



Department for  
Business, Energy  
& Industrial Strategy

# Groceries Code Adjudicator

## Statutory Review – Consultation

Pursuant to s.15(8) of the Groceries Code Adjudicator Act 2013

Closing date: 11 October 2022



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## Foreword



I am pleased to launch this consultation for the third statutory review of the Groceries Code Adjudicator (GCA) to gain evidence on how it has performed its statutory obligations from 1 April 2019 to 31 March 2022.

Established in 2013, the GCA's role is to make sure that large supermarkets in the UK treat their direct suppliers lawfully and fairly, investigating suspected breaches of the Groceries Supply Code of Practice (“the Code”) and arbitrating disputes. The GCA monitors, ensures compliance with, and enforces, the Code which helps to strengthen the supply chain benefiting suppliers, retailers and consumers.

There have been significant changes in the GCA’s landscape during the review period. Christine Tacon was the first GCA from its inception in 2013 until her second term ended on 30 October 2020 when the Secretary of State was pleased to appoint the current GCA, Mark White, as her successor. In addition, additional retailers were designated under the Code by the Competition and Markets Authority (CMA), Ocado Retail Ltd in August 2019<sup>1</sup>, TJ Morris in September 2019 and Amazon.com Inc on 1 March 2022.

There were also new challenges for suppliers and supermarkets alike, in particular the Covid-19 pandemic, where the GCA worked closely with large retailers and their direct suppliers to ensure that all parties were working in the best interests of the consumer and to identify early any Code related issues arising from the need to respond to the pandemic. The sector continues to experience external challenges and Mark White has highlighted how inflationary pressures are putting a strain on supplier and retailer relationships, as indicated by the latest GCA survey. It is therefore a useful time to consider the GCA’s role over the three years up to 31 March 2022 to help inform how best to address the challenges ahead.

The first and second reviews in 2016 and 2019 found that the GCA had been effective in enforcing the Code and had made a significant difference in ensuring fairness between the large retailers and their direct suppliers. The first review considered whether the GCA’s functions should be transferred to another public body or be abolished and found no evidence that transferring the GCA’s functions would increase the effectiveness of public functions or accountability to Ministers. In light of the need to ensure efficiency of public bodies, we would like to consider those questions again in the current review. The Government has not made any decisions about a possible transfer but would be particularly interested in whether there might be gains in efficiency and effectiveness in transferring the GCA functions to the CMA.

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<sup>1</sup> Ocado Group plc was designated on 1 November 2018 but following a joint venture with M&S Holdings Ltd., informed the CMA that from 5 August 2019, the retail supply of groceries in the UK would be carried out independently of Ocado Group plc by Ocado Retail Ltd and so the latter was designated instead.

The CMA owns the Groceries Code and already has some responsibility in relation to the Code to monitor, enforce and carry out formal reviews where necessary.

I look forward to receiving your views and comments on this statutory review.

A handwritten signature in black ink, appearing to read 'Jane', is centered on the page. The signature is written in a cursive, flowing style.

**Jane Hunt, MP**

Minister for Small Business, Consumers & Labour Markets

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# General information

## Why we are consulting

Section 15 of the Groceries Code Adjudicator Act 2013 (the Act)<sup>2</sup> requires the Secretary of State to review periodically the performance of the GCA. The first review covered the period from the creation of the GCA (in June 2013) to 31 March 2016 and the Secretary of State published a report setting out conclusions and recommendations of the review in July 2017<sup>3</sup>.

The second covered the period from 1 April 2016 to 31 March 2019. The Secretary of State's report on the second review was published in July 2020<sup>4</sup>.

The third statutory review (the "review") covers the period from 1 April 2019 to 31 March 2022.

## Consultation details

The Act specifies the issues which the review must address and who must be consulted as part of the review. The primary purpose of this consultation is to seek views and evidence which, together with other publicly available evidence, will allow the Secretary of State to make an assessment of the GCA's performance against the measures set out in the Act. These measures are explained in the Terms of Reference (which can be found at [Annex A](#)) the contents of which are summarised below.

The following are measures which the review must consider or assess under section 15 of the Act:

- Consider how the GCA's powers have been exercised;
- Assess how effective the GCA has been in enforcing the Code; and
- Consider whether to make an Order setting out the information that the GCA may consider when deciding whether to investigate.

The Act does not require the following to be part of the review but the Government has decided to include them in this review:

- Consider whether to amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;
- Consider whether some or all of the GCA's functions should be transferred to a public body; and
- Consider whether to abolish the Groceries Code Adjudicator.

