Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament, after the expiry of the 40-day period referred to in section 11(4) of that Act.

This draft Order supersedes the one titled The Office of Fair Trading (Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 which was laid before Parliament on 10th December 2012.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

PUBLIC BODIES

CONSUMER

The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013

Made - - - - ***

Coming into force in accordance with Article 2

The Secretary of State makes the following Order in exercise of the powers conferred by sections 5(1), 6(1) and (2) and 35(2) of the Public Bodies Act 2011(**a**) ("the Act").

The Treasury have consented to the making of this Order in so far as their consent is required by section 6(4) of the Act.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

(a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and

(b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Scottish Parliament has consented to the making of this Order in so far as its consent is required by section 9(1) of the Act in relation to article 8 of this Order.

The consent of the Northern Ireland Assembly has been obtained in accordance with section 9(3) of the Act.

(**a**) 2011 c.24.

The Secretary of State has consulted in accordance with section 10 of the Act.

The National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux have consented to the transfer of functions made by this Order in so far as their consent is required by section 21(1) of the Act.

A draft of this Order, and an explanatory document containing the information required in section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) of the Act after the end of the period of twelve weeks mentioned in section 11(3).

[In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.]

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013.

(2) The Order comes into force on the day after the day on which it is made.

(3) In this Order "the 2002 Act" means the Enterprise Act 2002(**a**).

Transfer of consumer advice scheme function

2.—(1) Subject to paragraph (3), the OFT's power under Part 1 of the 2002 Act to support a public consumer advice scheme is, so far as regards support of a scheme that takes the form of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them, transferred to Citizens Advice and Citizens Advice Scotland.

(2) The function transferred may be exercised by Citizens Advice or Citizens Advice Scotland or by them jointly.

(3) The OFT's power to support a public consumer advice scheme in that manner is abolished in relation to Northern Ireland, except so far as that function relates to the giving of advice relating to postal services.

(4) In this article—

"Citizens Advice" means the National Association of Citizens Advice Bureaux(**b**);

"Citizens Advice Scotland" means the Scottish Association of Citizens Advice Bureaux(**c**); and

"the OFT" means the Office of Fair Trading.

3. In the 2002 Act, after section 8 insert—

"**8A Exclusion of public consumer advice scheme**

The OFT may not under this Part support a public consumer advice scheme, where that support of a scheme consists of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them.".

(**a**) 2002 c.40.

(**b**) The National Association of Citizens Advice Bureaux is a company limited by guarantee, formed and registered under the Companies Act 2006 (c.46) with the company number 143695, and a registered charity with the number 279057.

(**c**) The Scottish Association of Citizens Advice Bureaux is a company limited by guarantee, formed and registered under the Companies Act 2006 (c.46) with the company number 89892, and a registered charity with the number SC016637.

4.—(1) The function transferred by article 2(1) is not to be regarded as a function under Part 1 of the 2002 Act for the purposes of section 238(1) of the 2002 Act.

(2) The function transferred by article 2(1) is to be regarded as conferred by this Order for the purposes of section 241(3)(c) of the 2002 Act.

5.—(1) Section 8 of the Utilities Act 2000(**a**) (Payments by licence holders relating to new arrangements) is amended as follows.

(2) Omit subsection (3A)(e).

(3) In subsection (3A)(f)—

(a) for "the Office of Fair Trading" substitute "Citizens Advice or Citizens Advice Scotland";

(b) for "any OFT scheme" substitute "any qualifying public consumer advice scheme".

(4) In subsection (3B)(b) for "the OFT scheme" substitute "the qualifying consumer advice scheme".

(5) After subsection (3B) insert—

"(3C) A qualifying public consumer advice scheme is a scheme that is supported by Citizens Advice or Citizens Advice Scotland, or by them jointly, in a manner that the Office of Fair Trading is prohibited from using by section 8A of the Enterprise Act 2002.".

