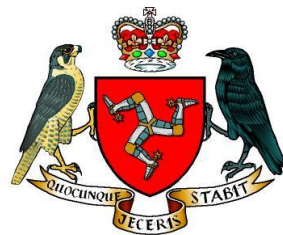


ISLE OF MAN OFFICE OF FAIR TRADING



# Isle of Man Office of Fair Trading

## CONSULTATION ON THE PROPOSED CONSUMER PROTECTION (AMENDMENT) BILL 2015



**Isle of Man**  
Government

*Reiltys Ellan Vannin*

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## STATEMENT BY THE CHAIRMAN



There has been a long-term intention to address the activities of unscrupulous traders (especially those operating within the home improvements sector) who prey on the most vulnerable in society by using cold calling techniques to sell goods and services that are not needed, or to sell goods and services at prices that are exorbitant. Indeed the Department of Home Affairs included a provision to address cold calling in the Criminal Justice (Miscellaneous Provisions) Bill 2010 which unfortunately ran out of time prior to the 2011 General Election.

The primary purpose of this Bill is to address the issue of cold calling by making it an offence for a trader to enter into a contract for the sale of goods and services as a result of cold calling. The Bill covers all forms of cold calling (including by telephone), although it has to be accepted that since almost all tele-sales emanate from outside the Island (and often from outside the European Union), it will be difficult to pursue prosecutions in those circumstances. At a practical level the primary impact and real benefit will be to disrupt the activities of those who use doorstep pressure selling techniques.

In promoting the Bill, the Office of Fair Trading (OFT) has also sought to resolve a number of inconsistencies in the Consumer Protection Act 1991 and to bring it up to date.

One of the challenges for the OFT is to keep pace with the ever changing need for consumer protection and to react to new developments, often international, in the methods used to part the unwary from their hard-earned money. Equally we are aware that we have to achieve this in the face of ever-reducing resources. The Bill makes provision to allow us to apply, by Order, secondary legislation relating to consumer protection from the United Kingdom with any modifications necessary for the Island. It is not the intention to import complex and unnecessary legislation, but rather to "cherry pick" what is needed and what is most appropriate and effective to ensure that consumers in the Isle of Man are adequately protected. The proposal will enable the OFT to react more quickly to emerging threats whilst ensuring effective scrutiny as any secondary legislation applying modified UK legislation to the Island will require consultation and Tynwald approval.

Whilst the OFT can and will continue to educate consumers to reduce the risk of them being successfully targeted by unscrupulous traders, we have to accept that there are vulnerable members of society for whom education will not be enough. If, as a society and a Government, we want, for example, to support the elderly in staying in their own homes for longer, we have to protect them from those who would prey on their vulnerability. This Bill will help towards achieving that objective.

The consultation is open until **25<sup>th</sup> September 2015** and we look forward to hearing your views. If you wish to answer the questions contained within this document please click this [link](#).

**David Quirk MHK**  
**Chairman, Office of Fair Trading**

## BACKGROUND

'Cold calling' is a sales tactic used by traders to try to persuade consumers to purchase goods or services during unsolicited visits to their homes or places of work, during excursions away from the traders' business premises or during unsolicited telephone calls. There is clear evidence that scammers and unscrupulous traders employ this sales tactic for criminal purposes and the Bill is intended to address this issue.

The activities of unscrupulous traders who operate through doorstep selling remain of serious concern in the Island. These traders tend to target the vulnerable, frail and elderly and although relatively few in number, the hardship and grief which they cause should not be underestimated.

Having made the doorstep "sale", these traders often go on to commit criminal offences such as, charging for work not undertaken, or distraction burglaries. At that stage, the real harm has been done to the unfortunate victims. Furthermore, victims are generally targeted in the first place because they are vulnerable, frail or elderly and so are more likely to be reluctant and easily challengeable witnesses.

Whilst the OFT has had some success in pursuing prosecutions, it often takes hundreds of hours of work to mount a successful prosecution. Even then, the success is tainted by the fact that there is still a victim whose life, independence and sometimes even health has been blighted.

The cold calling provisions within the Criminal Justice (Miscellaneous Provisions) Bill 2010, which unfortunately ran out of time prior to the 2011 General Election, were subject to public consultation as part of the wider consultation and were generally strongly supported.

The proposed Bill is included at **Appendix 1**. As it amends the existing Consumer Protection Act 1991, in order to assist understanding, **Appendix 2** sets out Part VII of the 1991 Act showing the amendments in *red italics*.

## SUMMARY OF THE BILL

### PART 1 – INTRODUCTORY

Part 1 of the Bill provides the basic legal framework. **Clause 1** gives the Bill its short title. **Clause 2** provides that the Bill will come into force as an Act on the day specified in an Order made by the OFT and that if necessary different provisions can come into force at different times. **Clause 3** provides for expiry immediately following the day on which the final part is brought into force. The purpose of the Bill is to amend existing legislation so once it is fully in force it serves no further purpose.

### PART 2 – AMENDMENT OF THE CONSUMER PROTECTION ACT 1991

Part 2 provides the substance of the Bill.

**Clause 4** serves to introduce Clauses 5 to 23 and provides that they amend the Consumer Protection Act 1991.

**Clauses 5, 6 and 7** are technical amendments of no practical substance.

**Clause 8** amends section 46 and defines a “relevant contract”, that is to say a contract created as a result of cold calling. The practical effect is that cold calling includes:-

- An unsolicited visit to the consumer’s home or place of work  
Example: A trader goes around an estate knocking on doors to sell goods or services – that is cold calling
- Taking the consumer on an excursion away from the trader’s business premises  
Example: A trader organises a coach trip for a group of consumers to entice them into buying goods or services – that is cold calling
- An unsolicited telephone call to the consumer  
Example: Out of the blue, a consumer receives a call from a trader or a call centre selling goods or services – that is cold calling

Any negotiation between the consumer and the trader does not negate the fact that it is still cold calling.

Clause 8 also provides for an “excepted contract”, i.e. a contract created as a result of cold calling but not deemed to be a “relevant contract”.

The new Schedule 2B, which is introduced in **Clause 23**, has effect to define “excepted contract”:-

- Land transactions
- Deliveries by roundsmen

Example: The milkman is not cold calling

- Routine catalogue sales subject to specified conditions  
Example: Someone who runs a catalogue selling to neighbours and friends is not cold calling if the specified conditions are satisfied
- Insurance contracts
- Low value contracts

**Clause 9** of the Bill inserts a new section 46A which creates the new offence of entering into a “relevant contract”.

Example: A trader knocks on the door of an elderly householder and offers to replace some ridge tiles that have worked loose during a storm. The resident is persuaded to have the work done and pays the trader. The trader has committed an offence.

The practical result of this clause is that there is effectively a ban on using cold calling as a sales tactic unless the total payments to be made by the consumer do not exceed such amount as may be prescribed, i.e. unless the contract is a “low value contract”.

