance for his services, and acts as an intermediary between the consumer who is selling the timeshare and the consumer or business buying the timeshare. Consumer evidence suggests that timeshare resale provides an opportunity for rogue traders to exploit. For instance, the 'agent' may charge an up-front fee to a consumer wishing to sell a timeshare when the 'agent' has no intention of selling the timeshare or the 'agent' may charge for a timeshare exchange or upgrade where no sale takes place at all, so the consumer ends up with two timeshares[8]. Therefore, the consumer interests in the area of resale are twofold: the protection of those consumers whose timeshares are being sold, and a degree of protection for consumers purchasing timeshares on the private market.

14. The resale market for timeshare products in Europe is not well-developed in terms of number of businesses and total sales. Within the UK, there are only 4 resale businesses that are RDO members, although we believe that there are an additional 4 non RDO resale companies that operate in the UK[9]. In the UK, the value of resales was estimated at £23.5 million for 2007. The figure did, however decrease by 25% for 2008[10]. Even though there are only an estimated 8 resale businesses within the UK, UK buyers are likely to buy a timeshare through resale (secondary market). In 2007, 16% of UK buyers had bought their timeshare through a resale[11].

<u>Timeshare Exchange Systems</u>

15. Consumers belonging to an exchange scheme 'deposit' their weeks of timeshare into the scheme 'pool' of available timeshare and request in exchange other weeks, usually in another resort, from the pool. Another type of exchange system assigns points to the deposited timeshare based on several factors, including the quality of the resort and size of the apartment. Members can identify how many points they need for stays in other affiliated resorts and request a stay. They can accrue extra points or carry unused points from one year to another. Points can be used for expenditure items, including air travel and car hire.

---

[7] Review of the Timeshare Directive (94/47/EC), a consultation report by The Office of Fair Trading, August 2006, http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft859.pdf.
[8] See footnote 5.
[9] Information provided to BIS by the RDO in December 2009
[10] Information provided to BIS by the RDO in December 2009
[11] RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org

16. The availability of membership to an exchange scheme can be pivotal in a consumer's decision to purchase because of the flexibility it offers in relation to what is otherwise a quite inflexible product. Problems with exchange schemes are related to the 'overselling' of the advantages and options, leaving consumers disappointed with the service ultimately supplied. For example, consumer organisations have stressed to the EU Commission that the marketing of exchange often gives consumers the impression that they are signing up to something that will give them unlimited choice from a large number of properties. However, the choice in practice is often limited due to availability and depending on the value of the timeshare to which the exchange membership is linked. Indicatively, in a 2003 OTE survey of timeshare owners in Spain, 32% of respondents said that exchange options with other resorts were unclear.

Rationale

17. Timeshare (and related products) involves substantial payment upfront, followed by payments linked to later actual use of holiday accommodation (either on its own or in combination with travel). Typically, the marketing and/or conclusion of the contract often takes place in a country other than the consumer's home country, or in a country other than that where the property is located. This separation – in terms of time and geography – between purchase and consumption exacerbates the potential for consumer harm, in that the seller of the contract is likely to have more information than the purchaser, creating the potential for **information asymmetry**.

18. In addition, contracts for timeshare (or related products) are legally complex, with division of responsibilities between parties not always entirely clear to consumers. This can potentially further impede consumer understanding of what they are signing up to.

19. The minimum harmonisation nature of the previous Directive in this policy area has led to discrepancies between levels of consumer protection in different Member States, such as differences in the cooling-off period for timeshare transactions (as shown in the table below).

Current cooling off periods across Member States (calendar days, unless specified)

15 days	Belgium (working days), Cyprus, Czech Republic, Hungary, Slovenia
14 days	Austria, Germany, Latvia, UK
10 days	Denmark, Estonia (from receipt of contract), Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden

According to the European Commission, responses to the stakeholder consultation confirmed that these differences cause fragmentation and legal uncertainty, which can be considered as a significant legal barrier to conducting business cross-border in the EU. This causes cost, complexity and uncertainty for firms, and negatively affects consumer confidence when conducting cross-border transactions. This is a particular problem for SMEs who face the same start-up costs as larger businesses, and whose activities are more seriously impeded by such obstacles due to their smaller size and capacity. Business and consumer stakeholders affirmed that a fully harmonised 14-day cooling off period for consumers would effectively tackle this problem with very beneficial effects for all stakeholders involved, without imposing a disproportional burden on businesses.

20. The development of new products which fall outside the scope of the existing Directive (as outlined above) has led to gaps in the regulatory framework. Indeed, the European Commission reports UK complaint data showing that complaints about these new types of products accounted for between three-quarters and four-fifths of all timeshare-related complaints. In response to the Government's formal consultation (URN 10/500) OFT provided figures taken from the Consumer Direct database for the calendar year 2009, relating to consumer complaints/enquiries for Great Britain. It is important to note that complaints to Consumer Direct are unverified and there is no distinction between enquiries and actual complaints, or between calls about products in the UK or abroad. The number of complaints in relation to timeshare resales were 1,706 and the number of complaints in relation to long-term holiday clubs were 1665. OFT was unable to provide any data indicating the number of complaints in relation to timeshare exchange.

21. Some Member States have also attempted to remedy the regulatory lacunae caused by the Directive's lack of coverage of the new products, by extending its scope. Such unilateral action on the part of Member States is however not sufficient to remedy the problems, since the rules will apply only when the law of the Member State which has extended the scope is the applicable one. For instance, a consumer buying a discount travel membership will only enjoy the rights afforded to buyers of such products by Portuguese legislation, if that is the applicable law. Moreover, unilateral action by Member States further increases fragmentation and legal inconsistency.

