

EXPLANATORY MEMORANDUM TO
THE CONSUMER RIGHTS ACT 2015 (COMMENCEMENT No. 3, TRANSITIONAL
PROVISIONS, SAVINGS AND CONSEQUENTIAL AMENDMENTS) ORDER 2015

2015 No. 1630 (C. 94)

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order commences (to the extent that they are not already in force) Parts 1, 2 and Chapters 1 and 2 of Part 3 of the Consumer Rights Act 2015 ('the 2015 Act') as well as Schedules 1 to 8 to the 2015 Act. It also makes transitional and savings provisions as well as amendments to secondary legislation consequent to the 2015 Act coming into force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2015 Act will bring together consumers' and businesses' rights and obligations and the investigatory powers of consumer law enforcers which are currently found in a number of pieces of secondary legislation. This will simplify the legislative framework for businesses and consumers which is considered as burdensome and confusing.

4.2 To the extent that they are not already in force, Article 3 of the Order commences Part 1 (apart from Chapter 4 on services, so far as consumer transport services in the rail, maritime and aviation sectors are concerned), Part 2 and Chapters 1 and 2 of Part 3 of the 2015 Act alongside Schedules 1 to 8 on 1 October 2015. These Parts of and Schedules to the 2015 Act consolidate consumers' rights in relation to goods, digital content, services and unfair terms in consumer contracts as well as the investigatory powers of consumer law enforcers. Part 3 further makes amendments to the Communications Act 2003 to clarify the penalties that can be imposed in relation to contraventions of the code regulating premium rate services and introduces provisions for private actions in competition law matters.

4.3 Article 4 provides for a later commencement date of 6th April 2016 with respect to Part 1 Chapter 4 and certain provisions in Schedule 4 which amend the Unfair Contract Terms Act 1977, in relation to consumer transport services in the rail, aviation and maritime sectors.

4.4 Articles 6 to 8 of and Schedules 1 to 2 to the Order make transitional and savings provisions as well as consequential amendments to secondary legislation in relation to the coming into force of these provisions of the 2015 Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 UK consumers spend £90 billion a month¹. However, UK consumer law is unnecessarily complex, ambiguous in places and has not kept up with technological developments. The Government consulted extensively on reforming consumer law, culminating in 2012 with a number of formal consultations. Responses to these consultations indicated that there was broad support for the reforms from business and consumer stakeholders.

7.2 In June 2013, the Government published its response to these consultations which proposed a simple, modern framework of consumer rights. A copy of the Government's response and accompanying impact assessments can be viewed here: <https://www.gov.uk/government/publications/consumer-rights-bill>. A draft Consumer Rights Bill was published alongside the Government's response which underwent pre-legislative scrutiny in late 2013. In January 2014, the Government published a statement on Policy Reform and Responses to Pre-Legislative Scrutiny.

7.3 On 23 January 2014 the Consumer Rights Bill was introduced into Parliament and it gained Royal Assent on 26 March 2015.

7.4 In order to simplify consumer law, the 2015 Act consolidates various provisions in existing legislation. These include provisions in the Sales of Goods Act 1979 and the Unfair Contract Terms Act 1977, insofar as they relate to business-to-consumer contracts, and the Unfair Terms in Consumer Contracts Regulations 1999. These provisions in existing legislation will not apply to business-to-consumer contracts entered into once the 2015 Act is in force.

7.5 The majority of provisions of the 2015 Act will commence on 1 October 2015. The later commencement date of 6 April 2016 for Part 1, Chapter 4 and certain provisions in Schedule 4 which amend the Unfair Contract Terms Act 1977 in relation to a contract

¹ Household Final Consumption Expenditure (HHFCE) for the UK. <http://www.ons.gov.uk/ons/rel/consumer-trends/consumer-trends/index.html>

to supply a consumer transport service in the rail, aviation and maritime sectors will enable the Department for Transport to consult widely with industry and other interested parties on a possible exemption enabling transport providers in these sectors to continue to offer compensation for delays and cancellations based on their sector specific schemes rather than the 2015 Act. Consultation will take place in the autumn.

7.6 Part 3 and Schedule 5 to the 2015 Act sets out the investigatory powers of public enforcers of consumer law, such as local authority Trading Standards Services, in one place so that these powers are more transparent. Adding the requirement for these enforcers to give two days' written notice will reduce the impact of burdensome inspections on compliant businesses.

7.7 [Part 3, chapter 1 section 80 of] the 2015 Act clarifies the penalties that the regulator of premium rate services can impose on non-compliant and rogue operators. Under the framework set out in sections 120 to 123 of the Communications Act 2003, providers of premium rate services must comply with the code published by the regulator, PhonepayPlus, and approved by Ofcom. For example, the Code requires clear and accurate pricing information, honest advertising, and appropriate and targeted promotions. The 2015 Act amends the Communications Act 2003 to make it clear that the regulator can impose the maximum penalty of £250,000 in respect of each contravention of the code, where it is appropriate and proportionate to do so. Premium rate services are a form of micro-payment for content, data and value added services charged to a telephone bill. They include services such as directory inquiries, business information lines, voting in TV and radio competitions and making charity donations by text.

7.8 Alongside the 2015 Act, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the Regulations) implement the Consumer Rights Directive (2011/83/EU). These regulations ensure that consumers and traders are clear about the bargain they are making in three main areas: information which traders should provide to consumers; cancellation rights and responsibilities; and measures to prevent hidden costs. The Government's response to the consultation on the draft regulations is available at:
<https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rightsdirective-2011-83-eu>.

7.9 The consumer law reforms constitute a fundamental reform of UK consumer rights and are predicted to boost the economy by £4 billion over the next decade. This will contribute to markets working more effectively, thereby driving economic growth.

8. Consultation outcome

8.1 Details of the consultation process for the consumer law reforms are given in paragraph 7.1. No formal consultation has taken place on the provisions included in this Order.

9. Guidance

9.1 Guidance has been produced for the 2015 Act which can be viewed here: <http://www.businesscompanion.info/>. Guidance was also produced for the Regulations which can be viewed at: <https://www.gov.uk/government/policies/providingbetter-information-and-protection-for-consumers/supporting-pages/implementing-theconsumer-rights-directive-2011-83-eu>. No guidance is required for the consequential amendments included in this Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. The Order simply commences Parts of the 2015 Act and makes transitional provisions and consequential amendments in consequence of the 2015 Act.

10.2 The impact on the public sector is nil. The Order simply commences Parts of the 2015 Act and makes transitional provisions and consequential amendments in consequence of the 2015 Act the 2015 Act.

10.3 An Impact Assessment has not been prepared for this Order. Impact assessments completed for the Consumer Rights Bill can be found at the website: <https://www.gov.uk/government/publications/consumer-rights-bill>.

11. Regulating small business

11.1 This Order applies to small business to the extent that it will affect the regulatory framework for those that transact with consumers, however it will not impose any new or increased burden upon small businesses.

12. Monitoring & review

12.1 As the Order commences Parts of the 2015 Act, makes transitional provisions and makes consequential amendments in consequence of the 2015 Act, the Department does not consider it appropriate to undertake any future reviews of the Order itself. However the 2015 Act will remain subject to regular reviews to ensure it is operating efficiently and providing consumers and businesses with appropriate rights and obligations.

13. Contact

Suzanne Redding at the Department for Business, Innovation and Skills Tel: 020 7215 0439 or email suzanne.redding@bis.gsi.gov.uk can answer any queries regarding this instrument.