

Commerce and Employment Consultation Paper

States of Guernsey

Proposals for New Trading Standards Legislation
for the Island of Guernsey

Closing Date 31st October 2015

Purpose and type of consultation

This consultation document which asks 18 questions is being circulated to gather the views of consumers, businesses, charities and any other interested parties, on proposals for an ambitious set of new trading standards legislation for the Island of Guernsey. The proposed new legislation will clarify the rights and obligations of consumers and traders in their dealings with each other, provide consumer safeguards which are fit for the modern retail environment and give the Trading Standards Service the legislative tools which are necessary to ensure a fair market place for consumers and business.

The Trading Standards Service has reviewed consumer protection legislation in other jurisdictions such as Jersey, the UK and the European Union and has picked out those pieces of legislation which we believe are right for Guernsey. We have clear idea about what the future range and content of trading standards law should be. Our aim is to introduce a package of measures which provides a balanced approach to trading standards and consumer protection, which will benefit the island's economy for years to come. However, it is important that we understand what members of the public and those involved in businesses think about these ideas. This consultation provides the opportunity for you to have your say before the ideas are drawn together by the Trading Standards Service and the final proposals are developed.

SECTION 1: How to use this document

This Consultation Document is produced to obtain the views of as wide a range of people as possible on the proposals for new trading standards legislation on Guernsey, ahead of any change in the law.

Each question asks for your opinion about a particular proposal. There is space at the back of the document which you can use to add any specific comments you wish to make.

As you read the document please let us know your opinion on the proposals put forward. If you don't have an opinion on a particular Section please move on to the next. You may respond to the whole document or directly to specific sections as you wish, but we do want you to respond.

How to respond

Online

The easiest way to respond to this Consultation Document is online via [surveymonkey which can be accessed via www.gov.gg/tradingstandardsconsultation](http://www.gov.gg/tradingstandardsconsultation).

We encourage as many people as possible to use this way of responding. To help, the consultation document is divided into Sections, each one dealing with a particular aspect of the proposals. At the end of each proposal, there is a question asking for your opinion. We ask that you tick the response which most closely reflects your opinion.

In writing



By responding to the questions at each section :

Please use the response form at end of document. (p29)

Please note Qu1 is only found at the front section of Questionnaire.

Additional Information:

In addition you can submit comments in writing (p35)

All written submissions should be sent to the Department's Freepost Address:

Trading Standards, Commerce and Employment Department, Freepost GU245, Guernsey, GY1 5SS

By e-mail



You can also respond by e-mail, by sending your comments to ts@gov.gg using the pdf version of the questionnaire which is available at: gov.gg/tradingstandardsconsultation.

For further information please contact the Commerce and Employment Department Trading Standards Service, Raymond Falla House, P O Box 459, Longue Rue, St Martin, Guernsey

Tel: 01481 234567

Email: ts@gov.gg

For further information about the Trading Standards Service please visit the Trading Standards website: <http://www.gov.gg/tradingstandards>

Timescale

Consultation on this document is open between 5th October and 31st October 2015.

Responses received after this date will not be taken into consideration.

**The Department would like to thank you
in advance for taking the time to
read and respond to this consultation.**

Contents

SECTION 1: How to use this document	1
How to respond	2
Timescale	2
SECTION 2: Introduction to the Trading Standards Service	5
What type of problems are we aiming to deal with by introducing the proposed legislation?	5
SECTION 3: What are the proposals?	8
The proposed legal framework	9
SECTION 4: Civil Law	11
Supply of Goods- Consumer Rights	11
Sale of goods – Remedies for the consumer	12
SECTION 5: Supply of Services – Consumer Rights	13
SECTION 6: Unfair Contract Terms and Notices	15
SECTION 7: Digital Content.....	15
Digital content: Consumer rights	16
The consumer’s rights to enforce terms about digital content	16
SECTION 8: Regulatory Developments: Criminal Law.....	17
Enforcement principles and powers	17
The impact of things going wrong	17
How can these problems be dealt with?	17
SECTION 9: Prohibition of Unfair Commercial Practices	18
Unfair commercial practice.....	18
Aggressive commercial practice	19
SECTION 10: Information Requirements for Consumer Contracts	20
Information requirements for on-premises, off-premises and distance contracts	20
Contracts entered into over the internet and by telephone	21
Repair or maintenance contracts.....	22
Other provisions for consumer/trader contracts	23
SECTION 11: Product Safety	24
Consumer Product safety.....	24
Monitoring the safety of products on the Guernsey market.....	25
SECTION 12: Indication of Prices	26
Section 13: Questionnaire	29
Please send comments to:	36

SECTION 2: Introduction to the Trading Standards Service

The Commerce and Employment Department Trading Standards Service is responsible for ensuring the accuracy of the weighing and measuring equipment used in Guernsey and Alderney and ensuring the quantities delivered to customers are what the consumer expects and pays for. The Trading Standards Service also provides a consumer advice service to individuals who encounter problems when buying goods or services from a business. In addition to this the Trading Standards Service provides guidance to businesses to help resolve any issues they may have with their customers.

The Weights and Measures (Guernsey and Alderney) Law 1991 provides the legal basis for the Service's weights and measures work. However the consumer advice and business guidance work does not have any statutory legal basis, with the advice given to consumers being based on the rules of contract law. This can lead to uncertainty, confusion and additional costs, for both business and consumers when trying to resolve problems.

For a number of years the Commerce and Employment Department has recognised that the legal framework for trading standards and consumer protection in the Bailiwick has differed from that which exists in other jurisdictions, for example Jersey, the UK, and elsewhere in Europe. This means that Bailiwick residents and businesses do not benefit from the protections offered by, such things as, sale of goods rights or the Trading Standards Service having the powers to prevent the sale of dangerous goods, which are taken for granted elsewhere.

