# Terms of Reference

## Introduction

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) 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.

### 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[[1]](#footnote-1);

(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.

### 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 the undertaking of Reviews of Public Bodies[[2]](#footnote-2).

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.

1. 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. [↑](#footnote-ref-1)
2. <https://www.gov.uk/government/publications/public-bodies-review-programme/guidance-on-the-undertaking-of-reviews-of-public-bodies>, see paragraph 16. [↑](#footnote-ref-2)