

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: the Office of Fair Trading

Establishment etc. of Office of Fair Trading

Sections 1 and 2 & Schedule 1: The Office of Fair Trading & The Director General of Fair Trading

18. **Section 1** establishes a new corporate authority to be known as the OFT. Section 2 abolishes the office of DGFT and transfers the DGFT's functions, property, rights and liabilities to the OFT. The office of DGFT was established by FTA 1973. The DGFT has a wide range of functions in respect of consumer protection and competition matters.
19. The OFT is to be a body corporate and is to consist of a Chairman and at least four other members. It is intended that the majority of members of the OFT to be non-executive appointments. As a Non-Ministerial Government Department, the OFT will be a Crown body and its staff will be civil servants.
20. The organisation currently known as the OFT is not a statutory body, but simply the administrative support that has grown up around the DGFT to support him or her in the exercise of his or her statutory functions. The OFT name has also traditionally been used when publicising and explaining the work of the DGFT. References in the Act to the OFT are purely to the new corporate authority.
21. In managing its affairs, the OFT is, under section 1, obliged to have regard to any relevant guidance on the governance of public bodies and to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it. For example, the OFT would have to have regard to relevant principles in the Combined Code produced by the Hampel Committee on Corporate Governance in 1998.
22. **Schedule 1** sets out in more detail the OFT's internal structure. The Chairman is to be appointed by the Secretary of State. The other members are to be appointed by the Secretary of State in consultation with the Chairman. Members may be removed from office by the Secretary of State only on the grounds of incapacity or misbehaviour.
23. The Secretary of State shall also, after consulting the Chairman, appoint a person to act as Chief Executive of the OFT. The Chief Executive may also be a member of the OFT. During the first two years after this provision comes into force, the Secretary of State may appoint a single person to hold both the post of Chairman and the post of Chief Executive. This is to provide some continuity for the OFT as the new arrangements settle down, and to allow the Government to honour its commitment to John Vickers. Mr Vickers will retire as Chairman and Chief Executive in 2005. The Schedule also gives the OFT the power to do anything that it thinks will facilitate or assist with the performance of its functions, and sets out its powers of delegation.

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24. **Schedule 1** also requires the OFT to publish a summary of its rules and procedures for dealing with conflicts of interest. It must consult the Secretary of State on these rules and procedures.

Section 3: Annual plan

25. This section provides that the OFT will, before each financial year, publish an annual plan setting out its main objectives and priorities for the year ahead, and lay the plan before Parliament. It also obliges the OFT to consult on its proposals for the annual plan at least two months before publishing the final document, and to lay any consultation proposals before Parliament.

Section 4: Annual and other reports

26. This section provides that, after the end of each financial year, the OFT will publish an annual report on its activities and performance, and lay the report before Parliament.
27. *Subsection (2)* stipulates that each annual report will include a general survey of developments in respect of matters falling within the scope of the OFT's functions; an assessment of progress against the year's annual plan (see section 3); a summary of the OFT's significant decisions, investigations and activities; a break-down of how the OFT has allocated its resources; and an assessment of its enforcement activities. This is the minimum that must be included in the report; it is open to the OFT to include more information if it wishes.
28. *Subsection (4)* allows the OFT to prepare other reports on issues that fall within its functions, and to publish them.

Schedule 24: Transitional and transitory provisions and savings

29. This schedule contains various transitional provisions relating to the creation of the OFT, the abolition of the offices of the DGFT, and the repeal of Schedule 4 to the Competition Act 1998.