**EXPLANATORY MEMORANDUM TO**

# THE DIGITAL MARKETS, COMPETITION AND CONSUMERS ACT 2024 (CMA CONSUMER ENFORCEMENT RULES) REGULATIONS 2025

**2025 No. 267**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

## 2. Declaration

2.1 Justin Madders, Minister for Employment Rights, Competition and Markets at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 David Marshall, Deputy Director for Consumer Policy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

3.1 Ian Meikle at the Department for Business and Trade Telephone: 07355 021903 or email: ian.meikle@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 The instrument approves procedural rules for the Competition and Markets Authority's ("CMA") new consumer law direct enforcement powers.

***Where does the legislation extend to, and apply?***

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland.

## 5. Policy Context

***What is being done and why?***

5.1 Part 3 of the Digital Markets, Competition and Consumers Act 2024 ("the 2024 Act") confers powers on the CMA to directly enforce infringements of core consumer protection laws listed in Schedule 16 of the 2024 Act. This means that, rather than having to seek enforcement through the court – as under the previous regime – the CMA is also empowered to make its own decision as to whether consumer law has been breached and what penalties, directions and remedies should be imposed.

5.2 Section 210 of the 2024 Act empowers the CMA to make procedural rules to govern the exercise of its direct enforcement powers ("the Rules"). Section 211 of the 2024 Act requires such rules to be approved by the Secretary of State by regulations. The Rules, approved by the Secretary of State are set out in the Schedule to this instrument.

5.3 The Rules govern how the CMA's investigation and decision-making process will function in consumer cases. Rules 1 and 2 clarify the interpretation of relevant terms and establish that the Rules apply to CMA investigations or enforcement actions under the 2024 Act relating to infringements of relevant consumer law. Rule 3 sets out procedures for a respondent to an enforcement action making written and oral representations. Rule 4 requires that the CMA set a time limit for responding to a requirement to substantiate a claim under s195 of the 2024 Act and confirms the CMA may determine a claim is inaccurate if evidence is not provided within that time. Rule 5 sets out the documents or information the CMA may withhold from a respondent that is inspecting its file and permits the CMA to make documents or information available in hard copy or electronically. Rule 6 establishes a framework for dealing with complaints by respondents to enforcement proceedings about procedural matters. Rule 7 sets out the conditions and procedures for reaching a settlement of enforcement proceedings. Rule 8 confirms that the CMA may publish a final infringement notice or online interface notice on its website. Rule 9 sets out the process for notifying and receiving representations from certain members of a corporate group who the CMA intends to bind to requirements of a notice under s. 200 of the 2024 Act. Rule 10 gives further detail on how provisions in the 2024 Act concerning time limits and the giving of notice will be applied by the CMA.

5.4 The intention of the Rules is to increase the predictability and accountability of the CMA's consumer law direct enforcement by setting out procedural aspects of the process that supplement the 2024 Act's framework. Further detail on the CMA's approach to enforcement is provided in the CMA's consumer law direct enforcement guidance (see below). In this way, enforcement subjects and other stakeholders can understand how the CMA will conduct enforcement cases.

***What was the previous policy, how is this different?***

5.5 Prior to the commencement of the 2024 Act, the CMA did not have consumer law direct enforcement powers. CMA consumer enforcement proceedings were brought through the courts and subject to the relevant court procedure rules. There are therefore no previous procedure rules.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 Part 3 of the 2024 Act replaces Part 8 of the Enterprise Act 2002 (the "2002 Act"). Under the 2002 Act, the CMA may only enforce civil breaches of consumer law through court proceedings. Chapter 3 of Part 3 of the 2024 Act sets out the updated court-based regime for civil enforcement of consumer law (this is not relevant to this instrument).

6.2 Chapter 4 of Part 3 of the 2024 Act provides a new direct enforcement regime for the CMA in respect of specified consumer laws (listed in Schedule 16 of the 2024 Act), giving the CMA powers that are analogous to those of the civil courts. The 2024 Act does not provide all the detail related to the procedural administration of the CMA's

direct enforcement regime. Instead, it enables the CMA to set that out in rules and guidance (sections 210 and 212).

6.3 Section 211 of the 2024 Act sets out procedural requirements for making rules under section 210. In particular, the CMA may not bring the rules into operation until they have been approved by regulations made by the Secretary of State. This instrument approves the rules set out in its Schedule.