Objectives

22. To implement the requirements of the Directive by introducing regulations that will:

- modernise and simplify the coverage of the current UK legislative regime as it applies to timeshare agreements;
- help improve the functioning of the internal market by harmonising the regulatory regime across the EU;
- include adequate and effective means to ensure compliance by traders with the Regulations;
- protect consumers and provide a level playing field for businesses whose choices and business activities are affected by the marketing of products that are economically broadly similar to timeshare, in the sense that there is a substantial payment upfront, followed by payments linked to later actual use of holiday accommodation (on its own or in combination with travel); and
- protect consumers in the timeshare aftermarket

Outcomes

23. A successful set of outcomes would constitute:

- a reduction in the number of consumer complaints relating to the purchase of timeshare, long term holiday products, and timeshare resale and exchange contracts;

- a reduction in the level of consumer detriment relating to the purchase of timeshare, long-term holiday products, and timeshare resale and exchange contracts;

- a more competitive market (due to the removal of rogue traders, unfair competition, and increased consumer confidence)

Options

24. The Directive includes a range of measures to protect business and consumers when entering into timeshare, long-term holiday products, resale and exchange contracts. Measures include:

Timeshare

- to extend existing consumer protection by adjusting the definition so that it no longer refers to agreements relating to "immoveable property" only, but to wider "overnight accommodation" and by reducing the minimum period of agreements caught by the regime from 3 years to 1 year;

- to standardise the length of the cooling-off period, during which the taking of deposits or any payment is banned, at 14 days (the consumer is entitled to withdraw from the contract without giving any reason and at no cost during the cooling off period);

- to clarify and extend the existing information requirements.

Long-term holiday products:

- to introduce substantially the same legislative regime to selling long-term holiday products as is applied to timeshare sales i.e. a 14 day cooling-off period, during which no money may be taken, and specific information requirements in the contract, and in advance (on request), and via regulating payment, to provide dissatisfied consumers with the opportunity to withdraw from the contract each year.

Resale of timeshare:

- to introduce the ban on taking payment for this type of intermediary/agency activity, until a sale has been completed, or the contract is otherwise terminated;

- to require relevant information to be provided both in the agency contract and in advance of agreeing the contract.

Timeshare exchange schemes

- to make selling membership of a timeshare exchange scheme subject to essentially the same regime as selling a timeshare agreement i.e. a 14 day cooling-off period, during which no money may be taken, and specific information requirements in the contract, and in advance of agreeing the contract.

We have a number of options with regard to transposition of the Directive in the UK.

Option 1 - Introducing new UK regulations and amending the existing UK regulatory regime

25. This option would involve further amendments to the already complex and difficult to understand 1992 Timeshare Act by making new regulations under s.2(2) ECA (revoking those elements of the 1997 regulations and amending orders which are no longer applicable).

Option 2 - Introducing new UK regulations and replacing the existing UK regulatory regime

26. This option would involve repealing the 1992 Timeshare Act and revoking the 1997 regulations and related orders replacing them with an entirely fresh set of regulations under s.2(2) ECA. This would remove the business to business coverage of the old UK Act and provide for a clearer more easy to understand set of regulations (rationale provided at paragraphs 67 to 81). This is our preferred option.

Option 3 - Self Regulation

27. Self regulation is not a viable option at this stage – a 'summary: analysis and evidence sheet has not been produced'. The RDO Code of Ethics establishes standards of practice, which help to ensure the fairness and propriety with which member companies conduct their business. It applies to all holiday products offered by RDO Members, including products marketed as timeshare, vacation ownership, holiday ownership, and points clubs. The Code includes disclosure requirements that are additional to those provided by the old Directive. However, the Code will not be in a position to resolve consumer problems in this area as it is non-obligatory for non-RDO members. Hence, the voluntary nature of the Code for non-members cannot prevent rogue traders from non compliance with the prescribed rules. Self regulation is not likely to achieve the objectives of ensuring adequate and proportionate protection for consumers and of levelling the competitive playing field between timeshare sales and other long-term holiday product sales as required by Directive 2008/122/EC.

Option 4 - 'Do nothing'

28. A 'do nothing' approach is not a viable option at this stage because the Directive has already been argued at the EU level and the focus is on the most effective form of implementation of the Directive in the UK. The UK is required to introduce measures to comply with Directive 2008/122/EC by 23 February 2011. A 'do nothing' approach would leave a gap in consumer protection with respect to timeshare-like products not covered under the current UK regulatory regime, as such the benefits of the Directive would not be realised.

29. It is likely that infraction proceedings would result from any failure to implement the Directive.

Analysis of Options 1 and 2

30. We have identified two regulatory options (Options1 & 2) for the feasible means of implementation.

31. The majority of the benefits and costs associated with implementing the Directive apply equally to both Option 1 and to Option 2. The benefits and associated costs that would apply equally to either

Option 1 or 2, relative to the counterfactual scenario of maintaining the current UK legislative regime, are explored from paragraph 34 to 60.

32. The additional benefits associated with a clearer and simpler UK legislative regime that would result from Option 2 are explored at paragraphs 65 to 80.

33. Net benefits take into account only the additional costs and benefits and do not allow for transfers between parties (for example any displaced sales from other holiday products to timeshare products). Where the costs and benefits cannot be quantified, we note these qualitatively, in keeping with best practice.

Benefits (common to both Options 1 and 2)

Beneficial impact on Consumers

34. Both Option 1 and Option 2 and are likely to lead to a boost in consumer confidence, and an associated increase in sales, for a number of reasons. Options 1 and 2:

- impart a benefit to consumers in terms of being able to make a better informed timeshare purchase decision and possibly a faster one. We are informed by the trade and relevant consumer groups that the current UK regulatory regime and the implementation of the current Directive in Europe, have been substantially successful in improving consumer confidence by discouraging the rogue element which was formerly rife in the sector. We anticipate similar benefits to consumers as the requirements are extended to new products. This is likely because, for example, consumers will have a no-obligation cooling-off period during which they can cancel a purchase contract without penalty or loss. This benefit applies to purchases not only of timeshare but also to the other products covered both within the UK and the EU; and

- impart a benefit to consumers in that they are likely to be frustrated less by the overall purchase process because clearer information for new timeshare products covered by the proposed regulations will be available.

