EXPLANATORY MEMORANDUM TO

THE CONSUMER RIGHTS (ENFORCEMENT AND AMENDMENTS) ORDER 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Consumer Rights (Enforcement and Amendments) Order 2016 ("the Order") amends primary legislation relating to enforcement of consumer law consequent to the Consumer Rights Act 2015 ("the 2015 Act"), and makes amendments to Schedule 5 to the 2015 Act on enforcement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 The 2015 Act brings together consumers' and businesses' rights and obligations and the investigatory powers of consumer law enforcers. This simplifies the legislative framework for businesses, consumers and enforcers which was considered as burdensome and confusing.

4.2 When the bulk of the 2015 Act was brought into force on 1st October 2015, commencement of certain provisions ("the deferred provisions") was deferred until 6th April 2016 by the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) Order 2015 (SI 2015/1630). The deferred provisions are: in Part 1, the Services Chapter and certain parts of Chapter 5 (which contains general and supplementary provisions), and certain parts of Schedule 4 which amended the Unfair Contract Terms Act 1977 as a consequence of the provisions in the Services Chapter and Chapter 5 of Part 1, in so far as they applied to the aviation, maritime and EU-licensed rail passenger sectors. In April 2016 commencement of these provisions of the 2015 Act was further deferred until 1st October 2016 by the Consumer Rights Act 2015 (Commencement No. 3, Transitional Provisions, Savings and Consequential Amendments) (Amendment) Order 2016 (SI 2016/484).

4.3 Article 3 and the Schedule to the Order make certain amendments to primary legislation in consequence of the effect of Schedule 5 (Investigatory powers etc) to the 2015 Act, together with Schedule 6 (Investigatory Powers: Consequential Amendments). The Schedule also makes other amendments to Schedule 5 to the 2015

Act, adding provisions which amend paragraph 10 so that it applies to The Tobacco and Related Products Regulations 2016 (S.I. 2016/507) and The Standardised Packaging of Tobacco Regulations 2015 (S.I. 2015/829). Finally, Schedule 5 is amended to add another item of "enforcer's legislation" to the table in paragraph 11 and, as a consequence, that legislation is itself amended.

5. Extent and Territorial Application

5.1 This instrument extends to the United Kingdom.

5.2 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 Nicola Blackwood MP, Parliamentary Under Secretary of State for Public Health and Innovation, has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Consumer Rights (Enforcement and Amendments) Order 2016 are compatible with the Convention rights.

7. Policy background

7.1 In order to simplify consumer law, the 2015 Act consolidates various provisions in existing legislation. These consumer law reforms constitute a fundamental reform of UK consumer rights and are predicted to boost the economy by £4 billion over the next decade. This will contribute to markets working more effectively, thereby driving economic growth.

What is being done and why

7.2 Schedule 5 to the 2015 Act sets out in one place the investigatory powers of public enforcers of consumer law ("domestic enforcers"), such as local authority Trading Standards Services, so that these powers are more transparent. The enforcers' powers now include a requirement for these enforcers to give two days' written notice for routine inspections. The powers and safeguards are designed so that, taken together, they provide a greater level of protection.

7.3 Schedule 5 also sets out the circumstances which are considered not to be routine inspections, such as where giving notice would defeat the purpose of the inspection.

7.4 This Order makes consequential changes so as to give effect to the enforcers' powers in the Weights and Measures (Northern Ireland) Order 1981.

7.5 Under the London Local Authorities Act 2007 ("the 2007 Act"), mail forwarding services are regulated, and London borough councils are empowered to enforce the regulations. This Order adds the 2007 Act to the list of "enforcer's legislation", thereby giving to London borough councils the investigatory powers under Schedule 5, and makes a consequential amendment to the 2007 Act.

7.6 The Order also amends paragraph 10 of Schedule 5 to the 2015 Act so as to apply the enforcement provisions in Part 3 and Schedule 5 to the Consumer Rights Act to The Tobacco and Related Products Regulations 2016 and The Standardised Packaging of Tobacco Regulations 2015.

Consolidation

7.7 None.

8. Consultation outcome

8.1 None.

9. Guidance

9.1 Guidance has been produced for the 2015 Act, which includes 'investigatory powers of consumer law enforcers'[1], which can be viewed here: http://www.businesscompanion.info/. No guidance is required for the consequential amendments included in this Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 The legislation will not impose any new or increased burdens on small businesses.

12. Monitoring & review

12.1 None.

13. Contact

13.1 Elaine Barley at the Department for Business, Energy and Industrial Strategy (telephone: 020 7215 0028 or email: Elaine.Barley@beis.gov.uk) can answer any queries regarding the Consumer Rights Act 2015.

[1] https://www.businesscompanion.info/sites/default/files/Trading%20standards%20visits%20and%20inspections_BIS_INVESTIGATORY_POWERS_GUIDANCE_OCT15.pdf