EXPLANATORY MEMORANDUM TO

THE ENTERPRISE ACT 2002 (PART 8 EU INFRINGMENTS) ORDER 2013

2013 No. 3168

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

The instrument relates to the implementation EU Consumer Rights Directive (2001/83/EU). The Directive is implemented by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and (in relation to article 19 of the Directive) the Consumer Rights (Payment Surcharges) Regulations 2012. This Order adds those regulations to the list of consumer protection measures that may be enforced within the framework of Part 8 of the Enterprise Act 2002. The Order is subject to the negative procedure.

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

None

4. Legislative Context

4.1 The instrument relates to the implementation EU Consumer Rights Directive (2001/83/EU). The Directive is implemented by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and (in relation to article 19 of the Directive) the Consumer Rights (Payment Surcharges) Regulations 2012. Separate explanatory memorandums have been prepared in relation to those instruments.

4.2 The Consumer Rights Directive requires that adequate and effective means exist in national law to ensure compliance with the provisions of the Directive. It also requires that the penalties laid down for breaches of the Directive are effective, proportionate and dissuasive.

4.3 Article 2 of this Order enables the enforcers listed in Part 8 of the Enterprise Act 2002 to apply to the courts for enforcement orders against traders that have engaged, are engaging in or are likely to engage in conduct which breaches the Regulations, if that conduct harms the collective interests of consumers in the United Kingdom. These powers will be available from 13th June 2014, which is the date that the Directive comes into force.

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

7.1 The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights (Payment Surcharges) Regulations 2012 place various obligations on traders in relation to the provision of information to consumers, rights to cancel and the taking and charging of payments.

7.2 This Order allows the enforcers specified under Part 8 of the Enterprise Act to take enforcement action in relation to breaches of these obligations.

8. Consultation outcome

8.1 As well as ongoing consultation across business and consumer groups, two formal consultations have been conducted. The first, in November 2008, gathered views on the European Commission's proposal for a Consumer Rights Directive. This informed the UK Government's views throughout negotiations to ensure that the Directive agreed provided a fair and effective framework for business while maintaining high levels of consumer protection. In August 2012 BIS ran a further consultation seeking views on the scope of the Directive, and those provisions in the Directive where the Government had options with regard to implementation. Comments were also sought on whether there were aspects or drafting in the Directive where stakeholders would welcome further clarity. 66 responses were received.

8.2 The Government then sought detailed views on the draft Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013, between 6 August and 11 October 2013. A total of 35 responses were received, including 22 representing business views, seven representing consumer views, and six representing other groups, including local authorities, legal representatives and individuals. In addition, a number of stakeholder meetings were held to discuss the draft regulations, including a roundtable on the provision relating to contacting a trader by telephone, attended by business and consumer groups, regulators and representatives from the telecoms industry.

8.3 The Government is very grateful to everyone who has taken the time to contribute. The information and comments received have been used to amend and finalise this instrument. A summary of views received, together with a short explanation of the Government's response to the comments received, is available at https://www.gov.uk/government/policies/providing-better-information-and-protection-for-consumers/supporting-pages/implementing-the-consumer-rights-directive-2011-83-eu

9. Guidance

The Department for Business, Innovation and Skills has published guidance to accompany the Consumer Rights (Payment Surcharges) Regulations 2012, and will be publishing further guidance to accompany the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

10. Impact

Impacts assessment which deals with the impact of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the

Consumer Rights (Payment Surcharges) Regulations 2012 are attached to the explanatory memorandums for those instruments.

11. Regulating small business

This instrument applies in relation to small business. For an explanation of the impact of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights (Payment Surcharges) Regulations 2012, please refer to the explanatory memorandums for those instruments

12. Monitoring & review

12.1 The aim of the Order is to provide for effective and proportionate enforcement of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Rights (Payment Surcharges) Regulations 2012 under the provisions of Part 8 of the Enterprise Act.

12.2 The Department intends to review the impact of the 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

Stella D'Italia (0207 215 6056 stella.ditalia@bis.gsi.gov.uk) and Ruth Henrywood (0207 215 5552 ruth.henrywood@bis.gsi.gov.uk) at the Department for Business, Innovation and Skills can answer any queries regarding the instrument.