



Department for
Business, Energy
& Industrial Strategy

**GROCERIES CODE ADJUDICATOR
REVIEW: PART 2**

Call for evidence on the case for
extending the Groceries Code
Adjudicator's remit in the UK
groceries supply chain

OCTOBER 2016

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Groceries Code Adjudicator Review: Part 2 - Call for Evidence

This consultation is Part Two of the Statutory Review and is a the Call for Evidence on the case for extending the Groceries Code Adjudicator's remit in the UK groceries supply chain. Further details can be found in the Terms of Reference – [Annex B](#).

Issued: 18 October 2016

Respond by: 10 January 2017

Enquiries to:

GCA Review Team
Victoria 316
Consumer and Competition Policy Directorate
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: GCAREview@beis.gov.uk

Stakeholders have until 10 January 2017 to respond to this consultation. Following this, we will assess and analyse the responses. A report on our findings will then be published and laid before Parliament

1. Ministerial foreword

I am pleased to launch this Call for Evidence on the case for extending the Groceries Code Adjudicator's remit in the UK groceries supply chain.

The Groceries Code Adjudicator (GCA) is the UK's first independent adjudicator to oversee the relationship between supermarkets and their suppliers. Established in 2013, its role is to make sure that large supermarkets treat their direct suppliers lawfully and fairly, investigating complaints and arbitrating in disputes. By ensuring that the big supermarkets treat their direct suppliers fairly, the GCA also helps ensure that consumers get a better deal through fair competition.



The GCA's role not only monitors, ensures compliance with and enforces the Groceries Supply Code of Practice ('the Code'); it also helps to strengthen the supply chain benefiting suppliers, retailers and consumers. The GCA's recent investigation into the compliance of Tesco plc with the Code is a significant achievement, and carries a clear message to all retailers that the GCA will accept no less than the principle of fair dealing demanded by the Code.

We are launching this Call for Evidence in recognition of concerns raised by other suppliers in the groceries sector – particularly primary producers and farmers – who are not covered by the Code. The government wants to do all it can to help these businesses, while taking account of the interests of all parties in the grocery sector. That is why we are taking this evidence-led approach and we will consider the best way to achieve fair outcomes for all in light of the responses we receive.

Alongside this Call for Evidence, we are also launching a Statutory Review on the GCA's performance from its creation, in June 2013, to March 2016.

We look forward to receiving your views and comments on both this Call for Evidence and the Statutory Review.

A handwritten signature in black ink that reads "Margot James".

Margot James MP
Parliamentary Under Secretary of State, Minister for Small Business, Consumers and Corporate Responsibility

2. Introduction

The Groceries Code Adjudicator

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 (“CC”)¹, following its market investigation into the supply of groceries in the United Kingdom and the publication of its findings in 2008². The Code applies to the ten largest UK grocery retailers³ and is designed to help control practices which transfer excessive risks and unexpected costs to suppliers, and have an 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.

Further information on the CC’s report findings, the creation of the GCA and the scope of its functions can be found at [Annex A](#).

The Groceries Code Adjudicator Review

Section 15 of the Act requires the government to review periodically the performance of the GCA. The first Review, which is launching alongside this Call for Evidence, covers the period from the creation of the GCA (in June 2013), to 31 March 2016. The Act specifies the issues which the Review must address and who must be consulted as part of the Review. These points are covered in the Terms of Reference (‘ToR’), which can be found at [Annex B](#). The overall Review process therefore comprises two parts: Part One is the Statutory Review of the GCA’s performance and Part Two is the Call for Evidence on the case for extending the GCA’s remit.

This consultation is on Part Two: the Call for Evidence. Part One: the Statutory Review of the GCA’s performance, can be found at www.gov.uk/government/consultations/groceries-code-adjudicator-statutory-review.

