EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (THE OFFICE OF FAIR TRADING TRANSFER OF CONSUMER ADVICE SCHEME FUNCTION AND MODIFICATION OF ENFORCEMENT FUNCTIONS) ORDER 2013

2013 No. XXXX

1. This explanatory document has been prepared by the Department of Business, Innovation and Skills (BIS) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011 ("PBA").

2. Purpose of the instrument

2.1. The purpose of this instrument is to make amendments to statutory provisions to finalise the transfer of the consumer advice scheme function from the Office of Fair Trading (OFT) to Citizens Advice[1] and to Citizens Advice Scotland (the Citizens Advice Services) and to make minor modifications to a number of the enforcement functions of the OFT[2]. We are also changing the provisions for the dissemination of information on the operation of two sets of Regulations[3].

2.2. These changes are part of a series of measures being taken following reviews by the Department in 2011 of the consumer and competition bodies. The Enterprise Regulatory Reform Bill (ERR), which is currently passing through Parliament, will abolish the OFT and Competition Commission (CC) from April 2014 and replace them with the Competition Markets Authority (CMA). A second Public Bodies Act order will be laid in draft next year and will amongst other things, make provision for the transfer of OFT's estate agency functions, and the transfer of Consumer Focus functions. The OFT's consumer credit functions are due to be transferred to the Financial Conduct Authority using powers in the Financial Services Bill.

2.3. The changes made by this instrument are happening in advance of the abolition of the OFT, the CC and Consumer Focus and the intention is that they will come into force in April 2013.

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

3.1. None.

4. Legislative context

Consumer Advice Scheme function

[1] Operating in England and Wales.
[2] Section 214 of the Enterprise Act 2002; the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083); the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334); the Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 20081277) .
[3] The Consumer Protection (Distance Selling) Regulations 2000 and the Business Protection from Misleading Marketing Regulations 2008.

4.1. The OFT has a power to operate a consumer advice scheme under its general functions in Part 1 of the Enterprise Act 2002 (the 2002 Act), in particular section 8(1). The consumer advice scheme was previously known as Consumer Direct. It provides a telephone advice line service to consumers. In April 2012 responsibility for operating this telephone advice service passed to the Citizens Advice Services on an administrative basis, but a statutory transfer is needed (via this Order) to make provision for the funding of parts of the scheme and to make consequential provision for information sharing. This is detailed further below.

4.2. The Utilities Act 2000 and the Postal Services Act 2011 provide that calls to Consumer Direct relating to products of the licensed gas, electricity and postal services industries are to be funded by an industry levy from energy and postal licence holders. Consumer Direct itself was not named in these Acts as it was not a legal entity, but was instead referred to as 'the OFT scheme'. This was defined as a "consumer advice scheme supported by the OFT".

4.3. The Public Bodies Act 2011 confers powers on Ministers in relation to certain bodies and offices. Section 5 to the Act enables Ministers, by order, to modify the functions of a body specified in Schedule 5, or to transfer a function of such a person to an eligible person, and to make consequential and supplementary changes. The Office of Fair Trading is listed in Schedule 5.

4.4. This instrument transfers the relevant statutory function to support a consumer advice scheme, to the Citizens Advice Services (eligible persons within section 1(3) of the Public Bodies Act 2011) and makes consequential amendments to the payment of the levies on the gas, electricity and postal services industries so that, in the future, the levy will be paid to the Citizens Advice Services and not the OFT.

4.5. We are also making consequential amendments to the information sharing provisions of the 2002 Act. The function transferred to Citizens Advice Services is to be regarded as a function conferred by this Order for the purposes of section 241(3) of the 2001 Act to ensure that information from other consumer bodies can be shared with Citizens Advice Services as it was previously shared with OFT. This will ensure a more integrated and joined up consumer service across all consumer bodies. The Citizens Advice Services will continue to be able to share information with other relevant consumer organisations, as they do now, whilst protecting the confidentiality of that information in accordance with normal data protection provisions. No further changes are therefore necessary to ensure the information is protected.