Clause 9 also provides the Courts with a range of penalties for the offence – on summary conviction a fine of up to £10,000 or 6 months imprisonment or both; with the ability to refer the case to a higher Court where there is an unlimited fine and up to two years in prison.

### QUESTION 1

**DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER THROUGH DOORSTEP COLD CALLING?**

### QUESTION 2

**DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER THROUGH EXCURSION-BASED SELLING?**

Whilst it is relatively easy to see how the OFT could enforce the provisions in relation to traders who use doorstep cold calling or excursion-based selling tactics (since both activities take place wholly within the Island), unsolicited tele-sales would be much more problematic. Almost all tele-sales emanate from outside the Island (and often from outside the European Union). Notwithstanding the obvious limitations on enforcement, the OFT still believes that unsolicited tele-sales should be covered, not least because it gives an opportunity (see Clause 18) to ensure that the resultant contract is governed by Manx law and enforceable only in Manx Courts.

### QUESTION 3

**DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER THROUGH TELEPHONE COLD CALLING?**

It will be noted that the Bill does not fix the value below which a contract is low value; this will be fixed by an Order. The OFT is minded to exempt contracts with a total cost to the consumer of less than £100 including VAT and all credit charges.

### QUESTION 4

**DO YOU AGREE THAT CONTRACTS WITH A TOTAL VALUE OF £100 OR LESS SHOULD BE EXCLUDED FROM THE PROVISIONS?**

**IF NOT, WHAT SHOULD THE LIMIT BE AND WHY?**

**Clause 10** makes a consequential amendment to section 47. More significantly it also extends the current 7 day cancellation notice period (cooling-off period) to 14 days. The OFT is concerned that the victims of pressure selling are often the vulnerable, frail and elderly; and where cases come to light it is often based on discovery of what has happened by relatives or friends of the victim. By extending the period to 14 days there is a better chance of the matter being discovered before it is too late.

### QUESTION 5

**DO YOU AGREE THAT THE PROPOSED CANCELLATION PERIOD OF 14 DAYS IS APPROPRIATE?**

**IF NOT, WHAT PERIOD IS APPROPRIATE AND WHY?**

**Clause 11** makes consequential amendments to section 47A and in particular brings the penalties for failure to provide a cancellation notice in line with the new level proposed in Clause 9.

**Clauses 12 and 13** make consequential amendments to section 47B and section 47C respectively.

**Clause 14** inserts a new section 47CA which allows the OFT to test purchase goods or services in order to ensure compliance with the effective ban on cold calling. Test purchases are a valuable enforcement tool which allows the OFT to target traders whom it suspects of operating illegally without having to involve a real victim.

**Clause 15** modifies section 47D and in particular modernises the scope of the term “document” so that it includes information in any recorded form.

**Example:** document would include information on a computer disk drive.

**Clause 16** inserts a new section 47DA which provides for compensation where goods are seized by the OFT under the existing section 47D and where there is no prosecution and/or for some reason the goods cannot be returned in good order.

**Example:** It is not possible to return perishable goods.

**Clause 17** provides some consequential amendments to section 47E which deals with obstruction of OFT staff involved in enforcement.

**Clause 18** modifies section 52 which deals with the potential for a trader to seek to avoid the provisions of the Act by inserting terms in his contract. Most of the changes are technical however there is one of real significance. The new sub-section (3) provides that where a contract is formed as a result of illegal cold calling, any term in that contract which provides for a governing law other than Manx law, or for jurisdiction other than in Manx Courts is void. In addition, because the contract is now subject to Manx law, the consumer is also protected against unfair terms. The OFT accepts that the protection of the consumer is less than perfect but it is much better than at present. It is hoped that the obstacles presented by this clause will go some way to persuading tele-sales operators to avoid the Island.

**Clauses 19 and 20** amend existing interpretations and insert new ones, whilst **Clause 21** amends a marginal note.

**Clause 22** is an important element of the Bill because it provides a mechanism to allow the OFT to regularly update its consumer protection legislation without the repeated need for primary legislation. Whilst the Isle of Man does not need the full range of UK consumer protection legislation, much of which is driven by membership of the European Union, it is important that consumers in the Island are effectively protected. Clause 22 inserts a new section 62A which will allow the OFT to make an Order which applies appropriate UK subordinate legislation to the Island, with modifications as necessary. Such an Order could also make any ancillary changes to other legislation. It is important that there is clear scrutiny on the use of these powers and for that reason, any Order made pursuant to the new section 62A, would require Tynwald approval. The



benefit is that the use of an Order would enable the OFT to react more quickly to emerging issues affecting consumers. Typically an Order, including the necessary consultation, would take around 4 months to enact whereas new primary legislation typically takes 1 to 2 years.

## CONSULTATION PROCESS

The OFT would welcome your views and any comments you wish to make on the above proposal.

Comments should be submitted by either using the online survey form ([https://www.surveymonkey.com/r/OFT\\_ConsumerProtectionAmendmentBill2015](https://www.surveymonkey.com/r/OFT_ConsumerProtectionAmendmentBill2015)), in writing by post, fax or email no later than **5 pm Friday 25<sup>th</sup> September 2015** to:

Mrs Sara McIntyre  
Legislation Executive  
Isle of Man Office of Fair Trading  
Government Building  
Lord Street  
Douglas  
Isle of Man  
IM1 1LE  
Tel: (01624) 686576  
Fax: (01624) 686504  
Email: [sara.mcintyre@gov.im](mailto:sara.mcintyre@gov.im)

Printed copies of this document can be obtained from the OFT by telephoning (01624) 686576.

When submitting your views please indicate if you are responding on behalf of an organisation. A list of Direct Consultees can be found at **Appendix 4** of this document. If there is anyone not on the list who you think should be consulted please contact the officer named above.

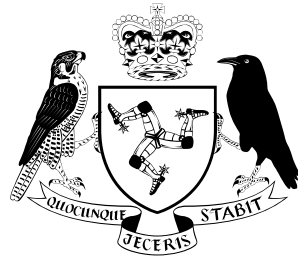
To ensure that the process is open and honest and in line with the Government's Code of Conduct on Consultation, as attached at **Appendix 5**, responses can only be accepted if you provide your name with your response.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. **Please mark your response clearly if you wish your response and name to be kept confidential.** Confidential responses will be included in any statistical summary and numbers of comments received.

A summary of responses will be published within three months of the closing date for this consultation and will be made available on the OFT website ([www.gov.im/oft](http://www.gov.im/oft)) or by contacting the above named officer.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to make an informed decision on the introduction of proposed Consumer Protection (Amendment) Bill. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

**APPENDIX 1  
PROPOSED BILL**



**Isle of Man**  
*Ellan Vannin*

V05

**CONSUMER PROTECTION (AMENDMENT)  
BILL 2015**





# CONSUMER PROTECTION (AMENDMENT) BILL 2015

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# CONSUMER PROTECTION (AMENDMENT) BILL 2015

A **BILL** to amend the Consumer Protection Act 1991 in respect of cold calling and the cancellation of certain contracts; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 – INTRODUCTORY

### 1 Short title

The short title of this Act is the Consumer Protection (Amendment) Act 2015.

