

BIS | Department for Business
Innovation & Skills

**LAND AGREEMENTS EXCLUSION
AND REVOCATION ORDER 2004**

A consultation on the
Order's future

JULY 2009

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1. EXECUTIVE SUMMARY

1.1 Purpose of this Consultation

This consultation seeks views from interested parties on whether the Secretary of State should amend or repeal the Land Agreements Exclusion Order¹. The effect of that order is that certain agreements concerning an interest in land are excluded from the prohibition on anti-competitive agreements contained in Chapter I of the Competition Act 1998.

1.2 In its final report² on the supply of groceries in the UK, which was published on 30 April 2008 following a two year investigation, the Competition Commission (CC) recommended that the Government should amend the Land Agreements Exclusion Order so that it no longer applied to exclusivity arrangements which restrict grocery retailing. This was on the grounds that the CC had found that, in highly concentrated markets, such agreements had an adverse effect on competition in the groceries sector.

1.3 The CC also suggested that the Government may want to consider repealing the Land Agreements Exclusion Order altogether as they judged it to be an anomaly in the modern competition regime and considered it feasible that land agreements involving parties in sectors other than grocery retailing may be similarly capable of resulting in anti-competitive effects.

1.4 The options

In light of these recommendations, the Government is considering the following three options:

- Option One: Make no change to the Exclusion Order;
- Option Two: Amend the Exclusion Order in the way recommended by the CC to remove its application to exclusivity arrangements in the groceries sector; or
- Option Three: Repeal the Exclusion Order altogether, as the CC invited us to consider. This is the Government's preferred option

1.5 This consultation seeks views on the merits of each of these options. We want to ensure we have as full an understanding as possible of the effects of each option and the likely impacts on business and consumers.

¹ 'The Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004 No 1260 is available at: <http://www.opsi.gov.uk/si/si2004/20041260.htm>

² 'The Supply of Groceries in the UK Competition Commission Market Investigation' report published on 30 April 2008

1.6 Views are also invited on the consultation stage Impact Assessment which is at Annex D of this document. Your responses will help in the preparation of a Final Stage Impact Assessment and in reaching final decisions on the way forward which will be published as part of the Government's response to this consultation.

1.7 The Department's initial view

The Department's initial view is that, following modernisation of competition law in 2004, the reasons for having the exclusion for land agreements no longer apply and that there appears no valid basis for continuing to exclude this one category of agreements from the provisions of competition law prohibiting anti-competitive agreements between undertakings.

1.8 The reason for excluding land agreements from the effects of the prohibition on anti-competitive agreements contained in Chapter I of the Competition Act 1998 was mainly a practical one. We wanted to provide certainty about how the Competition Act would apply to the very large number of agreements that concern land, the vast majority of which are not likely to result in negative impacts on competition in markets and are, therefore, of no concern to the Office of Fair Trading (OFT). An exclusion order was introduced for such agreements so as to provide certainty that a land agreement would be legal unless and until such time as they were specifically examined and found to be anti-competitive. This meant it was not necessary for parties to land agreements to notify them to the OFT for clearance. We wanted to avoid the OFT being over-burdened with a large number of such notifications which would have taken up time and resource which could be better used tackling genuine competition problems and promoting effective competition in markets.

1.9 Following modernisation of competition law in 2004, businesses are no longer able to notify their agreements to the OFT. They must instead self assess their agreements to ensure they are compatible with competition law. This has removed the Order's original purpose. Its existence in the new system appears to be an unnecessary anomaly. In a regime based on self assessment, people should be self assessing their agreements and reaching appropriate conclusions about whether or not they are likely to have anti-competitive effects and be compatible with the prohibition in Chapter I of the Competition Act 1998.

1.10 There seems good reason to consider that land agreements that are anti-competitive should be subject to a legal prohibition in the same way as any other type of agreement. Parties entering into restrictive agreements relating to land should be expected to undertake appropriate self-assessment to ensure their agreement does not infringe the Chapter I prohibition in the same way they would when entering into any other form of agreement.

1.11 Repeal of the Order rather than the alternative of amending it only so that it did not apply to agreements relating to the groceries sector, would also have

the benefit of removing the need to define when a land agreement should be deemed to relate to the groceries sector and the potentially problematic scope for debate as to whether or not a particular agreement fell within that definition.

1.12 Need to review existing agreements

Clearly, removing or amending the exclusion order would require a large number of parties to undertake a certain amount of work to assess the various land agreements to which they may be party to ensure these do not result in any substantive effects on competition in a market such as would involve a breach of the Chapter I prohibition. However, the exclusion order was never intended to enable parties to enter into anti-competitive agreements – only to provide that land agreements need not be notified to the OFT on the grounds that the great majority of them will be benign in competition terms. So it could be argued that parties to land agreements are already under an obligation to ensure their agreements are in fact compatible with the Chapter I prohibition. Removing the exclusion order would simply remove any basis for confusion as to whether such self assessment was necessary in respect of agreements that may be deemed to be land agreements.

1.13 If we amend or revoke the exclusion order, we would expect the OFT to publish as soon as possible new guidance on how land agreements should be assessed against competition law and this should help businesses conduct their self assessments. We would propose also that any order, whether amending or repealing the current Order, would contain a one year transitional period enabling businesses to review their agreements before the exclusion from the Chapter I prohibition came to an end.

1.14 It seems feasible that, in many cases, a high level assessment of the state of competition in the relevant area would be sufficient to enable conclusions to be reached about whether or not a particular agreement may cause substantive harm to competition. More detailed scrutiny would only be required in those cases where such an impact did indeed appear feasible. Given the previous assumptions about land agreements generally not having an adverse effect on competition in markets, such detailed scrutiny may be necessary in respect of only a relatively small proportion of cases.