35. Consumers purchasing the new products that would be covered by the proposed regulations - namely long-term holiday products, timeshare exchange schemes, or contracts for resale services - will now be protected with rights. For instance, in addition to the cooling off period, consumers participating in exchange schemes will benefit by being afforded rights and protection when entering these contracts e.g. better information and the fact that any exchange contract will be cancelled if the timeshare contract is cancelled within the cooling-off period. In response to our Consultation, Citizens Advice, OFT and Local Government Regulation all welcome the fact that the new Directive covers a wider range of products than the previous Directive – including timeshares on boats, resales and long-term holiday clubs.

36. It is difficult to measure directly the value of consumer confidence as a result of new products being captured by the regulations. However, we can utilise information on evidence of the extent of consumer detriment to estimate the value that consumers would place if they knew that the new products developed in the marketplace were regulated. The OFT has investigated the extent of consumer detriment in the discount holiday club market. According to the OFT[12], in 2006, there appeared to be five or six holiday discount clubs operating, services being provided from premises, mostly within Spain (in Costa Del Sol and in the Canary Islands). The two big holiday discount clubs operating within the UK have between them five marketing outlets operating within the UK and around twenty marketing outlets in Spain. The OFT's *Research on the Impact of Mass Market Scams* (2006)[13] identifies 400,000 holiday makers (purchasing long term holiday products both abroad and within the UK) who could be affected, many consumers feeling pressurised into signing up to these products on the spot. This regulation will, among other things regulate the sale of long term holiday products, including introducing a 14 day

[12]Review of the Timeshare Directive (94/47/EC), a consultation report by The Office of Fair Trading, August 2006, http://www.oft.gov.uk/shared_oft/business_leaflets/general/oft859.pdf.

[13] *Research on the Impact of Mass Market Scams: a summary of research into the impact of scams on UK consumers,* The Office of Fair Trading, 2006, http://www.oft.gov.uk/shared_oft/reports/consumer_protection/oft883.pdf

cooling off period, which should significantly reduce the estimated consumer detriment. The estimated consumer detriment amounts to £1.17 billion annually[14].

37. The impact of boosting consumer confidence could be threefold: first, the economic benefit to consumers who have previously been victims of a discount holiday scam can be approximated to the amount of the identified detriment; second, the fact that other purchasers of holiday clubs who have not been subject to fraudulent sales feel more confident about their actual and prospective purchasers bears a value as an added benefit; finally, some of those consumers who were deterred from purchasing now feel more confident to do so, and may purchase one and enjoy an associated benefit by doing so.

38. The above analysis of avoided detriment as an approximation to the benefit of higher consumer confidence only includes scams on discount holiday products and does not include scams on timeshare-like products, or resale. According to the European Commission, 81 and 53 complaints were reported for timeshares and timeshare resale respectively for the period between September 2005 and September 2006, in addition to those relating to discount holiday clubs. In addition to reducing detriment relating to discount holiday clubs we would also expect a reduction in detriment with regard to the other types of regulated contract. In response to the Government's formal consultation (URN 10/500) OFT provided figures taken from the Consumer Direct database for the calendar year 2009, relating to consumer complaints/enquiries for Great Britain. It is important to note that complaints to Consumer Direct are unverified and there is no distinction between enquiries and actual complaints, or between calls about products in the UK or abroad. The number of complaints were as follows: Timeshare sales 1,222; Timeshare resale 1,706; and Holiday Clubs 1665. OFT was unable to provide any data on the associated losses detriment or any statistics relating to Timeshare Exchange. The following estimate of benefits therefore relates only to the potential reduction in the £1.17 billion consumer detriment identified by OFT in relation to discount holiday clubs. .

39. In estimating benefits to consumers from increased confidence, dynamic effects must be taken into account. Such effects can potentially arise as the benefits of the proposal are likely to change over time. Implementation of the proposal is likely to provide consumers with a benchmark of business quality (in terms of information provided) such that they would be less likely to trade with businesses who did not provide the information required by the regulations. This increased ability to identify rogue traders would mean that the estimate of £1.17 billion may decrease as consumers become more sophisticated. If at least one of the organisations behind the discount holiday clubs abides by the regulations, the value of this benefit in the second year would be smaller than £1.17 billion and decline as the number of fraudulent sales declines. Equally however, the possible decline in consumer benefit may be offset by an increase in the overall level of timeshare purchases. In the scenario that the two organisations understood to be behind the discount holiday scams comply fully with the regulations once the proposal is implemented, the identified benefit due to higher consumer confidence would be one-off.

40. In estimating the average annual benefit to consumers we have adopted a conservative methodology. We have taken the figure of 80,000[15] UK holiday makers who are likely to fall within the scope of the UK regulations and multiplied that figure by the median consumer detriment figure (related to discount holiday club sales) of £601. This gives us a potential consumer detriment figure of £48 million per annum. In the absence of data relating to buying trends in the market since 2006, for the purposes of the Impact Assessment, we have worked on the assumption that a failure to regulate the UK market would mean that the potential consumer detriment figure would be likely to remain at £48 million per annum over the next ten years. We have then worked on the assumption that if regulations are introduced (a) there will be a learning effect among consumers and that (b) a number of rogue businesses will be forced out of the market - so the level of consumer detriment should reduce over a 10 year period. To balance this we have made the assumption that it is highly unlikely that enforcement can ever be 100 per cent effective and we have also made some allowance for the resourcefulness of rogue traders. Taking all of these factors into account we have estimated an overall effectiveness of between 20-50% (35% best estimate) reducing the level of consumer detriment by 10 per cent each year over 10

[14] The OFT commissioned Carol Goldstone Associates, together with GfK NOP to undertake this research. This was a major piece of work that included initial interviews with more than 11,200 people and 1,900 detailed follow-up interviews with people who reported that they had been a victim of a scam, or knew someone who had been a victim, or had been a target of a scam.