### 2 Commencement

- (1) This Act (other than this section and section 1) comes into operation on such day or days as the Isle of Man Office of Fair Trading by order appoints and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may make such consequential, incidental, transitional and saving provisions as the Isle of Man Office of Fair Trading considers necessary or expedient.

### 3 Expiry

- (1) This Act expires —
  - (a) on the day after its promulgation if all of its provisions are in operation on its promulgation; or
  - (b) otherwise, on the day after the last provision is brought into operation.
- (2) The expiry does not —
  - (a) revive any enactment amended by this Act as the enactment operated before the amendment commenced;
  - (b) revive anything not in operation or existing when the amendment took effect; or
  - (c) affect the continuing operation of the amendment.

## PART 2 – AMENDMENT OF THE CONSUMER PROTECTION ACT 1991

### 4 Amendment of the Consumer Protection Act 1991

The *Consumer Protection Act 1991* is amended in accordance with sections 5 to 23.

### 5 Section 24 repealed – enforcement (Parts II and III of the Consumer Protection Act 1991)

Section 24 is repealed.

### 6 Section 26 amended

In section 26(1) for “a duly authorised officer” substitute **“an officer”**.

### 7 Section 29 amended

In the heading to section 29 for “authorised officer” substitute **“officer of OFT”**.

### 8 Section 46 amended – contracts to which Part VII applies (cancellation of certain contracts)

(1) Section 46 is amended as follows.

(2) For subsection (1) substitute –

**“(1)** This Part applies to a contract (a “**relevant contract**”) between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made –

- (a) during an unsolicited visit by the trader to the consumer’s home or place of work, or to the home of another individual;
- (b) during an excursion organised by the trader away from the trader’s permanent or temporary business premises;
- (c) as the result of a telephone call by or on behalf of the trader to the consumer which the consumer neither initiated nor requested; or
- (d) after an offer made by the consumer during such a visit, excursion or telephone call.

(1A) Subsection (1) is subject to the qualifications in subsections (1B) and (1C).

(1B) This Part does not apply to an excepted contract.

(1C) OFT may by order prescribe –

- (a) contracts to which this Part does not apply;
- (b) persons or classes of persons to whose contracts this Part does not apply;
- (c) other circumstances where this Part is not to apply.

An order under this subsection may amend or repeal any provision of this Part (including a provision contained in Schedule 2B) if it appears to OFT to



be necessary or expedient to do so in consequence of or in connection with the provision made by the order. **22**.

(3) For subsections (2) and (3) substitute —

**23**(2) Schedule 2B has effect to define “**excepted contract**” **22**.

## 9 Section 46A inserted – offence to enter into certain contracts

After section 46 insert —

### **23**46A Offence to enter into certain contracts

- (1) A person commits an offence if, as a trader, he or she enters into a relevant contract.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment, to custody for not more than 2 years, a fine or both;
  - (b) on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £10,000, or both. **22**.

## 10 Section 47 amended – cancellation of contract

(1) Section 47 is amended as follows.

(2) In subsection (1) —

- (a) for “No contract to which this Part applies shall be” substitute **23** A relevant contract is not **22**; and
- (b) for “7 days” substitute **23** 14 day **22**.

(3) For subsection (2) substitute —

**23**(2) The notice must be dated and delivered to the consumer —

- (a) if the consumer and the trader are in the same place when the contract is made, at the time the contract is made; and
- (b) in any other case within 48 hours of the time at which the contract is made.

(4) In subsection (3) for the words preceding “a notice in writing” substitute

**23**If within the period of 14 days —

- (a) following the making of the contract in a case falling within subsection (2)(a); or
  - (b) following the delivery of a notice under subsection (1) in a case falling within subsection (2)(b),
- the consumer serves **22**.

## 11 Section 47A amended – failure to provide notice of cancellation rights

(1) Section 47A is amended as follows.

- (2) In subsection (1) —
  - (a) for “a contract to which this Part applies” substitute **66** a relevant contract **67**; and
  - (b) omit “(or, in the case mentioned in subsection 46(1)(c), has failed)”.
- (3) In subsection (2)—
  - (a) after paragraph (a) “and” is inserted; and
  - (b) paragraph (c) and the “and” immediately preceding it are repealed.
- (4) For subsection (3) substitute —  
**68**(3) A person guilty of an offence under subsection (1) is liable —
  - (a) on conviction on information to custody for a term not exceeding 2 years, a fine or both;
  - (b) on summary conviction, to a custody for a term not exceeding 6 months, a fine not exceeding £10,000 or both. **69**.
- (5) Subsection (4) is repealed

## **12 Section 47B amended – defence of due diligence**

In section 47B(1) for “section 47A ” substitute **63** section 46A or 47A **62**.

## **13 Section 47C amended – liability of persons other than the principal offender**

In section 47C(1) and (2) for “section 47A ” substitute **63** section 46A or 47A **62**.

## **14 New section 47CA – test purchases**

After section 47C insert —

### **63 47CA Test purchases**

OFT may make such purchases of goods and, secure the provision of such services, as may appear expedient for the purpose of determining whether or not the provisions of this Part are being complied with. **62**.

## **15 Section 47D amended – enforcement powers**

- (1) Section 47D is amended as follows
- (2) In subsection (1)—
  - (a) for “a duly authorised officer” substitute **63** an officer **62**; and
  - (b) for “section 47A ” substitute **63** section 46A or 47A **62**.
- (3) After subsection (5) insert —  
**63**(6) In this section “document” includes information recorded in any form.
- (7) The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible

form, a reference to the production of a copy of the information in a legible form. **22**.

**16 New section 47DA – compensation for loss, etc, of goods seized under section 47D**

After section 47D insert –

**47DA Compensation for loss, etc, of goods seized under section 47D**

- (1) Where an officer of OFT exercises any power under section 47D to seize and detain goods, OFT is liable to pay compensation to –
  - (a) the owner of the goods; and
  - (b) any other person having an interest in the goodsin respect of any loss or damaged caused by reason of the exercise of the power provided that an offence under section 46A or 47A, and to which those goods relate, has not been committed.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this section is to be determined by arbitration. **22**

**17 Section 47E amended – obstruction of OFT’s officers**

- (1) Section 47E is amended as follows
- (2) In subsection (1)(c) omit “authorised”.
- (3) For the section heading substitute “**Obstruction of OFT’s officers**”.

**18 Section 52 amended – no contracting-out**

- (1) Section 52 is amended as follows.
  - (2) For subsection (1) substitute –
    - 46**(1) A term contained in a contract is void if, and to the extent that, it purports to disapply this Part (or any of its provisions) if this Part would otherwise apply. **22**.
  - (3) In subsection (2) for “contract to which this Part applies” substitute **46**relevant contract **22**.
  - (4) At the end insert –
    - 46**(3) A term contained in a relevant contract is void if, and to the extent that, it would –
      - (a) make the proper law of the contract the law of a place outside the Island; or
      - (b) require any matter to be determined otherwise than by arbitration or by the Manx courts.
- (3A) For the purposes of subsection (3)(b)–

“arbitration” is to be construed in accordance with the *Arbitration Act 1976*; and

“the Manx courts” means—

- (a) the High Court;
  - (b) the Judicial Committee of the Privy Council; and
  - (c) the Court of Justice of the European Communities.
- (4) Where a term contained in a relevant contract is entered into as a direct result of a telephone call and is void, Part VIIIA (distance selling) does not apply in respect of it. **22**.