1.15 NOTE TO CONSULTEES

We are aware that the OFT is considering a super-complaint from CAMRA (Campaign for Real Ale) relating to issues affecting the pub industry. Should the OFT's enquiries include the consideration of agreements which concern an interest in land, we will take into account the outcome of the OFT's consideration of these issues, as may be relevant to the Government's decision on the future of the Exclusion Order.

2. DETAILS OF HOW TO RESPOND

2.1 This consultation opened on 29 July 2009 and ends on 4 November 2009

2.2 You are invited to respond either by letter, fax or email. When responding, please state whether you are an individual, or responding on the behalf of an organisation. If responding on behalf of an organisation, please state clearly who the organisation represents, and how the views of members were assembled.

2.3 Responses or questions about policy issues raised in this document should be submitted to:

Mala Mistry
Consumer Competition Policy Directorate
Department for Business, Innovation and Skills
Room 414
1 Victoria Street
London
SW1H 0ET

Tel: 0207 215 5374

Fax: 0207 215 2837

Email: mala.mistry@bis.gsi.gov.uk

2.4 Additional Copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845-015 0010
Fax: 0845-015 0020
Minicom: 0845-015 0030
www.berr.gov.uk/publications

An electronic version can be found at
<http://www.berr.gov.uk/consultations/index.html>

Other versions of the document in Braille, other languages or audio-cassette are available on request.

2.5 Consultees

This consultation will be mainly of interest to retail bodies and relevant trade organisations. Please tell us if you know of other parties who would be

interested in receiving this consultation. It is also available by request from the address listed above and on the BIS website at:

<http://www.berr.gov.uk/consultations/open-consultations/index.html>

2.6 Impact Assessment

We have produced a partial Impact Assessment (see separate annex) setting out estimates of the costs and benefits of the proposals and options within this consultation. However, there are inherent difficulties in presenting the associated costs and benefits in monetary terms.

2.7 The benefits of the move flow from the fact that the prohibition on anti-competitive agreements provided for in Chapter I of the Competition Act 1998 will apply to land agreements in the same way that it applies to all other agreements. This ensures that the benefits to consumers of ensuring effective competition between enterprises are not lost as a result of a land agreement that does in fact restrict competition. As the CC commented in their report on the groceries sector, there appears no longer to be any sound policy reason to exclude this category of agreements from the effects of the prohibition. Forcing enterprises to examine their land agreements to ensure they are indeed compatible with the Chapter I prohibition would be wholly beneficial.

2.8 The costs that arise are those an enterprise might need to incur in reviewing the land agreements to which they are a party. Parties to land agreements should, though, already be considering their agreements carefully to ensure they do not in fact result in anti-competitive outcomes and breach the Chapter I prohibition. In this way, the additional cost that arises from removing the exclusion order could be deemed to be nil.

2.9 The impact assessment seeks to reflect this situation. It would not be helpful to put forward highly speculative figures. This would not appear likely to produce credible information that would be useful in reaching a decision as to whether or not the exclusion order should be amended or revoked.

2.10 You are invited to comment on the analysis, and/or provide further evidence to demonstrate potential costs or benefits of the proposals set out in the consultative document.

2.11 Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

2.12 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

2.13 Consultation Code of Practice

A copy of the new Consultation Code of Practice Criteria (which came into effect from 1 November 2008) is listed at Annex A on page x. A link to obtain the full copy of the consultation guidance is also attached at Annex A.

2.14 Complaints

If you have any comments or complaints about the way this consultation has been conducted these should be sent to:

Mr Tunde Idowu
Consultation Co-ordinator
Department for Business, Innovation and Skills
Room 562
1 Victoria Street
London
SW1H 0ET
Tel: 0207 215 0412
Fax: 0207 215 0235
Email: babatunde.idowu@bis.gsi.gov.uk

3. BACKGROUND TO THE LAND AGREEMENTS EXCLUSION ORDER

3.1 In 2000, an Order was made under Section 50 of the Competition Act 1998 that excluded land agreements and also vertical agreements³ from the prohibition on anti-competitive agreements contained in Chapter I of the Act. The 2000 Order was revoked in 2004 so as to remove vertical agreements from its scope and it was replaced by a new Order⁴ that was concerned solely with Land Agreements. Such agreements were excluded from prohibition in exactly the same terms as they had been in the earlier Order.

3.2 ‘Land agreements⁵’ as defined in the Exclusion Order are agreements between undertakings that create, alter, transfer or terminate an interest in land. The term ‘interest in land’ includes “any estate, interest, easement, servitude or right in or over land” and includes licences and, in Scotland, any interest under a lease and other heritable rights in or over land, including heritable securities. Also excluded are certain obligations and restrictions which are accepted by one of the parties to a Land Agreement in his capacity as holder of an interest in certain relevant land or other relevant land⁶.

3.3 The original purpose of the exclusion was to avoid the OFT having to deal with a large number of notifications of Land Agreements at the inception of the new competition regime rather than focusing on matters of genuine competition concern, such as cartels. It was considered that, whilst such agreements may impose restrictions, the vast majority of them were not likely to appreciably restrict, distort or prevent competition in the UK or a significant part of the UK. Far from justifying exclusion, this would normally have been a reason for leaving the agreements to be considered under the prohibition. The prohibition only prohibits agreements that have an adverse effect on competition. Since the vast majority of agreements that businesses enter into do not have such anti-competitive effects they are not prohibited and there is no need for them to be excluded from the effects of the prohibition.

