

**EXPLANATORY MEMORANDUM TO THE
CONSUMER PROTECTION (CODE OF PRACTICE FOR TRADERS ON
PRICE INDICATIONS) APPROVAL ORDER 2005**

2005 No. 2705

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The Order approves a new Code of Practice for Traders on Price Indications issued by the Secretary of State, and which appears as a Schedule to the Order. This is an updated version of the 1988 Code.

3. Matters of special interest to the JCSI

3.1 None.

4. Legislative background

4.1 Section 20 of the Consumer Protection Act 1987 makes it an offence to give consumers a misleading price indication about goods, services, accommodation or facilities. Section 25 of the Act gives the Secretary of State powers to approve codes of practice giving practical guidance on promoting good practice in the giving of price indications. The Code of Practice issued by the Secretary of State in 1988 was approved by the Consumer Protection (Code of Practice for Traders on Price Indications) Approval Order 1988 (1988/2078) which is revoked by this Order. This Order is made under section 25 and is subject to the negative resolution procedure.

5. Extent.

5.1 The Order applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 The 1988 Code of Practice has been revised in the light of consultation with the Office of Fair Trading and other interested parties, in particular to clarify the application of the Code to sales over the Internet, and to other new trading practices.

8. Impact

8.1 A final Regulatory Impact Assessment for this Order is attached.

8.2 The impact on the public sector is negligible. The legislation will continue to be enforced by the Trading Standards Services of local authorities.

9. Contact

David Evans at the Department of Trade and Industry, 'phone 020 7215 0335 or e-mail david.a.evans@dti.gsi.gov.uk, can answer any queries regarding this Order.

REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL/PROPOSED REGULATION

Revisions to the Code of Practice for Traders on Price Indications.

PURPOSE AND INTENDED EFFECT OF MEASURE

Issue and Objective

The price of goods is key to consumer purchasing decisions, especially for those on low incomes. Prices are, however, not always easy to compare in a meaningful way. In the White Paper "Modern Markets: Confident Consumers", published in July 1999, the Government announced a series of measures intended to make prices clearer and more transparent for consumers. These included a review of the 1988 Code of Practice for Traders on Price Indications - which provides guidance for traders and sets out what is good practice to follow in giving price indications in a wide range of different circumstances and, in so doing, avoid the risk of committing a criminal offence under Section 20 of the Consumer Protection Act 1987.

The purpose of the review is to bring it up to date on new sales mechanisms and practices and to clarify the guidance where difficulties in interpretation have arisen.

Rationale for Government Assessment

Prices play a key role in the efficient functioning of markets. Where price information is distorted, or incomplete, the market can fail to arrive at the most efficient outcome. This can mean a misallocation of resources, with resources not being put to the highest value use. It could mean inefficiency, as price competition is subdued and inefficient producers escape pressure from efficient rivals. And it could also mean sub-optimal consumption, as consumers are led by incorrect price signals to consume either too much or too little of a particular good. This outcome could reduce consumer welfare.

The proposed changes to the Code address these risks by increasing clarity and certainty for business and transparency and confidence for consumers in the information provided. For instance, it has been updated to include references explicitly pertaining to sales over the Internet, removing any doubt that it does apply to such sales. This improved clarity will assist consumers in getting best value for money.

OPTIONS

Option 1 – Do nothing. To retain the current version which was issued in 1988.

Option 2 – To reissue the Code, bringing it up to date to address new selling practices/mechanisms.

ISSUES OF EQUITY OR FAIRNESS

The revision of the Code will benefit both traders and consumers, improving clarity and certainty for business and transparency and confidence for consumers, providing a fairer and more level playing field between traders and assisting consumers in making purchasing decisions.

BENEFITS

The benefits of improved practice in this area are increased clarity and certainty for business and increased transparency and confidence for consumers in the information provided which should assist consumers in making optimal purchasing decisions. It may also feed through to increased competitiveness at the retailing and manufacturing level.

Option 1

To do nothing is not an option. It is generally agreed amongst stakeholders that the current Code of Practice is not up to date to meet current markets, i.e. internet trading, and therefore needs to be revised to reflect new selling practices and mechanisms – including the internet and factory outlets. This cannot be done without a revision of the Code.