Part 2: Call for Evidence

The GCA monitors and enforces the Code. The remit of the GCA – or the extent to which its powers apply in the groceries supply chain – is limited to the carrying out of this purpose. This means that the GCA’s remit applies to the grocery retailers subject to the Code and their direct suppliers only. It does not apply elsewhere in the groceries supply chain: for example, it does not apply to businesses which supply these retailers through a third party (referred to as “indirect suppliers”).

¹ In April 2014, most of the functions of the Competition Commission were transferred to the Competition and Markets Authority.

² www.gov.uk/cma-cases/groceries-market-investigation-cc

³ These are: Aldi, Asda, Co-operative Group, Iceland, Lidl, Marks and Spencer, Morrisons, Sainsbury’s, Tesco, Waitrose.

A number of these indirect suppliers and their representatives have argued that the limitation in the GCA's remit is unfair. They argue that they are at least as vulnerable as direct suppliers to the practices referred to above, if not more so, but have no regulatory protection. These points received particular attention when a global over-supply of milk exposed problems in the dairy industry – and which brought greater attention to current issues across the whole farming and primary production sector.

This Call for Evidence is in response to those concerns. We have decided to issue this Call for Evidence simultaneously with the Statutory Review because we understand that many stakeholders would want to comment on the GCA's remit when responding. The evidence needed to assess the GCA's performance is different to that needed to assess the GCA's remit which is why we are running two separate consultations in parallel.

In the rest of this Call for Evidence we set out the background to the GCA and the Code and explain the respective roles of the government and the Competition and Markets Authority. We also set out the type of evidence needed for a decision to be made on the GCA's remit and discuss how the GCA's remit could be extended, if this proves necessary.

Stakeholders have until 10 January 2017 to respond to this consultation. Following this, we will assess and analyse the responses. A report on our findings will then be published, and laid before Parliament.

3. Why the Call for Evidence?

The government is inviting evidence to help it consider whether there is a case for extending the remit of the Groceries Code Adjudicator ('GCA'). The extended remit could cover parts of the UK groceries supply chain which are not currently covered by the Groceries Supply Code of Practice ('the Code'). Under the current arrangements, the GCA's remit is determined by the functions the GCA may or must perform pursuant to the Groceries Code Adjudicator Act 2013 ('the Act'). These functions relate to the use and operation of the Code and the GCA has no powers beyond it.

This Call for Evidence is in response to concerns from groups in the groceries supply chain not covered by the Code, for example primary producers, in particular farmers, who are indirect suppliers to retailers. These groups argue that they face the same, or similar, behaviours as those which the Code prohibits. They consider the Code – and therefore the GCA's remit – is too narrow to protect them.

The government recognises these concerns. The government has decided that it would be appropriate to consider extension of the GCA's remit at the same time as it carries out the GCA's Statutory Review. Although our statutory obligations do not require us to consider the GCA's remit, it is nevertheless an opportune time to do so, given that we are conducting a comprehensive public consultation.

The government is not making any specific proposal in this Call for Evidence. There are several possible outcomes to this exercise, and not all involve government action. We do not want to influence the submission of evidence, or give any impression that a preferred option has been identified.

In preparing this Call for Evidence the government has taken account of the existing regulatory framework in which the GCA operates. It is important that stakeholders understand this framework. Before submitting evidence, we recommend that stakeholders read the sections below.

The GCA's Regulatory Framework

The term 'regulatory framework' describes the legislation underpinning the GCA, the Code and the role of the various parties within this.

The GCA's current remit is to enforce the Code, which is a competition remedy introduced by the Competition Commission. The Competition Commission established the Code following its market investigation into the UK's groceries market⁴. This investigation identified an adverse effect on competition arising from the relationship between the UK's largest grocery retailers⁵ ('the retailers') and their direct suppliers and recommended the creation of the Code to remedy this. This decision and the Competition Commission's investigation were carried out independently of government.

⁴ See footnotes 1 and 2

⁵ See footnote 3

The Competition Commission's market investigation which led to the establishment of the Code looked at the supply of groceries by retailers in the United Kingdom. The terms of reference for this investigation were published by the OFT in May 2006⁶, with the final Competition Commission report published in 2008⁷.