4.6. In accordance with Government policy we are also providing that Citizens Advice be added to the Freedom of Information Act 2000 and that Citizens Advice Scotland be added to the Freedom of Information Act (Scotland) 2002, only for the purposes of the function that is being transferred to those bodies.

Enforcement Functions

4.7. The OFT is designated as an enforcer in a range of consumer protection legislation. In some cases it shares a duty to enforce with other enforcers. As explained further below, the policy intention is that in the future, local Trading

Standards authorities will take the lead in enforcing the vast majority of consumer protection legislation. This necessitates a change to the following legislation, so that the OFT will no longer have a duty to enforce, but rather a power:

The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)

The Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334)

The Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276)

The Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277)

4.8. Trading Standards will act as the lead enforcers of this legislation and will retain a duty to enforce the regulations in paragraph 4.7, except in the case of the Unfair Terms in Consumer Contracts Regulations 1999. In this case, the OFT, Trading Standards and other enforcers will all share a power to enforce. This will ensure that whilst the OFT will be able to continue to use its expertise in this area, other enforcers, including Trading Standards, will take up cases that more appropriately fall to them and the OFT will not always be seen as the most appropriate enforcer.

4.9. The Order also makes an amendment to section 213 of the 2002 Act to provide that the OFT will no longer need to consult with enforcers when applying for an enforcement order. Instead, enforcers will simply be required to notify the OFT. This amended provision continues to be consistent with obligations under the Injunctions Directive[4].

4.10. Consumer protection falls within the legislative competence of Northern Ireland under the Northern Ireland Act 1998. Accordingly, as required by section 9(3) of the Public Bodies Act 2011 the UK Government will be seeking the consent of the Northern Ireland Assembly for this Order. The Order will provide that the consumer advice function (in the manner described in the order) is only to be transferred to the Citizens Advice service in so far as it related to postal services in NI (which is not a devolved matter). Otherwise the function in relation to NI is to be abolished. This is because NI makes its own arrangements to deliver consumer advice through Consumer Line (operated by Department for Enterprise Trade and Investment) and the Consumer Council for Northern Ireland (an independent body).

4.11. As consumer protection is reserved in relation to Scotland and Wales, we do not need a consent motion under sections 9(1) or (6) in relation to the consumer matters being dealt with under the order.

[4] Directive 98/27/EC of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumers' interests.

4.12. We will however require the consent of the Scottish Parliament in relation to the addition of Citizens Advice Scotland to the Freedom of Information (Scotland) Act 2002 (see article 8 of the order).

4.13. The Government has consulted with the devolved administrations throughout this period, whether or not consent motions have been required.

4.14. The Government has also obtained the consent of the Citizens Advice Services to the transfer of the consumer advice function, as required by section 21(1) of the PBA 2011.

4.15. The consent of the Treasury has also been obtained under section 6(4) for the modified funding arrangements which will apply to the Citizens Advice Services.

5. Territorial Extent and Application

5.1. This instrument applies to the United Kingdom.

6. European Convention on Human Rights

Jo Swinson MP, Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 are compatible with the European Convention on Human Rights.**"**

7. Policy Background

7.1. The Department for Business, Innovation & Skills published a consultation document "*Empowering and Protecting Consumers*" and accompanying impact assessment on 22 June 2011.[5]

7.2. A central tenet of the Government's consumer policy is to empower consumers to make informed decisions when purchasing goods and services. Consumer empowerment depends on a robust framework of competition and consumer law which provides a level playing field for traders and an effective system of enforcement when things go wrong.

7.3. Empowerment can be promoted in different ways including the provision of timely information and advice, providing an advocacy role on behalf of consumers, and ensuring effective enforcement of consumer protection legislation.