[15] This regulation will apply to UK holidaymakers purchasing long-term holiday products in the UK. The OFT estimated 400,000 UK holiday makers could be affected by bogus holiday scams, we also know at least 20% UK timeshare owners own timeshares in the UK. Combining this information, it has been assumed 80,000 UK holiday would benefit from this regulation.

years i.e. by £17 million in year 1, £20 million in year 2, £23 million in year 3 etc. Applying a further discount of 3.5% results in an estimated average annual benefit to consumers of £27.7 million (constant prices), totalling £233 million over 10 years. We have based our estimate of 20-50% effectiveness on the fact that there is a relatively small number of UK businesses operating in the sector (although they do have the potential to cause considerable consumer detriment due to the nature of the contracts involved). Trading Standards will therefore have relatively few businesses to deal with plus the relatively small number of businesses will also make it easier for BIS to target those businesses when implementing our communication strategy to help raise business awareness of the requirements of the regulations. Another point that should help deliver immediate benefit is the new requirement (for long-term holiday contracts, timeshare resale and timeshare exchange) for a 14 day cooling off period (under the current regime, for these type of contracts, once the consumer has signed there is no chance to withdraw). The specific requirements for the trader to provide pre-contractual information and to provide it in a very prescriptive format and in 'good time' should also help to deliver an immediate benefit as consumers will be in a position to make a more informed decision. Applying the same methodology described above, it has been estimated that as the Directive is implemented across the EU that that the total annual benefit to UK consumers from the EU directive would be £162.1 million over ten years (and applying the discount rate of 3.5%) the total benefit to UK consumers of this directive would be £1,375 million. This is based on the assumption 400,000 UK holiday makers could be affected by this Directive i.e. UK holiday makers buying timeshare in Spain for instance, would not be covered by the UK regulation, but would be covered by the Spanish equivalent, hence creating benefits to UK consumers from the EU Directive.

Beneficial impact on businesses

41. As stated in the previous section, a key impact of both Option 1 and Option 2 is to increase overall consumer confidence in purchasing the products covered. This may lead to an increase in total sales. It is pertinent to point out that some of the benefits from higher sales would flow to timeshare companies based outside the UK, as UK consumers are more likely to purchase timeshare products outside the UK. The RDO estimates that about 80% of UK timeshare owners own timeshares outside the UK[16].

42. Moreover, by extending coverage to long-term holiday products, a broader range of timeshare products, and resale, it is likely that a large number of rogue traders will be squeezed out of the market.

43. Finally, a level playing field will be provided for legitimate timeshare businesses as operators of long-term holiday products, timeshare-like products, resale services or exchange scheme will need to comply with the same degree of regulation. Especially in relation to long-term holiday products, developers of timeshare resorts and associated businesses are at a disadvantage relative to discount holiday clubs because they have to offer cooling-off periods and are prohibited from taking deposits. The RDO estimates that there are approximately 100 timeshare developers based in the UK who own and manage resorts and sell in the UK. However, it is likely that many of the resorts are sold out and that many of the timeshare developers are no longer active in sales. Of the estimated 100 UK timeshare developers, the RDO has 7 members which represent approximately 60% of timeshare sales in the UK.[17]

44. Some stakeholders (specifically developers) consulted by KPMG (2007)[18] asserted that by including discount clubs under the scope of the regulations there might be negative consequences on sales due to negative image of discount holiday clubs being associated with timeshare products. On the contrary, we feel that by extending the coverage of the regulations to the new products developed in the marketplace, the image of the industry's products is actually likely to improve as such products will be competing on a level playing field. Overall, the increase in consumer confidence is likely to boost industry sales for timeshare products (primary market) and exchange scheme products (secondary market).

45. We have not been able to develop robust, quantitative estimates of these benefits. However, in keeping with best practice it is important to note these qualitatively.

46. An increase in total sales of timeshare products in the UK may transfer sales from other holiday products, such as hotel operations, thereby having a possible negative impact on non-timeshare UK

[16] RDO report 'The European Timeshare Industry 2008: Market Characteristics & Economic Impacts' www.rdo.org
[17] Information provided to BIS in December 2009.
[18] *Timeshare Directive Impact Assessment*, a report prepared for the OTE by KPMG with regard to the potential amendments to the Timeshare Directive (94/47/EC).

businesses. The impact of possible transfers in sales of timeshare products is not taken into account in this analysis because it is difficult to make predictions of the extent of such transfers. Transfers will not have a direct impact on the UK economy, rather distributional impacts on certain industries.

Beneficial impact across the UK

47. A better functioning market for consumers and businesses of timeshare products and resale and exchange schemes may encourage investment in regions of the UK traditionally attracting investment in holiday accommodation. In 2001 the UK timeshare market was predominantly concentrated in England which had 70% of the resorts in the UK (91 resorts in England, 26 in Scotland, and 12 in Wales) [19]. So it could be anticipated that by extending the scope of the regulations to cover new products, there could be an increase in the number of timeshare developments and products through increased demand as a result of boosting consumer confidence..

48. Moreover, an expansion of the timeshare market could lead to a higher demand for labour and subsequent job creation in the leisure industry. Across the UK, the second round impact of the proposal would be to increase the number of resort staff and staff in head office locations who need to deal with the administration of the resorts. The OTE 2001 study identified 4,713 employees (other than the 2,490 who were employed in resorts) who were employed by head offices in timeshare organisations. This brought the total number of employees employed in the UK timeshare industry at 7,203. Future employment levels due to the development of the timeshare market may be higher and therefore exert a positive impact to the local economy.