Preparatory steps to address this were taken in 2011 by the introduction of the Trading Standards (Enabling Provisions)(Guernsey) Law 2009 which says that the States may, through Ordinances, introduce new legislation which broadens the scope of trading standards law on the islands of Guernsey, Herm and Jethou. As the Enabling Law only has effect in Guernsey, the other Jurisdictions in the Bailiwick, Alderney and Sark would have to make their own arrangements in the future if they wished to have similar trading standards legislation.

What type of problems are we aiming to deal with by introducing the proposed legislation?

We are aiming to deal with problems which arise when consumers and traders enter into contracts with each other. It is the case that the vast majority of traders providing goods and services do treat their customers well, and resolve problems which arise quickly and fairly. Some businesses on the Island are part of larger UK based organisations and already follow customer care procedures and policies based on the same principles as proposed for the Guernsey legislation. The aim is to introduce consistency and clarity for traders and consumers, and to support businesses which are competing with competitors based outside the jurisdiction of Guernsey.

Useful Definitions:

Consumer – any individual acting as a private person and not acting for the purposes of their trade, business, craft or profession.

Trader – a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.

When a consumer buys a bar of chocolate, for example, they enter into a legal contract, even though there is no written agreement. Some terms of this contract will have been explicitly agreed by the trader and consumer, such as the price, but some terms will also be a part of the contract without having been specifically agreed. These are called “implied terms”. An implied term when you buy a bar of chocolate is that it’s edible. It’s unlikely the trader and consumer specifically agreed this, but any reasonable consumer would expect to be able to eat food they have purchased and therefore it is considered an implied term of the contract.

If the chocolate isn’t edible, the trader would be in breach of contract and the consumer would be entitled to some sort of remedy. We currently have no legislation that provides any further details, such as what the remedy should be, how it should be provided or even when it should be provided. For more complicated contracts and more complicated problems, this can cause serious issues.

Guernsey consumers can take out a claim in the Petty Debts Court, (up to a claim value of £10,000, or the Royal Court if higher); if they believe a trader is in breach of contract. However, without any written legislation, it can be difficult for a consumer to know whether they themselves are being reasonable and therefore whether any claim is likely to succeed.

The Commerce and Employment Department is proposing an Ordinance which will clearly set out a set of terms and conditions that will automatically form a part of contracts between consumers and traders.

The Ordinance will be a piece of civil legislation, which means that consumers would still have to take action in the civil court to enforce their rights under it if the trader refused to help. We believe that, in practice, very few consumers and traders will need to resolve issues in the Petty Debts Court once their rights and responsibilities are made clear.

The introduction of the Ordinance will help traders as much as consumers, by providing clarity on what they are required to do for a consumer and what they are not required to do. It will also greatly help traders by creating a level playing field, where all local traders are held to the same standards.

We are also proposing the introduction of legislation which addresses the problem of traders who do not deal fairly with consumers. The legislation will define the types of unfair behaviour and actions by a trader which the Trading Standards Service believes should be illegal and therefore banned. Such actions would be a criminal offence and the legislation will include provisions for the Trading Standards Service to enforce the law in appropriate cases.

The proposals recognise the change in the marketplace, which has taken place as internet purchases have increased in number and value. If the contract is entered into at the consumer's home or without the consumer visiting the trader's premises, then traders would have to provide particular information, including details of their name and address, a description of what the consumer is buying and the price. The trader would also be required to provide details of a 'cooling off' period, during which the consumer could cancel the contract if the contract is entered into over the telephone or over the internet. This will strengthen the position of the consumer when dealing with traders they don't meet in person and when the consumer is not able to inspect the goods before making the purchase.

The consultation document includes proposals for introducing product safety legislation to Guernsey which would help to ensure products sold in Guernsey are safe, and provide a statutory framework to deal with any dangerous consumer products that are found. The legislation will help local traders compete with businesses elsewhere, such as the UK and EU. These locations have similar legislation already in place, and Guernsey businesses could lose sales if consumers feel they do not benefit from the same level of consumer protection.

Many of the proposals being put forward are based on existing law already in place in the EU, the UK and Jersey. The proposals would adapt this legislation where necessary to ensure it is tailored to the Island's needs. The compatibility of future Guernsey trading standards legislation with these other jurisdictions will assist the operation of Guernsey businesses in these markets and will provide consistency for Guernsey consumers when dealing with businesses not based on the Island. Finally, the consultation outlines proposals for the introduction of price marking into the retail market to aid transparency and promote competition.

SECTION 3: What are the proposals?

The Trading Standards Service is proposing a comprehensive package of trading standards legislation, which is based on the principles of fairness and balance in the way consumers and traders deal with each other, and which helps traders and consumers deal effectively with any problems which may arise in the course of their transactions.

The legislation would give powers to the Trading Standards Service to undertake enforcement action against traders and businesses which do not comply. Such a framework would help to promote the efficient operation of the Guernsey economy to achieve the growth that is essential to the success of the island.

In summary the regulatory framework would be based on:

- introducing statutory civil rights and obligations for both the consumer and the trader relating to the sale of goods and the supply of services;
- ensuring the provision of enough information from the trader to the consumer to allow the consumer to make an informed decision, whether the transaction takes place face to face or at a distance, such as by telephone or over the internet;
- the requirement that traders would not act unfairly to consumers in a way that could affect the consumer's decision making and lead to consumer detriment;
- consumers having a reasonable time to consider their options when making a decision;
- taking account of the modern market place where more and more transactions are completed at a distance, and involve digital content such as computer software programs or music;
- appropriate enforcement powers for the Trading Standards Service;
- introducing a general safety requirement for consumer products;
- introducing a requirement for traders to indicate the price of products offered for sale

CONSUMER CREDIT



The Commerce and Employment Department is in discussion with the Guernsey Financial Services Commission (GFSC) about the regulation of Consumer Credit in the future. While the Department believes regulation of the consumer credit market is important, it has been decided to defer consultation on this subject until those discussions have reached conclusions on the future direction of consumer credit regulation.