## 19 Section 53 amended – interpretation of Part VII of the Consumer Protection Act 1991

(1) Section 53 is amended as follows.

(2) In subsection (1)—

(a) at the beginning of the alphabetical list of definitions insert —

“**arbitration**” means arbitration in accordance with the *Arbitration Act 1976*;

(b) omit the definition of “charge on land”;

(c) for the definition of “consumer” substitute —

**23** “**consumer**” means an individual who in making a relevant contract is acting for purposes which can be regarded as outside his or her business; **22**;

(d) for the definition of “trader” substitute —

**23** “**trader**” means a person who, in making a relevant contract, is acting in his or her business capacity and includes anyone acting in the name or on behalf of the trader;

(e) at the appropriate points in the alphabetical list insert the following definitions —

**23** “**relevant contract**” has the meaning given in section 46(1). **22**.

**23** “**solicited visit**” has the meaning given in subsection (1A) (and “**unsolicited visit**” shall be construed accordingly); **22**

**23** “**telephone call**” includes —

- (a) any form of communication by means of a telecommunication system;
- (b) any form of communication comprising or including the transmission of sound by means of the internet; **22**; and

**23** “**unsolicited visit**” see the definition of “**solicited visit**” above. **22**.

(3) After subsection (1) insert —

**23** (1A) A “**solicited visit**” is a visit by a trader, whether or not he or she is the trader who supplies the goods or services, to a consumer’s home or place of work or to the home of another individual, which is made at the express request of the consumer.

But neither of the following is a solicited visit —

- (a) a visit by a trader which is made after he or she, or a person acting in his or her name or on his or her behalf —
    - (i) contacts the consumer (otherwise than at the consumer’s express request) and indicates during the course of the contact (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to visit the consumer; or
    - (ii) visits the consumer (otherwise than at the consumer’s express request) and indicates during the course of that visit (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to make a subsequent visit to the consumer;
  - (b) a visit during which a contract is made which relates to goods or services which are materially different, either in nature or quantity, from those originally requested by the consumer.
- (1B) For the purposes of subsection (1A)(a) a visit is not solicited by virtue of the contact or visit being preceded by advertising material which the trader has delivered, or has caused to be delivered to the —
- (a) consumer’s home;
  - (b) consumer’s place of work; or
  - (c) home of another individual.
- (1C) For the purposes of this section —
- “advertising” means any form of representation which is made in connection with a business in order to promote the supply or transfer of a product or service;
- “contact” includes (without limiting the breadth of that word) contacting by telephone or by means of an electronic communication within the meaning of section 12 of the *Electronic Transactions Act 2000*. **22**.

**20 Section 60 amended and associated consequential amendment – interpretation: general**

- (1) Section 60(1) is amended as follows —
- (a) omit the definition of “the Board”.
  - (b) for the definition of “officer” substitute —
- 23** “officer” means a person authorised in writing to assist OFT in discharging its functions under this Act; **24** and
- (c) after that definition insert —
- “OFT” means the Isle of Man Office of Fair Trading; **25**.
- (2) Consequent upon subsection (1)(a) and (c), for “the Board” in every other place where that phrase occurs in the *Consumer Protection Act 1991* substitute “OFT”.

**21 Section 62 amended – self-incrimination**

For the marginal note immediately preceding section 62 substitute –

**62 Self-incrimination.**

**22 New section 62A – application to the Island of certain subordinate legislation and power to amend the Consumer Protection Act 1991**

After section 62 insert –

**62A Power to amend Act and apply certain subordinate legislation of the United Kingdom**

- (1) OFT may by order –
  - (a) modify this Act in such manner as appears to it expedient for the purpose of making this Act correspond (subject to such modifications as it considers appropriate) with the corresponding legislation of the United Kingdom;
  - (b) apply to the Island as part of the law of the Island, subject to such modifications as may be specified in the order, any subordinate legislation of the United Kingdom concerning matters relating to consumer protection.
- (2) An order under subsection (1) may include provision repealing or amending any provision of an enactment which is inconsistent with, or is unnecessary or requires modification in consequence of, the order or any subordinate legislation of the United Kingdom applied to the Island by order.
- (3) An order under subsection (1)(b) may do all or any of the following –
  - (a) specify the modifications subject to which the subordinate legislation of the United Kingdom applies to the Island;
  - (b) set out the subordinate legislation of the United Kingdom applied by the order, incorporating the modifications subject to which it applies to the Island;
  - (c) in the case of an order applying subordinate legislation of the United Kingdom which amends previous subordinate legislation of the United Kingdom applied to the Island, set out the previous legislation so applied as amended, incorporating the modifications subject to which that legislation applies to the Island.
- (4) In this section references to legislation of the United Kingdom includes references to legislation applying in any part of the United Kingdom.

**23 New Schedule 2B inserted – meaning of “excepted contract” for the purposes of section 46**

After Schedule 2A (list of terms which may be regarded as unfair) insert –

## **Schedule 2B**

### **MEANING OF “EXCEPTED CONTRACT” FOR THE PURPOSES OF SECTION 46**

[SECTION 46(2)]

#### **1 Meaning of “excepted contract”**

A contract is an excepted contract if it is within any of the following paragraphs.

#### **2 Land transactions**

(1) A contract is within this paragraph if it is one —

- (a) for the sale or other disposition of land, or any estate or interest in land (including a charge on land);
- (b) to finance the purchase of land;
- (c) for a bridging loan in connection with the purchase of land; or
- (d) for the construction or extension of a building or other erection on land.

In paragraph (a), “charge on land” includes any security charged on land.

(2) But a contract is not within this paragraph if it is a contract for the supply of goods and their incorporation in any land or a contract for the repair or improvement of a building or other erection on land, where the contract is not financed by a loan secured by a land mortgage.

#### **3 Deliveries by roundsmen**

A contract is within this paragraph if it one for the supply of food, drink or other goods intended for current consumption by use in the consumer’s household and supplied by regular roundsmen.

#### **4 Routine catalogue sales**

- (1) A contract is within this paragraph if it is one for the supply of goods or services which satisfies all the conditions in subparagraphs (2) to (4).
- (2) The condition is that the terms of the contract are contained in a trader’s catalogue which is readily available to the consumer to read in the absence of the trader or his representative before the conclusion of the contract;
- (3) The condition is that the parties to the contract intend that continuity of contact will be maintained between the trader or his representative and the consumer in relation to the transaction in question or any subsequent transaction.
- (4) The condition is that both the catalogue and the contract contain or are accompanied by a prominent notice indicating that the consumer has a right —

- (a) to return to the trader or the trader's representative goods supplied to the consumer within the period of not less than 14 days from the day on which the goods are received by the consumer; and
- (b) otherwise to cancel the contract within that period without incurring any liability, other than any liability which may arise from the failure of the consumer to take reasonable care of the goods while they are in the consumer's possession.

