Draft Public Bodies Act Consent Motion

1. The draft motion, which will be lodged by the Minister for Energy, Enterprise and Tourism, is:

“That the Parliament consents to the making of The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013, a draft of which was laid before the United Kingdom Parliament on 12 December 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained within an Act of that Parliament.”

2. This Memorandum has been lodged by Fergus Ewing, Minister for Energy, Enterprise and Tourism, in accordance with Standing Orders under Chapter 9BA.

Background

Public Bodies Act 2011

3. The UK Public Bodies Act 2011 (“the 2011 Act”) gives UK Ministers the authority (via order making powers) to abolish, merge or transfer the functions of public bodies listed in its schedules, and some of those bodies operate in both the reserved and devolved areas. Section 9 of the 2011 Act acknowledges the scope for incursion into devolved interests by requiring orders that include provision falling within devolved competence to be consented to by Holyrood.

4. On 21 November 2012, Standing Orders were updated to formally include the process for scrutinising PBACMs at Chapter 9BA.

Office of Fair Trading and Citizens Advice Scotland

5. The OFT is a non-ministerial government department. It is the UK’s consumer and competition authority. As part of its consumer landscape reforms, the UK Government announced in October 2010 that it planned to abolish OFT, moving some of its reserved competition functions to a new unitary body (Competition and Markets Authority) and passing some of its consumer functions to other bodies. The OFT Order relates only to OFT’s statutory function of providing a consumer advice scheme and to modifications to some of OFT’s enforcement functions.

6. CAS is the national umbrella organisation for Scottish Citizens Advice Bureaux. It is an independent charitable membership organisation and a cross border public authority under the Scotland Act 1998. The bulk of CAS funding comes from the UK Government, while individual bureaux are largely funded by local authorities. CAS is a partner organisation of Citizens Advice Direct, a Glasgow
based telephone advice service. SG Welfare Division has provided core funding for it since 2007. Citizens Advice is the equivalent body for England and Wales.

**UK Government reform proposal**

7. Consumer protection is reserved to the UK Government. Its consultation *Empowering and Protecting Consumers* (June 2011) proposed reform of the consumer landscape in order to reduce its perceived complexity. Plans included giving responsibility for consumer advice to CAS and Citizens Advice. One aspect of advice was Consumer Direct, the UK Government’s telephone and online service offering information and advice on consumer issues. Organised as a network of call centres, the Scottish one was based in Shawbost on Lewis. The Consumer Direct helpline was transferred from OFT to the Citizens Advice service on 1 April 2012.

**Implications for Scotland**

8. CAS has responsibility for the Scottish operation and contracted with its partner organisation Citizens Advice Direct to run the service. The Cabinet Secretary for Finance, Employment and Sustainable Growth opened the new Citizens Advice Consumer Helpline contact centre in Stornoway on Lewis in June 2012.

**The draft The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013**

9. The Department for Business, Innovation and Skills is promoting the OFT Order under sections 5(1), 6(1) and (2) and 35(2) of the 2011 Act. A copy of the OFT Order and its accompanying material, as laid at Westminster, is provided at Annex A. The OFT Order will transfer the statutory function of providing a consumer advice scheme from OFT to CAS (and Citizens Advice) and modify OFT’s consumer enforcement functions. The order will also list CAS in the Freedom of Information (Scotland) Act 2002 in relation to this statutory function. The specific provision in relation to the 2002 Act requires the consent of the Scottish Parliament as it would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament. The Order also makes modifications to some of the OFT’s consumer enforcement functions.

**Scottish Government position**

10. The statutory function of providing a consumer advice scheme is currently subject to Freedom of Information legislation because OFT is a government department. Adding the new function of CAS to the Freedom of Information (Scotland) Act 2002 will mean that this statutory function remains subject to Freedom of Information legislation. The change therefore will have no practical effect in what is subject to Freedom of Information legislation in Scotland.
Consultation

11. Section 10 of the 2011 Act requires the UK Minister proposing an order to consult about the proposed changes. The UK Government consulted on proposals to transfer responsibility for a public consumer advice scheme from OFT to the Citizens Advice service in *Empowering and Protecting Consumers* (June 2011). This was part of wider proposals to give responsibility for consumer advice to CAS and Citizens Advice. These proposals were welcomed by stakeholders in Scotland as they were seen to be bringing together advice provision within a single organisation.

