

Draft Order laid before Parliament under sections 48(8) and 96(3) of, and paragraph 12(6) of Schedule 5 to, the Consumer Rights Act 2015, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. 000

CONSUMER PROTECTION

**The Consumer Rights (Rail Passenger Service
Exemption, Enforcement and Amendments) Order 2016**

Made - - - - 2016

Coming into force - - 1st October 2016

The Secretary of State makes this Order in exercise of the powers conferred by sections 48(5) and (6) and 96(1) and (2) of, and paragraph 12(1)(a) and (b) of Schedule 5, to the Consumer Rights Act 2015⁽¹⁾ (“the Act”).

In accordance with paragraph 12(2) of Schedule 5 to the Act, the Secretary of State thinks that on and after the changes made by the Schedule to this Order (where a power of entry in legislation other than the Act is replaced by a power of entry in the Act), the condition in paragraph 12(3) of Schedule 5, that the safeguards applicable to the new power of entry, taken together, provide a greater level of protection than any safeguards applicable to the old power of entry, is met.

In accordance with sections 48(8) and 96(3) of, and paragraph 12(6) of Schedule 5 to, the Act, a draft of this statutory instrument was laid before, and approved by a resolution of, each House of Parliament.

Citation and commencement

1. This Order may be cited as the Consumer Rights (Rail Passenger Service Exemption, Enforcement and Amendments) Order 2016 and comes into force on 1st October 2016.

Interpretation

2. In this Order—

“the Act” means the Consumer Rights Act 2015;

“European rail operator licence” means a licence granted pursuant to—

(a) a provision contained in any instrument made for the purpose of implementing—

- (i) Council [Directive 95/18/EC](#) of 19th June 1995 on the licensing of railway undertakings⁽²⁾, or
 - (ii) Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)⁽³⁾, or
- (b) any action taken by an EEA State for that purpose;
- “railway” has the meaning given by section 67(1) of the Transport and Works Act 1992⁽⁴⁾;
- “railway undertaking” means any undertaking, the principal business of which is to provide services for the transport of goods or passengers by railway; and
- “relevant railway passenger service” means any service for the carriage of passengers operated by a railway undertaking pursuant to a European rail operator licence.

Consumer transport service exemptions

3. Subject to article 4, section 57(3) of the Act does not apply in respect of any liability which a railway undertaking may have to a consumer⁽⁵⁾ arising from the delay or cancellation of a relevant railway passenger service operated by that railway undertaking.

Sunset provision

4. The provisions of article 3 apply only to a liability owed to a consumer for the cancellation or delay of a relevant railway passenger service timetabled to depart from a railway passenger station, halt or terminal before the end of 30th September 2017.

Consequential and other amendments

5. The Schedule to this Order (amendments consequential on Schedules 5 and 6 to the Act, and amendments to Schedule 5 to the Act) has effect.

Transitional and saving provisions in respect of investigatory powers

6.—(1) In this article—

- (a) an “old enforcement provision” means a provision of Article 41 of the Weights and Measures (Northern Ireland) Order 1981, and
- (b) a “new enforcement provision” means a provision of Schedule 5 to the Act which applies in place of an old enforcement provision.

(2) The replacement of an old enforcement provision by a new enforcement provision does not affect the continuity of the law.

(3) Paragraph (2) does not apply to any change in the law made by Schedule 5 to the Act.

(4) A reference, express or implied, in an enactment, instrument or document to a new enforcement provision is, subject to its context, to be read as being or including a reference to the old enforcement provision which corresponds to it, in relation to times, circumstances or purposes in relation to which the old enforcement provision had effect.

(5) A reference, express or implied, in an enactment, instrument or document to an old enforcement provision is, subject to its context, to be read as being or including a reference to the

(2) OJ No L 143, 27.6.95, p70, repealed by [Directive 2012/34/EU](#), OJ No L 343, 14.12.2012, p32.

(3) OJ No L 343, 14.12.2012, p32, as corrected by Corrigendum, OJ No L 67, 12.3.2015, p32.

(4) [1992 c.42](#).

(5) “Consumer” is defined in section 2(3) of the Consumer Rights Act 2015 for the purposes of Part 1 of that Act.

new enforcement provision which corresponds to it, in relation to times, circumstances or purposes in relation to which the new enforcement provision has effect.

(6) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) an old enforcement provision, and in force or effective immediately before 1st October 2016, has effect on and after 1st October 2016 as if done under (or for the purposes of or in reliance on) the new enforcement provision which corresponds to it.

(7) Paragraphs (2) to (6) have effect in place of section 17(2) of the Interpretation Act 1978; but nothing in this Order affects any other provision of that Act.