The proposed legal framework

The proposals for new Guernsey legislation deal with:

- civil disputes which might arise in the course of consumer contracts between private individuals and traders or businesses they are contracting with, and are ultimately dealt with in the civil court (Petty Debts up to a claim value of £10,000); and
- criminal conduct by individuals and businesses which causes harm to the wider society as well as individual consumers, and is tackled by the Trading Standards Service for the benefit of the greater 'Public Good'.

Civil disputes may be resolved by a number of remedies including the court ordering a payment to be made. Usually however the final remedy or solution to the problem is agreed by negotiation between the consumer and the trader without the court becoming involved.

The consultation document describes legislation which can be used to deal with a wide range and variety of potentially criminal events which may cause the consumer to suffer damage or disadvantage in trader to consumer transactions. It is impossible to describe all the possible sets of circumstances which might occur. Therefore an established set of principles which define what is unfair or what is misleading is proposed. The outcome for a person who is prosecuted and found to be guilty by the courts of criminal conduct could be payment of a fine, or imprisonment, depending on the seriousness of the offence.

The starting point is that the trader must not do something which an honest and competent trader would not be expected to do and which causes the consumer to make a decision about the product or service they would not otherwise make.

For example, if the trader gives false information about the date of first registration of a car, and the consumer bases their decision to buy the car on that false information but pays more than they might otherwise have done, then the trader has traded unfairly.

Enforcement

A core role of a modern Trading Standards Service is to support businesses which want to comply with the law. The Trading Standards Service does this by providing advice and guidance to help the businesses implement regulations as efficiently and cost effectively as possible. In addition the Trading Standards Service needs appropriate tools to take action against non-compliant businesses which do not follow the law and do not take the advice and guidance which is offered. The proportionate use of enforcement powers to reinforce the law is a sign of a mature and effective market where responsible business benefits from both the advice received from Trading Standards, and from the impact of enforcement action taken against businesses which seek unfair competitive advantage through failing to comply with the law.

Trading Standards Service enforcement powers

The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009 makes provision for enforcement powers to be given to authorised officers.

To implement the law effectively and, if necessary, take formal enforcement action, the Trading Standards Service proposes that reasonable and proportionate enforcement powers and duties are given to officers of the Service.

Inspectors appointed under the Weights and Measures (Guernsey and Alderney) Law 1991 already have powers to enter trade premises, to undertake the inspection of goods and equipment and other associated powers. It is proposed that similar powers are included in the Ordinances introducing the additional trading standards legislation consulted on here.

Q2: How strongly do you agree with the following statement?

Trading Standards law covering a wide range of consumer and trader transactions should be introduced.

Please respond to Q2 in the questionnaire

(Please note Q1 only appears on the front of the Questionnaire)

SECTION 4: Civil Law



Supply of Goods- Consumer Rights

When buying goods consumers enter into a contract with the seller. Under the contract the consumer expects certain rights and that goods will satisfy certain criteria, for example that the goods will match their description or be fit for their stated purpose. However at present under Guernsey's customary law there may be uncertainty about the rights the consumer does have. The Trading Standards Service is proposing legislation which will clearly describe these rights and the remedies available to a consumer if those rights are not met. The criteria the goods must meet are described below:

- Goods must be of satisfactory quality taking into account things like their appearance and finish, their freedom from defects, safety and durability;
- Goods must be fit for all the purposes for which those types of goods are usually supplied, and must also be fit for the purpose the consumer made known to the trader before they purchased the goods;
- Goods must match any description made about them, such as any statements made by shop staff in pre-sales talks, anything stated on their packaging, or anything written in a catalogue or on a website where the consumer placed the order.

Goods must meet these criteria to conform to the contract, and if goods don't conform, the consumer is entitled to a remedy.

Where goods are purchased by a consumer seeing only a sample or model, the finished goods must also match that sample or model. Similarly, where goods are supplied as part of a contract which includes their installation, e.g. a fitted kitchen, the goods are only said to conform to the contract if the installation was carried out correctly. Finally, if the goods include digital content such as mp3 files or computer programs, that content must also meet the above three criteria.

Q3: How strongly do you agree with the following statement?

Consumers should have civil rights as described when they buy goods.

Please respond to Q3 in the questionnaire

Sale of goods – Remedies for the consumer

If the goods or the trader do not satisfy these rights, then the consumer may take action by exercising their right to redress. The Trading Standards Service is proposing legislation which will clearly describe the remedies that are available to ensure clarity for the consumer and the trader.

If goods do not conform to the contract (i.e. they are not of satisfactory quality, or fit for purpose, or as described), the following rights are proposed for the consumer.

- Within 30 days, the consumer has the right to reject the goods and receive a full refund (there are some exemptions, e.g. for perishable goods which would not last 30 days), or
- The consumer has the right to a repair or replacement of the goods.

There are some exceptions to this, for example there will be a shorter time limit for perishable goods that would not last for 30 days. Also, a consumer couldn't require the trader to repair or replace the goods if that is impossible or disproportionate compared to the other remedies.

The consumer has further rights if a repair or replacement isn't possible and more than 30 days have passed, or if the repair or replacement wasn't successful. In that case, the consumer has a right to:

- Keep the goods but receive a reduction in the price by an appropriate amount.
- Fully reject the goods and receive a refund of an appropriate amount, taking account of the use the consumer had of the goods since they received them.

Q4: How strongly do you agree with the following statement?