**5 Insurance contracts**

A contract is within this paragraph if it is a contract of insurance.

**6 Low value contracts**

A contract is within this paragraph if it is one under which the total payments to be made by the consumer do not exceed such amount as may be prescribed. **22**.



## APPENDIX 2

### PROPOSED AMENDMENTS TO PART VII OF THE CONSUMER PROTECTION ACT 1991 (additions shown in *red italics*)

#### PART VII – CANCELLATION OF CERTAIN CONTRACTS

##### 46 Contracts to which Part VII applies

- (1) *This Part applies to a contract (a “**relevant contract**”) between a consumer and a trader which is for the supply of goods or services to the consumer by a trader and which is made —*
- (a) *during an unsolicited visit by the trader to the consumer’s home or place of work, or to the home of another individual;*
  - (b) *during an excursion organised by the trader away from the trader’s permanent or temporary business premises;*
  - (c) *as the result of a telephone call by or on behalf of the trader to the consumer which the consumer neither initiated nor requested; or*
  - (d) *after an offer made by the consumer during such a visit, excursion or telephone call.*
- (1A) *Subsection (1) is subject to the qualifications in subsections (1B) and (1C).*
- (1B) *This Part does not apply to an excepted contract.*
- (1C) *OFT may by order prescribe —*
- (a) *contracts to which this Part does not apply;*
  - (b) *persons or classes of persons to whose contracts this Part does not apply;*
  - (c) *other circumstances where this Part is not to apply.*
- An order under this subsection may amend or repeal any provision of this Part (including a provision contained in Schedule 2B) if it appears to OFT to be necessary or expedient to do so in consequence of or in connection with the provision made by the order.*
- (2) *Schedule 2B has effect to define “**excepted contract**”.*

##### 46A Offence to enter into certain contracts

- (1) *A person commits an offence if, as a trader, he or she enters into a relevant contract.*
- (2) *A person guilty of an offence under subsection (1) is liable —*
- (a) *on conviction on indictment, to custody for not more than 2 years, a fine or both;*
  - (b) *on summary conviction, to custody for a term not exceeding 6 months, a fine not exceeding £10,000, or both.*

## 47 Cancellation of contract

- (1) ~~No contract to which this Part applies shall be~~ *A relevant contract is not* enforceable against the consumer unless the trader has delivered to the consumer notice in writing in the prescribed form, indicating the right of the consumer to cancel the contract within the period of ~~7 days~~ *14 days* mentioned in subsection (3).
- (2) *The notice must be dated and delivered to the consumer —*
  - (a) *if the consumer and the trader are in the same place when the contract is made, at the time the contract is made; and*
  - (b) *in any other case within 48 hours of the time at which the contract is made.*
- (3) *If within the period of 14 days —*
  - (a) *following the making of the contract in a case falling within subsection (2)(a); or*
  - (b) *following the delivery of a notice under subsection (1) in a case falling within subsection (2)(b),*

*the consumer serves* a notice in writing (a “notice of cancellation”) on the trader or any other person specified in a notice referred to in subsection (1) as a person to whom notice of cancellation may be given which, however expressed and whether or not conforming to any prescribed form, indicates the intention of the consumer to cancel the contract, the notice of cancellation shall operate to cancel the contract.
- (4) Except as otherwise provided under this Part, a contract cancelled under subsection (3) shall be treated as if it had never been entered into by the consumer.
- (5) Notwithstanding anything in section 41 of the *Interpretation Act 1976*, a notice of cancellation sent by post by a consumer shall be deemed to have been served at the time of posting, whether or not it is actually received.

## 47A Failure to provide notice of cancellation rights

- (1) A trader is guilty of an offence if he enters into ~~a contract to which this Part applies~~ *a relevant contract* with a consumer but fails ~~(or, in the case mentioned in section 46(1)(e), has failed)~~ to deliver to the consumer the notice in writing referred to in section 47(1) in accordance with subsection (2)
- (2) A notice is delivered in accordance with this subsection if it —
  - (a) contains what is required by section 47(1); *and*
  - (b) complies with the requirements of section 47(2). ~~and~~
  - ~~(c) is dated and delivered to the consumer at the time specified in section 47(3).~~
- (3) *A person guilty of an offence under subsection (1) is liable —*
  - (a) *on conviction on information to custody for a term not exceeding 2 years, a fine or both;*

*(b) on summary conviction, to a custody for a term not exceeding 6 months, a fine not exceeding £10,000 or both.*

~~(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £2,500.~~

~~(4) It is the duty of the Board to enforce this section.~~

#### **47B Defence of due diligence**

(1) In proceedings against any person for an offence under ~~section 47A~~ *section 46A or 47A* it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence

(2) Where in proceedings against a person for such an offence the defence provided for by subsection (1) involves an allegation that the commission of the offence was due —

(a) to the act or default of another, or

(b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless he has served a notice under subsection (3) on the person bringing the proceedings not less than 7 clear days before the hearing of the proceedings.

(3) A notice under this subsection shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time when he serves it.

#### **47C Liability of persons other than the principal offender**

(1) Where the commission by a person of an offence under ~~section 47A~~ *section 46A or 47A* is due to the act or default of some other person, that other person is guilty of the offence and may be proceeded against and punished by virtue of this section whether or not proceedings are taken against the first-mentioned person

(2) Where a body corporate is guilty of an offence under ~~section 47A~~ *section 46A or 47A* in respect of any act or default which is shown to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **47CA Test purchases**

*OFT may make such purchases of goods and, secure the provision of such services, as may appear expedient for the purpose of determining whether or not the provisions of this Part are being complied with.*

### **47D Enforcement powers**

- (1) If ~~a duly authorised officer~~ *an officer* of the Board has reasonable grounds for suspecting that an offence has been committed under ~~section 47A~~ *section 46A or 47A*, he may
  - (a) require a person carrying on or employed in a business to produce any book, document or record in non-documentary form relating to the business, and take copies of it or any entry in it, or
  - (b) require such a person to produce in a visible and legible documentary form any information so relating which is contained in a computer, and take copies of it,for the purposes of ascertaining whether such an offence has been committed.
- (2) If such an officer has reasonable grounds for believing that any books, documents or records may be required as evidence in proceedings for such an offence, he may seize and detain them and shall, if he does so, inform the person from whom they are seized.
- (3) The powers of an officer under this section may be exercised by him only at a reasonable hour and on production (if required) of his credentials.
- (4) Nothing in this section requires a person to produce, or authorises the taking from a person of, a book, document or record which he could not be compelled to produce in civil proceedings before the High Court.
- (5) Nothing in this section or section 47E requires a person to answer any question or give any information if to do so might incriminate him.
- (6) *In this section “document” includes information recorded in any form.*
- (7) *The reference in subsection (1) to production of documents is, in the case of a document which contains information recorded otherwise than in a legible form, a reference to the production of a copy of the information in a legible form.*

