

**EXPLANATORY MEMORANDUM TO
THE ENTERPRISE ACT 2002 (BODIES DESIGNATED TO MAKE SUPER-
COMPLAINTS) (AMENDMENT) ORDER 2008**

2008 No. 2161

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order amends The Enterprise Act 2002 (Bodies designated to make Super-complaints) Order 2004¹, which has previously been amended by the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2004², the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2005³ and the Enterprise Act 2002 (Bodies Designated to make Super-complaints) (Amendment) (No. 2) Order 2005⁴.

2.2 The original Order designated the Consumers' Association, the National Consumer Council and the National Association of Citizens Advice Bureaux to submit "super-complaints" to the Office of Fair Trading (OFT) and other sectoral regulators⁵. The first amendment Order added the Gas and Electricity Consumer Council and the WaterVoice Council to the list of those designated. The second amendment Order added the Consumer Council for Postal Services, the General Consumer Council for Northern Ireland ("GCCNI") and the Campaign for Real Ale Limited ("CAMRA").

2.3 The third amendment Order changed "The WaterVoice Council" to "The Consumer Council for Water" (Section 27A of the Water Industry Act 1991, inserted by section 35 of the Water Act 2003, established the Consumer Council for Water. Section 35(3) of the Water Act 2003 abolished the customer service committees established under section 28(1) of that Water Industry Act 1991, the chairs of which were known as the WaterVoice Council).

2.4 This Order reflects the changes made by the Consumers, Estate Agents and Redress Act 2007 (the "Act"), section 1 of which established a body corporate known as the National Consumer Council. The National Consumer Council will

¹ S.I. 2004/1517.

² SI 2004/3366.

³ S.I. 2005/2340.

⁴ S.I. 2005/2468.

⁵ The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 (S.I. 2003/1368), made under section 205 of the Enterprise Act 2002, provides that section 11 of the Enterprise Act 2002 applies to complaints made to the following regulators: the Office of Communications, the Gas and Electricity Markets Authority, the Director General of Electricity Supply for Northern Ireland, the Water Services Regulation Authority, the Director General of Gas for Northern Ireland, the Rail Regulator and the Civil Aviation Authority.

carry out the functions previously carried on by a body which was also known as the National Consumer Council, which is a company limited by guarantee and will be wound up. This Order removes that body from the Order and inserts the National Consumer Council established under the Act. Section 30 (3) of the Act transfers the functions of the Gas and Electricity Consumer Council⁶ and the Consumer Council for Postal Services⁷ to the new National Consumer Council. Therefore those bodies have been removed from the Order.

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

None.

4. Legislative background

4.1 This Order is made under Section 11 of the Enterprise Act 2002, which allows the Secretary of State to designate certain consumer bodies to submit super-complaints if he thinks they appear to represent the interests of consumers and satisfy other published criteria. These additional criteria, which were published on the DTI website on 31st March 2003, are:

- (i) the body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity;
- (ii) the body can demonstrate considerable experience and competence in representing the interests of consumers of any description;
- (iii) the body has the capability to put together reasoned super-complaints on a range of issues;
- (iv) the body is ready and willing to co-operate with the Office of Fair Trading (OFT), and/or with any other authority, body or person having responsibility for responding to super-complaints - in particular, the body agrees to take account of any guidance issued by the OFT on the making of super-complaints; and
- (v) the fact that a body has a trading arm will not disqualify it from being designated provided that the trading arm does not control the body; any profits of the trading arm are only used to further the stated objectives of the body; and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.

5. Territorial Extent and Application

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

Not applicable.

⁶ Under the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000

⁷ Under the Postal Services Act 2000

7. Policy background

7.1 The purpose of permitting certain designated bodies to make super-complaints is to encourage well-researched and substantial complaints to be made on behalf of groups of consumers who would not find it as easy to make such complaints individually. A super-complaint may be made when a designated consumer body considers that one or more features of a market (such as the market structure or the conduct of firms operating within it) may be significantly harming the interests of consumers. The market in question may be regional, national or supranational (where the UK forms part of that market). Super-complaints may be made to the OFT or to certain sectoral regulators⁵ where the super-complaint concerns a market in relation to which the regulator has functions pursuant to specified enactments. The OFT, or where appropriate the relevant sectoral regulator, will be obliged to publish a response to a super-complaint within 90 days, stating how it proposes to deal with the complaint and the reasons behind its decision. Although anyone can submit a complaint to the OFT or other sectoral regulators about market failure, bodies designated under this Order will benefit from a 'fast-track' procedure.

7.2 Consumer bodies that wish to be designated as super-complainants can submit their applications to the Department, which are then considered against the criteria. Applications are posted on the Department's website for 12 weeks to provide a transparent process.

7.3 Public interest in the designation of the new National Consumer Council is likely to be low since its predecessor bodies (i.e the National Consumer Council, the Gas and Electricity Consumer Council and the Consumer Council for Postal Services) are already super-complainants and the functions of these bodies are merely being transferred to the new National Consumer Council.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies. A full Regulatory Impact Assessment however was prepared for the Enterprise Act, a copy of which was placed in the Libraries of the House of Commons and House of Lords.

8.2 There is no impact on the public sector.

9. Contact

Marie Cawley (020 7215 6771) or Maureen Foggo (020 7215 1664), Consumer and Competition Policy Directorate, the Department for Business, Enterprise and Regulatory Reform (BERR), can answer any queries regarding the instrument.