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2013/19/contents>

<sup>3</sup> <https://www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2013-to-2016>

<sup>4</sup> <https://www.gov.uk/government/publications/groceries-code-adjudicator-statutory-review-2016-to-2019>

**Issued:** 19 July 2022

**Respond by:** 11 October 2022

**Enquiries to:**

GCA Review Team  
Consumer and Competition  
Department for Business, Energy and Industrial Strategy  
4<sup>th</sup> Floor, Victoria 2  
1 Victoria Street  
London  
SW1H 0ET

Email: [GCAREVIEW@BEIS.GOV.UK](mailto:GCAREVIEW@BEIS.GOV.UK)

**Consultation reference:** Statutory review of Groceries Code Adjudicator 2019 - 2022

**Audiences:**

S.15(8) of the Act requires that, in carrying out a review, the Secretary of State must consult the following:

- the GCA;
- the Competition and Markets Authority;
- the retailers subject to the Code;
- one or more persons representing the interest of suppliers;
- one or more persons representing the interests of consumers; and
- any other appropriate person (we have not identified any specific person or persons here and welcome contributions from any interested person).

When responding, we recommend that stakeholders take account of the Terms of Reference (see [Annex A](#)). We encourage stakeholders to provide supporting qualitative and quantitative evidence where possible.

**Territorial extent:**

The Groceries Code Adjudicator Act 2013 extends to England and Wales, Scotland and Northern Ireland.

## How to respond

**Email to:** [GCAREview@beis.gov.uk](mailto:GCAREview@beis.gov.uk)

**Write to:**

GCA Review Team  
Consumer and Competition  
Department for Business, Energy and Industrial Strategy  
4<sup>th</sup> floor, Victoria 2  
1 Victoria Street  
London  
SW1H 0ET

A response form is available on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2019-to-2022>

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (including the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will publish a summary of responses on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.



## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#). If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# Background

## Groceries Supply Code of Practice

The Groceries Code Adjudicator (“GCA”) was established under the Groceries Code Adjudicator Act 2013 (“the Act”). The purpose of the GCA is to monitor and enforce the Groceries Supply Code of Practice (“the Code”).

The Code was introduced in 2009 by the Competition Commission<sup>5</sup>, following its market investigation into the supply of groceries in the United Kingdom and the publication of its findings in 2008<sup>6</sup>. The Code applies to the UK and currently covers the fourteen largest grocery retailers (“designated retailers”) with UK annual groceries turnover of more than £1 billion. It is designed to help control practices which transfer excessive risks and unexpected costs to suppliers which in turn can impact on suppliers’ willingness to invest in quality and innovation – leading to potential consumer detriment.

The Code applies only to relationships between the retailers and their direct suppliers. The retailers must incorporate the Code into their supply agreements with their direct suppliers. It imposes an over-arching principle of fair and lawful dealing and includes specific provisions governing the variation of supply agreements and terms of supply; the timing of payments; payments for marketing costs and the funding of promotions; and payments as a condition of being a supplier. The Code is the responsibility of the Competition and Markets Authority, which designates retailers under the Code, and is not being considered as part of this review.

## Groceries Code Adjudicator

The Groceries Code Adjudicator is a statutory office and corporation sole appointed by the Secretary of State for Business, Energy and Industrial Strategy. Christine Tacon was the Adjudicator at the beginning of the period under review until her second term ended on 30 October 2020 when she was succeeded by Mark White as the second GCA, following three months as Deputy GCA. The Adjudicator is wholly funded by a levy on the retailers, agreed annually by the Secretary of State. The Groceries Code Adjudicator is operationally independent of government.

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<sup>5</sup> In April 2014, most of the functions of the Competition Commission were transferred to the Competition and Markets Authority.

<sup>6</sup> <https://www.gov.uk/cma-cases/groceries-market-investigation-cc>

## The proposals

This consultation is to seek views of stakeholders, consistent with requirements in the Act to consult about the performance of the GCA to inform the review. Any proposals resulting from the review will be set out in the Secretary of State's report which will be published once the review has concluded. We have identified questions which we consider are particularly relevant to the stakeholders and they are invited to respond to the relevant sections of the questions.

These stakeholders are:

- The GCA;
- The Competition and Markets Authority;
- The retailers subject to the Code;
- One or more persons representing the interest of suppliers;
- One or more persons representing the interests of consumers;
- Any other interested person or party (we have not identified any specific person or persons here and welcome contributions from any interested person)

We welcome contributions from any stakeholder on all questions, regardless of their position in the groceries supply chain. Stakeholders are free to respond to all or some of the questions, or to provide other views not covered by the questions. The questions are not an exclusive indicator of the evidence base we wish to develop as part of this consultation. When responding, we recommend that stakeholders take account of the Terms of Reference (see [Annex A](#)).