3.4 However, concern was expressed at the time by the property industry as to how the new prohibition would apply to agreements relating to property: in particular to agreements that place restrictions on the use of outlets in shopping centres and retail parks. This concern was underpinned by the novelty, in the property industry’s view, of property being made subject to competition law. Under the new Competition Act 1998, the Chapter I prohibition applied to any agreement that affected trade within the United Kingdom. Previously, the Fair Trading Act 1973 had applied only to goods and services and therefore had not applied to property since land is neither a good nor a service. And following the 1978 decision of the Restrictive Trade

³ A vertical agreement is one entered between two or more parties, each of which operates for the purposes of the agreement at a different level of the production chain, where the primary purpose of the agreement is to purchase, sell or resell goods or services.

⁴ The Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004 No 1260.

⁵ See Article 3 of the above Order.

⁶ See, Article 5 of the above Order.

Practices Court in the *Ravenseft*⁷ case, it was believed that the great majority of commercial leases were excluded from the Restrictive Trade Practices Act 1977. There was also a general perception that, with limited and well known exceptions (such as the beer tie and petrol distribution agreements), European law would not apply to land agreements since any restrictive provisions they may contain were not liable to affect trade between Member states.

3.5 Moreover, unlike the earlier competition legislation which it replaced, which was based on the form of restrictions, the new competition regime in the Competition Act 1998 was 'effects-based': it focused on economic analysis and whether there was an actual or likely effect on a market. Although this approach is now well understood, at the time there was less understanding of how the new approach would operate and uncertainty as to whether or not the restrictions contained in Land Agreements would be deemed to have such anti-competitive effects.

3.6 In the light of this, it seemed likely that property companies would, as a precaution, choose to notify their agreements to the OFT in order to secure comfort as to their compatibility with the prohibition. When Ireland had earlier introduced a similar prohibition of anti-competitive agreements modelled on Article 81 of the EC Treaty, its competition authority had been faced with a flood of notifications of shopping leases.

3.7 In view of this, the Government decided that the right course was to provide an exclusion of Land Agreements from the prohibition. This would remove the need for notifications of such agreements, enabling the OFT to concentrate their attention on matters more significant in competition terms. For similar reasons, vertical agreements were also excluded from the prohibition. Any Land Agreements that were found to be significantly anti-competitive could be dealt with by providing a mechanism⁸ in the Exclusion Order enabling the OFT to withdraw the benefit of the exclusion from any agreement it considered would, if not excluded, infringe the Chapter I prohibition.

3.8 Since the original Exclusion Order was made, European and domestic competition law has been modernised⁹ with the effect that the OFT no longer has the power to exempt individual agreements and agreements are not notified to the OFT. It is now the responsibility of businesses to self-assess their agreements and reach their own view as to whether or not they are compatible with competition law. There is substantial case law and published guidance from the OFT on which to base such assessments. Accordingly, the consideration of avoiding unnecessary notifications to the OFT is no longer relevant. Arguably, the Land Agreements exclusion should, for these reasons, have been repealed at the same time the Government repealed the exclusion for vertical agreements, at the time of modernisation in 2004. However, for practical reasons, it was decided at the time that, since the

⁷ Legal term refs to [1978] QB (Queen's Bench) 52, [1977] 1 A1 ER 47, RPC

⁸ See Article 6 of the SI Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004.

⁹ Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/261.

position of the exclusion for land agreements was not one of those matters that had to be addressed in order to ensure UK law was compatible with modernised EU law, it could be reviewed separately at a later date.

4. THE COMPETITION COMMISSION'S RECOMMENDATIONS ON THE EXCLUSION ORDER

4.1 On 9 May 2006, the OFT referred the supply of groceries by retailers in the UK to the CC for investigation under section 131 of the Enterprise Act 2002. The CC's final report was published on 30 April 2008. The Government's response to the report was published on 29 July 2008.

4.2 The CC's report recognised that the grocery market was generally working well for consumers, but identified two areas where action was needed to improve competition in local markets and to improve relationships between retailers and their suppliers to increase the benefits to customers. These related to concerns about high concentration in local markets for grocery retailing and barriers to entry and to grocery retailers with buyer power passing on excessive risk and unexpected costs to suppliers in a way that could reduce investment and innovation in the supply chain. To help address these areas of concern, the CC identified a package of remedies. The CC has the power to implement most of the remedies concerning land agreements itself and is presently consulting on the draft order.

4.3 In addition, the CC made a number of recommendations to Government about action it should take. These included the recommendation that the Land Agreements Exclusion Order should be amended so that it no longer applied to "exclusivity arrangements which restrict grocery retailing and which are entered into by grocery retailers". This reflected the CC's conclusion that, in highly concentrated local markets, exclusivity arrangements which restrict grocery retailing are in fact capable of having an adverse effect on competition by serving as a barrier to new parties entering the market and to existing parties expanding their businesses.

4.4 The CC believed that the existence of the Exclusion Order created an inaccurate impression among some grocery retailers that any agreements relating to land fell within the scope of the order and raised no such competition concerns. Removing the order's application to the groceries sector would force grocery retailers to look again at their agreements and assess whether or not they are in fact compliant with the Competition Act 1998. The CC considered that this would be wholly beneficial.