(6) In subsection (10)—

(a) at the appropriate place insert—

""Citizens Advice" means the National Association of Citizens Advice Bureaux;";

""Citizens Advice Scotland" means the Scottish Association of Citizens Advice Bureaux;";

(b) omit the definition of "OFT scheme".

6.—(1) Section 51 of the Postal Services Act 2011(**b**) (Consumer protection conditions) is amended as follows.

(2) In subsection (2)(c) for "or the Office of Fair Trading" substitute ", Citizens Advice or Citizens Advice Scotland".

(3) In subsection (4)—

(a) for "or the Office of Fair Trading" substitute ", Citizens Advice or Citizens Advice Scotland";

(b) in paragraph (b), for the words from "the Office" to "advice scheme" substitute "Citizens Advice or Citizens Advice Scotland incurred in connection with its support of a qualifying public consumer advice scheme".

(4) After subsection (4) insert—

"(4A) A qualifying public consumer advice scheme is a scheme that is supported by Citizens Advice or Citizens Advice Scotland, or by them jointly, in a manner that the Office of Fair Trading is prohibited from using by section 8A of the Enterprise Act 2002.".

(5) In subsection (8), after "In this section" insert—

"—

"Citizens Advice" means the National Association of Citizens Advice Bureaux;

"Citizens Advice Scotland" means the Scottish Association of Citizens Advice Bureaux; ".

(**a**) 2000 c.27. Section 8(3) was amended by section 1(4), Schedule 1, Part 5, paragraph 29, (3)(a), (3)(b), (3)(c), (4) to (11) of the Consumer, Estate Agents and Redress Act 2007 (2007 c.17).

(**b**) 2011 c.5.

Freedom of Information Act 2000

7. In Part 6 of Schedule 1 to the Freedom of Information Act 2000(**a**) (Other public bodies and offices: general), at the appropriate place insert—

> "The National Association of Citizens Advice Bureaux, in respect of information relating to the function exercisable by virtue of article 2 of the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. [ ])."

Freedom of Information (Scotland) Act 2002

8. In Schedule 1 to the Freedom of Information (Scotland) Act 2002(**b**) (Scottish public authorities), in Part 7 (others), before paragraph 80 insert—

> "**79A.** The Scottish Association of Citizens Advice Bureaux, but only in respect of information relating to the function exercisable by virtue of article 2 of the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. [ ])."

Modification of enforcement functions

9.—(1) Section 214 of the 2002 Act (Consultation) is amended as follows.

(2) For subsection (1) substitute—

> "(1) An enforcer must not make an application for an enforcement order unless—
>
> (a) the enforcer has engaged in appropriate consultation with the person against whom the enforcement order would be made, and
>
> (b) if the enforcer is not the OFT, the enforcer has given notice to the OFT of the enforcer's intention to apply for the enforcement order, and the appropriate minimum period has elapsed.
>
> (1A) The appropriate minimum period is—
>
> (a) in the case of an enforcement order, 14 days beginning with the day on which notice under subsection (1)(b) is given;
>
> (b) in the case of an interim enforcement order, seven days beginning with the day on which notice under subsection (1)(b) is given.".

(3) In subsection (4), for "Subsection (1)" substitute "Subsection (1)(a)".

(4) In subsection (7), for "(except subsection (4))" substitute "(except subsections (1A) and (4))".

10.—(1) The Unfair Terms in Consumer Contracts Regulations 1999(**c**) are amended as follows.

(2) In regulation 3 (Interpretation)—

(a) before the definition of "consumer" insert—

> ""complaint" means a complaint that any contract term drawn up for general use is unfair;";

(b) after the definition of "court" insert—

> ""DETINI" means the Department of Enterprise, Trade and Investment in Northern Ireland;";

(c) after the definition of "EEA Agreement" insert—

(**a**) 2000 c. 36. This Schedule has been amended by a number of provisions but they are not relevant to this Order.
(**b**) 2002 asp 13. There are a number of amendments to Schedule 1 to this Act, but they are not relevant to this Order.
(**c**) S.I. 1999/2083 to which there are a number of amendments, but they are not relevant to this Order.