Civil remedies, as described, should be introduced for consumers when the goods they buy do not meet their civil rights.

Please respond to Q4 in the questionnaire

SECTION 5: Supply of Services – Consumer Rights



The Trading Standards Service also provides advice relating to contracts concerning the supply of a service by a business to a consumer. Such contracts may relate to fitting a new kitchen or the repair of a laptop. As with goods, the Trading Standards Service is proposing that a specific set of rights for consumers is introduced to provide a defined set of minimum requirements which the consumer and trader would be bound by when entering into the contract.

It is proposed that under a service contract the consumer has the following rights:

- services supplied in the course of a business will be carried out with reasonable care and skill and will not present a safety risk to the consumer;
- any information the trader provides to the consumer about themselves or the service provided forms part of the contract;
- if a price has not been paid for the service, or a price has not already been agreed, then the consumer will pay a reasonable price for a service;
- unless a specific time for carrying out a service has been agreed, services supplied in the course of a business will be carried out within a reasonable time.

Q5: How strongly do you agree with the following statement?

A consumer should have rights, as described, when entering into a contract with a trader for the supply of a service.

Please respond to Q5 in the questionnaire

Supply of services - Consumer rights of remedy

It is proposed that the consumer will have the following rights in relation to enforcing the terms of a contract to supply services:

- the right to require repeat performance of the contract; which means for example, if a householder employs a trader to decorate a room, and the trader uses the wrong colour of paint, the householder can insist that the trader comes back and re-does the relevant work. The consumer cannot require repeat performance if completing the service in conformity with the contract is impossible, and will have to pursue other remedies. For example if a consumer requests a dress maker to shorten a pair of trousers to a particular length, and the dressmaker cuts off too much material making the finished trousers too short, then repeat performance is impossible as the material cannot be added back into the trousers;
- the right to a price reduction, which means the right to require the trader to reduce the price to the consumer by an appropriate amount, and includes the consumer's right to receive a refund for anything paid above the reduced amount.

Other remedies would also be available to the consumer depending on the circumstances:

- claiming compensation for loss suffered;
- seeking to recover money where the service paid for has not been delivered;
- seeking specific performance i.e. requiring the trader to carry out the service;
- exercising a right to treat the contract as at an end.

As with other remedies any refund must be given without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund. The trader must use the same means of payment as the consumer used, unless expressly agreed otherwise, and must not impose any fee on the consumer to provide the refund.

Q6: How strongly do you agree with the following statement?

Civil remedies, as described, should be introduced for consumers who enter into a contract with a trader for the supply of a service.

Please respond to Q6 in the questionnaire

SECTION 6: Unfair Contract Terms and Notices

A further safeguard which the Trading Standards Service is proposing, to help ensure a balanced, fair relationship between the trader and the consumer, is the prohibition of unfair contract terms or notices which:

- seek to exclude or restrict the liability of the trader when he is breach of the contract, or
- claim to entitle him to deliver a contract substantially different from that which the consumer expected, or
- allow the trader not to deliver what the contract says he will deliver, unless the wording of the term is reasonable, or
- change the terms of the contract without offering the consumer similar rights to change the terms of the contract.

It is proposed that an unfair term e.g. a term saying that the consumer must pay the trader a disproportionately high sum in compensation if they do not go ahead with the contract, is not binding on the consumer. Similarly an unfair consumer notice, e.g. a notice in a shop stating “No Refunds”, is not binding on the consumer.

The existence of such terms, and others like them, make the relationship unbalanced and the contract fundamentally unfair.

**Q7: How strongly do you agree with the following statement?
Unfair contract terms should be prohibited.**

Please respond to Q7 in the questionnaire

SECTION 7: Digital Content

The following proposals are made in relation to digital content which is defined as:

‘data which are produced and supplied in digital form, and includes software, music, computer games and applications or ‘apps’, provided in the course of a trader to consumer contract’.

The definition also covers the digital content supplied to a consumer as a result of a service which produces bespoke digital content, such as a website design service. Digital content has not been supplied where a trader supplies a service merely to enable consumers to access digital content, such as Internet or mobile service provision offered by a telecoms company.

The Trading Standards Service is suggesting that digital content should be treated in the same way as physical goods which a consumer may buy.

Digital content: Consumer rights

Therefore we are suggesting that a consumer would have the rights set out below when entering into a contract to buy digital content or a service which delivers digital content.

- digital content to be of satisfactory quality;
- digital content to be fit for purpose;
- digital content to be as described;
- the statutory rights will apply to digital content provided by the trader which is transmitted by another trader;
- digital content supplied by the trader to modify the original digital content provided under the contract (i.e. updates) must meet the original requirements as to quality, fitness for a particular purpose and description; i.e. upgrades for a program must meet the same statutory requirements as the original program.
- it is assumed that the trader has the right to supply that content to the consumer.

The consumer's rights to enforce terms about digital content

If the digital content does not conform to the contract, it is proposed that the consumer will have the following rights to seek redress and resolve the problem:

- the right to repair or replacement within a reasonable time and without significant inconvenience to the consumer. The trader must also bear any necessary costs incurred, including, in particular, the cost of any labour, materials or delivery;
- the right to a price reduction, in the event that a repair or replacement is impossible or any agreed repair or replacement has not been carried out within a reasonable time or without significant inconvenience to the consumer.

To ensure balance in the relationship between the trader and the consumer, the consumer cannot require the trader to repair or replace the digital content if that remedy is impossible or disproportionate compared to the alternative remedy.

So that there are definite time limits and consistency in the administration of refunds the Trading Standards Service proposes that a refund must be given without undue delay, and in any event within 14 days of the trader agreeing that the consumer is entitled to a refund. The refund should be made by the same means as the consumer paid for the digital content, unless agreed otherwise, and the trader must not impose any fee on the consumer in respect of the refund.