4.5 The CC's full consideration of the position of exclusivity arrangements and restrictive covenants under competition law is set out in their report.¹⁰

¹⁰ 'The Supply of Groceries in the UK Competition Commission Market Investigation' Restrictive covenants are covered in paragraphs 7.88-7.93 and 11.136-11.182. Exclusivity arrangements are covered in paragraphs 7.94-7.97 and 11.183-11.230.

4.6 The CC's view on repeal of the exclusion for land agreements

The CC's investigation related to the groceries sector and its recommendation about the exclusion order was confined to effects relevant to that sector. However, the CC does additionally state the view that having exclusion for land agreements appeared to be "something of an anomaly in the current competition regime". There may be other sectors in respect of which land agreements currently within the scope of the exemption may in fact be capable of having similarly adverse effects on competition. In view of this, the CC suggested that "there may be merit in revoking the Land Agreements Exclusion Order in its entirety" and suggested BIS should consider taking this step. Details of the CC's other recommendations to government are contained within their report (see the website link in Annex C of this document).

5. CONCLUSION

5.1 The Department is considering three options in response to the CC recommendations in respect of the Land Agreements Exclusion Order:

- Option One – Make no change to the Order;
- Option Two - Amend the Order in the way recommended by the Competition Commission to remove its application to exclusivity arrangements in the groceries sector;
- Option Three - Repeal the Order altogether.

5.2 As indicated in the Executive Summary, the Department's initial view, subject to considering responses to this consultation, is that Option Three is the appropriate action to take. The original reason for the Order no longer exists. Moreover, the Government is committed to competition as an essential characteristic of fair and open markets, driving productivity which brings benefits for both businesses and consumers. Competition law should therefore apply widely across the economy and any exceptions should require clear justification.

5.3 It is not obvious that there is now a justification for special treatment of Land Agreements; the exclusion is indeed, as the CC suggested, now an anomaly in the current competition regime. This is especially the case now that the CC has found that in highly-concentrated local markets exclusivity arrangements and restrictive covenants which restrict grocery retailing have had an adverse effect on competition.

5.4 Whilst the CC finding only concerned the grocery sector, it may be that detailed consideration of Land Agreements in other sectors would uncover similar anti-competitive effects. Whether or not an agreement does adversely affect competition depends upon an assessment against the specific circumstances and characteristics of the relevant market. There may well be value in parties to Land Agreements reconsidering whether or not those agreements do significantly restrict, distort or prevent competition.

5.5 Nevertheless, we would welcome your views on the case for and against each of the options. You may be assisted in framing your response by the following list of detailed questions on which we would particularly value views.

6. LIST OF CONSULTATION QUESTIONS

Option 1 – Do nothing- no change to the Exclusion Order

1. What would be the major advantages of retaining the Order in its present form?
2. What would be the major disadvantages of retaining the Order?

Option 2- Amend the Exclusion Order to remove its application to exclusivity arrangements in the groceries sector

3. What would be the major advantages of amending the Order in this way?
4. What would be the major disadvantages of amending the Order?
5. Is the definition “exclusivity arrangements which restrict grocery retailing and which are entered into by grocery retailers” sufficiently precise? Exactly how would the order need to be amended so that it ceased to apply to such agreements?
6. How could the order be amended so that it applies appropriately to enterprises that are partly engaged in grocery retailing but also supply other categories of products?
7. Are there any other consequences of amending the Order that should be taken into account?

Option 3 – Revoke the Exclusion Order altogether

8. What would be the major advantages of revoking the order in its entirety?
9. What would be the major disadvantages of doing so?
10. The Government’s initial view is that repealing the Order is appropriate since it would remove an anomaly from the competition regime, plugging an unnecessary gap in the way the prohibition on anti-competitive agreements applies. Are there any unintended consequences that should be taken into account in considering whether the Order should be repealed?

General

11. State which is your preferred option of 1, 2 and 3 above. Please give a summary of your reasons.
12. Would you agree or disagree with the idea of delaying the effect of any Order to amend or repeal the exclusion by one year to allow businesses to review their agreements? Please give your reasons.

Note: In responding to the above questions, to the extent practicable please indicate:

- The number of land agreements to which you are party;
- Their average duration and average remaining duration?
- The average number of new land agreements you enter into each year?
- Your principal business (e.g.: grocery, pharmacy, electrical retailer, DIY store).
- The principal business of the other party/parties to the agreements (e.g.: shopping centre, retail park);
- How many, or what proportion, of your existing agreements you have already scrutinised for compliance with competition law using
 - a. In-house legal advice and;
 - b. External legal advice?
- If the Order was repealed or amended, how many agreements you think you would have to scrutinise for compliance with competition law using:
 - a. In-house legal advice;
 - b. External legal advice;
- Your best estimate of the average cost of making each assessment?

7. Next Steps

At this stage, it is not possible to provide definitive timelines regarding implementation of any possible changes to the Order either through amendment or repeal should either of these options be concluded following this consultation. The following list of milestones and dates leading up to publication of the Government's response, the OFT guidance and implementation date to the regulation are based on estimated timescales only and will be subject to changes after the actual government response is published.