7.4. This Order will put in place the first tranche of changes proposed by the consumer bodies landscape review. It will result in the Citizens Advice Services

[5] http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf

positioned as the central bodies in England, Wales and Scotland providing information and advice to consumers. They will do this by taking responsibility for the former Consumer Direct advice line service. Information about the consumer experience will be shared with enforcers of consumer legislation to help them prioritise their enforcement activity.

7.5. Consumer enforcement will also be strengthened by improving the national leadership and coordination capability of Trading Standards through the establishment of a National Trading Standards Board (NTSB) and by clarifying its responsibility to tackle cross-boundary threats.

7.6. At a national level, responsibility is currently split between Trading Standards officers and the OFT. Historically BIS has provided some support for national and cross-boundary schemes (Scambusters, Illegal Money Lending, internet enforcement, funding for ports and a fighting fund for large, expensive cases), Trading Standards' accountability for tackling cross-boundary and national threats is not clear. In addition, OFT resources are limited with the result is that gaps in enforcement can appear.

7.7. In the light of the strong support from the consultation a decision was taken to immediately create the NTSB. The NTSB consists of members of Trading Standards officers representing England and Wales and is served by a central government-funded secretariat[6]. Representatives from Scottish and Northern Ireland Trading Standards will attend meetings to advise on UK-wide enforcement issues and on the coordination of business education.

7.8. In Scotland, the Convention of Scottish Local Authorities (COSLA) have set up the Scottish Consumer Protection Network (SCP Net) which carries out in Scotland similar functions to the NTSB.

7.9. From April 2013, the NTSB and SCP Net will receive additional funding from the current OFT enforcement budget and will take over existing OFT activities within their remit. Subject to transitional arrangements relating to live cases, the OFT will cease its work on consumer enforcement where in future it will be the responsibility of the NTSB.

7.10. The vision is for the majority of consumer law enforcement to be done by Trading Standards; with the support of the new NTSB and the Scottish Consumer Protection Network. The OFT (and in the future, the CMA) will retain primary expertise on unfair contract terms to allow it to take enforcement action in cases where there are structural market failures, for example, where there is evidence of market wide problems on tie-in contracts. However, the fact that all enforcers will have a power to enforce consumer legislation will mean that the NTSB can determine enforcement policy so that cases can be given to enforcers best placed to deal with them, rather than always falling to the OFT.

7.11. This Order modifies the functions of the OFT to reflect this change in enforcement policy.

[6] The NTSB is not a legal entity.

Compliance with Section 8(1) of the Public Bodies Act (PBA) 2011

7.12. Section 8(1) of the Public Bodies Act 2011, provides that Ministers may make an order under PBA 2011 only where they consider the order serves the purpose of improving the exercise of public functions having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.

Effectiveness and Efficiency

7.13. The variety of publicly funded bodies involved in consumer advice and representation are seen as causing confusion to the consumer and create duplication of effort. The proposed changes across the whole of the institutional landscape will reduce this confusion and duplication and create easily accessible and nationally consistent advice to consumers.

7.14. Streamlining bodies and maximising the benefits to be achieved by linking national activity to local intelligence and front-line delivery of advice and enforcement is one of the ways in which this can be achieved.

7.15. Effective enforcement of the law is essential to protect consumers from rogue traders and unfair market practices. Trading Standards are chiefly funded by local authorities with responsibilities within LA boundaries. The recent NAO[7] report concluded that £4.8 billion (73 per cent) of consumer detriment from unfair and rogue practices results of threats that span more than one local authority area. To reduce this level of detriment enforcement responsibilities need clarification and greater co-ordination to ensure better use of limited resources through more effective leadership and integration of effort at a national level.

7.16. Almost all central government funding for consumer information, advice, advocacy and education will transfer to the Citizens Advice Services. It is expected the Citizens Advice Services will work closely with Which? and other organisations in developing and delivering advice and advocacy functions.

