EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (BODIES DESIGNATED TO MAKE SUPER-COMPLAINTS) (AMENDMENT) ORDER 2009

2009 NO. 2079

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 This Order amends The Enterprise Act 2002 (Bodies designated to make Super-complaints) Order 2004[1] ("the Original Order"), which has previously been amended by the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2004[2] , the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2005[3], the Enterprise Act 2002 (Bodies Designated to make Super-complaints) (Amendment) (No. 2) Order 2005[4] and the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2008[5].

2.2 This Order adds the Scottish Association of Citizens Advice Bureaux to the list of designated bodies. The National Association of Citizens Advice Bureaux is already a designated body, but its activities do not extend to Scotland.

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

3.1 None.

4. Legislative context

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

[1] S.I. 2004/1517.
[2] SI 2004/3366
[3] S.I 2005/2340
[4] S.I. 2005/2468
[5] S.I. 2008/2161

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

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

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 regulators 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 for Business, Innovation and Skills, 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 There may be some public interest in the designation of the Scottish Association of Citizens Advice Bureaux given the current economic climate.

7.4 The change does not have particular political or legal importance.

- Consolidation

7.5 Although this SI is amends another and there have been several previous amendments, there is no intention to consolidate the relevant legislation.

8. Consultation outcome

8.1 There is no formal requirement to consult on this particular policy. However, applications are posted on the BIS website (www.berr.gov.uk) for 12 weeks to allow any person to make representations if they wish to do so, and to provide a transparent process. No representations were made in respect of the application from the Scottish Association of Citizens Advice Bureaux.

9. Guidance

9.1 Guidance for bodies wishing to apply for designation as a super-complainant can be found on the BIS website at: http://www.berr.gov.uk/files/file50334.pdf

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, as it has no impact on the private or voluntary sector. A full Regulatory Impact Assessment however was prepared for the Enterprise Act 2002, a copy of which was placed in the Libraries of the House of Commons and House of Lords. There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Designated bodies undertake to notify the Secretary of State of any material changes to the information supplied relevant to meeting any of the criteria for designation.

12.2 The Secretary of State shall, when he considers necessary, review the designation of any organisation as a designated consumer body under section 11 of the Enterprise Act 2002, in order to ensure that it continues to meet the criteria for designation. If during the review it is found that the organisation no longer meets the criteria, the Secretary of State will withdraw its designation. Designated status will also be removed from any designated consumer body that the Secretary of State believes has abused the super-complaints process.

13. Contact

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