The Competition Commission's investigation found that whilst the supply of groceries by retailers in the UK was broadly competitive, some retailers were transferring excessive risk and unexpected costs to their direct suppliers. The Competition Commission's report said:

"On balance, we concluded that supply chain practices that transfer excessive risks and unexpected costs to suppliers, including through the use of retrospective payments and other adjustments to supply agreements, are sufficiently prevalent to cause concern."
(Paragraph 9.66)

The report also said:

"We are concerned that current levels of innovation or investment (by suppliers) would not be maintained in the future were the practices that we observe to continue."
(Paragraph 9.67)

The Competition Commission saw these practices as resulting in a consumer detriment, through a potential lack of choice and quality that might otherwise be available to consumers. The Competition Commission's recommendation was to establish the Code⁸, enforced by an independent ombudsman.

The Code was created through the making of the Groceries (Supply Chain Practices) Market Investigation Order 2009⁹ by the Competition Commission. This Order came into force on 4 February 2010.

Approaches on changes to the Code and the GCA's remit

As the UK's current independent competition authority, the Competition and Markets Authority ('CMA') can decide that the Code should be amended or revoked if it is satisfied that, by reason of any change of circumstances, it is no longer appropriate and needs to be varied or revoked¹⁰. Case law¹¹ requires that, in exercising these powers, the CMA is limited to:

- a) Addressing the adverse effects specified in the Competition Commission's report and, in doing so;

⁶ www.gov.uk/cma-cases/grocery-market-investigation-reference-of

⁷ See footnote 3

⁸ The Code recommended by the Competition Commission in its 2008 report replaced the previous, non-statutory, Supermarket Code of Practice

⁹ www.gov.uk/government/publications/groceries-supply-chain-practices-market-investigation-order

¹⁰ See section 162(2) of the Enterprise Act 2002: note that the OFT's duties under this section are now carried out by the CMA. See also

www.gov.uk/government/uploads/system/uploads/attachment_data/file/453150/CMA11_Remedies_Guidance_revised_August_2015.pdf

¹¹ Thomson Holidays (R v the Secretary of State for Trade and Industry, ex parte Thomson Holidays [2000] ECC 321)

- b) Ensuring that any proposed variation is in respect of and relates to the same overall feature of the market as the Competition Commission had identified as causing the adverse effect on competition, and
- c) Ensuring that any practices identified where regulation by a revised Code is contemplated are sufficiently proximate to the original features identified by the Competition Commission in the course of its investigation.

Thus any amendment of the Code by the CMA (under the Enterprise Act 2002) would be constrained by these requirements.

The CMA has the power to amend, replace or remove the Code if it considered that this was necessary to remedy, mitigate or prevent any new or broader adverse effect on competition, having first carried out another market investigation and identified adverse effects, some or all of which occupied the same field as those the Code was designed to deal with. (This assumes that such an investigation would have been merited having had regard to the CMA's prioritisation principles.)

It might therefore be possible for the CMA to amend the Code, and thereby the GCA's remit in the circumstances described above, should it find that there had been any change of circumstances, and – taking account of the evidence it has received and its prioritisation principles – it chose to amend the Code. Although the government established the GCA via primary legislation, there is no symbiotic relationship between the Code and the GCA. If the government abolished the GCA, the Code would continue to exist (although there would then be no body specifically tasked with its enforcement).

Alternatively, the government can propose legislation to Parliament to extend the GCA's remit. For the government to consider this, we would first need to justify regulatory intervention and the net beneficial outcomes it would secure. This requires a robust evidence base and a thorough examination of alternative options. In the event that the government did decide to act, we would conduct a full consultation on our proposals and set out the evidence base.

Other possible outcomes

Although this is a Call for Evidence on the case for extending the GCA's remit, the government might conclude from the responses that there is no evidence of a problem with the supply chain or insufficient evidence to warrant government action.

