

**EXPLANATORY MEMORANDUM TO**  
**THE CONSUMER CONTRACTS (AMENDMENT) REGULATIONS 2015**

**2015 No. 1629**

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends and revokes provisions of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the “CCRs”) in consequence of the Consumer Rights Act 2015 (the “CRA”), where the Act re-implements certain obligations of the Directive which is transposed by the CCRs.

2.2 This instrument also clarifies the purpose of an exclusion in regulation 6(1)(a) of the CCRs for gambling contracts, and makes minor amendments, including an amendment to paragraph numbering in another instrument; the Consumer Protection from Unfair Trading Regulations 2008.

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

3.1 *Section 105 Deregulation Act 2015- Combining different forms of subordinate legislation*

This instrument relies on section 105 Deregulation Act 2015 to make a single instrument addressing amendments to the CCRs, rather than two separate instruments each making a relatively small number of changes. Section 96 CRA, the power to make provision in consequence of the CRA, is an order-making power; whereas amendments to the CCRs under section 2(2) European Communities Act 1972 (and section 14 Interpretation Act 1978) should be made in regulations. In accordance with the practice agreed between the Statutory Instruments Hub and Joint Committee legal advisors, section 105 Deregulation Act has not been cited in the preamble to the instrument.

3.2 *Minor corrections*

Regulations 7 and 9 of this instrument correct cross-referencing errors. The Department has considered the appropriateness of correcting these in an amending instrument rather than a correction slip, and considers this is necessary. The Department has consulted the S.I. Registrar, who considered that it would not be appropriate to rectify the two cross-reference errors by means of a correction slip on the grounds that the required correction in each instance is not obvious.

### *3.3 Free issue procedure*

After considering the matter, the Department has decided not to apply the free issue procedure in relation to this instrument. This is because the majority of the provisions are new amendments which constitute the more significant provisions of this instrument. As set out in paragraph 3.4.13 of Statutory Instrument Practice, the Department has consulted the S.I. Registrar who considered that based on these reasons the Department has a case not to apply the free issue procedure in this instance.

### *3.4 No review provision*

This instrument contains no regulation obliging the Secretary of State to carry out a review of the instrument. This is because this instrument is an amending instrument and the CCRs, which it amends, contain a review provision in regulation 3 of the CCRs.

## **4. Legislative Context**

4.1 This instrument amends the CCRs, which implemented the Consumer Rights Directive (2011/83/EU, referred to in this Explanatory Memorandum as the “Directive”) in the UK. The CCRs ensure that consumers and traders are clear about the contract they are making in three main areas: information which traders should provide to consumers; cancellation rights and responsibilities; and measures to prevent hidden costs.

4.2 The CCRs form part of a fundamental reform of UK consumer law, together with the CRA and the Consumer Protection from Unfair Trading (Amendment) Regulations 2014. Those Regulations introduced a private right of redress for consumers who have been victims of misleading or aggressive practices, under the Consumer Protection from Unfair Trading Regulations 2008. The CRA brings together key consumer rights and the investigatory powers of consumer law enforcers, many of which are currently found in a number of pieces of legislation. This will help simplify the legislative framework for businesses and consumers which is considered as burdensome and confusing. The CRA also updates and modernises key consumer rights, for example by introducing protections for consumers buying digital content.

## **5. Territorial Extent and Application**

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**

### *Revocation/Amendment of provisions of the CCRs*

7.1. The CRA sets out key rights and remedies of a consumer when they contract with a trader to buy goods, services or digital content. These include provisions derived from the Directive regarding transfer of risk and requirements around delivery time for sales of goods. The CRA makes clear that various protections form part of the contract between the trader and the consumer. To provide coherence, the CRA also specifies the contractual status of certain pre-contract information which traders are required to provide (the requirement to provide the information is set out in the CCRs, and derives from the Directive).

7.2 Provisions regarding delivery, risk and the contractual status of pre-contract information were initially transposed in the CCRs in order to transpose the Directive on time. To avoid duplication, this instrument now revokes and amends those provisions of the CCRs.

7.3 In respect of pre-contract information, regulations 9(3) and (4), 10(5) and (6) and 13(6) and (7) of the CCRs say that pre-contract information provided by the trader to the consumer forms part of the contract and requires express agreement to be varied. This instrument revokes these provisions because equivalents have been enacted in sections 11(4)-(5), 12, 36(3)-(4), 37 and 50(3)-(4) of the CRA.

7.4 However, the equivalent provisions in the CRA do not address contracts for free digital content. For this reason regulations 9, 10 and 13 of the CCRs are amended by this instrument to reflect that pre-contract information in respect of free digital provided by the trader to the consumer forms part of the contract and requires express agreement to be varied. For all other contracts the requirement that pre-contract information forms part of the contract is set out in the CRA.

### *Clarity of the Gambling Exclusion in the CCRs*

7.5 The Directive, and the CCRs which implement the Directive, exclude gambling from their scope. The gambling exclusion in the CCRs (regulation 6(1)(a)) refers to gambling within the Gambling Act 2005. As the National Lottery is treated as gambling for some sections of that Act but not others, this instrument clarifies that contracts to play the National Lottery are excluded (as well as other forms of gambling).

### *Amendment to regulation 34 of the CCRs*

7.6 This instrument amends a cross-referencing error at the end of regulation 34(6) of the CCRs (reimbursement by trader in the event of withdrawal or cancellation).

## *Amendment to the Consumer Protection from Unfair Trading Regulations 2008*

7.7 This is a minor amendment to address a cross-referencing error. The paragraph number in regulation 27I(6) of the Consumer Protection from Unfair Trading Regulations 2008 (how does the right to a discount work?), should read “paragraph (4)” not paragraph (5).

### **8. Consultation outcome**

8.1 No formal consultation has taken place on the consequential amendments included in this instrument.

8.2 However in 2008 the Government sought views on the Commission’s proposal for the Directive and then in 2012 consulted on the scope of the Directive and those provisions in the Directive where there were options with regard to implementation. The Government then in 2013 sought detailed views on the draft CCRs, which were to implement the Directive. In addition a number of stakeholder meetings were held to discuss the draft CCRs. The information and comments received were used to finalise the CCRs.

8.3 The Government also consulted extensively on reforming consumer law, culminating in 2012 with a number of formal consultations, including on clarifying the law in relation to the supply of goods, services and digital content. Responses to these consultations indicated that there was broad support for the reforms from business and consumer stakeholders. In June 2013, the Government published its response to these consultations which proposed a simple, modern framework of consumer rights. The majority of the consumer rights reforms were enacted in the CRA.

### **9. Guidance**

9.1 No guidance is being issued on the amendments included in this instrument. However guidance has been produced for the CCRs which can be viewed here: <http://www.businesscompanion.info/en/in-depth-guides>

### **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil. The instrument simply updates the CCRs to reflect the CRA and clarify an existing exclusion.

10.2 The impact on the public sector is nil. The instrument simply updates the CCRs to reflect the CRA and clarify an existing exclusion.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 These Regulations apply to small business to the extent that they will affect the regulatory framework for those that transact with consumers, however they will not impose any new or increased burden upon small businesses.

## **12. Monitoring & review**

12.1 As these Regulations make amendments to the CCRs, which are already subject to a review requirement (in regulation 3 of the CCRs), the Department does not intend to undertake any future reviews of these Regulations.

## **13. Contact**

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