Costs (common to Options 1 and 2)

Cost to businesses

49. There could be a negative consequence on the timeshare market resulting from the introduction of a ban on deposits during the cooling-off period to the new products which are covered by the proposal. Businesses have argued that such a ban dissuades international brand name hotel chains from investing in timeshares. For example, Interval International considers that while the proposals may contribute to enhance consumer confidence and therefore make timeshare a more attractive product, the proposals will not help business growth. Interval International argue that large multi-national groups wishing to invest in the development of timeshare resorts will choose locations outside the EU for their developments given the burdens imposed by the EU regulatory regime. Interval International believe that the cost of extending the ban on deposits to resale, timeshare exchange, and long-term holiday products is likely to be significant but Interval International is unable to provide any quantifiable evidence to support that view. Diamond Resorts believe that whilst the Regulations are unlikely to lead to an expansion of the number of traders involved in the sale of timeshare the proposals will hopefully improve the reputation of the industry and thereby enhance the business operations of the legitimate traders.

50. The Government's formal consultation [URN 10/500] sought to clarify the extent of costs associated with the ban on deposits, however, while industry respondents including Interval International and the Resort Development Organisation suggested there would be added costs, none were able to provide any quantitative estimates of the costs involved. Again, in keeping with best practice, it is important to note these qualitatively.

51. There is an associated negative impact on business as a result of increased administrative costs, particularly in relation to the newly regulated businesses. Administrative costs relate to the preparation of pre-contractual information/contracts for consumers are one-off. Such costs include the translation costs of providing information to foreign consumers of UK timeshares in the language in which the purchaser is a resident. A number of respondents to the formal consultation (URN 10/500) felt that the potential additional costs involved in translating information would be prohibitive to the average developer and as a result many developers may turn away potential clients However, in respect of timeshare sales, developers are already required to provide information and contracts in different languages depending on the circumstances. Furthermore, it is our view that traders will not necessarily need to keep stocks of documentation in all 24 languages unless they are confident that they will be selling to consumers who would choose any one of those languages. When a trader is contacted by a potential buyer, in respect of whom the trader does not hold the documentation in the required language,

[19] OTE Report 2001.

the trader must make a decision of whether they wish to sell, and therefore translate the relevant documents or not. Our understanding is that most traders are very familiar with the nationalities which are most likely to be attracted by their offers and will stock accordingly.

52. For the calculation of such additional costs, the methodology followed by the Commission was used. Information provided by the RDO was used to estimate the number of timeshare, timeshare resale and timeshare exchange companies. In estimating the cost to business we have worked on the basis that there are 57 timeshare businesses[20] (7 of which are RDO members) actively selling in the UK, 8 resale businesses (4 of which are RDO members), and 3 exchange businesses based in the UK (2 of which are RDO members). As a proxy to the average wage of a timeshare industry employee, the average wage for the real estate, renting and business activities sector (that relates to computer and related activities) was used from the 2006 Annual Survey of Hours and Earnings (ASHE)[21] which have been updated to 2009 prices using the HMT's GDP deflator[22]. These numbers have then be multiplied by 1.3 to take account of the non-wage labour costs, which includes employer national contributions, pensions provision and other related costs. . Furthermore, the analysis utilised the estimated number of hours that are needed to perform the activities relating to the pre-contractual information obligations. The calculation of administrative costs involves the multiplication of the number of hours needed to perform the required action by one employee by the proxy of the average wage for that sector. This figured is then multiplied by the number of enterprises required to perform this action in each category (timeshare, timeshare exchange and timeshare resale).

53. The calculation comprises of the following elements/assumptions:

- An assumption that the costs involved in designing the information material in each category (timeshare, timeshare exchange and timeshare resale) are approximately equal to the hourly wage paid in the real estate, renting, and business activities sector;

- An estimate of the costs involved in reproducing this material for members in all categories. According to the Commission report, each RDO member has, on average, 964 sales per year. Anecdotal evidence cited in the European Commission's calculations suggest that the cost of printing 1000 copies of a 30-page black-and-white booklet containing text and cover colour is €900. Making the assumption that each company needs 2000 copies of this material per year, there would be a cost of €1,800 for the reproduction of the material per business;

- An estimate of the costs of legal validation of the information (converted the amount used in the European Commission's calculations into GBP); and

- An estimate of the costs involved in translating the pre-contractual information requirements from English into 20 other European languages[23] (converted the amount used in the European Commission's calculations into GBP). This estimate was obtained through an assessment of the EU-level average costs of translating 30 pages of legal/economic information material in the private sector.

54. If businesses pass on such costs to consumers directly (or indirectly through developers of timeshare resorts), this would make the facility less attractive and thus lower sales volumes. KPMG (2007)[24] notes that the two major exchange companies it has consulted indicated that they would be strongly opposed to regulation of exchange as timeshare for the aforementioned reason, and stressed that there was no evidence of high number of complaints concerning exchange. However, contact with UK officials suggested less concern on the part of the companies at providing more accurate information for consumers.

[20] For the purpose of our cost calculations, we have assumed there are six large timeshare (developer) businesses.
[21] Go to http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=14630, then Table 4: Industry, and select Table 4.6a. It is interesting to note that this average wage is higher than that used in the Commission's analysis (when converted in £GBP) for the Pan-European calculation of administrative costs.
[22] http://www.hm-treasury.gov.uk/data_gdp_fig.htm - accessed 22 October 2010
[23] It is estimated that 37,000 timeshares in the UK are owned by non-UK consumers. According to the 2001 OTE report, the majority of non-UK consumers owning timeshares in the UK come from countries including, Germany, Switzerland, the Netherlands, and Austria.
[24] See footnote 15.