Alternatively, the responses may show that there is a problem, but lead us to conclude that there are alternative approaches to addressing the issue rather than remit extension. These alternative options could include application of existing government policy, or short-term support measures.

What happens after the call for evidence?

The existing regulatory framework, in the form of the Code and the GCA, represents a competition remedy. At the end of this Call for Evidence, we will first wish to consider whether there might be competition issues existing elsewhere in the groceries supply chain which are not covered by the Code. We will pass relevant evidence received to the CMA for them to consider and decide whether to commence the process leading towards

a market investigation. If the CMA decides that further action is justified, having applied its prioritisation principles¹², we will wait for the outcome of that process.

If the CMA decides not to take action itself, the government will make its own assessment of the evidence. The government will consider whether there is sufficient evidence to support proposals for regulatory interventions in those parts of the groceries supply chain where the Code does not apply or whether alternative approaches would be more suitable (such as application of existing government policy, or short-term support measures). As part of this, the government may conclude that there is no evidence of a problem with the supply chain or insufficient evidence to warrant government action.

¹² The CMA's prioritisation principles are available at: www.gov.uk/government/publications/cma-prioritisation-principles

4. The Call for Evidence

The rationale for government action in regulating markets is usually based either on ‘market failure’¹³, or where there are government objectives based on equity considerations that may not be met by unregulated markets.

Even where there is a market failure an assessment is needed on whether intervention is justified, e.g. whether the government is best placed to act or whether the problem would resolve itself over time. This would include whether it was reasonable to assume that intervention will be cost effective and proportionate, i.e. the benefits of intervention will exceed the costs and that the costs are not disproportionate to the benefits.

Government intervention can incur costs and create economic distortions. These costs can fall on businesses, the government or the public. These must be taken into account to determine whether intervention is warranted. For example, a regulation may be successful in addressing a particular market failure, but might also involve other costs (e.g. higher retail prices) which mean that overall it is not worthwhile.

Clearly, there has already been intervention in the UK groceries market, in the form of the Code and the GCA. As explained in [section 3](#), this intervention was justified on competition grounds, following an investigation by the UK’s independent competition authority. The current degree of intervention is set by the Code and applies to the relationship between the retailers and their direct suppliers.

The purpose of this Call for Evidence is to gather as much evidence as possible on how the groceries sector is currently functioning. This will help us to ascertain if there is a clear need for further intervention. The questions below aim to do this. In responding it would be particularly helpful if you could supply any underpinning evidence, examples, case studies or estimates to help illustrate your points.

The questions are split into three categories; the first category is for suppliers, either direct or indirect; the second category is for the retailers; and the third category is for trade associations. Please respond to the section that applies to your organisation.

At this stage, we require evidence of a specific nature and we consider that the categories identified are best placed to provide this. However, this is a public consultation therefore we also welcome evidence from any organisation outside of the above categories, where this might be relevant to the questions raised. We also welcome views on how the GCA’s role should be extended, e.g. should it cover more retailers, should it apply to indirect supplier relationships, should there be symmetrical enforcement with obligations to comply also applying further down the supply chain?

As explained in the previous section, in the event that the government does decide to act, we will conduct a full consultation on our proposals and set out the evidence base.

¹³ Market failure refers to where the market has not and cannot of itself be expected to deliver an efficient outcome (i.e., an efficient outcome is achieved when nobody can be made better off without someone else being made worse off).

5. How to respond

Issued: 18 October 2016

Respond by: 10 January 2017

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

There are two ways of contributing to the consultation:

- Via the online survey running alongside this consultation which can be found at the Citizenspace website: <https://beisgovuk.citizenspace.com/gca/groceries-code-adjudicator-review-part2>
- The consultation response form available electronically on the consultation page: www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit (until the consultation closes).

The form can be submitted online/by email or by letter to:

GCA Review Team
Victoria 316
Consumer and Competition Policy Directorate
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: GCAREview@beis.gov.uk

You may make printed copies of this document without seeking permission.