7.17. Transferring the Consumer Advice Scheme[8] to the Citizens Advice Services in April 2012 will consolidate their position as the principle source of Government funded consumer advice. The industry paid levy to fund consumer calls on the regulated gas, electricity and postal services industries will pass to Citizens Advice service.

7.18. The deployment of national funding for enforcement activities will facilitate a more integrated approach to national and cross local authority boundary threats. This activity would be more effectively coordinated at national level by Chief Trading Standards Officers to ensure that enforcement gaps do not arise and that activity overall is better targeted.

Accountability

7.19. The Citizens Advice Services will be fully accountable for use of BIS funding and levy funding through conditions placed in their grant arrangements with BIS.

[7] NAO 2011 Protecting Consumers – the system for enforcing consumer law
[8] Currently branded Consumer Direct

These will require Citizens Advice and Citizens Advice Scotland to fully demonstrate the costs of calls relating to the regulated products of the gas, and postal services industries in order to obtain levy funding. Grant conditions will also include a requirement for the Citizens Advice services to produce key performance indicators to ensure that the quality of service is of a suitable standard. These arrangements will mirror arrangements previously in place to manage the Office of Fair Trading expenditure;

7.20. This Order will give Citizens Advice and Citizens Advice Scotland statutory functions. It is therefore appropriate that they be brought under the requirements of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. Personal information and commercially sensitive information will however remain protected.

Compliance with section 8(2) of the PBA

7.21. Section 8(2) of the PBA 2011 provides that a Minister may make an order only if the Minister considers that:

- The Order does not remove any necessary protections;
- The Order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Given the nature of this Order, which is largely concerned with the transfer but not the abolition of functions, the Minister considers that the conditions in section 8(2) of the PBA 2011 are satisfied.

8. Consultation outcome

8.1. The consultation period, carried out in accordance with sections 10 and 11 of the Public Bodies Act 2011, ran for 14 weeks, closing on 27 September 2011. The consultation document was sent to a range of relevant key stakeholder organisations and was posted on the BIS website.. The Government Response was issued on 11th April 2012[9].

8.2. The Consultation covered a range of proposals flowing from the review of the consumer bodies landscape. The chapters relevant to this order are 3, 5, 6 (although other issues not relevant to this order are also covered in these chapters). As explained in paragraph 2.2 above, the other proposals are being implemented through a second Public Bodies Act order next year. The proposals relating to the merger of the OFT and CC and to the transfer of consumer credit regulation to the FCA were the subject of separate consultations which are not relevant to this order.

8.3. The Government received 184 formal written responses from a variety of organisations including Local Authority Trading Standards Services (LATSS), trade bodies, consumer organisations, businesses and individuals. There was also

[9] http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-510-empowering-protecting-consumers-government-response.pdf

extensive stakeholder engagement both before and during the consultation period. A summary of key points made by respondents can be found in Chapters 3 to 6 of the Government's response and a list of those who provided written responses is at Annex A. The responses are also published, except those where respondents requested confidentiality. These can be found on the BIS website along with the consultation response document. The Department would be happy to supply copies should the Committee consider these useful.

Table 1. Responses to the consultation by type of organisation Type of organisation	**Information, advice & education**	**Code approva l**	**Advocacy**	**Enforcement**	**All**
LATSS	53	43	48	56	56
Trade Body	8	14	11	14	28
Business	6	12	20	9	27
Individual	6	7	10	8	17
Consumer	12	9	13	11	16
Regulatory Body	6	4	9	8	12
Academic	6	3	6	3	7
Other	4	3	4	4	6
Legal	3	3	6	3	6
Ombudsman	3	3	5	2	6
Government	1	1	1	2	3
Total	**108**	**102**	**133**	**120**	**184**

8.4. Of those consultees who responded, the majority supported the proposal to move the consumer advice service to Citizens Advice and Citizens Advice Scotland. These included both enforcers and representatives of consumers and business. The British Retail Consortium (BRC) was alone amongst business representatives in expressing concerns about the perceived lack of business engagement and understanding within Citizens Advice and Citizens Advice Scotland. This perception was not shared by other business representative bodies

8.5. There was misunderstanding in some of the responses about the relationship between Citizens Advice (a national body) and Citizens Advice bureaux (local bodies). The consumer advice scheme will be delivered at a national level by Citizens Advice. The role of Citizens Advice bureaux in delivering face to face advice and support at a local level is not affected by this Order.