The Act allows transfers of some or all of the GCA's functions and in deciding whether to make such transfer the Secretary of State must take account of the desirability of increasing efficiency, effectiveness and economy in the exercise of public functions, and of ensuring appropriate accountability to Ministers in the exercise of public functions. In addition the Act allows the Secretary of State to abolish the GCA if (among other things) as a result of the findings of a review the Secretary of State is satisfied that: (i) the GCA has not been sufficiently effective in enforcing the Code to justify its continued existence; (ii) it is no longer necessary for there to be a GCA to enforce the Code.

The GCA was originally to be based within the Office of Fair Trading (OFT), but it was not practical to increase the OFT's functions ahead of its merger with the Competition Commission into the CMA. For this review, we are seeking stakeholders' views on whether the functions of the GCA should be transferred or abolished. This was last considered in first review which took place in 2016 and it is government policy more generally to periodically consider whether there are more efficient and effective alternatives to existing public bodies to deliver the government's objectives. This is consistent with the principles in Cabinet Office guidance on

the undertaking of Reviews of Public Bodies<sup>7</sup>. We will assess all contributions against the Terms of Reference. Any recommendations which may follow this review will take account of the evidence received. Therefore, we encourage stakeholders to provide supporting qualitative and quantitative evidence where possible.

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<sup>7</sup> <https://www.gov.uk/government/publications/public-bodies-review-programme/guidance-on-the-undertaking-of-reviews-of-public-bodies>, see paragraph 16.

# Consultation questions

## Part 1: Questions for all relevant parties

1. Have you engaged with the GCA?

- a) Yes
- b) No

2. If yes, how often?

- a) Regularly
- b) Occasionally
- c) Rarely
- d) Never

3. How satisfied were you with how the GCA handled your issue?

- a) Very satisfied
- b) Satisfied
- c) Neutral
- d) Unsatisfied
- e) Very unsatisfied
- f) not applicable

4. If you are a representative group (e.g. a trade association), would you consider raising an issue with the GCA on behalf of your members?

- a) Yes
- b) No

Comments:

5. What do you believe has been the impact of the GCA on the groceries market?

Comments:

6. How effective do you consider the GCA has been in exercising its powers:

- a) in providing arbitration?
- b) in conducting investigations and undertaking enforcement activity?
- c) in providing advice, guidance and recommendations?

In responding to this question, stakeholders may wish to refer to the GCA's own guidance on its approach to carrying out investigations, enforcement and arbitration<sup>8</sup>.

Comments:

7. Do you think the GCA has been effective in enforcing the Code?

a) Yes

b) No

Please give your reasons: This question will allow us to gauge the broad sense of effectiveness in wide terms. Detailed analysis of effectiveness will be judged by responses to all questions.

Comments:

8. Do you think there are advantages of transferring the GCA functions to the Competition and Markets Authority ("CMA") to increase efficiency, effectiveness and economy in exercise of public functions?

Comments:

9. Do you think there are disadvantages of transferring the GCA functions to the CMA and do you have thoughts on how these might be addressed?

Comments:

10. Do you think there would be advantages of transferring to another public body. If so, could you explain which one and why and whether there are any disadvantages?

Comments:

11. Do you think it is still necessary to have an Adjudicator to enforce the Code?

Comments:

## Part 2: Questions for the Groceries Code Adjudicator

1. For the statutory review period, please explain how you have met your statutory duties set out in the Groceries Code Adjudicator Act 2013?

Please comment in particular on:

a) how much you have exercised your powers;

b) how effective you have been in enforcing the Groceries Code.

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<sup>8</sup> <https://www.gov.uk/government/collections/gca-guidance>

2. We would also welcome any comments you may have on the Order-making powers contained in the Act and whether you would find it helpful for the Secretary of State to:

a) amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015;

b) make an order setting out the information which you may consider when deciding whether to investigate (see section 15(11) of the Act).

3. How effective has the GCA been since 2019 in:

a) improving retailer and supplier awareness of the Code; and

b) improving supplier confidence in raising issues with retailers and with the GCA?

### Part 3: Questions for the Competition and Markets Authority

The Competition Commission's investigation into the UK's retail grocery market recommended the creation of an Ombudsman to monitor and enforce compliance with the Code. This recommendation was taken forward in the Groceries Code Adjudicator Act 2013.

1. For the statutory review period, please comment on the GCA's effectiveness in fulfilling the role intended for it by the Competition Commission in 2009<sup>9</sup>?