BEIS consultations are digital by default but if required printed copies of the consultation document can be obtained from the above address.

Other versions of the document in Braille, other languages or audio-cassette are available on request.

6. Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

7. Help with queries

Questions about the policy issues raised in the document can be addressed to:

GCA Review Team
Victoria 316
Consumer and Competition Policy Directorate
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: GCAREview@beis.gov.uk

The consultation principles are in [Annex D](#).

8. What happens next?

Comments made in response to this review will be considered by the 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 at: www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit.

Annex A: The Groceries Code and the Groceries Code Adjudicator

The Groceries Supply Code of Practice ('the Code') was introduced by the former Competition Commission ('CC') in 2009 following the CC's market investigation into the supply of groceries by retailers between 2006 and 2008. The CC found that the problems in the sector were largely in the commercial relationships between the ten largest UK grocery retailers – Aldi, Asda, Co-operative, Iceland, Lidl, Marks and Spencer, Morrison's, Sainsbury's, Tesco, and Waitrose – which at that time collectively accounted for around 85 percent of the UK market for groceries, and their direct suppliers.

These retailers must incorporate the Code into their supply agreements with their direct suppliers. The Code imposes an over-arching principle of fair 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 does not govern the prices paid by the retailers to their direct suppliers – which fall under general UK competition law and are the responsibility of the Competition and Markets Authority ('CMA'). Nor does it cover the disputes between the retailers and consumers – which are regulated by consumer protection legislation.

The Groceries Code Adjudicator Act 2013 established an independent Adjudicator to ensure compliance with the Code. Christine Tacon CBE became the first Adjudicator in June 2013 on a four year appointment. The Adjudicator is wholly funded by a levy on the retailers. The total levy for 2016/17 was £2 million. The Adjudicator works part-time three days per week; and has a small staff made up of government secondees and contractors.

The Adjudicator has a duty to arbitrate where a supplier refers a dispute with a retailer to her. The Adjudicator may arbitrate herself or appoint a third party to do so. The Adjudicator is under a statutory duty to protect the anonymity of complainants.

The Adjudicator has the power to investigate where she has reasonable grounds to suspect a breach of the Code. The Adjudicator has wide discretion to assess when the 'reasonable grounds' test has been satisfied – the Adjudicator's published guidance states that this may be based on information from, but not restricted to, direct and indirect suppliers; whistle-blowers; and that is otherwise in the public domain.

Where the Adjudicator is satisfied that there has been a breach of the Code, she has three enforcement options – she may:

- Make recommendations as to future compliance to the retailer concerned;
- 'Name and shame' the retailer by requiring it to publish information relating to the investigation; or
- Impose a financial penalty on the retailer of up to 1 percent of UK turnover.

Role of government

The Groceries Code Adjudicator is operationally independent of government.

The Secretary of State for Business, Energy and Industrial Strategy is responsible for appointing the Adjudicator. The current Adjudicator was appointed following an open competition in accordance with Cabinet Office guidelines on public appointments.

The Secretary of State is also required to approve the Adjudicator's annual levy. The Adjudicator must submit a levy proposal and supporting business case in advance to the Secretary of State. The Secretary of State will consider the proposal, and write to the Adjudicator confirming whether he has approved the levy, and whether he has done so in full or in part. Once in receipt of this approval, the Adjudicator may invoice the retailers for their share of the levy. Non-payment of the levy is recoverable by the Adjudicator as a civil debt.

Annex B: Terms of Reference

Introduction

This document sets out the terms of reference for the government's Review of the Groceries Code Adjudicator (the GCA Review)¹⁴. Its purpose is to explain the issues that will be examined by the GCA Review, to allow them to prepare contributions in advance of the formal start of the GCA Review process.

The GCA Review is in two parts, identified below as Part 1 and Part 2. Part 1 covers the statutory requirements which the government is obliged to fulfil under the Groceries Code Adjudicator Act 2013 ("the Act")¹⁵. Part 2 covers the evidence gathering process we are undertaking on the GCA's remit. Details on both parts are set out below.