8.6. Respondents from all backgrounds expressed support for OFT's consumer enforcement functions to be transferred to Trading Standards with some consumer enforcement powers being retained by the Competition and Markets Authority (CMA). There was overwhelming support for the more effective enforcement regime resulting from this transfer

9. Guidance

9.1. Guidance will be issued to coincide with the Order coming into force.

10. Impact

10.1. The measures brought about by this Order are part of a wider package of consumer bodies landscape changes.

10.2. Impact assessments (IAs) on the whole package of consumer landscape reforms were published in April 2011 alongside the Government Response to the 'Empowering and Protecting Consumers' consultation.

10.3. These are available as a single document online at:

http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/12-637-empowering-protecting-consumers-impact-assessments.pdf

10.4. The impact of the transfer of Consumer Direct from the OFT to the Citizens Advice services is assessed in the 'Transfer of consumer information, advice and education functions' IA, which begins on page 46 of the document. This assesses the cost of the transfer at £15m to BIS with a potential additional £1m of pension costs and increase of £220k per annum of employer contribution costs. The IA confirmed that no costs would fall to business as a result of this transfer.

10.5. The impact of the modification of consumer enforcement powers is assessed in the 'Transfer of consumer enforcement powers' IA which begins on page two of the document. This assesses the overall package of measures as resulting in a saving of £3.2m per annum by streamlining existing provisions. The IA confirmed that no costs would fall to business as a result of this transfer.

10.6. The impact assessment relevant to this Order is attached to this Explanatory Document and will be published alongside the Explanatory Document on www.legislation.gov.uk.

11. Regulating small businesses

11.1. This instrument does not apply to small business, although clearly the underlying consumer protection legislation affected by it does so apply.

12. Monitoring and review

12.1. Government expects all policies to be evaluated following implementation as a matter of course. The grant funding agreement between Citizens Advice Services and BIS for the delivery of the consumer advice scheme recognised the importance of realising benefits by making a portion of the grant funding conditional of the satisfactory completion of agreed performance standards. Regular monitoring and review of the agreed targets under that agreement will take place and will be adjusted in light of experience and to reflect changes in the market environment as necessary.

12.2. Cabinet Office will carry out a post legislative scrutiny review of the Public Bodies Act 2011 in due course[10]. The Department for Business, Innovation and

[10] Using the Public Bodies Act 2011 – A guidance and Best Practice Note for Officials - March 2012

Skills will monitor the outcome of that process and consider potential impact on this legislation.

13. Contact

13.1. Paul Bland, Department for Business, Innovation and Skills, tel. 020 7215 5745 or email paul.bland@bis.gsi.gov.uk can answer any queries in relation to this instrument.

