EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (BODIES DESIGNATED TO MAKE SUPER-COMPLAINTS) (AMENDMENT) ORDER 2026

2026 No. 257

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kate Dearden, Parliamentary Under-Secretary of State for Employment and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Tony Thomas, Deputy Director for Consumer Policy at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Carol Rice at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the instrument: carol.rice@businessandtrade.gov.uk Alternatively, the department can be contacted by telephone: +44 (0) 20 4551 0011.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Enterprise Act 2002 (Bodies designated to make Super-complaints) Order 2004 ("the 2004 Order") by adding Consumer Scotland to the list of designated consumer bodies. Designated consumer bodies are bodies designated by the Secretary of State under Section 11 of the Enterprise Act 2002 (the "Act") to make a complaint (known as a super-complaint) to the Competition and Markets Authority (the "CMA") that any feature, or a combination of features, of a market in the United Kingdom for goods or services is, or appears to be, significantly harming the interests of consumers.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 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 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 CMA 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 CMA, or where appropriate the relevant sectoral regulator, will be obliged to publish a response to the super-complaint within 90 days, stating how it proposes to deal with the complaint and the reasons behind its decision.

5.2 Consumer bodies that wish to be designated as super-complainants can submit their applications to the Department for Business and Trade, which are then considered against the criteria. Guidance is available on gov.uk at the following link: www.gov.uk/government/publications/what-are-super-complaints/super-complaints-guidance-for-bodies-seeking-designation-as-super-complainants.

5.3 Consumer Scotland has been designated to enhance the representation of consumers in Scotland in the super-complaints process.

5.4 Consumer Scotland is a body corporate established by the Consumer Scotland Act 2020 (asp. 11) to act as the consumer advocate for Scotland. It aims to reduce harm, increase consumer confidence, and improve outcomes for consumers that buy, use, or receive goods and services in Scotland. The designation of Consumer Scotland as a super complainant enables it to submit super-complaints to the CMA concerning UK-wide or regional markets insofar as the features complained of significantly harm the interests of consumers in Scotland.

What was the previous policy, how is this different?

5.5 The policy has not changed. The Instrument adds Consumer Scotland to the list of designated bodies under the 2004 Order. The policy continues to support the submission of well-researched and substantial complaints on behalf of consumers, to help ensure their interests are represented effectively.

6. Legislative and Legal Context

How has the law changed?

6.1 This Instrument does not change the law. This Instrument is made under Section 11 of the Act, which allows the Secretary of State to designate certain consumer bodies to submit super-complaints if they represent the interests of consumers and satisfy other published criteria.

Why was this approach taken to change the law?

6.2 This Instrument designates Consumer Scotland by amending the 2004 Order. This approach has been followed for consistency. The 2004 Order has been previously amended in a similar manner by the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2004, the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2005, the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) (No.2) Order 2005, the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2008, the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2009, the Enterprise Act 2002 (Bodies

designated to make Super-complaints) (Amendment) Order 2004, the Enterprise Act 2002 (Bodies designated to make Super-complaints) (Amendment) Order 2025. For completeness, the 2004 Order was also amended by the Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no formal requirement to consult on this particular policy. However, applications are posted on the gov.uk website for 12 weeks to allow any person to make representations if they wish to do so, and to provide a transparent process. Consumer Scotland's application was posted at: www.gov.uk/government/consultations/consumer-scotland-super-complaint-application. No representation was made in respect of this application.

8. Applicable Guidance

8.1 There is no guidance in relation to this Instrument. Under Section 11(6)(b) of the Act, the Secretary of State has published the criteria to be applied in determining whether to make (or revoke) a designation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Instrument because it has no impact on the private or voluntary sector and only adds a new body to the list of designated consumer bodies without altering the existing policy framework. 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.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or the voluntary bodies because the designation of a new super-complainant body does not impose any regulatory requirements or financial burdens on these entities.

9.3 The legislation does not impact small or micro businesses.

9.4 The is no or no significant impact on the public sector because the administrative processes are routine, the existing framework handles super-complaints, and the frequency of super-complaints is low.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The 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.

10.2 The Secretary of State shall, when considered 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.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").