Part 1: 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 25 June 2013 (when the GCA was established) to 31 March 2016.

This will in particular:

- Consider how much the GCA's powers have been exercised; 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) 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.

¹⁴ 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 first review period covering the period from 25 June 2013 (when the GCA was established) to 31 March 2016.

¹⁵ See Section 15 of the Act.

The Act also provides powers for the government to transfer the GCA's functions to another body, or abolish the GCA¹⁶. The government will use the GCA Review to consider whether it is necessary to exercise these powers and this will be covered in the following terms of reference.

Term of Reference 3

Consider whether some or all of the GCA's functions should be transferred to a public body.

This power may be exercised if it:

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

Term of Reference 4

Consider whether to close down the GCA.

This power may be exercised if findings demonstrate that:

- The GCA has not been sufficiently effective in enforcing the Code to justify its continued existence;
- It is no longer necessary for there to be a GCA to enforce the Code;
- If all of the GCA's functions are transferred to a public body.

Part 2: The Call for Evidence

The GCA's current remit is determined by the Groceries Supply Code of Practice ("the Code"). The GCA enforces the Code, which applies to the 10 largest UK supermarkets and their direct suppliers. The Code, and therefore the GCA's remit, do not apply elsewhere in the groceries sector.

The question of the GCA's remit has been raised by some stakeholders who are currently out of scope, but who argue that they require similar levels of protection afforded by the Code. These stakeholders include "indirect suppliers" such as farmers and primary producers.

There is no statutory obligation in the Act to look at the GCA's remit. However, because the GCA Review will engage interested parties across the groceries sector whether or not the Code applies to them, the government has decided it is a suitable opportunity to look at the GCA's remit. This will be done through a separate Call for Evidence that will launch, and run, alongside the Statutory Review.

¹⁶ See Section 16 of the Act.

Our approach has taken account of the following: Responsibility for changes to the Code rests with the Competition and Markets Authority (“CMA”) as the UK’s independent competition authority. However, the government can introduce legislation and impose duties on the GCA to carry out functions, alongside its role on enforcing the Code. This approach would extend regulation in the groceries sector and the government would need to be convinced that regulation was necessary and had net beneficial outcomes.

Term of Reference A

“Call for Evidence” on the case for extending the GCA’s remit in the UK groceries supply chain.

The government will not make any proposals until it has had an opportunity to review the evidence. The Call for Evidence will be used to determine:

- Whether there is evidence of market failure in the UK groceries supply chain. And if so, where in the supply chain this is located, and whether this can best be rectified through further regulation or through existing channels or through non-legislative remedies;
- Whether any market failures which are identified are issues falling within the jurisdiction of the CMA and which would need to be addressed by the CMA using its competition powers;
- How the costs of any new regulation would be met by the industry. And the consequences for the entire supply chain, through to consumers, of imposing new costs.

Consultation process

There will be a separate consultation paper for each part of the GCA Review, to be published and to be run concurrently.

For both parts of the GCA Review, 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 Order¹⁷;
- (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.

¹⁷ 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; and Lidl UK GmbH.

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.

Annex C: Response form

We have identified below the specific categories of stakeholders which we consider are best placed to provide evidence of any market failure in the UK groceries supply chain. However, this is a public consultation and we also welcome views from any other parties on the points raised.

A copy of this call for evidence can be found at:

www.gov.uk/government/consultations/groceries-code-adjudicator-extending-its-remit.

You can also complete your response online through:

<https://beisgovuk.citizenspace.com/gca/groceries-code-adjudicator-review-part2>

Alternatively, you can e-mail or post the completed response form to:

GCA Review Team
Victoria 316
Consumer and Competition Policy Directorate
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: GCAREview@beis.gov.uk

The closing date for the Review is 10 January 2017.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see [page 13](#) for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments: [Click here to enter text.](#)

Name:
 Organisation (if applicable):
 Job title (if applicable):
 Address:
 Telephone number:
 Email address:

Please check a box from the list of options that best describes you as a respondent. This allows views to be presented by group type.

