EXPLANATORY MEMORANDUM TO

THE CONSUMER RIGHTS (PAYMENT SURCHARGES) REGULATIONS 2012

2012 No. 3110

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 The Consumer Rights (Payment Surcharges) Regulations implement Article 19 of the EU Consumer Rights Directive[1] into UK law. The Regulations prohibit traders from charging consumers 'above-cost' payment surcharges. The Regulations implement the ban earlier than the remaining provisions of the Directive because evidence suggests that excessive payment surcharges are particularly detrimental to consumers and have a damaging effect on competition. The Regulations also give certain enforcers the power to apply for injunctions against traders that they consider are acting in breach of the regulations.

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

3.1 None

4. Legislative Context

4.1 The Consumer Rights (Payment Surcharges) Regulations implement Article 19 of the Consumer Rights Directive. The prohibition provided for in the Directive is copied out in regulation 4.

4.2 The scope of the Regulations largely follows the scope of the Consumer Rights Directive. However, contracts for package travel are covered by the ban in the Regulations, although they are not covered by the Directive.

4.3 The Enterprise Act 2002 (Part 8 Domestic Infringements) Order is laid in draft at the same time as these Regulations. If approved by a resolution of each House of Parliament and made, that Order will provide that enforcement procedures under Part 8 of the Enterprise Act 2002 will also apply in relation to a breach of these Regulations. It will

[1] Directive 2011/83/EU of the European Parliament and of the Council on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64.).

also amend regulation 7(4) of these Regulations, so that enforcement authorities may take account of any enforcement action taken under Part 8 of the 2002 Act when considering complaints about surcharges. That provision was not included in the Regulations when made, because the possibility of any enforcement action under the 2002 Act is contingent on Parliament approving the Order.

4.4 A transposition note will be published alongside the remaining provisions implementing the Consumer Rights Directive when these are made and laid before Parliament in 2013.

5. Territorial Extent and Application

5.1 This instrument applies to the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Consumer Rights (Payment Surcharges) Regulations 2012 prohibit payment surcharges being imposed on consumers where the surcharge exceeds the cost to the trader of using that means of payment. Payment surcharges are additional fees added to the price of a product or service when a consumer chooses to pay by a certain means of payment.

7.2 Excessive payment surcharges cause detriment to consumers in two ways. First, they can add a significant amount to the total cost of the transaction which consumers, particularly those purchasing online, may have no realistic way of avoiding.

7.3 Second, and particularly where consumers are not made aware of the payment surcharge at the same time as they are informed of the headline price, surcharges can make it more difficult for consumers to calculate the final price they will pay and compare that price with the price of competing products. Excessive payment surcharges are most common in certain industries where a large volume of transactions are completed online. In particular, complaints from consumers and consumer bodies have focussed on the passenger transport industry.

Consolidation

7.4 By December 2013, the remaining provisions of the Consumer Rights Directive will be implemented in UK legislation. It is intended that the provisions of the Consumer Rights (Payment Surcharges) Regulations will be consolidated in the instrument which implements the remainder of the Consumer Rights Directive.

8. Consultation outcome

8.1 A 6 week formal consultation was published on the 3rd September 2012. The consultation sought views on the timing of the implementation, which costs incurred by the trader should be allowed to be included in a payment surcharge, which sectors should be subject to the ban and issues surrounding enforcement of the Regulations.

8.2 Around 1000 consumers responded via the online survey, and a further 60 substantive responses were received from businesses, business representatives and consumer organisations. Virtually all consumers supported early implementation of the ban, and many businesses were also in favour of the Government's proposals.

9. Guidance

9.1 The Department for Business, Innovation and Skills will publish guidance to accompany the Regulations. The guidance will provide more information to traders on how to comply with the Regulations.

10. Impact

10.1 An Impact Assessment is attached to this memorandum.

10.2 The impact of the Regulations is expected to be small. Businesses that currently charge above cost payment surcharges may incur transitional costs if they need to adjust their pricing strategies to comply with the regulations. They may decide to compensate for lost payment surcharge revenue by increasing their headline price or other additional charges.

10.3 Consumers will be able to compare prices more easily, boosting competition in areas where payment surcharges are common.

11. Regulating small business

11.1 The instrument applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, exemptions from the prohibition on payment surcharges are provided for new businesses and micro-businesses (that is, businesses with fewer than 10 employees). Those exemptions expire on 13 June 2013, because the Consumer Rights Directive requires the prohibition to apply to all businesses within its scope from that date.

11.3 Small businesses were consulted as part of the formal consultation published on the 3rd September 2012. In light of this, the decision was taken to assist small businesses by providing the above exemptions.

12. Monitoring & review

12.1 The policy objectives are to increase price transparency, increasing consumers' ability to choose effectively between different products and services, and for payment surcharges to become more cost reflective, steering consumers to the most efficient payment method The intended effects are to remove barriers to effective competition both for the products and services being purchased as well as competition between payment methods.

12.2 The Department intends to review the impact of these Regulations and other provisions implementing the Consumer Rights Directive by 2016. The UK will also be able to contribute views to the Commission in the course of its review of the Directive in 2016.

13. Contact

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