Q8: How strongly do you agree with the following statement?

A consumer should have rights, as described, when entering into a contract for the supply of digital content or for a service to deliver digital content.

Please respond to Q8 in the questionnaire

SECTION 8: Regulatory Developments: Criminal Law

Enforcement principles and powers

It is proposed that the legislation introduced will give the Trading Standards Service the powers to enforce the new framework of trading standards legislation within which businesses will operate.

The proposed enforcement framework will help to ensure that all competitors in a market are operating to the same level of regulation and compliance. A lack of regulation can lead to a business, which decides to operate outside international standards of best practice, gaining an unfair competitive advantage over a business which does aim to meet those standards and incurs cost in doing so.

The impact of things going wrong

When a business provides goods or services which do not comply with the relevant legislation the non-compliant business will benefit by not incurring any costs of compliance, while the consumer or the wider economy suffers the additional costs of the failure to comply. For example, individuals and the wider society will incur costs as a result of personal injury caused by unsafe goods, while a Government incurs costs dealing with reputational damage arising from an unregulated market, or the costs of dealing with problems when they have arisen, rather than preventing them coming to the market in the first instance.

How can these problems be dealt with?

In recent years there have been significant developments in the way trading standards matters have been dealt with. These developments, which originated in the EU and have been implemented in other jurisdictions such as the UK, address unfair trading activities which cause financial or emotional harm to the consumer. Problems arising in the modern market where transactions are undertaken and completed using distance selling technology, for example the internet, are also addressed.

Such problems are dealt with by prohibiting a number of commercial practices which are deemed to be, by definition, unfair. For example:

- claiming to be a signatory to a code of conduct when the trader is not;
- claiming the trader is about to cease trading or move premises when he is not; or
- making personal visits to the consumer's home and ignoring the consumer's request to leave or not to return.

Many consumer problems arise as a result of a lack of information at the time the consumer makes their decision to buy a product. The failure to provide information which the consumer needs to make an informed decision, called a misleading omission, is therefore considered to be an offence. This means that the trader should for example:

- adequately describe the product on offer;
- identify the trader;
- indicate the price, including any taxes and any additional charges;
- provide details of cancellation rights.

The provision of a minimum level of information, whether during a face to face transaction or in the circumstances of remote selling, supports the operation of an open and effective market.

It is therefore proposed to prohibit unfair commercial practices, and make it a criminal offence to perform an unfair commercial practice, and make the provision of specified information to consumers a key part of the new trading standards regulatory regime.

SECTION 9: Prohibition of Unfair Commercial Practices

Unfair commercial practice

A commercial practice is unfair if:
the trader does something which an honest and competent trader would not be expected to do, and that action causes the consumer to make a decision about the product or service they would not otherwise make.

A misleading commercial practice

A commercial practice is also unfair if it is a misleading action, for example:

- if it contains false information and is therefore untruthful in relation to the product's characteristics e.g. the availability, benefits or specification; or
- if its overall presentation deceives or is likely to deceive the average consumer; and
- the commercial practice causes, or is likely to cause the consumer to make a decision to buy or make a payment or keep a product, that they would not have taken otherwise.

A commercial practice is also unfair if it is a misleading omission, for example:

- it omits material information, i.e. it omits the information a consumer needs to take an informed decision to purchase, such as the price;
- it hides material information;
- it provides material information in a manner which is unclear, unintelligible, ambiguous or untimely; or
- it fails to make clear that the person responsible is in business;
and as a result it causes or is likely to cause the consumer to take a decision he would not have taken otherwise.

For example, it is a material omission if a trader, when describing a car to the buyer, didn't inform him that the car been an insurance write off, and then repaired as the buyer needs to know that information in order to make an informed decision about the value of the car.

Q9: How strongly do you agree with the following statement?

Unfair commercial practices should be prohibited.

Please respond to Q9 in the questionnaire

Aggressive commercial practice

Prohibition of aggressive commercial practices

The prohibition of behaviour and techniques by traders, such as the use of harassment, coercion or undue influence, which affect the consumer's ability to make a free choice when deciding on a product is also a key part of the proposals being considered.

The Trading Standards Service proposes the following factors should be taken into account when considering a trader's behaviour:

- the timing, location, nature or persistence; e.g. persistent telephone calls encouraging a consumer to purchase a particular product;
- the use of threatening or abusive language or behaviour, e.g. a doorstep salesperson refusing to leave the consumer's premises until they agree to have some work done;
- the exploitation by the trader of a vulnerable person,; e.g. a trader taking advantage of a consumer's physical condition to sell medical aids or equipment which are not appropriate or not needed;
- the making of any threat to take any action which cannot legally be taken, e.g. a threat to take a consumer to court to enforce a payment which cannot legally be enforced.

The Trading Standards Services' intention is to introduce provisions which make it clear that traders must not behave in a way which is aggressive towards the consumer, or which intimidates more vulnerable consumers into making decisions which they would not otherwise have made. The proposals will also give the Trading Standards Service a clear mandate to take action against traders who are based on Guernsey and who use such techniques.

Q10: How strongly do you agree with the following statement?

Aggressive commercial practices should be prohibited.

Please respond to Q10 in the questionnaire

SECTION 10: Information Requirements for Consumer Contracts

It is proposed that new legislation is introduced dealing with the information which must be provided to a consumer before they enter into a contract with the trader. If the information is not provided the contract between the trader and the consumer may not be enforceable.

These proposals will deal with contracts of the following types:

“distance contract” means a contract between a trader and a consumer which is arranged and concluded without the trader and the consumer physically meeting, for example, over the telephone or by internet. A good example would be a purchase of home or car insurance completed on the internet or over the telephone.