MILESTONES	APPROXIMATE DUE DATES
Publication of Government response document and final stage Impact Assessment	End January 2010
Depending on the option selected: 'Information Notice' on Land Agreements webpage and sent to listed stakeholders inviting comments on draft regulations and draft OFT guidance	End October 2010
Finalisation and publication of guidance	Early January 2011
SI (Statutory Instrument) enters into force	Early April 2011

Annex A

The Government's Code of Practice on Consultation (introduced from 1 November 2008)

This consultation has been conducted in accordance with the following criteria:

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2 Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4 Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6 Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The complete code is available on the following website address:

<http://www.berr.gov.uk/files/file47158.pdf>

Annex B

List of Stakeholders Consulted

Other Government Departments

Department of Communities and Local Government
Treasury Department
Cabinet Office
Welsh Assembly Government
Scottish Government

Competition Authorities

Competition Commission
The Office of Fair Trading

Legal Institutions

The Law Society
The Law Society of England and Wales
The Law Society of Scotland
The Law Society of Northern Ireland
UK Bars and Law Societies on Competition Law

Retail Bodies

Association of Convenience Stores
Accessible Retail
British Chambers of Commerce
British Retail Consortium
British Shops and Stores Association (BSSA)
British Council of Shopping Centres
Confederation of British Industry
Consumer Focus
Home Retail Group:
Independent Retailers Confederation
Retail Planning Forum
Rural Shops Alliance:
Small Business Federation
Which
Wine and Spirits Trade Association:

Others

British Property Federation
British Hardware Federation:

CAMRA
Horticultural Trades Association
Institute of Directors
Investment Property Forum
Local Government Association
Land Registry
Royal Institute of Chartered Surveyors
Local Government Association
Town & Country Planning Association

Annex C

Links

1. A full copy of the CC's final report on the UK groceries sector is available on their website at:
http://www.competition-commission.gov.uk/rep_pub/reports/2008/fulltext/538.pdf
2. The government's published response to the CC's report can be viewed on the BIS website at:
<http://www.berr.gov.uk/bbf/competition/market-studies/supplyofgroceries/index.html>
3. Details about the OFT's referral to the CC including a copy of their report can be viewed at:
http://www.ofg.gov.uk/advice_and_resources/resource_base/references/grocery
3. A Link to the exclusion order is available at:
<http://www.opsi.gov.uk/si/si2004/20041260.htm>
4. A Link to the OFT's guidance is available at:
http://www.ofg.gov.uk/shared_ofg/business_leaflets/ca98_guidelines/ofg420.pdf

ANNEX D CONSULTATION IMPACT ASSESSMENT

Summary: Intervention & Options

Department /Agency: Business for Innovation & Skills	Title: Impact Assessment on the future of the Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004	
Stage: Consultation	Version: draft	Date: June 2009
Related Publications: The Supply of Groceries in the UK Competition Commission Market Investigation report (published on 30 April 2008)		

Available to view or download at:

http://www.competition-commission.gov.uk/rep_pub/reports/2008/538grocery

Contact for enquiries: Mala Mistry

Telephone: 0207 215 5374

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

The Order excludes a specified category of agreements (land agreements) from the effects of the general prohibition on anti-competitive agreements that is provided for in Chapter I of the Competition Act 1998. Following a recommendation from the Competition Commission (CC), we have reviewed the continued appropriateness of that exclusion and concluded that it is in fact, no longer necessary and should be revoked so that the Competition Act Chapter I prohibition will apply uniformly to all agreements without exception. This move is necessary in view of the evidence identified by the CC in the context of its inquiry into the UK groceries sector, that land agreements may, in highly concentrated markets, have an adverse effect on competition. The proposed action - to remove the exclusion for land agreements - will ensure consistent application of the prohibition on anti-competitive agreements and promote effective competition in markets.

What are the policy objectives and the intended effects?

Removing the exclusion for land agreements would ensure parties to such agreements properly examined them to ensure they were indeed compatible with the Competition Act 1998 - something the CC considered would be wholly beneficial.

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

Option One- Do nothing i.e retain the exclusion order

Option 2- Amend the Exclusion Order so that it no longer applies to exclusivity arrangements which restrict grocery retailing and which are entered into by grocery retailers.

Option 3- Repeal the order altogether. This is the preferred option. We are satisfied there is no longer a valid reason to exclude land agreements from the effects of the general prohibition on anti-competitive agreements provided for in Chapter I of the Competition act 1998..

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?. The policy involves revoking an order that we judge is no longer necessary. There would be no formal review of the policy. It remains open to make a new order to exclude particular agreements from the Competition Act Chapter 1 prohibitions as deemed appropriate in future.

Ministerial Sign-off For SELECT 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:

.....Date:

Summary: Analysis & Evidence

Policy Option: 1
Retain the Order

Description: Option to retain the Competition Act 1998 (Land Agreements Exclusion and Revocation Order 2004)

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Retaining the Order is the 'do nothing' option. Therefore there is no cost associated with this option.
	One-off (Transition) Yrs	
	£ 0	
	Average Annual Cost (excluding one-off)	
	£ 0	
Total Cost (PV)		£
Other key non-monetised costs by 'main affected groups'		
BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' There are no benefits associated with this option.
	One-off Yrs	
	£	
	Average Annual Benefit (excluding one-off)	
	£	
Total Benefit (PV)		£
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks Retention of the Order may continue to create an inaccurate impression amongst some grocery retailers that any land agreements covered by the Order would not raise any competition concerns. The CC stated there may be similar agreements in other sectors which may be capable of having anticompetitive effects.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?	OFT				
What is the total annual cost of enforcement for these organisations?	£				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£				
Will the proposal have a significant impact on competition?	Yes/No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; text-align: center;"> <tr> <td style="width: 25%;">Micro</td> <td style="width: 25%;">Small</td> <td style="width: 25%;">Medium</td> <td style="width: 25%;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; text-align: center;"> <tr> <td style="width: 25%;">No</td> <td style="width: 25%;">No</td> <td style="width: 25%;">N/A</td> <td style="width: 25%;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2
Amend the Order

Description: Option to amend the Competition Act 1998 (Land Agreements Exclusion and Revocation Order 2004)

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' It is not possible at this stage to estimate the key monetary costs of amending the Order. Questions on costs and benefits have been asked in the consultation document
	One-off (Transition)	Yrs	
	£	1	
	Average Annual Cost (excluding one-off)		
£ nil		Total Cost (PV)	£

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

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
£		Total Benefit (PV)	£

Other **key non-monetised benefits** by 'main affected groups' If agreements have to be altered as a result of amending the Order, then there could be benefits to consumers in the grocery sector including lower prices and improved levels of service.