""a local weights and measures authority" means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985)(**a**);".

(3) For regulation 10 substitute—

"**Complaints – consideration by OFT and qualifying bodies**

10.—(1) The following bodies may consider complaints—

(a) the OFT;

(b) a qualifying body.

(2) Where the OFT agrees to consider a complaint, it shall be under a duty to consider that complaint.

(3) Where a qualifying body agrees to consider a complaint, it shall—

(a) be under a duty to consider that complaint; and

(b) notify the OFT of its agreement to consider that complaint.

(4) The OFT, or as the case may be, a qualifying body shall give reasons for its decision to apply or not to apply for an injunction under regulation 12 in relation to any complaints which these Regulations require it to consider.

(5) In deciding whether or not to apply for an injunction in respect of a term which the OFT or a qualifying body considers to be unfair, the OFT or the qualifying body may, if it considers it appropriate to do so, have regard to any undertakings given to it by or on behalf of any person as to the continued use of such a term in contracts concluded with consumers. ".

(4) Omit regulation 11 (Complaints – consideration by qualifying bodies).

(5) In regulation 13 (Powers of the OFT and qualifying bodies to obtain documents and information)—

(a) in paragraph (1), after "The OFT" insert ", a local weights and measures authority or DETINI";

(b) in paragraphs (1)(a) and (2)(a) omit "that a contract term drawn up for general use is unfair";

(c) in paragraph (2), after "A qualifying body specified in Part One of Schedule 1", insert "(other than a local weights and measures authority or DETINI),".

11.—(1) The Consumer Protection (Distance Selling) Regulations 2000(**b**) are amended as follows.

(2) In regulation 3 (Interpretation), in the definition of "enforcement authority" omit "the OFT,".

(3) In regulation 26(1) (Consideration of complaints)—

(a) at the end of sub-paragraph (a) omit "or", and

(b) after sub-paragraph (b) insert—

"or

(c) the OFT has agreed to consider the complaint.".

(4) After regulation 26 insert—

(**a**) 1985 c.72; section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

(**b**) S.I. 2000/2334 as amended by S.I. 2004/2095 and S.I. 2005/689.

"Complaints – consideration by the OFT

26A.—(1) If the OFT agrees to consider a complaint made to it about a breach it shall be under a duty to consider that complaint.

(2) Paragraphs (3) and (4) of regulation 26 shall apply to the OFT when it is under a duty to consider a complaint as they apply to an enforcement authority.".

(5) In regulation 27 (Injunctions to secure compliance with these Regulations)—

(a) in paragraph (1) for "any other" substitute "an";

(b) in paragraph (2) omit "other than the OFT".

(6) In regulation 28 (Notification of undertakings and orders to the OFT) omit "other than the OFT".

(7) In regulation 29(2) (Publication, information and advice) after "The OFT" insert "or an enforcement authority".

12.—(1) The Business Protection from Misleading Marketing Regulations 2008(**a**) are amended as follows.

(2) In regulation 2 (Interpretation)—

(a) after the definition of "court" insert—

""DETINI" means the Department of Enterprise, Trade and Investment in Northern Ireland;";

(b) for the definition of "enforcement authority" substitute—

""enforcement authority" means the OFT, every local weights and measures authority and DETINI;";

(c) after the definition of "goods" insert—

""local weights and measures authority" means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985);".

(3) For the heading in regulation 13 substitute "Duty and power to enforce".

(4) For regulation 13(1) substitute—

"(1) It shall be the duty of every local weights and measures authority and DETINI to enforce these Regulations.

(1A) The OFT may also enforce these Regulations.".

(5) In regulation 13(4) for "In determining how to comply with its duty of enforcement" substitute "In determining how to comply with paragraph (1), or as the case may be, paragraph (1A)".

