

**EXPLANATORY MEMORANDUM TO  
THE CONSUMER CONTRACTS (INFORMATION, CANCELLATION AND  
ADDITIONAL CHARGES) REGULATIONS 2013**

**2013 No. 3134**

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

**2. Purpose of the instrument**

2.1 This instrument implements most provisions of the EU Consumer Rights Directive (the remaining provisions are implemented in the Consumer Rights (Payment Surcharges) Regulations 2012 and the Enterprise Act 2002 (Part 8 EU Infringements) Order 2013). It will 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. Together with the draft Consumer Rights Bill, these reforms constitute a fundamental reform of UK consumer rights, which will contribute to markets working more effectively, thereby driving economic growth.

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

3.1 None

**4. Legislative Context**

4.1 The instrument is being made to implement the UK's obligations under the EU Consumer Rights Directive (2001/83/EU). A Transposition Note is attached. In general, a copy-out approach to transposition has been taken.

4.2 The Consumer Rights Directive was considered by the House of Commons European Scrutiny Committee on 5 November 2008, (published in 38<sup>th</sup> Report HC 16-xxxiv 2007-08), in January 2011 (published in 13<sup>th</sup> Report HC 428-xii 2010-12) and in June 2011 (published in 34<sup>th</sup> Report HC 428-xxx 2010-12).

4.3 The Lords European Union Committee Sub-Committee G (Social policy and consumer affairs) published its report on the Directive on 15<sup>th</sup> July 2009 (*EU Consumer Rights Directive: getting it right* 18<sup>th</sup> Report HL Paper 126 2008-09). The Report was debated in the House of Lords on 23 October 2009, (HL Debates Vol 713 c923-950).

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

The instrument is subject to negative resolution procedure, but does make some consequential amendments to primary legislation. The instrument is considered to be compatible with the Convention rights.

## 7. Policy background

- *What is being done and why*

7.1 Confident consumers are vital to building a stronger economy. High levels of consumer confidence encourage consumers to experiment and shop around which supports new businesses, boosts competition and creates growth.

7.2 UK businesses and consumers are not fully reaping the benefits of the Single Market. Fragmentation of national laws regulating consumer transactions across the EU has meant that business, in particular small and medium enterprises, have been more reluctant to explore export opportunities offered in trading across EU borders. This reluctance primarily stems from the additional costs of compliance when trading cross-border. Consumers are also reluctant to take part in cross-border shopping, demonstrating lower levels of confidence, thus diminishing their access to wider choice and lower prices.

7.3 The aim of the Consumer Rights Directive (CRD) is to encourage growth and consumer confidence through the harmonisation of rules in a limited number of areas so that traders and consumers face only one set of requirements wherever they sell or buy in the EU. These areas are:

- Information to be provided when consumers buy goods and services. The Directive sets out what information must be provided and some rules on how and when it must be given.
- Cancellation right and responsibilities for both traders and consumers where goods and services are purchased at a distance or off-premises.
- Clarification of delivery dates, and the passing of risk where goods are delivered.
- Prohibition of certain practices which can lead to hidden costs.

7.4 The majority of provisions contained in the CRD are maximum harmonisation measures, minimising the degree of deviations that Member States can introduce when transposing the regulations into national legislation. Implementation must be through regulation, and options regarding implementation are limited. In the knowledge that flexibility in implementation would be extremely limited once agreed, the UK Government consulted widely during negotiations and worked hard to ensure that the final Directive was shaped so as to bring clear benefits to both business and consumers in the UK.

## 8. Consultation outcome

8.1 As well as ongoing consultation across business and consumer groups, two formal consultations have been conducted. The first, in November 2008, gathered views on the European Commission's proposal for a Consumer Rights Directive. This informed the UK Government's views throughout negotiations to ensure that the Directive agreed provided a fair and effective framework for business while maintaining high levels of consumer protection. In August 2012 BIS ran a further consultation seeking views on the scope of the Directive, and those provisions in the Directive where the Government had options with regard to implementation. Comments were also sought on whether there were aspects or drafting in the Directive where stakeholders would welcome further clarity. 66 responses were received.

- 8.2 The Government then sought detailed views on the draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013, between 6 August and 11 October 2013. A total of 35 responses were received, including 22 representing business views, seven representing consumer views, and six representing other groups, including local authorities, legal representatives and individuals. In addition, a number of stakeholder meetings were held to discuss the draft regulations, including a roundtable on the provision relating to contacting a trader by telephone, attended by business and consumer groups, regulators and representatives from the telecoms industry.
- 8.3 The Government is very grateful to everyone who has taken the time to contribute. The information and comments received have been used to amend and finalise this instrument. A summary of views received, together with a short explanation of the Government's response to the comments received, is available at <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>.

## **9. Guidance**

9.1 Guidance is available at <https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu>. The Government is continuing to engage stakeholders, including consumer groups, Trading Standards, and business representatives to ensure that consumers and businesses are aware of their rights and responsibilities under this instrument. The Government will also continue to pursue an innovative digital communications strategy, using social media to target small businesses in particular.

## **10. Impact**

10.1 The Impact Assessment for the instrument, which has been validated as fit for purpose by the Regulatory Policy Committee, measures the impact as a net "IN" of £1.3m per year/ The wider net economic impact of the instrument is estimated to benefit UK businesses by £2.6bn (Net Present Value over 10 years) through standardised rules for business selling across the EU.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business. There is no flexibility to vary the implementation of the Directive according to the size of firms.

11.2 Any exemption would be counter-productive, and even detrimental to micro businesses, as consumers would be discouraged from buying from them. Consumers would be encouraged to stick to large businesses and would be less likely to try out new suppliers, hindering innovation and growth and creating obstacles to market entry. There was strong and widespread support in consultation responses for applying the consumer protection regime (including the measures set out in this instrument) to all

businesses, regardless of size. There was no support for a micro or small business exemption.

## **12. Monitoring & review**

12.1 The Impact Assessment includes a commitment to review the changes 3-5 years after implementation. The review will assess:

- Whether more businesses are involved in cross border trade
- Whether the policy changes are meeting policy objectives
- Whether policy objectives are in practice feeding through to increased consumer empowerment.

The review will evaluate the effectiveness of the changes within this Impact Assessment. The review will incorporate stakeholders' views that will include consumer groups, business groups, Local Authority Trading Standards, the Consumer and Markets Authority and the Citizens Advice services. Criteria for success include increased consumer empowerment, reduction in consumer detriment, and reduced disputes including court cases.

## **13. Contact**

Stella D'Italia (0207 215 6056) and Ruth Henrywood (0207 215 5552) at the Department for Business, Innovation and Skills, email: [consumerbill@bis.gsi.gov.uk](mailto:consumerbill@bis.gsi.gov.uk) can answer any queries regarding the instrument.