EXPLANATORY MEMORANDUM TO THE

ENTERPRISE ACT 2002 (BODIES DESIGNATED TO MAKE SUPER-COMPLAINTS) (AMENDMENT) ORDER 2004

2004 No. 3366

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

2. Description

This Order amends The Enterprise Act 2002 (Bodies designated to make Super-complaints) Order 2004[1]. It adds the Gas and Electricity Consumer Council (which trades as Energywatch) and the Watervoice Council (which is a non-statutory body set up by the Director General of Water Services in 1993, made up of the ten chairmen of the Regional WaterVoice Committees) to the list of consumer bodies designated to submit "super-complaints" to the Office of Fair Trading (OFT) and other sectoral regulators.

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 she 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 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;

[1] S.I. 2004/1517.

and the body has established procedures to ensure that any potential conflicts of interest are properly dealt with.

4.2 The Order amends the original designation Order (which designated the Consumers' Association, the National Association of Citizens Advice Bureaux and the National Consumer Council as super-complainants) so that the Gas and Electricity Consumer Council and the Watervoice Council are also on the list of designated bodies.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The super-complaints process has been set up with the aim of strengthening the voice of consumers, as they are unlikely to have access individually to the kind of information necessary to judge whether markets are failing for them. Consumer groups can access individuals' complaints to form a judgment on whether there is a problem in the market and then take the necessary action.

7.2 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 regulators[2] where the super-complaint concerns a market in relation to which the regulator has functions. 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.

7.3 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.

7.4 Public interest in the designation of the Gas and Electricity Consumer Council and the Watervoice Council as super-complainants is likely to be low.

[2] Those Regulators that have concurrent enforcement powers under the Competition Act 1998, namely, the Office of Communications, the Gas and Electricity Markets Authority, the Director General of Water Services, the Office of Rail Regulation, the Civil Aviation Authority, the Director General of Electricity Supply for Northern Ireland and the Director General of Gas for 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. 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 Rosita Hill (020 7215 6260), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.