Financial / Resource Implications

12. There are no financial or resource implications.

Conclusion

13. The Scottish Government invites the Parliament to consent to the making of The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013, a draft of which was laid before the UK Parliament on 12 December 2012.

Scottish Government
December 2012
Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament, after the expiry of the 40-day period referred to in section 11(4) of that Act.

D R A F T  S T A T U T O R Y  I N S T R U M E N T S

2013 No. XXXX

CONSUMER

PUBLIC BODIES

The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013

Made - - - - ***

Coming into force in accordance with Article 2

The Secretary of State makes the following Order in exercise of the powers conferred by sections 5(1), 6(1) and (2) and 35(2) of the Public Bodies Act 2011(1) (“the Act”).

The Treasury have consented to the making of this Order in so far as their consent is required by section 6(4) of the Act.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

(a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and

(b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Scottish Parliament has consented to the making of this Order in so far as its consent is required by section 9(1) of the Act in relation to article 8 of this Order.

The consent of the Northern Ireland Assembly has been obtained in accordance with section 9(3) of the Act.

The Secretary of State has consulted in accordance with section 10 of the Act.

(1) 2011 c.24.
The National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux have consented to the transfer of functions made by this Order in so far as their consent is required by section 21(1) of the Act.

A draft of this Order, and an explanatory document containing the information required in section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) of the Act after the end of the period of twelve weeks mentioned in section 11(3).

[In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.]

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013.

(2) The Order comes into force on the day after the day on which it is made.

(3) In this Order “the 2002 Act” means the Enterprise Act 2002(1).

Transfer of consumer advice scheme function

2.—(1) Subject to paragraph (3), the OFT’s power under Part 1 of the 2002 Act to support a public consumer advice scheme is, so far as regards support of a scheme that takes the form of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them, transferred to Citizens Advice and Citizens Advice Scotland.

(2) The function transferred may be exercised by Citizens Advice or Citizens Advice Scotland or by them jointly.

(3) The OFT’s power to support a public consumer advice scheme in that manner is abolished in relation to Northern Ireland, except so far as that function relates to the giving of advice relating to postal services.

(4) In this article—

“Citizens Advice” means the National Association of Citizens Advice Bureaux(2);

“Citizens Advice Scotland” means the Scottish Association of Citizens Advice Bureaux(3); and

“the OFT” means the Office of Fair Trading.

3. In the 2002 Act, after section 8 insert—

“8A Exclusion of public consumer advice scheme

The OFT may not under this Part support a public consumer advice scheme, where that support of a scheme consists of providing, or securing the provision of, an arrangement for giving advice without charge to individual consumers on matters personal to them.”.

4.—(1) The function transferred by article 2(1) is not to be regarded as a function under Part 1 of the 2002 Act for the purposes of section 238(1) of the 2002 Act.

(2) The function transferred by article 2(1) is to be regarded as conferred by this Order for the purposes of section 241(3)(c) of the 2002 Act.

(1) 2002 c.40.
(2) The National Association of Citizens Advice Bureaux is a company limited by guarantee, formed and registered under the Companies Act 2006 (c.46) with the company number 143695, and a registered charity with the number 279057.
(3) The Scottish Association of Citizens Advice Bureaux is a company limited by guarantee, formed and registered under the Companies Act 2006 (c.46) with the company number 89892, and a registered charity with the number SC016637.
5.—(1) Section 8 of the Utilities Act 2000(2) (Payments by licence holders relating to new arrangements) is amended as follows.

(2) Omit subsection (3A)(e).

(3) In subsection (3A)(f)—

(a) for “the Office of Fair Trading” substitute “Citizens Advice or Citizens Advice Scotland”;
(b) for “any OFT scheme” substitute “any qualifying public consumer advice scheme”.

