

EXPLANATORY MEMORANDUM TO
THE DESIGNATION OF THE COMPETITION AND MARKETS AUTHORITY AS A
NATIONAL COMPETITION AUTHORITY REGULATIONS 2014

2014 No. 537

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty
2. **Purpose of the instrument**
 - 2.1 The Regulations designate the Competition and Markets Authority (“CMA”) from 1st April 2014 as one of the UK’s national competition authorities for the purposes of EU competition law.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 Article 35 of Council Regulation (EC) No 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ No. L 1, 4.1.2003, p.1) (“the EC Competition Regulation”) provides that Member States shall designate the competition authority or authorities responsible for the application of Articles 81 and 82 of the Treaty (now Articles 101 and 102 of the Treaty on the Functioning of the European Union) in such a way that the provisions of that Regulation are effectively complied with.
 - 4.2 Regulation 2 of the Designation of the Competition and Markets Authority as a National Competition Authority 2014 designates the CMA as a national competition authority, pursuant to the EC Competition Regulation.
 - 4.3 It was necessary to make this designation as a result of Section 25 of and Schedule 4 to the Enterprise and Regulatory Reform Act 2013 which provide for the creation of the CMA and Section 26 of and Schedule 5 and 6 to that Act which provide for the abolition of the Office of Fair Trading (“OFT”).
 - 4.4 Given the abolition of the OFT, which was a designated national competition authority, it was necessary for the CMA to be designated in its place. The designation of the OFT as a national competition authority is removed by article 2 of and paragraph 13(2) of Part 1 of Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Savings Provisions) (No.2) Order 2014.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Competition and Markets Authority will acquire its full statutory powers on 1st April 2014. This will include succeeding the designation of the Office of Fair Trading as one of the UK's designated national competition authorities for the purposes of EU law.

7.2 It is good practice when giving effect to European legislation to provide a Transposition Note that sets out how the Government will deal with the main elements of that legislation into UK law. However, in the present case a Transposition Note has not been made available. This is because, in the Government's view, the resources required to produce a Transposition Note are significantly greater than can be justified by the resulting added benefit to the reader.

8. Consultation outcome

8.1 No formal consultation was undertaken on this measure, which is a procedural consequence of the abolition of the Office of Fair Trading – which was previously designated for these purposes; and the transfer of its competition functions to the Competition and Markets Authority from 1st April 2014.

9. Guidance

9.1 No guidance is required in respect of this Order. However, the CMA has published guidance on the changes to competition law made by the Act at <https://www.gov.uk/government/publications?departments%5B%5D=competition-and-markets-authority>

10. Impact

10.1 A full regulatory impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 Section 46 of the Enterprise and Regulatory Reform Act requires the Secretary of State to conduct a review within five years of the operation of the competition provisions in Part 1 of the Competition Act 1998. The CMA as a national competition authority will be responsible for exercising the powers and functions of a competition authority of a Member State under the EC Competition Regulation, some of which powers and functions are reflected in Part 1 of the Competition Act 1998. As a result, the review provision of section 46 encompass this 2014 Designation Regulation.

12.2 The impact assessment for the Enterprise and Regulatory Reform Act 2013 competition provisions stated that there would be a review of the competition regime introduced by the Act in April 2018.

13. Contact

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