

*These notes relate to the Commons Amendments on the Groceries Code Adjudicator Bill [HL] as brought from the House of Commons on 27th February 2013 [HL Bill 87]*

# **GROCERIES CODE ADJUDICATOR BILL [HL]**

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## **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

### **INTRODUCTION**

1. These explanatory notes relate to the Commons Amendments on the Groceries Code Adjudicator Bill [HL], as brought from the House of Commons on 27th February 2013. They have been prepared by the Department for Business, Innovation and Skills in order to assist the reader of the Bill and the Commons Amendments and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Commons Amendments themselves, refer to HL Bill 62, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.
4. All the Commons Amendments were in the name of the Minister.

### **COMMENTARY ON COMMONS AMENDMENTS**

#### ***Commons Amendments 1 to 9, 11, 14 and 16***

5. Commons Amendments 1 to 9, 11, 14 and 16 would have the effect of granting the Adjudicator the power to impose financial penalties from the outset. In the Bill as brought from the Lords, financial penalties are a reserve power requiring authorisation by order of the Secretary of State before any financial penalty could be imposed. The amendments would therefore remove references to the power to impose financial penalties being a reserve power; would delete Schedule 3 which governed how an order was to be made authorising the Adjudicator to impose financial penalties; and would require the Adjudicator to publish guidance on the criteria that the Adjudicator intends to adopt in deciding the amount of any

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financial penalty (such guidance would also have been required in the Bill as brought from the Lords, but only if financial penalties were authorised by the Secretary of State).

6. The amendments would also require the Adjudicator to recommend the maximum level of a financial penalty or how the maximum level is to be calculated. The recommendation would have to be made following consultation and within six months of the commencement of clause 1. The maximum level, or how it is to be calculated, would then be set out in an Order made by the Secretary of State. The Secretary of State would be able to alter that maximum level, or how it is to be calculated, only following consideration as part of a triennial review under clause 15. Within the maximum, the Adjudicator would have discretion over whether and at what level to impose financial penalties for particular breaches of the Groceries Code. Financial penalties could only be imposed for breaches occurring after the Order has set out the maximum or how it is to be calculated. As is the case in the Bill as brought from the Lords, retailers would have a right of appeal against the imposition of a financial penalty or its amount.

#### ***Commons Amendment 15***

7. Commons Amendment 15 would amend clause 26 to remove the “privilege amendment” inserted by the House of Lords.

#### ***Commons Amendments 10, 12 and 13***

8. Commons Amendments 10, 12 and 13 would place additional safeguards on when the power in clause 15(10A) of the Bill (clause 15(10) before taking account of the Commons Amendments) could be exercised. This power allows the Secretary of State to restrict by Order the information the Adjudicator can consider in deciding whether to carry out an investigation. Two safeguards would be added by the Commons Amendments:

- Amendment 12 would provide that an order under clause 15(10A) could only be made if, as a result of the findings of a review under clause 15 (see Amendment 10), the Secretary of State thought that this would enable the Adjudicator to be more effective (in the Bill as brought from the Lords, the Bill reads if ‘the Secretary of State thinks that it would be desirable to do so’).
- Amendment 13 would make an Order subject to the affirmative rather than the negative procedure.

Finally, Amendment 12 would allow an earlier Order to be revoked if, as a result of the findings of a review under clause 15 (see Amendment 10), the Secretary of State thought that this would not impair the Adjudicator’s effectiveness. (In the Bill as brought from the Lords, it was not intended that an Order could be revoked.)

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