Option 2

The benefits of revising the current Code will be to produce a better version with improved clarity in the guidance provided to traders, as well as providing an opportunity to update it with new sections to deal with the modern market place, and one which is available in an accessible manner and cost free to them. It should result in a general improvement of current practice in price indications, which will be to the benefit of the vast majority of traders and should provide increased price transparency for consumers.

Statistics collected by the Office of Fair Trading (OFT) from Trading Standards Officers show that there are around 35000 complaints per annum solely on price/pricing information problems. Disaggregated data relating to the precise nature of the complaints – i.e., whether they relate to problems with price transparency, price levels or misleading prices – is not available.

Cost estimates based on the methodology used in the OFT report “Consumer Detriment” (2000) indicate that the direct costs of the complaints to consumers is of the order of £650k a year. This is made up of administrative costs, loss of personal time and legal fees that are incurred in a small percentage of cases. However, this number is likely to be a significant underestimate since it does not account for the impacts of lost or distorted competition from misleading pricing, contraction in the market due to

increased consumer uncertainty, or the additional search costs facing consumers from reduced price stability.

Increased clarity of the guidelines to business can be expected to produce reduce these administrative costs to consumers, and to have additional benefits to competition (mentioned above). It has not however been possible to quantify these.

CONSULTATION

The OFT has to be consulted before any Code is made under the provisions of the Consumer Protection Act 1987. The DTI conducted a consultation with the OFT and other interested parties in 2003. The proposed changes to the Code have been revised in the light of the consultation responses – a more detailed account of these revisions has been placed on the DTI website.

COMPLIANCE COSTS FOR BUSINESS

In principle, there are no compliance costs for businesses, since the Code itself is not enforced by law. However, although the Code is not mandatory, and therefore traders are not obliged to follow the guidance contained in the Code, it does provide good practice guidance that businesses can follow to ensure that their selling practices do not breach provisions made under the Consumer Protection Act 1987 on misleading price indications - which are unchanged. (Breach of the Code is not itself an offence but, where an offence of giving a misleading price indication is alleged, breach of the Code can be used in court as evidence for the prosecution; and compliance with it can be used as evidence for the defence.) In practice, it is to be expected that responsible firms will familiarise themselves with the revised Code so that they can be sure that they are following good practice in giving price indications. There will, therefore, be a one-off transitional cost to businesses, which we believe will be negligible (as the greater part of the current Code is unaffected by the revisions proposed).

BUSINESS SECTORS WHICH WILL BE AFFECTED

As the guidance in the Code covers all product and service sales between traders and consumers, however made, including those by tradesmen, professional services etc. all businesses in the market place will be affected.

CONSULTATION WITH SMALL BUSINESS: "THE SMALL FIRMS IMPACT TEST"

The Small Business Service (SBS) and organisations that represent SME interests have been consulted during this review, including the British Hospitality Association and the British Retail Consortium. No adverse impacts for small firms in particular were identified. However, should any hidden or as yet unidentified impacts be highlighted for SMEs by the planned post-implementation review of the Code, the position will be reviewed and the SBS informed.

OTHER COSTS

The only other costs identified are the cost to Government of updating the current Code to take account of the changes and printing/distribution costs but these are expected to be minimal, as are the costs of placing the Code on the DTI website. Trading Standards Officers are already responsible for enforcing the existing legislation and the proposals are not expected to add to the work involved.

ENFORCEMENT, AND SANCTIONS

The Code itself is not enforceable by law. However, the Consumer Protection Act 1987 – which contains provisions pertaining to misleading price indications, is enforced by Local Authority Trading Standards Departments and no change is therefore proposed to the current enforcement arrangements.

POST-IMPLEMENTATION REVIEW

The DTI will have further discussions with interested parties on the working of the Code. Some respondents were of the view that further changes to the Code are desirable. Others thought it would be better to see how the revised Code worked in practice before considering further change. The Department will be considering this question in the light of users' experience. Any proposals for further change would of course be subject to consultation.

COMPETITION ASSESSMENT

As suggested above, more uniform practice by traders in the giving of price indications would be expected to strengthen competitive pressures. No adverse impacts on competition have been identified.

SUMMARY AND RECOMMENDATIONS

The preferred option is option 2. Updating and clarification of the Code should improve trading practice in the area of price indications, with benefits to consumers and traders. Associated costs are assessed to be negligible. This is therefore the recommended course of action.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Gerry Sutcliffe
(Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs)

11th September 2005

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