55. Our initial estimate of the additional administrative cost for the industry involved in implementing the proposal amounts to £441,000 (Four hundred and forty-one thousand GBP). This equates to, approximately, £6,300 (six thousand and three hundred GBP) for the average business. It is pertinent to note that this calculation involves the costs imposed on the UK-based RDO members active in selling in the UK plus an estimate of 50 additional timeshare UK based businesses that may be selling in the UK (we are not at this stage able to say how many UK based businesses are actively selling) plus an estimate of 8 resale businesses (4 of which are RDO members), and 3 exchange businesses based in the UK (2 of which are RDO members).The £6,300 figure represents, therefore, in our view a maximum average additional administration cost per business. Based on a calculation of additional administrative costs relating to time requirements to comply with information obligations imposed by the proposal, administrative cost per business amounts to, approximately: £5,400 (five thousand and four hundred GBP) for each small and medium timeshare developer; £18,700 (eighteen thousand and seven hundred GBP) for each large timeshare developer £4,100 (four thousand and one hundred GBP) per resale business; and £4,100 (four thousand and one hundred GBP) per exchange business. Calculation of these costs to business comprises the following elements: an estimate of the costs involved in designing the information material for timeshare, timeshare exchange and timeshare resale; an assumption that each UK business needs 2000 copies of the information material costing each UK business approximately £1,700; and an estimate of the legal validation costs and the translation costs for each UK business (our formal consultation seeks further estimates).

56. Albeit the two major discount holiday clubs that operate in Europe have five marketing outlets in the UK, the administrative costs of complying with the regulations will fall on non-UK businesses. As we understand that there are no discount holiday clubs that are UK-based, the total costs to the industry are lower than in the case where some clubs were located in the UK.

"One In, One Out" Rule

57. EU measures are, for the present, excluded from the ‘one-in-one-out’ rule whereby no new regulation can be brought in without other regulation being removed. Therefore, regulatory savings to compensate for the additional transition cost will not be sought.

Impact on enforcement costs

58. The impact of the uptake of both Option 1 and Option 2, to capture new products under the coverage of consumer protection legislation, will have a twofold impact on enforcement costs. On one hand, it will facilitate the work of Trading Standards as it will set clear and unequivocal enforceable rights and obligations for consumers and business. This is expected to reduce enforcement costs. On the other hand, the fact that Trading Standards will need to monitor a larger market due to the inclusion of new products (resale and exchange) under the regulation of the new Directive, could imply higher enforcement costs. However, according to statistics from the RDO, it is important to point out that the number of resale and exchange businesses that are UK-based and would need to comply with the regulations amount to 8 entities. Respondents to the Government’s formal consultation (URN 10/500) including the Association of Chief Trading Standards Officers, Local Government Regulation, OFT and the Trading Standards Institute agreed that the proposed regulations would not result in any additional enforcement costs for Trading Standards and that the inclusion of criminal offences would make it quicker and easier for Trading Standards to enforce the proposed regulations and to remove rogue traders from the sector.

59. The level of local authority enforcement that happens at the moment is unknown. Hence, we have not been able to develop quantitative estimates of enforcement costs. Nevertheless, as the number of complaints received, with regard to timeshares sold within the UK, is small relative to the size of the UK market[25], we believe that the current level of enforcement activity is limited. Moreover, there is no minimum level of enforcement activity set out at the EU level in terms of the activity carried out by Trading Standards in order for the UK to meet its obligation to enforce neither the 1992 Act, nor the new Directive. However the need to enforce the Act within the local authority exists and should the problem

[25] The OFT has recorded 81 complaints related to timeshare and 53 complaints related to timeshare resale for the period spanning September 2005 to September 2006. Consumer Direct has recorded 530 complaints related to timeshare and 500 complaints related to timeshare resale during the same period. There is no data on the number of complaints on exchange timeshares available. These figures contrast to the figure of 500,000 UK families are reported to own a timeshare within and outside the UK.

become larger (especially in light of the fact that a number of unregulated businesses would be covered in future) the UK would need to ensure that it meets its obligation in terms of effective enforcement of the Directive.

60. It should be acknowledged that much of the enforcement costs will not fall upon the UK Trading Standards. It is estimated that approximately 80,000 UK consumers own timeshares in the UK out of a total of around 500,000 UK consumers who own timeshares worldwide. Hence, much of the enforcement costs will fall upon enforcement agencies of other countries (mainly Spain, Portugal and Malta according to the OTE survey of the European Timeshare Industry in 2001). However, UK based timeshare will require enforcement. The impact of enforcement on Trading Standards will be measured in the Post Implementation Review.

Preferred Option

61. Our preferred option is Option 2 for the reasons set out below. In general, we consider that replacing the current UK legislative regime will make the law a lot clearer and easier for business to comply with, for consumers to understand and for Trading Standards to enforce. A detailed rationale for our preferred option is provided below.

Rationale for Preferred Option

62. The current UK legislative regime consists of the 1992 Act which predates Directive 94/47/EC and which was substantially amended by the 1997 regulations to implement that directive. The Act has been further amended by regulations and an order in 2003. Consequently, the regime is difficult and complicated to understand.

63. Simplification by introducing regulations to replace the current regime would benefit consumers and business. Further amendment of the current regime would add to the already complicated position.

64. The new directive represents a complete revision of directive 94/47/EC, introducing maximum harmonisation to the regulation of the sale of timeshare contracts. It extends the coverage of timeshare contracts and introduces regulation to long-term holiday product contracts (which are not timeshare), timeshare exchange contracts, and contracts covering services which facilitate the sale and purchase by consumers of timeshare contracts and long-term holiday product contracts.

65. The new directive also introduces set formats for the provision of pre-contractual information for consumers in respect of all of the contract types covered, and for a form designed to facilitate the withdrawal by the consumer from a contract within the withdrawal period.

66. While there are similarities between the provisions of the existing regime and how one might envisage some of the new regime being implemented, the differences and new coverage effectively render the bulk of the existing provisions inappropriate and in need of substantial amendment and additions.

The case for not retaining elements of the existing regime which apply beyond the coverage of the new directive.

67. The 1992 Act contains some limited provisions which are not the subject of the new directive. We are satisfied that removing the provisions is justified, in accordance with good regulatory practice and within the vires of s 2(2) ECA.

68. The new directive applies to business to consumer transactions only. Under the Directive a consumer is an individual acting for purposes outside his trade, business, craft or profession. The current 1992 Act applies in some particular respects to transactions where the customer or “offeree” is not such a consumer. For example, the UK regime can in some respects apply to companies and other bodies (and not just individuals) or to individuals where they are acting for business purposes when they are purchasing timeshare agreements.