Key Assumptions/Sensitivities/Risks Altering the Order may require some parties in the grocery sector to undertake a certain amount of work to assess whether or not their agreements have any substantive effects on the market. However, this activity should have been undertaken.

Price Base	Time Period	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)	
Year	Years	£	£	

What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		Oct 2010/April 2011		
Which organisation(s) will enforce the policy?		OFT		
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		Yes		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3.
Repeal of the order

Description: Option to repeal the Competition Act 1998 (Land Agreements Exclusion and Revocation Order 2004)

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' It is not possible at this stage to estimate the key monetary costs on repealing the Order in its entirety. Annual costs are to be quantified (TBQ) Possible one-off cost involved for business to review their terms for compliance with the regulation
	One-off (Transition)	Yrs	
	£ TBQ		
	Average Annual Cost (excluding one-off)		
	£ nil		
Total Cost (PV)			£
Other key non-monetised costs by 'main affected groups'			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
Total Benefit (PV)			£
Other key non-monetised benefits by 'main affected groups' If agreements have to be repealed there could be benefits to consumers in groceries and other sectors including lower prices and improved levels of service.			

Key Assumptions/Sensitivities/Risks Repealing the Order may require a large number of parties to undertake a certain amount of work to assess whether or not their agreements have any substantive effects on the market. However, self assessment of agreements should already be taking place.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?			UK		
On what date will the policy be implemented?			Oct 2010/April 2011		
Which organisation(s) will enforce the policy?			OFT		
What is the total annual cost of enforcement for these organisations?			£		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			Yes		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ 0	Decrease of	£ 0	Net Impact	£ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Impact Assessment Evidence Base Sheet for Consultation on the Competition Act 1998 (Land Agreements Exclusion & Revocation) Order 2004

A. Strategic Overview and Background to the Consultation

The Government's policy is to ensure the right conditions are in place to promote rigorous competition between enterprises. This benefits both business and consumers, encouraging efficiency in companies and forcing them to offer consumers the best products and services at the most attractive prices. An effective competition law regime, prohibiting anti-competitive conduct, helps ensure these benefits are achieved.

The Competition Commission (CC) is one of the UK's two independent competition authorities responsible for ensuring healthy competition in markets.

One of the CC's roles is to carry out market investigations, examining markets where there is a concern that they may not be working well for consumers and imposing remedies where appropriate to address situations that significantly damage or restrict competition in markets. If the CC decides such remedies are required, it will consult with relevant parties on the choice and form of these measures and then explain its decisions in its final report.

The CC has the powers to implement remedies itself through exercising its order making powers or accepting undertakings from the parties. Alternatively, the CC may recommend, as in this particular case, that remedial action should be taken by others, such as Government, regulators and public authorities, to remedy the adverse effects on competition (AEC) or any detrimental effect on customers resulting from AEC.

B. The Issue

In its final report on the supply of groceries in the UK which was published on 30 April 2008 following a two year investigation, the CC recommended that the Government should amend the Competition Act 1998 Land Agreements Exclusion Order so that it no longer applied to exclusivity arrangements which restrict grocery retailing. The Order currently provides exclusion to businesses' land agreements from the general prohibitions of the 1998 Competition Act. However, the CC's findings suggested that in highly concentrated markets, supermarket margins were higher than in non-concentrated ones. In this context the CC found that land exclusivity agreements were capable of having an adverse effect on competition in the groceries sector by preventing the entry of competitors that would put downward pressure on margins. The CC also judged the Order an anomaly in the current competition regime and consider there may be other sectors affected by land agreements capable of having anticompetitive effects.

The Order applies across the UK. However, at this stage, it is not currently possible to dictate the scale or geographical extent of the problem or currently define what groups apart from retailers could/would be affected. As stated above, the CC has indicated that as land agreements, may in certain circumstances, give rise to competition problems in the market for the supply of groceries in the UK then it is possible that they might also give rise to similar anticompetitive effects in other areas.

Amending or repealing the Order as recommended by the CC may impose some costs. To get some indication of the extent of costs involved, we are asking for information from consultees relating to the number or types or proportion of land agreements that may need to be reviewed to ensure that these are compliant with competition law.

As part of our consultation process, we have held a small number of informal workshops to establish how businesses be affected by the Order. This has enabled BIS to consider the right range of options being taken forward and their possible effects in the consultation.

C. Objectives

The CC believed the Exclusion Order created an inaccurate impression amongst some grocery retailers that land agreements covered by the Order raised no competition concerns. The Order's original purpose was to provide legal certainty to businesses & to avoid overwhelming the OFT with a large number of notifications which did not raise competition concerns.

Removing the Order's application might force some firms to look again at their land agreements and assess whether or not they are compliant with the Competition Act 1998. The CC considered that this process would be wholly beneficial.

Repealing the Order altogether, rather than the alternative of amending it only so that it did not apply to agreements relating to the groceries sector, would also have the benefit of removing the need to define when a land agreement should be deemed to relate to the groceries sector and would remove the problematic scope for debate as to whether or not a particular agreement fell within that definition.

