

**EXPLANATORY MEMORANDUM TO
THE RESTRICTION ON CONDUCT (SPECIALIST ADVERTISING
SERVICES) (REVOCATION) ORDER 2005**

2005 No. 2670

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order revokes the Restriction On Conduct (Specialist Advertising Services) Order 1988 (“the 1988 Order”)¹

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

None

4. Legislative background

4.1 The Monopolies and Mergers Commission (MMC) - the predecessor of the Competition Commission – reported on the supply of advertising services in specialist outdoor magazines and found that a complex monopoly situation existed among the four main publishers. The report found that manufacturers and retailers of outdoor goods were concerned at the publication in specialist outdoor magazines of advertisements of certain mail order firms which advertised prices for goods which were significantly lower than prices in shops. Because manufacturers and retailers provided most of the advertising revenue for the magazines, and some retailers stocked the magazines in their outlets, they successfully exerted pressure on publishers to change their advertising policies. The 1988 Order was made under the Fair Trading Act 1973 (FTA) for the purpose of remedying or preventing the adverse effects specified in the Monopolies and Mergers Commission report².

4.2 The 1988 Order makes it unlawful for publishers of specialist magazines to withhold, or threaten or agree to withhold, advertising services from persons seeking to place adverts containing information on the price of the goods being advertised. It also prohibits discriminating against price-bearing advertisements in the prices charged and other terms and conditions for advertising services. It was intended to facilitate more effective price competition between mail order suppliers and manufacturers or retailers of outdoor goods.

¹ S.I. 1988/1017

² “A report on the matter of the existence or possible existence of a monopoly situation in relation to the supply in the United Kingdom of the services of accepting advertisements for publication in specialised magazines intended for campers, climbers and walkers” (CM 280)

4.3 Section 88(5) of the Fair Trading Act 1973 (FTA)³ requires the Office of Fair Trading (OFT) to keep under review Orders made as a consequence of an MMC monopoly report and to advise the Secretary of State if they believe that changes are appropriate. The OFT recommended that the Secretary of State revoke the 1988 Order.

4.4 The Order revoking the 1988 Order is being made under FTA provisions, which have been saved⁴.

4.5 The statutory consultation provisions contained in section 91(2) of the Fair Trading Act have been complied with, which require a Notice to be published stating the Minister's intention to make the Order, indicating the nature of the provisions to be contained in it and asking for representations. There has to be a minimum of 30 days consultation. The section 91(2) Notice was published on the DTI website and in the trade press.

5. Extent

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

No statement is required..

7. Policy background

7.1 In its 1988 report (CM 280), the MMC found that a complex monopoly situation existed among the four main publishers of specialist outdoor magazines.. Following the report, the 1988 Order was made making it unlawful for publishers of specialist magazines to withhold, or threaten or agree to withhold, advertising services from persons seeking to place adverts containing information on the price of the goods being advertised. It also prohibits discriminating against price-bearing advertisements in the prices charged and other terms and conditions for advertising services. It was intended to facilitate more effective price competition between mail order suppliers and manufacturers or retailers of outdoor goods.

7.2 The OFT has reviewed the Order as a part of its programme of reviews of Orders and undertakings under section 88 of the FTA. The OFT recommended that the Secretary of State revoke the 1988 Order, as the nature of competition and the advertisement of prices in the supply of outdoor goods has changed. The OFT also advised that such practices are now likely to be subject to the Competition Act 1998.

7.3 In light of this advice, and following the statutory consultation period, the 1988 Order is no longer required as a matter of policy and is therefore being revoked.

³ The Enterprise Act repealed the majority of the provisions of the FTA, but saving provisions continue to apply in relation to monopoly references made under the FTA.

⁴ See footnote 3.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Philip Martin (020 7215 6363), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.