

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE ACT 2002 (PART 8) (DESIGNATION OF THE
CONSUMERS' ASSOCIATION) ORDER

2005 No. 917

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Enterprise Act 2002 (Part 8) (Designation of the Consumers' Association) Order 2005 designates the Consumers' Association as a designated enforcer under Part 8 of the Enterprise Act 2002. As a result the Consumers' Association will be able to obtain enforcement orders under Part 8 of the Act to protect the collective interests of consumers.

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

- 3.1 None

4. **Legislative Background**

- 4.1 The Order is made under section 213 of the Enterprise Act 2002 ("EA02").

- 4.2 The Consumers' Association is designated as an enforcer in respect of all infringements to which Part 8 of EA02 applies.

- 4.3 The EA02 received Royal Assent on 7 November 2002. The consumer provisions including Part 8 came into force on 20 June 2003. The EA02 includes a range of measures to strengthen the UK's competition and consumer law framework.

5. **Extent**

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 Part 8 of the EA02 replaced Part III of the Fair Trading Act 1973 and the Stop Now Orders (EC Directive) Regulations 2001. It enables enforcers specified in the Act and others designated by the Secretary of State to apply to the courts for an enforcement order to stop a business from breaching a wide range of domestic and Community legislation, where the breach harms the collective interests of consumers. Such breaches are known as either 'domestic infringements' or 'Community infringements'. The latter comprise acts or omissions which contravene a European Directive listed in the Injunctions Directive (98/27/EC) (these are also listed in Schedule 13 to the EA02) or which contravene any EEA states' legislation implementing those directives. This will include legislation conferring greater protection than the directives themselves.

7.2. Part 8 is not a means of pursuing individual redress. It applies only to an infringement which harms the collective interests of consumers. It follows that the breach must affect, or have the potential to affect, consumers generally or a group of consumers.

7.3. Both public and private bodies may be designated as enforcers under Part 8. A private body may only be designated as an enforcer if it satisfies the criteria in article 3 of the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003. In order to be designated it must also have as one of its purposes the protection of the collective interests of consumers.

7.4. Bodies that wish to be designated as Part 8 enforcers can submit their applications to the Department, which are then considered against the criteria mentioned above. Applications are posted on the Department's website for 12 weeks to provide a transparent process. This was done in the case of Consumers' Association.

7.5. Consumers' Association is the first private body to be designated. Public bodies which are currently designated as enforcers are:

- The Civil Aviation Authority
- The Director General of Electricity Supply for Northern Ireland
- The Director General of Gas for Northern Ireland
- The Director General of Telecommunications
- The Director General of Water Services
- The Gas and Electricity Markets Authority
- The Information Commissioner

- The Office of the Rail Regulator
- The Financial Services Authority

7.6. There are also general enforcers under Part 8 of EA02, which are the Office of Fair Trading and the Trading Standards Service in Great Britain and the Department for Enterprise, Trade and Industry in Northern Ireland.

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.

9. Contact

Re Mian at the Department of Trade and Industry Tel: e-mail:
re.mian@dti.gsi.gov.uk can answer any queries regarding the instrument.