

EXPLANATORY MEMORANDUM TO
THE CONSUMER RIGHTS ACT 2015 (ENFORCEMENT) (AMENDMENT) ORDER
2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to enable the Secretary of State, and the Office of Product Safety and Standards on his behalf, to investigate claims about unsafe consumer products that fall solely within the ambit of the General Product Safety Regulations 2005, through the use of the investigatory powers listed in Schedule 5 to the Consumer Rights 2015 (“the Act”). The investigatory powers currently apply to enforcement bodies under the General Product Safety Regulations 2005 (“the 2005 Regulations”) other than the Secretary of State.
- 2.2 The purpose of this instrument is also to enable enforcement authorities in the UK (including local authority Trading Standards, district councils in Northern Ireland and the Secretary of State) to investigate claims about unsafe gas appliances or unsafe personal protective equipment through use of the investigatory powers listed in Schedule 5 to the Act.
- 2.3 This instrument also contains a minor amendment to the Measuring Instruments Regulations 2016 (S.I. 2016/1153), and a related minor amendment to the list in paragraph 10 of Schedule 5 to the Act, in order to correct an error.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 99 of the Act) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Small Business, Consumers and Corporate Responsibility, Kelly Tolhurst MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Consumer Rights Act 2015 (Enforcement) (Amendment) Order 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Schedule 5 to the Act consolidated the investigatory powers of enforcement authorities.
- 6.2 Paragraph 19 of Schedule 5 to the Act provides that the investigatory powers can be exercised by “domestic enforcers” with respect to the “enforcer’s legislation”. Paragraph 3 of the same Schedule includes the Secretary of State in the definition of “domestic enforcer”. Paragraph 9 defines “enforcer’s legislation” as legislation listed in Paragraph 10 that the enforcer has a power or a duty to enforce. Paragraph 12 gives the Secretary of State the power to amend the list of enforcer’s legislation by order made by statutory instrument.
- 6.3 Products not covered by sector specific product safety legislation fall within the ambit of the 2005 Regulations. The list in Paragraph 10 already includes regulation 10(1) of the 2005 Regulations, which means that local authority Trading Standards and district councils in Northern Ireland are able to use the investigatory powers listed in Schedule 5 to the Act to enforce the 2005 Regulations. Whilst the Secretary of State is an enforcement authority for the purpose of the 2005 Regulations, he is not presently included in regulation 10(1), which means that he is not able to use the investigatory powers.
- 6.4 An effective enforcement regime requires the UK to arrange and ensure that the relevant enforcement authorities have and use the necessary powers to take appropriate measures in relation to general product safety. As a result of the listing of regulation 10(1) of the 2005 Regulations in Schedule 5 to the Act, local authority Trading Standards and district councils in Northern Ireland have been able to rely on the relevant statutory powers in their exercise of this function.
- 6.5 This instrument amends Schedule 5 to the Act, so that the entry for regulation 10(1) of the 2005 Regulations refers instead to the definition of “enforcement authority” in regulation 2 of the 2005 Regulations, which includes the Secretary of State, local authority Trading Standards and district councils in Northern Ireland. This change establishes equivalency with respect to the investigatory powers in Schedule 5 to the Act between the Secretary of State and those other authorities for the purpose of enforcing the 2005 Regulations.
- 6.6 This instrument also amends Schedule 5 to the Act to include references to the Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018 and the Personal Protective Equipment (Enforcement) Regulations 2018 (together, “the 2018 Regulations”). This enables local authority Trading Standards, district councils in Northern Ireland and the Secretary of State to access the investigatory powers set out in Schedule 5 to the Act for the purpose of enforcing the 2018 Regulations.
- 6.7 This instrument also amends Schedule 5 to the Act to replace the incorrect reference to regulation 70 of the Measuring Instruments Regulations 2016 with the correct reference to regulation 67, which lists the enforcement authorities for those

Regulations. In addition, the instrument amends Schedule 3 of the Measuring Instruments Regulations 2016. These amendments correct a minor and technical error.

7. Policy background

What is being done and why?