Date

Name
Minister of State for Skills
Department for Business, Innovation and Skills

SCHEDULE

Article 5

Amendments consequential on Schedules 5 and 6
to the Act, and amendment to Schedule 5 to the Act**Weights and Measures (Northern Ireland) Order 1981**

- 1.—(1) The Weights and Measures (Northern Ireland) Order 1981⁽⁶⁾ is amended as follows.
- (2) In Article 26(1) (special powers of inspector with respect to certain goods), for “Article 41” substitute “Schedule 5 to the Consumer Rights Act 2015”.
- (3) In Article 39 (function of Department)—
- (a) the existing text becomes paragraph (1), and
 - (b) after paragraph (1) insert—

“(2) For the investigatory powers available to the Department for the purposes of the duty in paragraph (1) see Schedule 5 to the Consumer Rights Act 2015.”
- (4) Omit Article 41 (general powers of inspection and entry)⁽⁷⁾.
- (5) In Article 42(1)(a) and (c) (obstruction of inspectors), omit “or the packaged goods regulations”⁽⁸⁾.
- (6) In Article 47 (penalties)—
- (a) after paragraph (2) insert—

“(2A) A person guilty of an offence under Article 42(1) or (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
 - (b) omit paragraph (4), and
 - (c) in paragraph (5) for “(4)” substitute “(2A)”⁽⁹⁾.

Consumer Rights Act 2015

- 2.—(1) Schedule 5 to the Consumer Rights Act 2015 (investigatory powers) is amended as follows.
- (2) In paragraph 10 (enforcer’s legislation: duties and powers mentioned in paragraph 9(1)(a))—
- (a) in the entry for section 27(1) of the Consumer Protection Act 1987, after “under that Act” insert “and by regulation 18 of the Standardised Packaging of Tobacco Products Regulations 2015 (S.I. 2015/829) to those Regulations”; and
 - (b) at the appropriate place, insert “regulation 53 of the Tobacco and Related Products Regulations 2016 (S.I. 2016/507).”
- (3) In paragraph 11 (enforcer’s legislation: legislation mentioned in paragraph 9(1)(b)), in the table, after the last entry insert—

“A London borough council	Section 75 of the London Local Authorities Act 2007”
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⁽⁶⁾ S.I.1981/231 (N.I. 10).

⁽⁷⁾ Amended by the Weights and Measures (Amendment) Act (Northern Ireland) 2000 (c.5).

⁽⁸⁾ Amended by the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011 (S.R. (NI) No 2011/331).

⁽⁹⁾ Amended the Fines and Penalties (Northern Ireland) Order 1984 (S.I.1985/703 (N.I. 3)).

London Local Authorities Act 2007

3. In section 75 of the London Local Authorities Act 2007(10) (mail forwarding businesses: enforcement provisions), for subsection (12) substitute—

“(12) For the investigatory powers available to a borough council in relation to enforcement of this section see Schedule 5 to the Consumer Rights Act 2015.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for a temporary exemption from section 57(3) of the Consumer Rights Act 2015 (“the Act”) in respect of liability for delays or cancellations of certain railway passenger services operated under a European rail operator licence, and makes amendments concerned with the enforcement arrangements under the Act.

Section 57(3) of the Act renders non-binding a term of a contract to supply services that would restrict a trader’s liability for breach of certain statutory rights of a consumer arising under Chapter 4 of Part 1 of the Act, if this would prevent the consumer in an appropriate case from recovering the price paid for the service.

The Order also makes various amendments to specified primary legislation.

Article 2 defines certain expressions used in this instrument. A “European rail operator” licence is defined as a licence granted pursuant to UK legislation or action taken by an EEA state for the purpose of implementing Council [Directive 95/18/EC](#) of 19th June 1995 on the licensing of railway undertakings (OJ No L 143, 27.6.95, p70, now repealed by [Directive 2012/34/EU](#)) or Chapter III of [Directive 2012/34/EU](#) of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast) (OJ No L343, 14.12.2012, p32, as corrected by Corrigendum, OJ No 67, 12.3.2015, p32).

Article 3 provides that section 57(3) does not apply to any liability which a railway undertaking may have to a consumer of a railway passenger service operated by it under a European rail operator licence, where this is due to delay or cancellation.

Article 4 provides that the exemption from section 57(3) provided for by article 3 will apply only in relation to the delay or cancellation of a railway passenger service timetabled to depart before the end of 30th September 2017.

Article 5 gives effect to the Schedule to the Order which specifies amendments to primary legislation.

In the Schedule, paragraph 1 specifies amendments made in consequence of the conferring of Schedule 5 investigatory and enforcement powers (which replace existing powers) on the Department of Enterprise, Trade and Investment in Northern Ireland.

Paragraph 2 specifies amendments to Schedule 5 to the Act. Paragraph 2(2) amends paragraph 10 so as to include two sets of regulations on tobacco to the list of legislation to which the investigatory powers in Schedule 5 apply. Paragraph 2(3) amends paragraph 11 in order to specify legislation as enforcer’s legislation.

(10) 2007 c.ii.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument.

The impact of the Act on the costs of business, charities, voluntary bodies and the public sector was assessed before its introduction and is available on the website www.legislation.gov.uk. A validation stage impact assessment of the effect that the exemption from the application of s.57(3) of the Act in this instrument will have on the costs of business, charities, voluntary bodies and the public sector is available from the Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR and is published alongside the instrument and the Explanatory Memorandum on the website www.legislation.gov.uk.