(4) In subsection (3B)(b) for “the OFT scheme” substitute “the qualifying consumer advice scheme”.

(5) After subsection (3B) insert—

“(3C) A qualifying public consumer advice scheme is a scheme that is supported by Citizens Advice or Citizens Advice Scotland, or by them jointly, in a manner that the Office of Fair Trading is prohibited from using by section 8A of the Enterprise Act 2002.”.

(6) In subsection (10)—

(a) at the appropriate place insert—

“‘Citizens Advice’ means the National Association of Citizens Advice Bureaux;”;
“‘Citizens Advice Scotland’ means the Scottish Association of Citizens Advice Bureaux;”;
(b) omit the definition of “OFT scheme”.

6.—(1) Section 51 of the Postal Services Act 2011(3) (Consumer protection conditions) is amended as follows.

(2) In subsection (2)(c) for “or the Office of Fair Trading” substitute “, Citizens Advice or Citizens Advice Scotland”.

(3) In subsection (4)—

(a) for “or the Office of Fair Trading” substitute “, Citizens Advice or Citizens Advice Scotland”;
(b) in paragraph (b), for the words from “the Office” to “advice scheme” substitute “Citizens Advice or Citizens Advice Scotland incurred in connection with its support of a qualifying public consumer advice scheme”.

(4) After subsection (4) insert—

“(4A) A qualifying public consumer advice scheme is a scheme that is supported by Citizens Advice or Citizens Advice Scotland, or by them jointly, in a manner that the Office of Fair Trading is prohibited from using by section 8A of the Enterprise Act 2002.”.

(5) In subsection (8), after “In this section” insert—

“Citizens Advice” means the National Association of Citizens Advice Bureaux;
“Citizens Advice Scotland” means the Scottish Association of Citizens Advice Bureaux; “.

Freedom of Information Act 2000

7. In Part 6 of Schedule 1 to the Freedom of Information Act 2000(4) (Other public bodies and offices: general), at the appropriate place insert—

“The National Association of Citizens Advice Bureaux, in respect of information relating to the function exercisable by virtue of article 2 of the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. [ ]).”.

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(2) 2000 c.27. Section 8(3) was amended by section 1(4), Schedule 1, Part 5, paragraph 29, (3)(a), (3)(b), (3)(c), (4) to (11) of the Consumer, Estate Agents and Redress Act 2007 (2007 c.17).
(3) 2011 c.5.
(4) 2000 c. 36. This Schedule has been amended by a number of provisions but they are not relevant to this Order.
Freedom of Information (Scotland) Act 2002

8. In Schedule 1 to the Freedom of Information (Scotland) Act 2002(s) (Scottish public authorities), in Part 7 (others), before paragraph 80 insert—

“79A. The Scottish Association of Citizens Advice Bureaux, but only in respect of information relating to the function exercisable by virtue of article 2 of the Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. [ ]).”.

Modification of enforcement functions

9.—(1) Section 214 of the 2002 Act (Consultation) is amended as follows.

(2) For subsection (1) substitute—

“(1) An enforcer must not make an application for an enforcement order unless—

(a) the enforcer has engaged in appropriate consultation with the person against whom the enforcement order would be made, and

(b) if the enforcer is not the OFT, the enforcer has given notice to the OFT of the enforcer’s intention to apply for the enforcement order, and the appropriate minimum period has elapsed.

(1A) The appropriate minimum period is—

(a) in the case of an enforcement order, 14 days beginning with the day on which notice under subsection (1)(b) is given;

(b) in the case of an interim enforcement order, seven days beginning with the day on which notice under subsection (1)(b) is given.”.

(3) In subsection (4), for “Subsection (1)” substitute “Subsection (1)(a)”.  

(4) In subsection (7), for “(except subsection (4))” substitute “(except subsections (1A) and (4))”.

10.—(1) The Unfair Terms in Consumer Contracts Regulations 1999(t) are amended as follows.