69. The current regime applies to “business to business” transactions in very restricted circumstances:

- The obligation on operators to provide pre-contractual information applies in relation to any person who requests it whether or not they are consumers (although this information only becomes part of the timeshare agreement where the person in question is a consumer);

- The provisions relating to advertising apply to any advertisements irrespective of the target audience (consumer or non-consumer);

- The right of withdrawal, including the right of withdrawal from related credit agreements, applies to companies or bodies <u>but only where the purchase of timeshare is wholly or partly for leisure purposes</u> (section 1(1)(a)) <u>and the agreement is not entered into in the course of business</u> (section 4).

70. While we are not aware of the reasons for the introduction of these provisions in the 1992 Act, we believe that they have no real value today. If these elements of the current regime were to be of any benefit to non-"consumers" purchasing timeshare, that benefit would appear to lay only in the right to pre-contractual information and the provisions covering advertising.

71. The restrictions on the applicability of the withdrawal rights seem so tight as to exclude any "real world" circumstances where a company or body might be purchasing not in the in the course of its business.

72. Informal consultation with industry stakeholders in the UK tends to confirm our view. They reported that they were aware of only rare occurrences where a non-timeshare related business might purchase a timeshare agreement, for example for the use of employees for leisure purposes. Even these transactions might not benefit from these provisions as it could be argued that these businesses were still purchasing in the course of their business objectives.

73. Other business to business transactions reported by respondents concern timeshare exchange scheme operators, or timeshare points scheme operators buying timeshare in order to increase their portfolio of available properties for use by their customers or members. Again, these are clearly transactions carried out in the course of the operators' business.

74. Those respondents who undertake these transactions pointed out that the information and advertising provisions added no particular value to their normal business practice of applying due diligence to their purchasing decisions.

75. To the very limited extent that these business to business provisions apply in the UK, in reality they apply in circumstances which do not fit the rationale for providing additional protections in the timeshare sector, i.e. to redress information asymmetries and to provide added and specific protection against unfair, pressure, sales techniques.

76. The business benefits of introducing a simpler and clearer regime in respect of business to consumer transactions are likely to far out-weigh any, unconfirmed and unsubstantiated, benefits from retaining the business to business elements of the current regime. Indeed, the complexity of further amending the existing regime to implement the new directive is likely to add business burdens and costs far in excess of anything which business might gain by retaining these elements. This option would also be likely to add to enforcement costs. Respondents to the Consultation overwhelmingly support our proposals to repeal the Timeshare Act 1992 as amended and replace it with new implementing regulations in order to simplify the UK legislative regime for traders and consumers.

<u>Risks</u>

<u>Risk 1</u>

77. There is a risk that the UK legislative regime will be overcomplicated making it difficult for business to comply with, consumers to understand and for Trading Standards to enforce.

<u>Mitigating Action – Risk 1</u>

78. Our preferred option – Option 2 – will involve replacing the current UK legislative regime. This will make the law a lot clearer and easier for business to comply with, for consumers to understand and for Trading Standards to enforce. We will also be issuing guidance on the new regime (see below).

Risk 2

79. There is a risk that the removal of the provisions relating to business to business transactions may leave an area of the market unregulated.

Mitigating Action – Risk 2

80. The 1992 Act contains some limited provisions which are not the subject of the new directive. We are satisfied that removing the provisions is justified, in accordance with good regulatory practice and within the vires of s 2(2) ECA. Informal consultation with industry stakeholders in the UK tends to confirm our view.

Risk 3

81. There is a risk that UK businesses will not be sufficiently aware of the requirements of the new regulations in advance of the planned commencement date of February 2011.

Mitigating Action – Risk 3

82. 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 will be available 12 weeks before the new regulations come into force. We will seek help from the representative bodies to help shape and disseminate the guidance effectively. The Regulations will be made publicly available and will be sent to key stakeholders in the travel industry.

Enforcement

83. The duties of the proposal would be enforced by local authority Trading Standards and OFT. As analysed previously, implementation of the proposal is expected to entail little additional enforcement cost because of the small number of entities that would be covered by the regulations.

84. Enforcement will be compliant with the Hampton Code, and will be conducted in a fair, open and transparent manner.

Implementation

85. The new regulations will come into force in February 2011. As previously stated, the proposal would be enforced by local authority Trading Standards. 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.

Monitoring and Evaluation

86. The Commission shall review the Directive and report to the European Parliament and Council by no later than 23 February 2014. The Department for Business, Innovation and Skills will work with Trading Standards to develop an evaluation mechanism for the UK regulations – the Post Implementation Review – will be conducted by the end of 2013 and will feed into the Commission's Review.

Specific Impact Tests

Competition Assessment

87. We do not expect there to be adverse effect on competition in relevant markets (i.e. timeshare products, long-term holiday products, timeshare-like products, or products sold within a resale or exchange scheme). On the contrary, the effect of these measures is likely to improve competitive

conditions in the marketplace by levelling the playing field, and making the new timeshare products subject to the same regulatory regime.

88. The majority of respondents to our formal consultation (URN 10/500) felt that the proposed regulations would be likely to increase the ability of traders to compete. OFT expressed the view that markets work well when there are efficient interactions on both the demand (consumer) side and the supply (firm) side. On the demand side, confident consumers activate competition by making well-informed and well-reasoned decisions which reward those firms who best satisfy their needs. On the supply side, vigorous competition provides firms with incentives to deliver what consumers want as efficiently and innovatively as possible. When both sides function well, a virtuous circle is created between consumers and competition. OFT felt that the proposed regulations should improve the consumer's ability to access and assess key information. This would improve the working of the consumer demand side and should encourage firms to react and improve performance in the supply side. A number of respondents emphasised the importance of effective and uniform enforcement across the EU to ensure that UK traders were not put at a competitive disadvantage to their EU counterparts. Enforcement is a matter for Member States, however, we are aware that during negotiation of the Directive the main market countries, for example Spain and Portugal, were very much in favour of the revision and we might therefore assume that, in implementing, they will be keen to ensure firm enforcement. Ultimately, it would be for the Commission to be satisfied that implementation in each Member State is effective. The Resort Development Organisation considered that the broadening of the proposed regulations to include a wider range of products would automatically lead to enhanced competition on standards, services and quality rather than leading to 'negative' differentiation of products based on circumvention of the regulations, as was the case in the current regime.