“off-premises contract” means a contract not concluded on the trader’s premises and is illustrated by any of these examples:

a contract signed in the consumer’s home;

a contract where a consumer signs an order form during a visit to his home by the trader and the trader agrees the contract later;

a situation where the consumer enters into a contract to buy membership of an organisation and the contract is concluded over the telephone after the consumer has been in discussion with a salesperson in the street;

a contract concluded during a visit to a timeshare property or similar accompanied by the trader with the aim of promoting and selling the property.

“on-premises contract” means a contract between a trader and a consumer which is neither a distance contract nor an off-premises contract; e.g. a contract made in the trader’s shop or showroom.

Information requirements for on-premises, off-premises and distance contracts

The Trading Standards Service believes that a vital component of an effective market is that consumers have access to all the necessary information on which to base their decision when they need it and before they make the final decision on whether or not to proceed with a transaction. The consumer’s confidence is increased if they know who they are dealing with, how to get in touch with them and have a clear understanding of what they are signing up to. Depending on the circumstances of the transaction the proposed legislation would require traders to provide specified information to consumers before they are bound by the contract.

For example the requirement to provide information when the consumer enters into a contract on the trader's premises i.e. in the shop or showroom, is less onerous than if the consumer is entering into a contract in their own home or by email because the consumer knows where the trader is based or has had personal dealings with them.

The trader would be expected to provide information which adequately describes the goods or service being provided, gives details of the name, address and telephone number of the trader and the price to be paid. The information must be legible, and include details of the right to cancel if such a right exists. Other information which might be provided includes details of the trader's complaints handling policy, details of any delivery charges for the goods and details of the length of the contract and how the consumer can terminate it if the contract is not of a fixed length.

Q11: How strongly do you agree with the following statement?

Information requirements for 'on-premises', 'off-premises' and 'distance' contracts should be introduced, the exact requirements being dependent on the type of contract entered into.

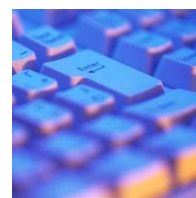
Please respond to Q11 in the questionnaire

Contracts entered into over the internet and by telephone.

Requirements for distance contracts concluded by electronic means

To reflect the contemporary market place, the proposals deal specifically with distance contracts concluded by electronic means and also distance contracts concluded by telephone calls.

If the contract places the consumer under an obligation to pay, the trader must make the consumer aware directly before they place the order of the information listed below, in a clear and prominent manner



- the details of the goods or service;
- its price or how the price is calculated;
- all additional delivery charges and any other costs, or how they will be calculated;
- if the contract is not for a specified period, or it contains a subscription, the total cost per billing period, or the total monthly cost;
- the duration of the contract, or if not of a fixed period, the conditions for terminating the contract;
- the minimum duration of the consumer's obligations under the contract.

The ordering process must also include a stage where the consumer explicitly acknowledges they have an obligation to pay the trader, and if placing an order entails activating a button or a similar function, the trader must ensure that the button is clearly labelled with the words 'order with obligation to pay' or a corresponding unambiguous wording indicating that placing the order entails an obligation to pay the trader.

It is also proposed that the trader must ensure that any trading website through which the contract is concluded indicates clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply and which means of payment are accepted.

The Trading Standards Service proposes that if the trader makes a telephone call to the consumer with a view to concluding a distance contract, the trader must, at the beginning of the conversation with the consumer, disclose the trader's identity, or the identity of anyone they are calling on behalf of, and that the call has a commercial purpose, i.e. the caller is a trader aiming to sell their product to the consumer.

These provisions would ensure that a consumer is aware early in the conversation the purpose of the call and who they were dealing with, and would be better prepared to make informed decisions during the call.

Q12: How strongly do you agree with the following statement?

Information requirements for contracts concluded over the internet or by telephone should be introduced.

Please respond to Q12 in the questionnaire

Repair or maintenance contracts

Information in connection with repair or maintenance contracts

Because of the particular nature and circumstances of repair and maintenance contracts it is proposed that they have specific information requirements. Generally the requirements for such contracts are less onerous and reflect the urgency with which such contracts are often entered into.

For repair or maintenance contracts up to a maximum value of £170, (this maximum value could be changed/increased in the future to reflect the changing market), it is proposed that the trader will be required to provide details of their name and address, the price including any delivery charges, a description of the goods or service to be supplied and a cancellation notice if the right to cancel exists, before entering into the contract with the consumer.

Q13: How strongly do you agree with the following statement?

Information requirements for repair and maintenance contracts should be introduced.

Please respond to Q13 in the questionnaire

Other provisions for consumer/trader contracts

A number of other suggestions for dealing with contracts between traders and consumers are also proposed. These are: that the trader must give the consumer a copy of the signed contract or confirmation of the contract; that a 14 day cancellation period, during which the consumer can notify the trader they want to cancel without giving any reason, is introduced for off-premises and distance contracts; that if the consumer does cancel the contract they must return any goods to the trader and bear the cost of doing so, unless the trader has agreed to collect the goods or bear the costs of the consumer returning them and; that any ancillary contract, for example a service contract linked to the supply of a washing machine, will be automatically terminated on cancellation of the main contract.

The right to cancel would be subject to restrictions in certain circumstances, for example if the consumer had requested the trader to attend to carry out urgent repairs or maintenance, or if the contract related to the supply of goods made to the consumer's specification or they are clearly personalised. If the consumer cancels the contract the goods must be returned by them without undue delay and in any event within 14 days of the contract being cancelled. Similarly the trader would be required to reimburse any costs incurred by the consumer within 14 days of being notified of the cancellation using the same method as the consumer used to pay for the goods. The trader would not have to reimburse the consumer for any additional services requested by the consumer, for example if the consumer opted for a more expensive, enhanced delivery service. Also the trader can reduce the amount reimbursed if the value of the goods is reduced by the consumer's handling of them.

