

**EXPLANATORY MEMORANDUM TO THE
ENTERPRISE ACT 2002 (BODIES DESIGNATED TO MAKE SUPER-
COMPLAINTS) (AMENDMENT) ORDER 2005**

2005 No. 2340

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 amends The Enterprise Act 2002 (Bodies Designated to make Super-complaints) (Amendment) Order 2004¹, which has previously been amended by the Enterprise Act 2002 (Bodies Designated to make Super-complaints) Order 2004².

2.2 The original Order designated the Consumers' Association, the National Consumer Council and the National Association of Citizens Advice Bureaux to submit "super-complaints" to the Office of Fair Trading (OFT) and other sectoral regulators³. The first amendment Order added the Gas and Electricity Consumer Council and the Watervoice Council to the list of those designated. This Order adds the Consumer Council for Postal Services ("Postwatch"), the General Consumer Council for Northern Ireland ("GCCNI") and the Campaign for Real Ale Limited ("CAMRA").

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 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:

¹ S.I. 2004/1517.

² S.I. 2004/3366.

³ The Enterprise Act 2002 (Super-complaints to Regulators) Order 2003 (S.I. 2003/1368), made under section 205 of the Enterprise Act 2002, (as amended by the Communications Act 2003 (Consequential Amendments No.2) Order 2003 S.I. 2003/3182 and the Railways and Transport Safety Act 2003) provides that section 11 of the Enterprise Act 2002 applies to complaints made to the following regulators: the Office of Communications, the Gas and Electricity Markets Authority, the Director General of Electricity Supply for Northern Ireland, the Director General of Water Services, the Director General of Gas for Northern Ireland, the Rail Regulator and the Civil Aviation Authority.

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

5. Extent

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

No statement is required.

7. Policy background

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, 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 could be a small amount of public interest in the designation of CAMRA, but interest in the designations of Postwatch and GCCNI is likely to be low.

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

John Madill (020 7215 2132), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.