(2) In regulation 3 (Interpretation)—

(a) before the definition of “consumer” insert—

““complaint” means a complaint that any contract term drawn up for general use is unfair;”;

(b) after the definition of “court” insert—

““DETINI” means the Department of Enterprise, Trade and Investment in Northern Ireland;”;

(c) after the definition of “EEA Agreement” insert—

““a local weights and measures authority” means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985)(u);”.

(3) For regulation 10 substitute—

“Complaints – consideration by OFT and qualifying bodies

10.—(1) The following bodies may consider complaints—

(a) the OFT;

(b) a qualifying body.

(2) Where the OFT agrees to consider a complaint, it shall be under a duty to consider that complaint.

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(s) 2002 asp 13. There are a number of amendments to Schedule 1 to this Act, but they are not relevant to this Order.

(t) S.I. 1999/2083 to which there are a number of amendments, but they are not relevant to this Order.

(u) 1985 c.72; section 69 was amended by paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c.19) and by paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).
(3) Where a qualifying body agrees to consider a complaint, it shall—
(a) be under a duty to consider that complaint; and
(b) notify the OFT of its agreement to consider that complaint.

(4) The OFT, or as the case may be, a qualifying body shall give reasons for its decision to apply or not to apply for an injunction under regulation 12 in relation to any complaints which these Regulations require it to consider.

(5) In deciding whether or not to apply for an injunction in respect of a term which the OFT or a qualifying body considers to be unfair, the OFT or the qualifying body may, if it considers it appropriate to do so, have regard to any undertakings given to it by or on behalf of any person as to the continued use of such a term in contracts concluded with consumers.”.

(4) Omit regulation 11 (Complaints – consideration by qualifying bodies).

(5) In regulation 13 (Powers of the OFT and qualifying bodies to obtain documents and information)—
(a) in paragraph (1), after “The OFT” insert “, a local weights and measures authority or DETINI”;
(b) in paragraphs (1)(a) and (2)(a) omit “that a contract term drawn up for general use is unfair”;
(c) in paragraph (2), after “A qualifying body specified in Part One of Schedule 1”, insert “(other than a local weights and measures authority or DETINI),”.

11.—(1) The Consumer Protection (Distance Selling) Regulations 2000(1) are amended as follows.

(2) In regulation 3 (Interpretation), in the definition of “enforcement authority” omit “the OFT,”.

(3) In regulation 26(1) (Consideration of complaints)—
(a) at the end of sub-paragraph (a) omit “or”, and
(b) after sub-paragraph (b) insert—
“or
(c) the OFT has agreed to consider the complaint.”.

(4) After regulation 26 insert—

“Complaints – consideration by the OFT

26A.—(1) If the OFT agrees to consider a complaint made to it about a breach it shall be under a duty to consider that complaint.

(2) Paragraphs (3) and (4) of regulation 26 shall apply to the OFT when it is under a duty to consider a complaint as they apply to an enforcement authority.”.

(5) In regulation 27 (Injunctions to secure compliance with these Regulations)—
(a) in paragraph (1) for “any other” substitute “an”;
(b) in paragraph (2) omit “other than the OFT”.

(6) In regulation 28 (Notification of undertakings and orders to the OFT) omit “other than the OFT”.

(7) In regulation 29(2) (Publication, information and advice) after “The OFT” insert “or an enforcement authority”.

12.—(1) The Business Protection from Misleading Marketing Regulations 2008(2) are amended as follows.

(2) In regulation 2 (Interpretation)—
(a) after the definition of “court” insert—
“DETINI” means the Department of Enterprise, Trade and Investment in Northern Ireland;”;
(b) for the definition of “enforcement authority” substitute—

(2) S.I. 2008/1276.
““enforcement authority” means the OFT, every local weights and measures authority and DETINI;”;

(c) after the definition of “goods” insert—
““local weights and measures authority” means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985);”.

(3) For the heading in regulation 13 substitute “Duty and power to enforce”.

(4) For regulation 13(1) substitute—
“(1) It shall be the duty of every local weights and measures authority and DETINI to enforce these Regulations.

(1A) The OFT may also enforce these Regulations.”.