Q14: How strongly do you agree with the following statement?

Other provisions, as described, in relation to consumer/trader transactions should be introduced.

Please respond to Q14 in the questionnaire

SECTION 11: Product Safety

Consumer Product safety

It is fundamental to an efficient and effective market that products do not cause harm to their users. Other jurisdictions, for example Jersey and the countries of the EU have addressed this by introducing a general safety requirement into their law. The introduction of a similar legal framework for Guernsey would help to ensure only safe goods were available to consumers and, if unsafe or dangerous goods were supplied, then the Trading Standards Service would have effective powers to deal with goods which failed to meet international standards of safety.

Examples of unsafe products supplied on the island in recent years are snap bands made from thin sheet steel which presented a cutting hazard, laser pens which presented a risk to the eyesight of humans and various electrical accessories and phone chargers which did not meet safety standards.

At present there is no statutory legal sanction which can be applied in such cases and to have unsafe products withdrawn from the market Trading Standards Officers must rely on persuasion and the trader recognising their wider responsibilities and duty of care to their customers. The measures proposed would seek to address this weakness in the operation of a safe consumer market in Guernsey and are explained in more detail below.

General safety requirement

The general safety requirement applies to any product put on the market for consumers or likely to be used by them, including all products that are provided in the course of delivering a service. Second-hand products that have antique value or those that need to be repaired are not subject to this requirement.

What is a safe product?

A safe product is one which poses as little risk as possible while still functioning properly. The risk must be acceptably low in view of maintaining a high level of protection. For instance a chainsaw will always pose a significant risk, but if it is made properly, and supplied with appropriate instructions for safe use, this risk will be acceptably low and the chainsaw will be considered safe.

It is proposed that Guernsey would adopt a similar definition of a safe product meaning that any consumer product placed on the market on the island would be required to satisfy the general safety requirement above.

Q15: How strongly do you agree with the following statement?

A General Safety Requirement for consumer products should be introduced.

Please respond to Q15 in the questionnaire

Monitoring the safety of products on the Guernsey market

The most efficient and effective way to monitor products is at the first point of entry into the Guernsey market, i.e. where the product is manufactured in Guernsey or imported into Guernsey. It is proposed that responsibility for ensuring products are safe should rest with the producer of the product. The meaning of 'producer' under the proposed legislation is given below.

"producer" means –

- (a) if the manufacturer of consumer goods is established in Guernsey, that manufacturer and any person who –
 - (i) presents himself or herself as the manufacturer by affixing to those goods his or her name, trade mark or other distinctive mark, or
 - (ii) reconditions the goods;
- (b) if the manufacturer of consumer goods is not established in Guernsey –
 - (i) if the manufacturer has a representative established in Guernsey, that representative, or
 - (ii) in any other case, the importer of the goods, and
- (c) any other person carrying on a commercial activity in the supply chain insofar as that activity may affect the safety properties of any consumer goods supplied;

Manufacturers will be required to make sure their products are safe. Generally if they manufacture them in line with European, British and International Standards it can be assumed that they are safe unless proven otherwise. If a manufacturer chooses not to follow any recognised standards they can do so but it will be up to them to demonstrate that their products are safe.

Manufacturers will be required to keep records of their manufacturing process to demonstrate they are following standards and/or to demonstrate that their products are safe.

Distributors of consumer products would also be required to supply products that are safe, to pass on any information on the risks posed by the product, and be able to provide documentation to allow products they distribute to be traced.

Q16: How strongly do you agree with the following statement?

The safety of consumer products should be monitored by the arrangements as described.

Please respond to Q16 in the questionnaire

SECTION 12: Indication of Prices

Price marking and price display

Price and quality are the two most fundamental considerations when determining value for money and satisfaction in a consumer contract, and of these, price most often takes precedence. Therefore easy, unambiguous access to price information is an essential requirement of an effective market.

In Guernsey, except for price lists in licensed premises, there is no legislation which controls the display of prices, therefore a mix exists of some retailers displaying prices, perhaps in the manner required by their UK parent company e.g. unit pricing such as price per kilogram or price per 100g, and some retailers displaying no prices, and some displaying prices in an ad hoc way. This is confusing to consumers and does not aid competition.



The situation has been subject to a number of pricing investigations by CICRA (Channel Islands Competition and Regulatory Authorities) in recent years looking at grocery pricing in supermarkets, retail vehicle fuel and domestic oil pricing. The general conclusion drawn had been that, in the absence of regulation, consumers are not best served and a requirement to price mark would benefit consumers and businesses as an effective means of comparing the offers of different retailers, thus allowing consumers to make better informed choices and help drive competition.

The Trading Standards Services believes that a requirement to price mark, or give an indication of the price of, goods on offer for sale at the retail level should be introduced.

It is therefore proposed that a general requirement to provide pricing information for both goods and services is introduced through the legislation discussed in Section 9 above which prohibits unfair trading. This would mean that **giving false information** about the price of a product, or how the price will be calculated, would be a **misleading action**, while **failure to give material information**, i.e. the price of a product or service, or how the price may be calculated, may be a **misleading omission**. Both would not be allowed and the Trading Standards Service would be able to take necessary action under the unfair commercial practices Ordinance.

Q17: How strongly do you agree with the following statement?

A requirement for traders to price mark goods on retail sale should be introduced.

Please respond to Q17 in the questionnaire

How a price indication should be given

If a requirement to give a price indication for goods is introduced then the Trading Standards Service believes it is sensible to provide a price marking framework within which traders can work to provide consistency and allow consumers to compare prices easily between traders. Proposals for this framework are given below.