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Questions relevant to retailers

(i.e. retailers mentioned in Article 4(1)(a) and (b) of the Groceries Supply Order).

1. Are you currently covered by the Code?

- Yes
- No

2. If yes, what is the impact of being in scope of the Code on your business, suppliers and consumers?

Comment:

3. If no, what do you think would be the impact on your business, suppliers and consumers if you were in scope of the Code?

Comment:

4. What changes, if any, do you think are needed to the grocery supply chain to ensure fair practice, whilst ensuring that, over the long term, consumers face no extra costs?

Comment:

5. What impact do you think any changes you identify will have on the competitiveness of the grocery sector?

Comment:

6. Can the changes you propose be achieved in a non-legislative way?

Comment:

7. Do you have any views or evidence on the possible costs of extending the GCA's remit?

Comment:

8. Are there any additional issues you would like to bring to the attention of the Call for Evidence?

Comment:

Questions relevant to suppliers

1. Where do you fit into the grocery supply chain?

- Direct supplier covered by the Code
- Indirect supplier
- Other

Comments:

2. How many people work in your business?

- Up to 9
- 10 to 49
- 50 to 250
- Over 250

3. For the last financial year please provide an approximate estimate of the following:

a) Annual turnover of your business

Comments:

b) The price – cost margin

Comments:

c) Fixed costs of production

Comments:

d) Profit and loss

Comments:

e) Number of customers

Comments:

f) State what Units you are using (e.g. £ sterling?)

Comments:

4. Did your business grow in the last financial year?

Yes

No

5. What, if any, are the barriers to growing your business?

Comments:

6. What are the major challenges you face in investing in your business and their resultant impact?

Comments:

7. In your view, are there any behaviours in the grocery supply chain that are unhelpful but not covered by the Code, either because they are new behaviours not identified in the Code or because the behaviours are affecting businesses who are not direct suppliers to the grocery retailers?

Comments:

8. What impact do these behaviours have on your business and on consumers?

Comments:

9. Have you ever challenged these behaviours?

Yes

No

If yes, how?

If no, did anything stop you from challenging them?

10. Have you ever sought external advice/support in dealing with these behaviours?

Yes

No

If yes, who did you approach and what support did you receive?

If no, did anything stop you?

11. What are the top two or three priorities in the groceries supply chain that you feel will benefit your business most if addressed?

Comments:

12. What steps do you think are needed to address these priorities that are not now being taken?

Comments:

13. Are there any non-legislative steps that can be taken?

Comments:

14. What do you perceive would be the impact of expanding the GCA remit?

Comments:

a) Could these be achieved in a less regulatory way?

Comments:

b) What impact do you think this will have on consumers?

Comments:

15. Are there additional issues you would like to bring to the attention of the Call for Evidence?

Comments:

Questions relevant to Trade Associations

- 1. Do you have any evidence of the number of entries of new businesses into the different parts of the grocery supply chain?**

Comments:

- 2. Do you have any evidence of the market shares of different businesses in the different parts of the supply chain?**

Comments:

- 3. From your perspective what are the most significant challenges in the grocery supply chain? Can you prioritise these in order of impact?**

Comments:

- 4. Do your members ever approach you for support on these issues? What support do you provide? If none why do you not provide any support?**

Comments:

- 5. What changes, if any, do you think are needed to the grocery supply chain to ensure fair practice, whilst ensuring that there are no costs to consumers over the long term?**

Comments:

- 6. What impact would these changes have on the competitiveness of the grocery sector?**

Comments:

- 7. Can these be achieved in a non-legislative way?**

Comments:

8. What do you perceive is the impact of expanding the GCA remit on your members and their consumers?

Comments:

9. Are there additional issues you would like to bring to the attention of the Call for Evidence?

Comments:

Annex D: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BEIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1661

Email: angela.rabess@beis.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see '[Help with queries](#)').



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