EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (PART 8 NOTICE TO OFT OF INTENDED PROSECUTION SPECIFIED ENACTMENTS) ORDER 2006

2006 No. 3371

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

2.1 This Order specifies certain subordinate legislation (ie: the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005) for the purposes of section 230 of the Enterprise Act 2002. The effect of the Order is to require trading standards officers to notify OFT where they intend to bring a prosecution under the said Regulations. This Order forms part of the implementation of (EC) Regulation 2006/2004 (the Consumer Protection Cooperation Regulation) ("CPC"). This Explanatory Memorandum should be read in conjunction with the Explanatory Memorandum produced for The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363).

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

3.1 None

4. Legislative Background

Transposition

4.1 CPC, although theoretically directly applicable, requires further implementation to give effect to some of its provisions (in this case by means of an Order adding subordinate legislation under section 230(1) and (7) of the Enterprise Act 2002). For the most part CPC has been implemented by means of amendments to Part 8 of the Enterprise Act 2002 and this Order flows from those amendments. In particular it was necessary to extend the scope of Part 8 to apply to (amongst other things) the Denied Boarding Regulations 2005 (since CPC applies to the corresponding EC regulation) as a result of which it was necessary to make this Order. This Order must be in place by 29 December 2006 to meet our EU obligations and avoid possible infraction proceedings.

Scrutiny Committee History

4.2 The relevant Scrutiny Committee History for the (EC) Regulation 2006/2004 (the Consumer Protection Cooperation Regulation) is detailed in the Explanatory Memorandum for The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363).

5. Territorial Extent and Application

5.1 This Order applies to all of the United Kingdom.

6. European Convention on Human Rights

The relevant ECHR considerations for the CPC are detailed in the Explanatory Memorandum for The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363). Ian McCartney, Minister for Trade, Investment and Foreign Affairs has made the following statement regarding human rights. "In my view the provisions of The Enterprise Act 2002 (Part 8 Notice to OFT of Intended Prosecution Specified Enactments) Order 2006 are compatible with the Convention rights."

7. Policy background

7.1 The policy background and consultations relevant to the implementation of CPC is detailed in the Explanatory Memorandum for The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363).

7.2 This Order ensures that the legislation implementing Regulation (EC) No. 261/2004, the Civil Aviation (Denied Boarding, Compensation and Assistance) Regulations 2005, is specified for the purposes of giving notice to the Office of Fair Trading of intended prosecutions by local weights and measures authorities. This legislation is specified in order to give effect to full implementation to the CPC which has been achieved for the most part through amendments to Part 8 of the Enterprise Act 2002. The remainder of the regulations that implement the EC legislation (and create criminal offences) to which CPC applies are already specified under this section.

8. Impact

8.1 A Regulatory Impact Assessment relating to the implementation of (EC) Regulation 2006/2004 (the Consumer Protection Cooperation Regulation) ("CPC") is attached to the Explanatory Memorandum for The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363).

8.2 The impact on the public sector is examined in the Regulatory Impact Assessment

9. Contact

9.1 Duncan Lawson at the Department of Trade and Industry Tel: 0207 215 5465 or e-mail: Duncan.Lawson@dti.gov.uk can answer any queries regarding the instrument.