Please comment in particular on:

a) whether the GCA has sufficient and proper powers to enforce the Code effectively.

2. We would also welcome any comments you may have on how effective the GCA has been in exercising its powers.

Comments:

### Part 4: Questions for retailers

*(i.e. retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order and in the Notices of Designation issued by the CMA. While responding, retailers should only consider their experience with the GCA from April 2019 or from when they were designated under the Code.)*

1. What impact, if any, has the GCA had on your relationships with your suppliers?

Comments:

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<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461114/GSCO-P-Order\\_v2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461114/GSCO-P-Order_v2.pdf)

2. Has resolving a complaint with suppliers become more or less burdensome than before the GCA?

Comments:

3. What do you believe has been the impact of the GCA on the groceries market?

Comment:

4. Is there any way to make the GCA more effective in delivering its key objectives?

Comments:

5. Do you think the Secretary of State should make an order setting out the information which the GCA may consider when deciding whether to investigate (see section 15(11) of the Act)? If so, please explain why.

Comments:

## Part 5: Questions for suppliers

1. To which of these retailers do you currently supply groceries?

Please tick all that apply:

- Aldi Stores Limited
- Amazon.com, Inc.
- Asda Stores Limited
- B&M European Value Retail SA
- Co-operative Group Limited
- Iceland Food Limited
- J Sainsbury plc
- Lidl UK GmbH
- Marks and Spencer plc
- Ocado Retail Ltd
- Tesco plc
- TJ Morris Ltd (trading as Home Bargains)
- Waitrose Limited
- WM Morrison Supermarkets plc



2. During your contract period, and since April 2019, have you experienced any issues with the retailers which are covered by the Code areas below? (If the retailers were designated under the Groceries Code between April 2019 and March 2022, you should only consider your experience with these retailers since the designation).

Please tick all that apply:

- Variation of supply agreements and terms of supply
- Unjustified charges for consumer complaints
- Obligation to contribute to marketing costs
- Delay in payments
- No compensation for forecasting errors
- Payment as a condition of being supplier
- Not applying due care when ordering for promotions
- Not meeting duties in relation to de-listing
- Variation of supply chain procedures
- Payment for wastage
- Payment for better positioning of goods
- Payment for shrinkage
- Tying of third party goods and services to payment
- No issues with the Code
- Not aware of the Code
- Don't know (Please explain below)

Comments:

3. If you ticked any of the boxes above:

How often did you experience each of these issues?

- a) Regularly
- b) Occasionally
- c) Rarely

4. Did you raise the issue with the GCA?

- a) Yes
- b) No

5. If you raised an issue with the GCA how satisfied were you with your dealings with the GCA?

- a) Very satisfied
- b) Satisfied
- c) Neutral
- d) Unsatisfied
- e) Very unsatisfied

Comments:

6. If you did not raise an issue with the GCA, why not?

Please tick all that apply:

- Fear of some form of penalty from retailer
- Didn't think the GCA would be able to do anything
- You can address the concerns yourself
- Didn't feel that the concerns were important enough
- You already alerted a trade association
- Concerns over confidentiality
- Not sure what is covered by the Code.
- Other reason

Comments:

7. Would you say the issues you have highlighted have happened to a greater, the same or lesser extent since the previous review of the GCA?

- a) Greater
- b) Same
- c) Lesser

Comments:

8. How do you feel retailer practice overall has changed since the previous review of the GCA?

- a) Improved
- b) Stayed the same
- c) Worsened
- d) Not sure

Comments:

9. In future, would you consider raising any issues you have about groceries supply with the GCA?

- a) Yes
- b) No
- c) Don't know

Comments:

10. b) If no, why not?

Please tick all that apply:

- Fear of some form of penalty from retailer
- Don't think the GCA will be able to do anything
- You can address the concerns yourself
- Don't think the concerns are important enough
- You already alerted a trade association
- Concerns over confidentiality
- Not sure what is covered by the Code
- Other reason

What would encourage you to raise an issue with the GCA?

Comments:

11. Has the introduction of the GCA had an impact on product or process innovation?

- a) Substantially more likely to undertake product or process innovation
- b) Slightly more likely to undertake product or process innovation
- c) No impact on undertaking product or process innovation
- d) Less likely to undertake product or process innovation
- e) Substantially less likely to undertake product or process innovation

If the introduction of the GCA has had an impact on product or process, could you please give examples of product or process innovation that you have carried out?

Comments:

12. Do you now spend relatively more, or relatively less, on product or process

innovation than you did 3 years ago.