### **47DA Compensation for loss, etc, of goods seized under section 47D**

- (1) *Where an officer of OFT exercises any power under section 47D to seize and detain goods, OFT is liable to pay compensation to —*
  - (a) *the owner of the goods; and*
  - (b) *any other person having an interest in the goods**in respect of any loss or damaged caused by reason of the exercise of the power provided that an offence under section 46A or 47A, and to which those goods relate, has not been committed.*

- (2) *Any disputed question as to the right to or the amount of any compensation payable under this section is to be determined by arbitration.*

**47E ~~Obstruction of authorised officers~~ *Obstruction of OFT's officers***

- (1) A person who —
- (a) intentionally obstructs an officer of the Board acting in pursuance of his functions under this Part,
  - (b) without reasonable cause fails to comply with the requirement made of him by section 47D(1), or
  - (c) without reasonable excuse fails to give an ~~authorised~~ officer of the Board acting in pursuance of his functions under this Part any other assistance or information which the officer has reasonably required of him for the purpose of the performance of the officer's functions under this Part,
- is guilty of an offence.
- (2) If a person, in giving information to an officer of the Board who is acting in pursuance of his functions under this Part —
- (a) makes a statement which he knows is false in a material particular, or
  - (b) recklessly makes a statement which is false in a material particular,
- he is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £1,000.

**47F Restrictions on disclosure of information**

- (1) If a person discloses to another any information obtained in the exercise of his functions under section 47D, he is guilty of an offence unless the information has already been disclosed in any civil or criminal proceedings or the disclosure is made
- (a) in or for the purpose of the performance by him or any other person of any such function, or
  - (b) for a purpose specified in section 34(2)(a) or (b) or in the circumstances or for a purpose described in section 34(2)(c).
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding £1,000.

**48 Recovery of money paid by consumer**

- (1) Subject to section 50(2), on the cancellation of a contract under section 47 any sum paid by or on behalf of the consumer under or in contemplation of the contract shall become repayable.
- (2) If under the terms of the cancelled contract the consumer or any person on his behalf is in possession of any goods, he shall have a lien on them for any sum repayable to him under subsection (1).

- (3) Where any security has been provided in relation to the cancelled contract, the security, so far as it is so provided, shall be treated as never having had effect and any property lodged with the trader solely for the purposes of the security as so provided shall be returned by him forthwith.

#### **49 Repayment of credit**

- (1) Notwithstanding the cancellation of a contract under section 47 under which credit is provided, the contract shall continue in force so far as it relates to repayment of credit and payment of interest.
- (2) If, following the cancellation of the contract, the consumer repays the whole or a portion of the credit —
  - (a) before the expiry of one month following service of the notice of cancellation, or
  - (b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,

no interest shall be payable on the amount repaid.

- (3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2)(b), the consumer shall not be liable to repay any of the credit except on receipt of a request in writing signed by the trader stating the amounts of the remaining instalments (recalculated by the trader as nearly as may be in accordance with the contract and without extending the repayment period), but excluding any sum other than principal and interest.
- (4) Repayment of a credit, or payment of interest, under a cancelled contract shall be treated as duly made if it is made to any person on whom, under section 47(3) a notice of cancellation could have been served.
- (5) Where any security has been provided in relation to the contract, the duty imposed on the consumer by this section shall not be enforceable before the trader has discharged any duty imposed on him by section 48(3).
- (6) In this section —

“cash” includes money in any form;

“credit” means a cash loan and any facility enabling the consumer to overdraw on a current account;

“current account” means an account under which the customer may, by means of cheques or similar orders payable to himself or to any other person, obtain or have the use of money held or made available by the person with whom the account is kept and which records alterations in the financial relationship between the said person and the customer; and

“repayment”, in relation to credit, means the repayment of money —

  - (a) paid to a consumer before the cancellation of the contract; or
  - (b) to the extent that he has overdrawn on his current account before the cancellation.

## 50 Return of goods by consumer after cancellation

- (1) Subject to subsection (2), a consumer who has before cancelling a contract under section 47 acquired possession of any goods by virtue of the contract shall be under a duty, subject to any lien, on the cancellation to restore the goods to the trader in accordance with this section, and meanwhile to retain possession of the goods and take reasonable care of them.
- (2) The consumer shall not be under a duty to restore —
  - (i) perishable goods;
  - (ii) goods which by their nature are consumed by use and which before the cancellation, were so consumed;
  - (iii) goods supplied to meet an emergency; or
  - (iv) goods which, before the cancellation, had become incorporated in any land or thing not comprised in the cancelled contract,

but he shall be under a duty to pay in accordance with the cancelled contract for the supply of the goods and for the provision of any services in connection with the supply of the goods before the cancellation.

- (3) The consumer shall not be under any duty to deliver the goods except at his own premises and in pursuance of a request in writing signed by the trader and served on the consumer either before, or at the time when, the goods are collected from those premises.
- (4) If the consumer —
  - (a) delivers the goods (whether at his own premises or elsewhere) to any person on whom, under section 47(3), a notice of cancellation could have been served; or
  - (b) sends the goods at his own expense to such a person,he shall be discharged from any duty to retain possession of the goods or restore them to the trader.
- (5) Where the consumer delivers the goods as mentioned in subsection (4)(a), his obligation to take care of the goods shall cease; and if he sends the goods as mentioned in subsection (4)(b), he shall be under a duty to take reasonable care to see that they are received by the trader and not damaged in transit, but in other respects his duty to take care of the goods shall cease.
- (6) Where, at any time during the period of 21 days following the cancellation, the consumer receives such a request as is mentioned in subsection (3) and unreasonably refuses or unreasonably fails to comply with it, his duty to retain possession and take reasonable care of the goods shall continue until he delivers or sends the goods as mentioned in subsection (4), but if within that period he does not receive such a request his duty to take reasonable care of the goods shall cease at the end of that period.
- (7) Where any security has been provided in relation to the cancelled contract, the duty imposed on the consumer to restore goods by this section shall not be enforceable before the trader has discharged any duty imposed on him by section 48(3).

- (8) Breach of a duty imposed by this section on a consumer is actionable as a breach of statutory duty.

## 51 Goods given in part-exchange

- (1) This section applies on the cancellation of a contract under section 47 where the trader agreed to take goods in part-exchange (the “part-exchange goods”) and those goods have been delivered to him.
- (2) Unless, before the end of the period of 10 days beginning with the date of cancellation, the part-exchange goods are returned to the consumer in a condition substantially as good as when they were delivered to the trader, the consumer shall be entitled to recover from the trader a sum equal to the part-exchange allowance.
- (3) During the period of 10 days beginning with the date of cancellation, the consumer, if he is in possession of goods to which the cancelled contract relates, shall have a lien on them for —
- (a) delivery of the part-exchange goods in a condition substantially as good as when they were delivered to the trader; or
  - (b) a sum equal to the part-exchange allowance;
- and if the lien continues to the end of that period it shall thereafter subsist only as a lien for a sum equal to the part-exchange allowance.
- (4) In this section the “part-exchange allowance” means the sum agreed as such in the cancelled contract, or if no such sum was agreed, such sum as it would have been reasonable to allow in respect of the part-exchange goods if no notice of cancellation had been served.

