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.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

PUBLIC BODIES
CONSUMER

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.

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).

(**1**) 2011 c.24.

[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(**2**).

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(**3**);

"Citizens Advice Scotland" means the Scottish Association of Citizens Advice Bureaux(**4**); and

"the OFT" means the Office of Fair Trading.

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

"**Exclusion of public consumer advice scheme**

8A. 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.

5.—(1) Section 8 of the Utilities Act 2000(**5**) (Payments by licence holders relating to new arrangements) is amended as follows.

(**2**) 2002 c.40.
(**3**) 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.
(**4**) 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**) 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).

(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(**6**) (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(**7**) (Other public bodies and offices: general), at the appropriate place insert—

(**6**) 2011 c.5.
(**7**) 2000 c. 36. This Schedule has been amended by a number of provisions but they are not relevant to this Order.

"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. [ ]).".

Freedom of Information (Scotland) Act 2002

8. In Schedule 1 to the Freedom of Information (Scotland) Act 2002(**8**) (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(**9**) 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—

(**8**) 2002 asp 13. There are a number of amendments to Schedule 1 to this Act, but they are not relevant to this Order.
(**9**) S.I. 1999/2083 to which there are a number of amendments, but they are not relevant to this Order.