(5) In regulation 13(4) for “In determining how to comply with its duty of enforcement” substitute “In determining how to comply with paragraph (1), or as the case may be, paragraph (1A)”.

(6) In regulation 20(2) (Publication, information and advice) for “The OFT” substitute “An enforcement authority”.

13.—(1) The Consumer Protection from Unfair Trading Regulations 2008(1) are amended as follows.

(2) In regulation 2 (Interpretation)—
(a) after the definition of “consumer” insert—
““DETINI” means “the Department of Enterprise, Trade and Investment in Northern Ireland;”;

(b) for the definition of “enforcement authority” substitute—
““enforcement authority” means the OFT, every local weights and measures authority and DETINI;”;

(c) after “invitation to purchase” insert—
““local weights and measures authority” means a local weights and measures authority in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985);”.

(3) For the heading in regulation 19 substitute “Duty and power to enforce”.

(4) For regulation 19(1), substitute—
“(1) It shall be the duty of every local weights and measures authority and DETINI to enforce these Regulations.

(1A) The OFT may also enforce these Regulations.”.

(5) In regulation 19(3) for “the Department of Enterprise, Trade and Investment in Northern Ireland” substitute “DETINI”.

(6) In regulation 19(4) for “In determining how to comply with its duty of enforcement” substitute “In determining how to comply with paragraph (1), or as the case may be, paragraph (1A),”.

Name
Title
Date

Department for Business, Innovation and Skills

(1) S.I. 2008/1277.
EXPLANATORY NOTE

(This note is not part of the Order)

This instrument transfers the power of the Office of Fair Trading ("OFT") to support a consumer advice scheme, within the meaning of article 2, to the National Association of Citizens Advice Bureaux ("Citizens Advice") and the Scottish Association of Citizens Advice Bureaux ("Citizens Advice Scotland"). The instrument also makes modifications to the OFT’s consumer enforcement functions.

Article 2 transfers the OFT’s power under section 8(1) of the Enterprise Act 2002, of supporting a specified type of public consumer advice scheme to Citizens Advice and Citizens Advice Scotland. It abolishes the OFT’s equivalent power in relation to Northern Ireland, except in so far as it relates to postal services. Article 3 amends the Enterprise Act 2002 to make clear that the OFT may no longer support the specified type of public consumer advice scheme.

Article 4 makes consequential amendments to Part 9 of the Enterprise Act (information sharing).

Articles 5 and 6 make consequential amendments to section 8 of the Utilities Act 2000 and section 51 of the Postal Services Act 2011 as concerns the funding arrangements of the public consumer advice scheme. They ensure that levy payments are no longer made to the OFT but rather to Citizens Advice and Citizens Advice Scotland.

Article 7 adds Citizens Advice to Part 6 of Schedule 1 to the Freedom of Information Act 2000 for the purpose of the function transferred to them under this Order. Article 8 adds Citizens Advice Scotland to Part 7 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 for the same purpose.

Article 9 amends section 214 of the Enterprise Act 2002. There are a number of enforcers under Part 8 of the 2002 Act, primarily the OFT, local weights and measures authorities in Great Britain (known as Trading Standards authorities) and the Department of Enterprise, Trade and Investment in Northern Ireland. There are also a number of sectoral regulators. These enforcers may seek an enforcement order in relation to the enforcement of consumer infringements. As a result of this Order Part 8 enforcers, other than the OFT, will no longer be required to consult with the OFT before they make an application for an enforcement order. Instead, enforcers will be required to notify the OFT that they are making an application.

Articles 10 to 13 amend the Unfair Terms in Consumer Contracts Regulations 1999, the Consumer Protection (Distance Selling) Regulations 2000, the Business Protection from Misleading Marketing Regulations 2008 and the Consumer Protection from Unfair Trading Regulations 2008, to provide that the OFT will have a power rather than a duty to enforce those regulations.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the BIS website at www.bis.gov.uk. and is published with the Explanatory Document alongside the instrument on www.legislation.gov.uk. A copy has also been placed in the Libraries of both Houses of Parliament.