If the exercise concluded that either amendment or repeal of the Order was the way forward, then we would expect the OFT to publish new guidance on how land agreements should be assessed against competition law and this should help businesses conduct their self assessments. We would propose also that any order, whether amending or repealing the current Order, would contain a proposed one year transitional period (subject to consultation) enabling businesses to review their agreements before the exclusion from the Chapter I prohibition came to an end.

D. Options Identification

There are three options being considered in this consultation. These are:

- Option 1: To retain the Exclusion Order;
- Option 2: To amend the Exclusion Order in the way recommended by the CC so that it does not apply to agreements relating to the groceries sector;
- Option 3: To repeal the Exclusion Order altogether.

Option 3 is the preferred option as the Order currently appears to be an anomaly in the competition regime. The Department's view is that the Order no longer appears to be necessary and should be repealed. Following modernisation of competition law in 2004, businesses are no longer able to notify their agreements to the OFT and are required instead, to self assess their agreements to ensure they are compatible with competition law. In a regime based on self assessment, businesses should be self assessing their agreements and reaching appropriate conclusions about whether or not they are likely to have anti-competitive effects and be

compatible with the prohibition in Chapter 1 of the Competition Act 1998. This appears to have removed the Order's original purpose.

E. Analysis of options and risks

Option 1. Do nothing i.e. retain the Order

The CC in its investigation into grocery retailing estimated that the effect of weak local competition on store level profit margins allows large grocery retailers to earn an additional £105-£125 million in profits per year at their larger grocery stores, which represents the detriment of weak competition to consumers in such areas. There are difficulties in presenting the associated costs and benefits of retaining or changing the Order in actual monetary terms.

The CC believed that the existence of the Exclusion Order created an inaccurate impression among some grocery retailers that any agreements relating to land fell within the scope of the order and raised no such competition concerns. Retaining the order in its current form would only serve to maintain this misconception amongst businesses who may be unaware as to whether their agreements are, or are not in fact, compliant with competition law.

However, the Order was never intended to, and does not in fact, provide a safe harbour for agreements that restrict competition in markets. Parties to land agreements should already be considering their agreements to ensure these do not infringe the chapter 1 prohibitions of the Competition Act.

The CC's report found that, in highly concentrated local markets, agreements which fell under the scope of the Order which restrict grocery retailing are in fact, capable of having an AEC by serving as a barrier to new parties entering the market and to existing parties expanding their businesses. The CC also highlighted in their report, there may be other sectors in respect of which land agreements which currently fall within the scope of the Order may, in fact, be capable of having similar AEC and serve as barriers to entry. Retaining the Order in its current form could, lead to restrictions in competition and increased prices, thus impacting on consumer detriment.

Option 2 Amending the Order

Likewise as stated under option 1, there are difficulties in presenting the associated costs and benefits of changing the Order in actual monetary terms

The CC's report found that, in highly concentrated local markets, agreements (exclusivity arrangements) which fell under the scope of the Order which restrict grocery retailing are in fact, capable of having an AEC by serving as a barrier to new parties entering the market and to existing parties expanding their businesses. To address these concerns, the CC have recommended to Government to consider amending the Order so that exclusivity arrangements which restrict grocery retailing and which are entered into by grocery retailers which were previously within its scope, should no longer benefit from exclusion under the Competition Act.

The benefits of amending the Order in the way recommended by the CC stem from the fact that the prohibition on anti-competitive agreements provided for in Chapter I of the Competition Act 1998 will apply to land agreements in the same way that it applies to all other agreements. This will ensure that the benefits to consumers of ensuring effective competition between businesses are not lost as a result of a land agreement that does in fact restrict competition.

The costs that might arise are those that some businesses could incur in reviewing the land agreements to which they are a party and which they consider may raise competition concerns.

The Exclusion Order however, was never intended to, and does not in fact, provide a safe harbour for agreements that restrict competition in markets. As the CC commented in their report on the groceries sector, there appears no longer to be any sound policy reason to exclude this category of agreements from the effects of the prohibition. Forcing enterprises to examine their land agreements to ensure they are indeed compatible with the Chapter I prohibition would be wholly beneficial.

Parties to land agreements should already be considering their agreements carefully to ensure they do not in fact result in anti-competitive outcomes and breach the Chapter I prohibitions of the Competition Act.

Option 3 – Repealing the Order

As with the previous two options, there are difficulties in presenting the associated costs and benefits of repealing the Order in actual monetary terms.

The benefits of repealing the Order stem from the fact that the prohibition on anti-competitive agreements provided for in Chapter I of the Competition Act 1998 will apply to apply to land agreements in the same way that it applies to all other agreements. This will ensure that the benefits to consumers of ensuring effective competition between businesses are not lost as a result of a land agreement that does in fact restrict competition.

Other benefits of repealing the Order in its entirety, (rather than the alternative of amending it only so that it did not apply to agreements relating to the groceries sector), would also have the benefit of removing the potentially problematic scope for debate as to whether or not, a particular agreement fell within that definition.

The costs that might arise are those that some businesses could incur in reviewing the land agreements to which they are a party, and which they consider may raise competition concerns. If agreements are assessed and it is found that they would infringe competition law, the parties to the agreement may incur costs in making them compliant. However, these actions would lead to benefits to consumers and the economy.

The Exclusion Order was never intended to, and does not in fact, provide a safe harbour for agreements that restrict competition in markets. Parties to land agreements should already be considering their agreements carefully to ensure they do not in fact result in anti-competitive outcomes and breach the Chapter I prohibition. In this way, the additional cost that arises from removing the exclusion order which is the Government's preferred option, could be deemed to be nil.