(6) In regulation 20(2) (Publication, information and advice) for "The OFT" substitute "An enforcement authority".

13.—(1) The Consumer Protection from Unfair Trading Regulations 2008(**b**) are amended as follows.

(2) In regulation 2 (Interpretation)—

(a) after the definition of "consumer" insert—

""DETINI" means "the Department of Enterprise, Trade and Investment in Northern Ireland;";

(b) for the definition of "enforcement authority" substitute—

""enforcement authority" means the OFT, every local weights and measures authority and DETINI;";

(**a**) S.I. 2008/1276.
(**b**) S.I. 2008/1277.

(c) after "invitation to purchase" insert—

""local weights and measures authority" means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985);".

(3) For the heading in regulation 19 substitute "Duty and power to enforce".

(4) For regulation 19(1), substitute—

"(1) It shall be the duty of every local weights and measures authority and DETINI to enforce these Regulations.

(1A) The OFT may also enforce these Regulations.".

(5) In regulation 19(3) for "the Department of Enterprise, Trade and Investment in Northern Ireland" substitute "DETINI".

(6) In regulation 19(4) for "In determining how to comply with its duty of enforcement" substitute "In determining how to comply with paragraph (1), or as the case may be, paragraph (1A),".

Name
Parliamentary Under Secretary of State for Employment Relations, Consumer and Postal Affairs
Date
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Order)

This instrument transfers the power of the Office of Fair Trading ("OFT") to support a consumer advice scheme, within the meaning of article 2, to the National Association of Citizens Advice Bureaux ("Citizens Advice") and the Scottish Association of Citizens Advice Bureaux ("Citizens Advice Scotland"). The instrument also makes modifications to the OFT's consumer enforcement functions.

Article 2 transfers the OFT's power under section 8(1) of the Enterprise Act 2002, of supporting a specified type of public consumer advice scheme to Citizens Advice and Citizens Advice Scotland. It abolishes the OFT's equivalent power in relation to Northern Ireland, except in so far as it relates to postal services. Article 3 amends the Enterprise Act 2002 to make clear that the OFT may no longer support the specified type of public consumer advice scheme.

Article 4 makes consequential amendments to Part 9 of the Enterprise Act (information sharing).

Articles 5 and 6 make consequential amendments to section 8 of the Utilities Act 2000 and section 51 of the Postal Services Act 2011 as concerns the funding arrangements of the public consumer advice scheme. They ensure that levy payments are no longer made to the OFT but rather to Citizens Advice and Citizens Advice Scotland.

Article 7 adds Citizens Advice to Part 6 of Schedule 1 to the Freedom of Information Act 2000 for the purpose of the function transferred to them under this Order. Article 8 adds Citizens Advice Scotland to Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 for the same purpose.

Article 9 amends section 214 of the Enterprise Act 2002. There are a number of enforcers under Part 8 of the 2002 Act, primarily the OFT, local weights and measures authorities in Great Britain (known as Trading Standards authorities) and the Department of Enterprise, Trade and Investment in Northern Ireland. There are also a number of sectoral regulators. These enforcers may seek an enforcement order in relation to the enforcement of consumer infringements. As a result of this Order Part 8 enforcers, other than the OFT, will no longer be required to consult with the OFT before they make an application for an enforcement order. Instead, enforcers will be required to notify the OFT that they are making an application.

Articles 10 to 13 amend the Unfair Terms in Consumer Contracts Regulations 1999, the Consumer Protection (Distance Selling) Regulations 2000, the Business Protection from Misleading Marketing Regulations 2008 and the Consumer Protection from Unfair Trading Regulations 2008, to provide that the OFT will have a power rather than a duty to enforce those regulations.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the BIS website at www.bis.gov.uk. and is published with the Explanatory Document alongside the instrument on www.legislation.gov.uk. A copy has also been placed in the Libraries of both Houses of Parliament.

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