Proposals for how price indications relating to goods are given

Effective price marking can be achieved by ensuring that the selling price is given to the consumer in writing in a form which is clearly legible, unambiguous, easily identifiable, in sterling, and inclusive of any taxes which might apply. It is proposed that the price marking requirements would apply to shops, catalogues produced in Guernsey, and online market places based in Guernsey.

How price information must be given

The Trading Standards Service believes price information is of limited value if it is not readily available to the consumer at the time they are making the decision to purchase. Therefore the price indication must be close to the product, or in the case of distance contracts (for example, online or mail order sales) and advertisements, close to a picture or written description of the product. In relation to sales by telephone, price indications must be clearly audible and linked to the goods or services being sold.

Prices can be shown:

- on goods themselves;
- on a ticket or notice near to the goods;
- grouped together with other prices on a list or catalogue(s) in close proximity to the goods
- on roadside displays in the case of fuel for vehicles.

If counter catalogues are used, there should be sufficient copies for consumers to refer to.

Pricing information must be available - that is, clearly visible to consumers without them having to ask for assistance in order to see it.

Goods that are kept out of the consumer's sight are exempt from price marking until an indication is given that they are for sale. In the case of tobacco products which are not on open display prior to sale, but are available, then the price indication must be given by means of a suitable method.

Q18: How strongly do you agree with the following statement?

Price information for goods should be provided by the methods or arrangements described.

Please respond to Q18 in the questionnaire

**Section 13 consists of the questionnaire and commences on the next page.
Please detach these pages and return if you are submitting a hard copy
response.**

**All written submissions should be sent to the Department's Freepost
Address:
Trading Standards, Commerce and Employment Department, Freepost
GU245, Guernsey, GY1 5SS**

Section 13: Questionnaire (Detach and Complete)

The following 8 pages (4 sheets) are designed to be separated from the rest of the consultation and sent in to the Trading Standards Service. The questions relate directly to the numbered sections in the above document.

Thank you for taking part in our consultation. We are interested in understanding who has responded and in what capacity you have done so. Therefore please answer the following questions to help us analyse the responses we have received.

Q1: Please tick the box which best describes your interest in this consultation.

I am a consumer

I am a business operator supplying goods.

I operate a business providing services

I am a provider of goods and/or services via the internet

I represent a business organisation

I represent a consumer group

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

SECTION 3: WHAT ARE THE PROPOSALS?

Q2. How strongly do you agree with the following statement?

Trading Standards law covering a wide range of consumer and trader transactions should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 4: SUPPLY OF GOODS

Q3. How strongly do you agree with the following statement?

Consumers should have civil rights as described when they buy goods.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q4. How strongly do you agree with the following statement?

Civil remedies, as described, should be introduced for consumers when the goods they buy do not meet their civil rights.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 5: SUPPLY OF SERVICES

Q5. How strongly do you agree with the following statement?

A consumer should have rights, as described, when entering into a contract with a trader for the supply of a service.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q6. How strongly do you agree with the following statement?

Civil remedies, as described, should be introduced for consumers who enter into a contract with a trader for the supply of a service.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 6: UNFAIR CONTRACT TERMS

Q7. How strongly do you agree with the following statement?

Unfair contract terms should be prohibited.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 7: DIGITAL CONTENT

Q8. How strongly do you agree with the following statement?

A consumer should have rights, as described, when entering into a contract for the supply of digital content or for a service to deliver digital content.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 9 – PROHIBITION OF UNFAIR COMMERCIAL PRACTICES

Q9. How strongly do you agree with the following statement?

Unfair commercial practices should be prohibited.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q10 How strongly do you agree with the following statement?

Aggressive commercial practices should be prohibited.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 10: INFORMATION REQUIREMENTS FOR CONSUMER CONTRACTS

Q11. How strongly do you agree with the following statement?

Information requirements for 'on-premises', 'off-premises' and 'distance' contracts should be introduced, the exact requirements being dependent on the type of contract entered into.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q12. How strongly do you agree with the following statement?

Information requirements for contracts concluded over the internet or by telephone should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q13 How strongly do you agree with the following statement?

Information requirements for repair and maintenance contracts should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q14 How strongly do you agree with the following statement?

Other provisions, as described, in relation to consumer/trader transactions should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 11: PRODUCT SAFETY

Q15. How strongly do you agree with the following statement?

A General Safety Requirement for consumer products should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q16. How strongly do you agree with the following statement?

The safety of consumer products should be monitored by the arrangements as described.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

SECTION 12: PRICES

Q17. How strongly do you agree with the following statement?

A requirement for traders to price mark goods on retail sale should be introduced.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Q18. How strongly do you agree with the following statement?

Price information for goods should be provided by the methods or arrangements described.

Strongly agree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
Agree	<input type="checkbox"/>	Strongly Disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>	No opinion	<input type="checkbox"/>

Please send comments to:

Trading Standards, Commerce and Employment Department, Freepost GU245, Guernsey, GY1 5SS	Telephone: (01481) 234567 Fax: (01481) 235015 Email: ts@gov.gg
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Disclaimer

Please note that consultation responses may be made public (sent to other interested parties on request, quoted in a published report, reported in the media, published on www.gov.gg, listed on a consultation summary etc.)

Please indicate how the Department should treat your response:

- I agree that my comments may be made public and attributed to me
- I agree that my comments may be made public but not attributed (i.e. anonymous)
- I don't want my comments made public

Respondents to this Consultation Document must fill in the following details so that the Department can verify that responses are from separate individuals. Your personal details will never be passed on to a third party and will be deleted once the consultation has ended.

Name:	<hr/> <hr/>
Address:	<hr/> <hr/> <hr/> <hr/> <hr/>
Email:	<hr/> <hr/>
Tel:	<hr/> <hr/>