

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE ACT 2002 (EEA STATE) (AMENDMENT) REGULATIONS 2007

2007 No.528

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 This Regulation updates Part 8 of the Enterprise Act 2002 to ensure that all the current EU Member States fall within its scope. Part 8 of the Enterprise Act foresees UK enforcers taking action on behalf of foreign consumers and foreign enforcers taking action on behalf of their consumers to combat community infringements. The new text captures countries that have acceded to the EU since January 2004 (the “accession states”) and any future accessions.

3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Background

Transposition

4.1 This change is not explicitly required by any of the Community legislation which Part 8 implements. However it is necessary to make this amendment in order to enable UK bodies to comply with their obligations in relation to the accession states under the Injunctions Directive (as defined in section 235 of the 2002 Act) and to enable bodies in those states to exercise (in the UK) the rights they enjoy under the CPC Regulation (as defined in section 235A of the 2002 Act).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The SI is subject to negative resolution procedure but amends primary legislation. Ian McCartney, Minister for Trade, Investment and Foreign Affairs has made the following statement regarding human rights. “In my view the provision in the Enterprise Act 2002 (EEA State) (Amendment) Regulations 2007 is compatible with the Convention rights.”

7. Policy background

- 7.1 Part 8 of the Enterprise Act (2002) which came into force on 20 June 2003 implements (amongst other things) the Injunctions Directive (Directive 98/27/EC).
- 7.2 In the UK, the Enterprise Act 2002 provides enforcers with power to disclose information on consumer cases to overseas public enforcement bodies. It also gives our consumer protection regime a more international focus by providing that enforcement authorities can act in the interest of foreign consumers under certain circumstances.
- 7.3 The Regulation on Consumer Protection Co-operation (CPC) came into force on 29 December 2006. This Regulation was designed to eliminate barriers to, and gaps in, cross border enforcement through formalized co-operation with a network of public authorities (called ‘competent authorities’) on the enforcement of intra-Community laws that protect consumers’ interests (14 directives and a regulation listed in the annex to the Regulation).
- 7.4 It was through the implementation of the CPC Regulation that it came to the notice of officials that the current definition of EEA state was outdated and did not include any country that had acceded to the EU since January 2004.
- 7.5 Due to this outdated formulation, the current position is that the UK has not fully implemented the Injunctions Directive or the CPC Regulation. The proposed amendment addresses these lacunae. Any future accession countries will automatically be captured by the definition in Schedule 1 to the Interpretation Act which includes any country which is for the time being a Member State or a signatory to the EEA Agreement.

Consultation

- 7.5 There was wide consultation on both the Enterprise Act and the implementation of the CPC Regulation. A consultation is unnecessary for this small change.

8. Impact

- 8.1 Failure to make this amendment means;
- there is a significant gap in the UK’s consumer protection. Having identified this gap, if it were not addressed there is a significant risk to the reputation of the UK and of international embarrassment;
 - The UK would be unable to meet its international commitments under both the Injunctions Directive and the CPC Regulation;
 - Failure to enact the proposed change runs a risk of infraction proceedings from the Commission.
- 8.2 The amendment can be enacted with no cost to legitimate business. The only potential cost would be to business operating illegally in Romania, Bulgaria, Poland, Cyprus, Malta, Lithuania, Latvia, Estonia, Slovenia, Slovak Republic, Czech Republic and Hungary.

9. Contact

- 9.1 Duncan Lawson at the Department of Trade and Industry Tel: 0207 215 5465 or e-mail: Duncan.Lawson@dti.gov.uk can answer any queries regarding the instrument.

