EXPLANATORY MEMORANDUM TO

THE RESTRICTION ON AGREEMENTS (MANUFACTURERS AND IMPORTERS OF MOTOR CARS) (REVOCATION) ORDER 2005

2005 No.355

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

The Order revokes the Restriction on Agreements (Manufacturers and Importers of Motor Cars) Order 1982 ("the 1982 Order")[1].

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

None

4. Legislative background

4.1 The Monopolies and Mergers Commission (MMC) - the predecessor of the Competition Commission - investigated the market in the wholesale supply of motor car parts in the United Kingdom and found that a complex monopoly situation existed among a number of manufacturers and importers of car parts. The 1982 Order was made under the Fair Trading Act 1973 (FTA) for the purpose of remedying or preventing the adverse effects specified in the MMC report[2].

4.2 The 1982 Order makes it unlawful, subject to certain exceptions, for car manufacturers and importers to carry out agreements with a franchisee to the extent that the agreement contains an exclusive buying provision relating to replacement car parts.

4.3 Section 88(5) of the Fair Trading Act 1973 (FTA)[3] requires the Office of Fair Trading (OFT) to keep under review Orders made as a consequence of an MMC monopoly report and to advise the Secretary of State if they believe that changes are appropriate. The OFT recommended that the Secretary of State revoke the 1982 Order.

4.4 The Order revoking the 1982 Order is being made under FTA provisions, which have been saved[4].

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[1] S.I. 1982/1146.
[2] "A Report on the matter of the existence or the possible existence of a complex monopoly situation in relation to the wholesale supply of motor car parts in the United Kingdom" (HC 318).
[3] The Enterprise Act 2002 repealed the majority of the provisions of the Fair Trading Act 1973 (FTA), but saving provisions ensure that the relevant parts of the FTA continue to apply in relation to monopoly references made under the FTA.
[4] See footnote 3.

4.5 The statutory consultation provisions contained in section 91(2) of the FTA have been complied with, which require a Notice to be published stating the Minister's intention to make the Order, indicating the nature of the provisions to be contained in it and asking for representations. The section 91(2) Notice was published on the DTI website and in the trade press. No responses to the consultation were received.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 In its 1982 report (HC 318), the MMC found that a complex monopoly situation existed among a number of manufacturers and importers of car parts. Following the report, the 1982 Order was made making it unlawful, subject to exceptions, for car manufacturers and importers to make or carry out agreements with a franchisee to the extent that the agreement contains an exclusive buying provision relating to replacement car parts. The Order was intended to facilitate competition between independent suppliers of car parts and car manufacturers.

7.2 The OFT has reviewed the Order as a part of its programme of reviews of Orders and undertakings under section 88 of the FTA. The OFT recommended that the Secretary of State revoke the 1982 Order, as it has been superseded by other legislation, namely the 2002 EC Motor Vehicles Block Exemption Regulation[5] in that all the provisions in the Order are now covered in that Regulation. The OFT also advised that as it is now able to apply the relevant EC competition law provisions following recent EC modernisation reforms, it could apply the Block Exemption Regulation, if the need arises.

7.3 In light of this advice, and following the statutory consultation procedure, the 1982 Order is no longer required as a matter of policy and is therefore being revoked.

7.4 As the provisions of the Order are covered by the EC block exemption, the level of public interest is likely to be low and the announcement is likely to be uncontroversial.

[5] European Commission Regulation 1400/2002 (OJ L203 1/8/02).

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.

8.2 There is no impact on the public sector.

9. Contact

Philip Martin at the Department of Trade and Industry (Tel: 020 7215 6363 or e-mail: Philip.martin@dti.gsi.gov.uk) can answer any queries regarding the instrument.