***Why was this approach taken to change the law?***

6.4 This instrument does not change the law. This instrument is required to bring procedure rules made by the CMA under section 210 of the 2024 Act into operation, pursuant to section 211 of the 2024 Act.

6.5 The requirement to approve CMA procedural rules for consumer law enforcement is analogous to the power in section 51 of the Competition Act 1998 in respect of CMA's competition enforcement regime. This instrument follows the example of the exercise of that power under the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 ("the Competition Rules") by approving the rules as set out in a Schedule. Further, to the extent relevant in the context of consumer enforcement policy, the Rules adopt analogous processes to the Competition Rules.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 The policy of granting the CMA consumer law direct enforcement powers was consulted on publicly, and the response to that consultation published in Reforming competition and consumer policy.[1] Respondents were broadly supportive of granting the CMA direct enforcement powers. Some respondents conditioned their support for this step on adequate safeguards and a requirement for due process.

7.2 The proposed rules were publicly consulted on by the CMA[2] - alongside guidance (see below) - between 31 July and 18 September 2024 and the response to that consultation will be published on the CMA's website before the Rules come into operation. Specific questions were asked on significant aspects of the CMA's proposed processes, including the following matters addressed in the rules: written representations; oral hearings; settlement; and procedural complaints. Respondents were also invited to and comments were also invited on any other aspect of the rules or guidance they wished to.

7.3 20 responses were received from legal and business firms and groups, consumer groups and consumer enforcers. They were generally supportive of the rules and guidance. There were objections in the following three areas: 5 respondents argued for more prescriptive rules on how the CMA should notify and allow representations from interconnected bodies corporate ("IBC"). Three respondents argued the rule on procedural complaints should establish a full-time procedural officer. 7 respondents argued for a rule preventing the Senior Responsible Officer for a CMA investigation from participating in the making of a final enforcement decision.

7.4 The government considers that there are adequate procedural safeguards in those three areas and supports the CMA's decision – having carefully considered consultation responses – to preserve its original approach.

[1] https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy
[2] https://www.gov.uk/government/consultations/direct-consumer-enforcement-guidance-and-rules

## 8. Applicable Guidance

8.1 This instrument does not implement or require guidance. However, pursuant to section 212 of the 2024 Act, the CMA is obliged to produce guidance explaining its general approach to the carrying out of its direct enforcement functions. This guidance complements the procedure rules by providing further detail on matters covered by the rules and by explaining the CMA's approach in areas that are not.

8.2 This guidance has been approved by the Secretary of State (in accordance with section 212 of the 2024 Act) and can be found on the CMA's website.

# Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the procedural rules do not impose significant costs or impacts upon compliant businesses. The impact of the grant of consumer law direct enforcement powers to the CMA was considered in the impact assessment for the 2024 Act.[3]

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the procedure rules do not impose regulatory obligations, require familiarisation or otherwise cause costs to be incurred. Impacts on non-compliant businesses do not fall to be considered.

9.3 The legislation does not significantly impact small or micro businesses, because the procedure rules do not impose regulatory obligations, require familiarisation or otherwise cause costs to be incurred. Impacts on non-compliant businesses do not fall to be considered.

9.4 There is no, or no significant, impact on the public sector. The only public sector body affected by the procedure rules is the CMA, and the procedure rules do not create significant CMA impacts beyond those already assessed in the impact assessment for the 2024 Act.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The government has no specific plans to conduct a post-implementation review of this instrument or the reforms to which it relates, but will continue to monitor the effectiveness of CMA consumer enforcement, including how it uses its new direct enforcement powers. Section 201 of the 2024 Act gives the Secretary of State the power to require the CMA to prepare a report on aspects of its direct enforcement powers, and section 211 empowers the Secretary of State to vary or revoke rules or direct the CMA so to do.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Justin Madders, Minister for Employment Rights, Competition and Markets has made the following statement:

[3] https://publications.parliament.uk/pa/bills/cbill/58-03/0294/ImpactAssessmentSummary.pdf

"Having regard to the economic impact of the Digital Markets, Competition and Consumers Act 2024 (CMA Consumer Enforcement Rules) Regulations 2025, a statutory review would be disproportionate."

## Part Three: Statements and Matters of Particular Interest to Parliament

### 11. Matters of special interest to Parliament

11.1 None.

### 12. European Convention on Human Rights

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

### 13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").