Enforcement

In its role in enforcing fair competition, the remedial action that the CC takes will always depend on the facts and circumstances of the case. When deciding what an appropriate remedy is, the CC will consider the effectiveness of different remedies and their associated costs and will have regard to the principle of proportionality.

The CC must have regard to the reasonableness of any remedy and will aim to ensure that no remedy is disproportionate in relation to any AEC and any adverse effects on customers. Part of its consideration will include an assessment of the costs of implementing a remedy, for example in disbanding or modifying a distribution system; and the costs of complying with a remedy, for example, providing the OFT with periodic information on prices or margins. However, the CC must consider the wider picture. Adverse effects on competition are likely to result in a cost or

disadvantage to the UK economy in general and customers in particular. Where significant, these costs might usually be expected to outweigh the costs incurred by any person on whom remedies are imposed. If the CC is choosing between two remedies which it considers would be equally effective, it will choose the remedy that imposes the least cost or that is least restrictive.

The CC will endeavour to minimise any ongoing compliance costs to the parties, subject to the effectiveness of the remedy not being reduced.

In deciding what remedy or remedies would be appropriate, the CC will first look for a remedy that would be effective in dealing with the AEC of the market features rather than seeking to deal with any detrimental effects on customers.

Relevant customer benefits are limited to benefits to customers in the form of:

- (a) Lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market to which the feature or features concerned relate); or
- (b) Greater innovation in relation to such goods or services.

Implementation

If the consultation concludes that either amendment or repeal of the Act is the way forward then, BIS will apply for the affirmative procedure through Parliament as required by the Competition Act (under section 71). Usual timescales of at least 6-8 weeks will need to be factored in for this parliamentary procedure.

Further time will also be needed to comply with Departmental procedures. Implementation of guidance will need to be published around twelve weeks before the Order comes into force. We intend to follow the Departmental common commencement dates protocol to enact any Order around April or October. Consultees should also note that the suggested one year transition period (subject to stakeholders' views) will have the effect of delaying implementation to enable businesses to review their agreements.

Monitoring and evaluation

The Order is being reviewed as a result of the CC's inquiry into the supply of groceries in the UK. The CC identified that the Order might contribute to an AEC and recommended that it be amended or repealed.

Given that the review's aim is to deal with the AEC it will be the role of the competition authorities to monitor the eventual outcome to ensure that the action taken has the desired impact on freeing up markets and opening up competition. However, this is a small measure that is part of a wider package of remedies that the CC is taking forward on restrictive covenants and exclusivity arrangements. The monitoring of these measures will be part of the ongoing role of the competition authorities based on priorities. It is unlikely that the measure would be reviewed again by central Government unless a further recommendation is made by the competition authorities.

The competition authorities undertake their own evaluation exercises to measure the financial impact that their actions have on the UK economy. If either amendment or total repeal of the Order is taken forward, the OFT may choose to monitor and review the market conditions at an appropriate point as it deems necessary.

Specific Impact Tests: Checklist

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

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

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

1. Competition Assessment

The CC's report found that, in highly concentrated local markets, land agreements which fell under the scope of the Exclusion Order which restrict grocery retailing had an adverse effect on competition by serving as a barrier to new parties entering the market and to existing parties expanding their businesses. The CC recommended to Government that the Order should be reviewed with a view to being amended or repealed.

The CC also believed the Exclusion Order created an inaccurate impression amongst some grocery retailers that land agreements covered by the Order raised no competition concerns. The Order's original purpose was to provide legal certainty to businesses & to avoid overwhelming the OFT with a large number of notifications which did not raise competition concerns.

The government's preferred option is to repeal the Order altogether to the effect that prohibitions on anti-competitive agreements provided for in Chapter I of the Competition Act 1998 will apply to land agreements in the same way that it applies to all other agreements. This will ensure that the benefits to consumers of ensuring effective competition between businesses are not lost as a result of a land agreement that does in fact restrict competition.

Other benefits of repealing the Order in its entirety, (rather than the alternative of amending it only so that it did not apply to agreements relating to the groceries sector), would also have the benefit of removing the potentially problematic scope for debate as to whether or not, a particular agreement fell within that definition.

Given that the aim of reviewing the Order is to deal with the adverse effects on competition, it will be the role of the competition authorities to monitor the eventual outcome to ensure that the action taken has the desired impact on freeing up markets and opening up competition. However, this is a small measure that is part of a wider package of land remedies that the CC is taking forward.

Amending or removing the Order's application might force some firms to look again at their land agreements and assess whether or not they are compliant with the Competition Act 1998. The CC considered that this process would be wholly beneficial.

2. Small Firms Impact Test

The Exclusion Order for land agreements applies across the UK. However, at this stage, it is not currently possible to currently define which groups (apart from retailers) or size of businesses could or would be affected. The CC has indicated that as land agreements, may in certain circumstances, give rise to competition problems in the market for the supply of groceries in the UK then it is possible that they might also give rise to similar anticompetitive effects for land agreements in other sectors. The questions in the consultation document should provide further information on the impact on small businesses.

Other specific impact tests have been considered, including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing. After careful analysis it has been concluded that there is no significant impact anticipated in any of these areas.

3. Equalities-related impact tests

After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

4. Other impact tests

Other specific impact tests have been considered, i.e Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Human Rights and Rural Proofing. After careful analysis it has been concluded that there is no significant impact anticipated in any of these areas.