Impact on Small Firms

89. In our view small and medium sized enterprises (SMEs) are likely to benefit as much as larger operators from overall improvements in the functioning of the market. There will be some additional administrative costs, particularly in the form of additional translations costs, but we feel that these additional costs are proportionate when balanced against the benefits provided by improved consumer confidence, improved consumer protection and the likely reduction in rogue traders operating in the sector. RDO figures suggest that there are potentially 100 timeshare developers in the UK, although they suggest that less than 10 are actively selling. The fact that the RDO's UK members, which total just 7, account for some 60% of timeshare sales in the UK suggests that many of the remaining businesses are likely to be SMEs.

90. There was broad agreement among respondents to our formal consultation (URN 10/500) on implementation of the Directive, that the proposed regulations were likely to benefit reputable business by limiting the number of rogue traders in the market. However, concerns were expressed that even though disreputable traders were now more likely to be shut down by the enforcement authorities, these traders would still be free to set up again under another name. This is not unique to this sector and is substantially a matter for alert enforcement Concerns were also expressed that the cost of complying with the translation requirements for pre-contractual and contractual information and the ban on taking advanced payments may deter new businesses from entering the sector. Aside from timeshare resale contracts, the ban on pre-payments means that traders will not receive their payment for a period of just two weeks after the consumer has entered into the contract. Given the overall investment which is required in this sector to be able to produce an attractive product, a two week delay in the payment for individual sales should not jeopardise the participation of properly run businesses. While there may be some upfront costs in relation to translations, as we have commented above (paragraph 55) a business should be able to tailor its stocks to the intended target purchasers. In respect of timeshare resale contracts, pre-payments on the promise of services ultimately not delivered are the chief cause of detriment. In general, payment on the successful performance of a service is the norm and throughout negotiations on the Directive, and since, we have received no convincing evidence that it should not be the norm in this market. Interval International held the view that large multinational groups wishing to invest in the development of timeshare resorts would now choose locations outside the EU for their developments given the burdens imposed by the EU regulatory regime. Alternatively, a number of respondents felt an increase in consumer confidence resulting from the additional protection provided by the proposed Regulations may encourage more businesses into the market.

91. Respondents felt that business would need to plan carefully to ensure compliance with the proposed regulations. Business would be likely to need to take legal advice, instruct translators and adjust their

operational structures, including training staff, to address the new requirements. Changes in regulation almost inevitably lead to additional expenses for business, at least in the short term. However, prospects for this sector suffer considerably due to the activities of a small number of traders who are able to circumvent the current regime or who are not covered by it. If consumer confidence in the products covered by the proposed regulations is to be regained, then transparency and the minimising of risk for consumers is essential. If this sector can deliver an attractive and worthwhile product for consumers, measures to encourage consumer confidence should pay off in the longer-term.

Impact on the Environment

92. Having considered the responses to questions 60 and 61 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations will have any significant impact, either positive or negative, on the environment .

Impact on Human Rights

93. Having considered the responses to question 62 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations raise any human rights issues.

Impact on Race Equality, Disability Equality, Gender Equality, and Age Equality

94. Citizens Advice has analysed the information on its database about clients who have sought advice about the timeshare and long – term holiday product market. On the basis of this analysis, Citizens Advice is satisfied that the proposed regulations will not have any significant impact on equality matters. Other respondents to questions 56 and 57 in our formal consultation (URN 10/500) agreed that there would be no significant impact on equality issues.

Impact on Sustainable Development

95. Having considered the responses to questions 58 and 59 of our formal consultation (URN 10/500) on implementation of the Directive, we do not believe that the proposed regulations will have any significant impact, either positive or negative, on sustainable development issues.

Impact on the Judicial System

96. BIS and the Ministry of Justice are satisfied that the regulations will have a minimal impact of the judicial system. The regulations will not require the introduction of new IT systems, new forms or any new training or guidance for Court staff.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Article 17 of Directive 2008/122/EC provides that the Commission shall review the Directive and report to the European Parliament and the Council by no later than 23 February 2014. If necessary, the Commission shall make further proposals to adapt the Directive. The Commission will request information from the Member States and the national regulatory bodies. This Impact Assessment states that the UK PIR will be undertaken to feed into the EU's evaluation

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To check that the Regulations are are operatiing as expected; that the benefits to consumers, industry and enforcers set out in this impact assessment have been achieved; and to identify opportunities for further improvement e.g. to update the guidance. To check that costs have not greatly exceeded what we expexted in this impact assessment. To validate the costs and benefits and any administrative burdens reductions. To provide information to the Commission for its review of Directive 2008/122/EC planned for 23 February 2014

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Information gathered from business, consumers, the enforcement bodies and other interested parties will be analysed to identify what has worked well and what has worked badly. The data obtained from the information gathered will be brought together in a suitable form to support any recommendations put forward.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The effectiveness of the regulations will be evaluated against the baseline of the current Uk legislative regime.

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

Success criteria will be achievement of the policy objectives and delivery of the benefits identified in the impact assessment. i.e. a reduction in the number of consumer complaints relating to timeshare, long term holiday products, and timeshare resale and exchange contracts; a reduction in consumer detriment related to those types of contract; and a more competitive market (due to the removal of rogue traders and increased consumer confidence).

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

We will agree with the trade associations, consumer representative groups, and the enforcement bodies (Trading Standards) the most effective way to collect data and to monitor information for future policy review.