## 52 No contracting-out

- (1) *A term contained in a contract is void if, and to the extent that, it purports to disapply this Part (or any of its provisions) if this Part would otherwise apply.*
- (2) Where a provision of this Part specifies the duty or liability of the consumer in certain circumstances, a term contained in a ~~contract to which this Part applies~~ *relevant contract* is inconsistent with that provision if it purports to impose, directly or indirectly, an additional duty or liability on him in those circumstances.
- (3) *A term contained in a relevant contract is void if, and to the extent that, it would —*
- (a) make the proper law of the contract the law of a place outside the Island; or*
  - (b) require any matter to be determined otherwise than by arbitration or by the Manx courts.*
- (3A) *For the purposes of subsection (3)(b) —*
- “arbitration” is to be construed in accordance with the Arbitration Act 1976; and*
- “the Manx courts” means —*
- (a) the High Court;*
  - (b) the Judicial Committee of the Privy Council; and*
  - (c) the Court of Justice of the European Communities.*



- (4) *Where a term contained in a relevant contract is entered into as a direct result of a telephone call and is void, Part VIIIA (distance selling) does not apply in respect of it.*

## 53 Interpretation of Part VII

(1) In this Part —

**“arbitration”** means arbitration in accordance with the *Arbitration Act 1976*;

**“charge on land”** includes any security charged on land;

~~“consumer” means a person other than a body corporate, who, in making a contract to which this Part applies, is acting for purposes which can be regarded as outside his business;~~

*“consumer” means an individual who in making a relevant contract is acting for purposes which can be regarded as outside his or her business;*

**“notice of cancellation”** has the meaning given by section 47(3);

*“relevant contract” has the meaning given in section 46(1);*

**“security”** in relation to a contract means a mortgage, charge, pledge, bond, debenture, indemnity, guarantee, bill, note or other right provided by the consumer, or at his request (express or implied), to secure the carrying out of his obligations under the contract;

*“solicited visit” has the meaning given in subsection (1A) (and “unsolicited visit” shall be construed accordingly);*

**“telephone call”** includes —

- (a) *any form of communication by means of a telecommunication system;*
- (b) *any form of communication comprising or including the transmission of sound by means of the internet;*

*“trader” means a person who, in making a relevant contract, is acting in his or her business capacity and includes anyone acting in the name or on behalf of the trader; and*

*“unsolicited visit” see the definition of “solicited visit” above.*

~~“trader” means a person who, in making a contract to which this Part applies is acting for the purposes of his business, and anyone acting in the name or on behalf of such a person.~~

(1A) *A “solicited visit” is a visit by a trader, whether or not he or she is the trader who supplies the goods or services, to a consumer’s home or place of work or to the home of another individual, which is made at the express request of the consumer.*

*But neither of the following is a solicited visit —*

- (a) *a visit by a trader which is made after he or she, or a person acting in his or her name or on his or her behalf —*
  - (i) *contacts the consumer (otherwise than at the consumer’s express request) and indicates during the course of the contact (either expressly or by implication) that he or she, or the trader in whose*

*name or on whose behalf he or she is acting, is willing to visit the consumer; or*

*(ii) visits the consumer (otherwise than at the consumer's express request) and indicates during the course of that visit (either expressly or by implication) that he or she, or the trader in whose name or on whose behalf he or she is acting, is willing to make a subsequent visit to the consumer;*

*(b) a visit during which a contract is made which relates to goods or services which are materially different, either in nature or quantity, from those originally requested by the consumer.*

*(1B) For the purposes of subsection (1A)(a) a visit is not solicited by virtue of the contact or visit being preceded by advertising material which the trader has delivered, or has caused to be delivered to the —*

*(a) consumer's home;*

*(b) consumer's place of work; or*

*(c) home of another individual.*

*(1C) For the purposes of this section —*

*“advertising” means any form of representation which is made in connection with a business in order to promote the supply or transfer of a product or service;*

*“contact” includes (without limiting the breadth of that word) contacting by telephone or by means of an electronic communication within the meaning of section 12 of the Electronic Transactions Act 2000.*

**(2)** Any provision in this Part requiring a document to be signed shall be complied with by a body corporate if the document is properly executed under its common seal.

## **Schedule 2B**

### **MEANING OF “EXCEPTED CONTRACT” FOR THE PURPOSES OF SECTION 46**

#### **[SECTION 46(2)]**

#### **1 Meaning of “excepted contract”**

*A contract is an excepted contract if it is within any of the following paragraphs.*

#### **2 Land transactions**

(1) *A contract is within this paragraph if it is one —*

- (a) *for the sale or other disposition of land, or any estate or interest in land (including a charge on land);*
- (b) *to finance the purchase of land;*
- (c) *for a bridging loan in connection with the purchase of land; or*
- (d) *for the construction or extension of a building or other erection on land.*

*In paragraph (a), “charge on land” includes any security charged on land.*

(2) *But a contract is not within this paragraph if it is a contract for the supply of goods and their incorporation in any land or a contract for the repair or improvement of a building or other erection on land, where the contract is not financed by a loan secured by a land mortgage.*

#### **3 Deliveries by roundsmen**

*A contract is within this paragraph if it one for the supply of food, drink or other goods intended for current consumption by use in the consumer’s household and supplied by regular roundsmen.*

#### **4 Routine catalogue sales**

(1) *A contract is within this paragraph if it is one for the supply of goods or services which satisfies all the conditions in subparagraphs (2) to (4).*

(2) *The condition is that the terms of the contract are contained in a trader’s catalogue which is readily available to the consumer to read in the absence of the trader or his representative before the conclusion of the contract;*

(3) *The condition is that the parties to the contract intend that continuity of contact will be maintained between the trader or his representative and the consumer in relation to the transaction in question or any subsequent transaction.*

(4) *The condition is that both the catalogue and the contract contain or are accompanied by a prominent notice indicating that the consumer has a right —*

- (a) *to return to the trader or the trader’s representative goods supplied to the consumer within the period of not less than 14 days from the day on which the goods are received by the consumer; and*
- (b) *otherwise to cancel the contract within that period without incurring any*

*liability, other than any liability which may arise from the failure of the consumer to take reasonable care of the goods while they are in the consumer's possession.*

**5 Insurance contracts**

*A contract is within this paragraph if it is a contract of insurance.*

**6 Low value contracts**

*A contract is within this paragraph if it is one under which the total payments to be made by the consumer do not exceed such amount as may be prescribed.*

## APPENDIX 3

### IMPACT ASSESSMENT

#### CONSUMER PROTECTION (AMENDMENT) BILL 2015

**DEPARTMENT: OFFICE OF FAIR TRADING**

**DATE: 8<sup>th</sup> July 2015**

**VERSION NUMBER: 3**

**RELATED PUBLICATIONS:**

Responsible Officer: M J Ball, Chief Officer

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Telephone number: 686501

#### SUMMARY: INTERVENTION AND OPTIONS

**What is the Bill intended to do:**

To amend consumer protection legislation by introducing new provisions which address the problem of cold calling and disrupt the activities of "rogue traders". The Bill also makes minor amendments which update existing provisions.