Annex A: List of respondents to the Government Consultation

Aberdeenshire Council
Association of British Travel Agents (ABTA)
Association of Chief Trading Standards Officers (ACTSO)
Advertising Association
Advertising Standards Authority
Age UK
Association of Independent Tour Operators
Alliance against IP Theft
Anglian Water
Angus County Council Trading Standards (CCTS)
Allan Auty
British Association of Removers
Barnsley Metropolitan Borough Council
British Air Transport Association
Jeffrey Bell
Laila Benfaida
BEUC – European Consumer organisation
Blackpool Trading Standards (TS)
Mark Boleat
Bosch Car Service
Brighton & Hove TS
British Airways
British Brands Group
British Compressed Air Society
British Gas
British & Irish Ombudsman Association
British Retail Consortium
BSI
BT
Buckinghamshire CCTS
Civil Aviation Authority (CAA)
Cambridgeshire CCTS
Carpet Foundation
CBI
Central England TS Authorities
Centrica
Cheshire East Borough Council
Cheshire West & Chester Council
Children's Commissioner for Wales
Citizens Advice and Citizens Advice Scotland
City of London TS
Communications Consumer Panel
Competition Commission
Construction Licensing Executive
Consumer Council
Consumer Council for Water
Consumer Credit Association
Consumer Finance Association
Consumer Focus
Ray Cope
Convention of Scottish Local Authorities (COSLA)
David Hume Institute
Debt Managers Standards Association
Derbyshire County Council (CC)
Devon CC
Direct Selling Association
East of England TS Association
East Midlands Trading Standards
East Riding, Yorkshire
East Sussex CC
ebay
EDF Energy
Electricity North West
Energy Retail Association
Essex CCTS
Financial Services Consumer Panel
Financial Ombudsman Service
Food Standards Agency
Forensic & Litigation Consulting
FRESH – smoke free North East
Fundraising Innovations Ltd
Furniture Ombudsman
Gemserv Ltd
Glasgow CC
Gloucestershire CCTS
Hampshire CCTS
Haringey Council TS
Hertfordshire CCTS
Highland Council
Gwen Holmes
Home Retail Group
Paul Hunt
Institute of Professional Willwriters
International Consumer Policy Bureau
Islington Council TS
R&T Jebbett & J Purvin
Joint Working Party of the Bars &
Law Societies of the UK on competition law
Tom Jones
KGB
Kingston-upon-Thames TS
Law Society of England & Wales
Law Society of Scotland
Local Better Regulation Office (LBRO)
Legal Services Board

Legal Services Consumer Panel
Peter Lennon
Local Government Group
Local Government Ombudsman
London School of Economics (LSE)
Ken Lyle
Manchester Metropolitan University
David McCulloch
MD Insurance Services Ltd
Sharon Mills
Claire Milne
Mobile Broadband Group
Money Advice Scotland
Money Advice Service
Money Advice Trust
Motor Codes
National Caravan Council
National Consumer Federation
National Energy Action
North East TS Association
Newport City Council TS
National Federation of Property Professionals
North Lanarkshire Council TS
North Yorkshire CC
Nottinghamshire CCTS
Npower
Dr Neil Ogg
Ombudsman Services
Ofcom
Ofgem
OFT
Ofwat
Office of Rail Regulation
Prof P Cartwright, University of Nottingham
Professor T H Pennington, Aberdeen University
Personal Finance Education Group
David Phillips
Phonepay Plus
Professor J F Pickering
Plymouth City Council
Portsmouth City Council TS
The Property Ombudsman
REAL Assurance Scheme
Reference Line
Renewable Energy Association
Rhondda Council
RMI National Franchised Dealers Association
Royal Mail
Sainsburys plc
St Helens Metropolitan Borough Council
Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
Scottish Government
Scottish Legal Aid Board
Scottish Power
Scottish Water
Severn Trent Water
Shelter Cymru
Sky Broadcasting Group plc
Somerset CC
South Gloucestershire CCTS
South West Water
Southampton City Council
Staffordshire CC
Stockton on Tees Borough Council TS
Sustain – alliance for better food and farming
Swansea City & County
Trading Standards North West
Trading Standards South East (Buy with Confidence)
Trading Standards South West
Trading Standards Institute (TSI)
TSI North East
TSI Scotland
Trustmark
Howard Turton
UK Accreditation Service (UKAS)
UK Competitive Telecommunications Association
Underage Sales
University of East Anglia
US Federal Trade Commission to UK
uSwitch.com
Vehicle Builders & Repairs Association
Virgin Atlantic Airways
Wandsworth Council TS
Warwickshire CCTS
Water UK
Welsh Government
West Yorkshire TS
Which?
Helen Woods
York City Council
Yorkshire & Humber Trading Standards Group