- a) Relatively more
- b) Relatively less
- c) No change

Comments:

13. What do you believe has been the impact of the GCA on the groceries market?

Comment:

## Part 6: Questions for consumers

1. What do you believe has been the impact of the GCA on consumers in relation to: a) the quality of groceries supplied by the retailers.

b) the choice of groceries supplied by the retailers.

c) any other impact or effects?

Comments:

## Next steps

Comments made in response to this review will be considered by the GCA Review Team and will inform the final report which will then be considered by BEIS ministers. We may contact you if, for example, we have a query in respect of your response. A final report covering the review of the GCA will be published on the GOV.UK website.

# Annex A: Terms of Reference

This document sets out the terms of reference for the government’s third review of the Groceries Code Adjudicator (“the GCA review”). Its purpose is to explain the issues that will be examined by the GCA review.

Section 15 of the Groceries Code Adjudicator Act 2013 requires the Secretary of State to review the Groceries Code Adjudicator’s performance every 3 years, with the third review period covering the period from 1 April 2019 to 31 March 2022.

The GCA review covers the statutory requirements which the government is obliged to fulfil under the Groceries Code Adjudicator Act 2013 (“the Act”).

## The Statutory Review

The Act requires the government to look at the GCA’s performance and at specific Order-making powers contained within the Act. These obligations will be met in the first two terms of reference.

### Term of Reference 1

Consider the GCA’s performance from 1 April 2019 to 31 March 2022.

This will in particular:

- Consider how much the GCA’s powers have been exercised and in what circumstances; and
- Assess how effective the GCA has been in enforcing the Groceries Code (“the Code”).

### Term of Reference 2

Consider whether it would be desirable for the Secretary of State to exercise his Order-making powers contained in Section 9(6)<sup>10</sup> and Section 15(11) of the Act.

This will consider whether:

- To make an Order setting out the information that the GCA may consider when deciding whether to investigate;
- To amend or replace the Groceries Code Adjudicator (Permitted Maximum Financial Penalty) Order 2015.

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<sup>10</sup> Note section 15 does not require the review to consider the powers in section 9(6) of the Act but section 15(6) provides that the review may consider this.

### Term of Reference 3

Consider whether some or all of the GCA's functions should be transferred to a public body, such as the Competition and Markets Authority.

In deciding whether to exercising the power to transfer, the Secretary of State must take account of the desirability of:

- Increasing efficiency, effectiveness and economy in the exercise of public functions; and
- Ensuring appropriate accountability to Ministers in the exercise of public functions.

### Term of Reference 4

Consider whether to abolish the GCA.

This power may be exercised if:

- review findings demonstrate that the GCA has not been sufficiently effective in enforcing the Code to justify its continued existence;
- review findings demonstrate that it is no longer necessary for there to be a GCA to enforce the Code;
- all of the GCA's functions are transferred to a public body; or
- the Code is revoked and not replaced.

### Consultation process

The following will be consulted:

- (a) The GCA;
- (b) The Competition and Markets Authority;
- (c) The retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order<sup>11</sup>;
- (d) One or more persons representing the interests of suppliers;
- (e) One or more persons representing the interests of consumers; and
- (f) Any other person (see explanatory notes below).

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<sup>11</sup> At the date of this document these retailers are: Asda Stores Limited, a subsidiary of Wal-Mart Stores Inc; Co-operative Group Limited; Marks & Spencer plc; Wm Morrison Supermarkets plc; J Sainsbury plc; Tesco plc; Waitrose Limited, a subsidiary of John Lewis plc; Aldi Stores Limited; Iceland Foods Limited, a subsidiary of the Big Food Group; Lidl UK GmbH; B&M European Value Retail SA; TJ Morris Ltd, trading as Home Bargains; Ocado Retail Ltd; and Amazon.com, Inc.

## Next steps

As soon as practicable after the consultation period, the Secretary of State will:

- Publish a report of the findings of the GCA review; and
- Lay a copy of the report before Parliament.

## Explanatory notes

In preparing these terms of reference we have fulfilled the requirements of the Act. We have also drawn on Cabinet Office guidance on reviews of arm's length bodies (ALBs) even though this guidance does not directly apply to the GCA review.

Section 15 (8) of the Act sets out those parties that should be consulted as part of the review. Paragraph (g) of section 15 (8) says that this may include any person the Secretary of State thinks appropriate. We have decided not to identify any specific person or persons, but to define this widely as "any person". This will allow us to get as wide a view as possible on the GCA review.



This publication is available from: [www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2019-to-2022](https://www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review-2019-to-2022)

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