

**EXPLANATORY MEMORANDUM TO THE
ENTERPRISE ACT 2002 (PART 8 COMMUNITY INFRINGEMENTS
SPECIFIED UK LAWS) (AMENDMENT) ORDER 2005**

2005 No. 2418

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 (2003/1374) lists the UK legislation implementing Community Directives which may be enforced under Part 8 of the Enterprise Act 2002. The Order lists Part V of the Telecommunications (Data Protection and Privacy) Regulations 1999 (which make provisions about the use of telecommunications services for direct marketing purposes) as implementing article 10 of Directive 97/7/EC on the protection of consumers in respect of distance contracts.

2.2 The Telecommunications (Data Protection and Privacy) Regulations have been revoked and replaced by the Privacy and Electronic Communications (EC Directive) Regulations 2003. The Order to which this memorandum relates therefore replaces the reference to Part V of the Telecommunications (Data Protection and Privacy) Regulations 1999 with a reference to Regulations 19 to 24 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 not including their application to persons who are not consumers (use of telecommunications services for direct marketing services).

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

3.1 None.

4. Legislative background

4.1 The Order is made under section 212(3) and (6) of the Enterprise Act 2002.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy Background

7.1 The Enterprise Act 2002 received Royal Assent on 7 November 2002. The consumer provisions including Part 8 came into force on 20 June 2003. The EA02 includes a range of measures to strengthen the UK's competition and consumer law framework.

7.2 Part 8 replaced Part III of the Fair Trading Act 1973 and the Stop Now Orders (EC Directive) Regulations 2001 which originally implemented the Directive 98/27/EC on injunctions to protect consumers (the Injunctions Directive). This Directive requires Member States to provide for injunctive orders to be obtained against businesses which breach the provisions of the Directives listed in the Injunctions Directive where such breaches harm the collective interests of consumers. The Order here being amended lists the UK legislation which implements the listed Directives. Such breaches are known as 'Community infringements'.

7.3 One of the Directives listed in the Injunctions Directive is Directive 97/77/EC on the protection of consumers in respect of distance contracts. Article 10 of that Directive is listed in the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 as being implemented by Part V of the Telecommunications (Data Protection and Privacy) Regulations 1999. Those Regulations have been replaced by the Privacy and Electronic Communications (EC Directive) Regulations 2003. This Order consequently replaces the reference to Part V the 1999 Regulations with a reference to the relevant part of the 2003 Regulations.

7.4 We consider that it was possible for an enforcer to rely on section 17(2)(a) of the Interpretation Act 1978 (repeal and re-enactment) to enforce the relevant provisions of the new Regulations without amending the Communities Infringement Order. However making the amendment will make the enforcement of the relevant provisions easier and more transparent.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

9.1 Re Mian at the Department of Trade and Industry. Tel: 020 7215 5432 or e-mail: re.mian@dti.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note for Directive 98/27/EC

This Transposition Note has been prepared by the Department of Trade and Industry and shows how the Department has implemented the reference in Directive 98/27/EC on injunctions for the protection of consumers' interests (the Injunctions Directive) to Directive 97/77/EC on the protection of consumers in respect of distance contracts (the Distance Selling Directive).

The Injunctions Directive is implemented by Part 8 of the Enterprise Act 2002 (so far as Part 8 relates to Community Infringements), Schedule 13 (listing the Directives and provisions of Directives required to be enforced under the Injunctions Directive) and The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 (2003/1374) (listing the UK legislation implementing the Directives and provisions of Directives listed in Schedule 13).

The Community Infringements Order specified the Consumer Protection (Distance Selling) Regulations 2000 (SI 2000/2334) as implementing the Distance Selling Directive with the exception of article 10. The Order listed Part V of the Telecommunications (Data Protection and Privacy) Regulations 1999 (1999/2093) as implementing article 10. These Regulations have been revoked and replaced by the Telecommunications (Data Protection and Privacy) Regulations 1999. This transposition note therefore relates only to the re-implementation of article 10 of the Distance Selling Directive as it relates to the Injunctions Directive.

The Department of Trade and Industry has lead responsibility for implementation of the Injunctions Directive.

Directive			
Directive 97/7/EC on injunctions for the protection of consumer's interests.			
Article	Objective	Transposition	Responsibility (Secretary of State if not specified)
Annex: the reference to Directive 97/7/EC	Protection of consumers in respect of use of telecommunications systems for direct marketing purposes	Article 2 of the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) (Amendment) Order 2005 amending the Enterprise Act 2002 (Part 8 Community Infringements Specified UK laws) Order 2003	