**Nature of Problem:**

1. There are a small number of unscrupulous traders (especially those within the home improvements sector), who operate in the Island. They generally target the most vulnerable members of society, especially the elderly, and persuade them to have property repairs undertaken.

Typically these repairs fall within a number of categories:-

- (a) Completely unnecessary;
- (b) Exorbitantly overpriced;
- (c) Badly executed.

These traders operate through unsolicited doorstep selling, pressurising the "victim" to make an instant decision.

2. Whilst the OFT can and does assist the victims, it generally only becomes involved after the damage has been done, when a victim (or where the victim is elderly, a friend or relative) realises what has happened. Prosecutions are very difficult because the victim has often been selected because they are elderly or infirm and they are reluctant and hesitant witnesses.
3. In addition the general public are disenchanted about receiving unsolicited sales contacts either through doorstep selling or telesales.

### **Purpose of Proposal:**

The objectives of the Bill are:-

To address the issue of cold calling by making it an offence for a trader to enter into a contract for the sale of goods and services as a result of cold calling. The Bill covers all forms of cold calling (including by telephone).

To resolve a number of inconsistencies in the Consumer Protection Act 1991 and to bring it up to date.

To make provision to allow the OFT to apply, by Order, secondary legislation relating to consumer protection from the United Kingdom with any modifications necessary for the Island.

### **Means by which it is to be achieved:**

#### **Option A - Do nothing**

The problem with the current situation is that the OFT can only become involved once a vulnerable consumer has fallen victim. Prosecutions are very difficult because the victims are generally either reluctant to be witnesses or would not make good witnesses, due to possibly being elderly/frail. Enforcement action is often limited to recovery of money (with some success). Where a successful prosecution has been possible, they require substantial resources. Whilst recovery of money can be a positive step, there is often a major impact on the victim ranging from loss of confidence to live in their own home to physical illness. The OFT believes that were it to do nothing it would be failing to protect the most vulnerable in society.

#### **Option B – Promote the Bill to ban cold calling (preferred option)**

The creation of a new offence of entering into a contract as a result of an unsolicited sales visit or contact will provide a degree of protection to the vulnerable because the perpetrators will either be prevented from pressurising victims; or if they continue their current operational model will be committing an early offence which is relatively easy to prosecute.

#### **Option C – Compulsory Registration of Tradesmen**

One solution to the problem which has been used elsewhere is the compulsory registration of tradesmen. Alongside registration it would become unlawful for any person who is not registered to undertake any form of building work. Whilst probably a more effective way of dealing with the perpetrators of building fraud, it would be highly bureaucratic (and hence expensive to administer) and would place a significant burden on the legitimate traders who represent the vast majority of the building industry.

Whilst the OFT has not totally rejected Option C as a long term solution should resources permit, it feels that Option B represents a more proportionate response.

**Board sign off for Options stage**

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



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**Mr D J Quirk MHK  
Chairman, OFT**

Pursuant to OFT Minute No:  
*2015/07/04*

Date

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30<sup>th</sup> July 2015

## SUMMARY: ANALYSIS AND EVIDENCE

### IMPACT OF PROPOSAL

#### Resource Issues - Financial (including manpower)

##### Statement

The Bill is not expected to result in any increase in costs to, or personnel employed by, Government.

**Likely Financial Costs** Nil

**Likely Financial Benefits** Nil

#### If the proposal introduces provisions that will require enforcement or monitoring who will undertake this and what is the likely annual cost

Enforcement will be undertaken by Trading Standards Officers, who currently deal with complaints about rogue traders. The legislation will allow Trading Standards to focus on enforcement action intended to disrupt and stop the activities of unscrupulous traders rather than dealing with the outcome of their activities. Resources allocated to this area of enforcement vary over time (and will continue to do so) based on risks in this and other areas. Overall the OFT does not envisage an increase in resources in this area; but the new legislation will enable those resources to be used more efficiently.

#### Are there any costs or benefits that are not financial i.e. social

The activities of rogue traders are often targeted at the most vulnerable members of society and can have a profound effect on elderly victims. The OFT has seen cases where the confidence of an elderly person to live at home has been undermined and even one case where it has apparently triggered serious illness.

#### Has Treasury Concurrence been given for the preferred option

The Bill would not be intended to increase or decrease the revenue of Government, and consequently concurrence has not been sought.

#### Key Assumptions / Sensitivities / Risks

Risk: There are a small number of people for whom 'cowboy building' is a very profitable way of life. Whilst this measure is about the disruption of their activities and those of other rogue traders, there is always the risk that they will move into other areas of criminality.

#### Approximate date for legislation to be implemented if known

Appointed Day Order - October 2016 with the Act coming into full force in January 2017.

#### Link to Government Strategic Plan

Protecting the Vulnerable



**Link to Department/Statutory Board/Office Aims and Objectives**

Protecting consumers from unfair trading practices through advice, education and enforcement

**SUMMARY: CONSULTATION**

**Consultation in line with Government standard consultation process:**

This is a short Bill and it is therefore considered a standard period of 6 weeks for the receipt of views from the public is sufficient.

**Consultation To be undertaken:** August – September 2015

## **APPENDIX 4**

### **LIST OF DIRECT CONSULTEES**

- **Tynwald Members**
- **Attorney General**
- **Local Authorities**
- **Chief Officers of Government Departments, Boards and Offices**
- **Isle of Man Chamber of Commerce**
- **Isle of Man Law Society**
- **Isle of Man Employer's Federation**
- **Isle of Man Trade Union Council**
- **Age Isle of Man**
- **Ballacurn House Trust**
- **C.I.R.C.A.**
- **Care In MANN**
- **Community Nursing Fund**
- **Corrin Memorial Home Governor's Accounts**
- **Endowments Committee of the Parish of Patrick**
- **Grest Trust**
- **Isle of Man Health & Care Association**
- **Isle of Man Live at Home Scheme**
- **Isle of Man Neighbourhood Watch Scheme**
- **Isle of Man Residential Homes**
- **Meals on Wheels IOM**
- **Praxis Care Limited**
- **Samaritans of the Isle of Man**
- **Southern Befrienders Limited**
- **Victim Support Isle of Man**

## APPENDIX 5

### Code of Practice on Consultation

This consultation follows the Code of Practice on Consultation the criteria for which are set out below.

The Six Consultation Criteria:

1. Consult widely throughout the process, allowing a minimum of six weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The full Code of Practice is available at [Isle of Man Government Code of Practice](#)