- 7.1 This instrument establishes equivalency with respect to the investigatory powers in Schedule 5 to the Act between the Secretary of State and those of local authority Trading Standards and district councils in Northern Ireland, for the purpose of enforcing the 2005 Regulations. It also ensures that both the Secretary of State and the relevant market surveillance authorities are able to use the same set of investigatory powers in enforcing the regulation of gas appliances and personal protective equipment.
- 7.2 This instrument gives greater protection to consumers by improving the ability of the Secretary of State to investigate claims about unsafe consumer products and therefore help to prevent injury or loss of life. It also gives greater protection to businesses by helping to prevent unfair competition through entry of cheap, but unsafe, products onto the UK market. In light of a number of product safety incidents highlighted in the press there is a growing expectation since the establishment of the Office for Product Safety and Standards for the Secretary of State to exercise a greater role in product safety enforcement investigations. This instrument will help to ensure that the Secretary of State has the appropriate powers to do so.
- 7.3 This instrument continues the process of developing a national incident management capability in response to serious safety concerns over consumer products, as set out in Strategy for the Office for Product Safety and Strategy, published by BEIS in August 2018 *Strengthening national capacity for product safety: Strategy 2018-2020* <https://www.gov.uk/government/publications/strengthening-national-capacity-for-product-safety-strategy-2018-2020>. The instrument allows the Office for Product Safety and Standards, on behalf of the Secretary of State, to investigate claims of unsafe products in the context of a national incident, where local authority Trading Standards or other relevant enforcement authorities lack the resources or expertise to do so. It is envisaged that the investigatory powers will not be used frequently, given the infrequency of incidents requiring a national response and the ability of Trading Standards departments or other relevant enforcement authorities to deal with local incidents. However, when these occur, the Office will be able to support and supplement the work of local authority Trading Standards or other relevant enforcement authorities more effectively than at present. This policy builds on the work of the Office's predecessor organisation, the Regulatory Delivery Directorate, in response to the Grenfell Tower fire, and its current review of Whirlpool's actions in relation to a modification programme for tumble dryers.
- 7.4 When the 2018 Regulations were being drafted, it was the intention in each set of Regulations to amend Schedule 5 to the Act to include a reference in paragraph 10 to each set of Regulations so local authority Trading Standards and other relevant enforcement authorities could exercise the investigatory powers, as they have responsibility for enforcing the Regulations where there are safety concerns in a domestic setting. However, close to the laying date, the JCSI published its 16th Report of Session 2017-19 drawing attention to the inappropriate use of the negative resolution procedure for making the Financial Services and Markets Act 2000

(Benchmarks) Regulations 2018. As the 2018 Regulations were being made under the negative procedure, the provisions amending Schedule 5 to include a reference to the 2018 Regulations were removed before it was made, pending a later opportunity to include them in an affirmative resolution procedure Statutory Instrument. There has therefore been no change of policy intention for how the 2018 Regulations are enforced. Rather, the correct procedures are being observed for linking the 2018 Regulations to Schedule 5.

- 7.5 The policy intention underpinning the enforcement of the Measuring Instruments Regulations 2016 was always that the enforcement authorities should have access to the investigatory powers in Schedule 5. Unfortunately, the wrong reference in the Regulations was included in Schedule 5. This instrument corrects that reference.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are currently no plans to include these amendments in a wider programme of consolidation.

10. Consultation outcome

- 10.1 The Government consulted on the investigatory powers in the Act in 2012 and received 103 responses to the consultation paper entitled *Enhancing Consumer Confidence through effective enforcement: Consultation on consolidating and modernising consumer law enforcement powers*. The Government published a response to the consultation in June 2013, alongside a draft Consumer Rights Bill - <https://www.gov.uk/government/publications/consumer-rights-bill>. A number of stakeholder meetings and roundtables were also held. On the basis of the responses, the Government proposed the consolidation and simplification of the investigatory powers of consumer law enforcers. This instrument continues this consolidation process by enabling the Secretary of State and other enforcement authorities to rely on the investigatory powers in Schedule 5 to the Act when enforcing regulations relating to gas appliances and personal protective equipment.
- 10.2 This instrument also establishes equivalency with respect to those investigatory powers between the Secretary of State and other enforcement authorities when investigating possible infringements of the 2005 Regulations. OPSS has discussed *Strengthening national capacity for product safety: Strategy 2018-2020* <https://www.gov.uk/government/publications/strengthening-national-capacity-for-product-safety-strategy-2018-2020> with the Heads of Services of each of the 260 Trading Standards authorities at face-to-face meetings. The strategy and the Office's national incident management role has been well received.
- 10.3 There has been no consultation on the correction of the reference to the Measuring Instruments Regulations 2016 as this is a technical correction.
- 10.4 Devolved administrations have been informed about this Order.

11. Guidance

- 11.1 The National Incident Plan is available on <https://www.gov.uk/government/publications/strengthening-national-capacity-for-product-safety-strategy-2018-2020>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been completed because the changes in relation to the 2005 Regulations and the 2018 Regulations only affect the public sector in terms of operational changes. The changes relating to the Measuring Instruments Regulations 2016 are technical and correct an error and as such have not been consulted on.

13. Regulating small business

- 13.1 This instrument does not directly apply to activities that are undertaken by small businesses. It governs the investigatory powers of the Secretary of State and those of other enforcement authorities in relation to certain products. All businesses which are complying with the underlying law relating to product safety should not face any additional burden.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation will be post implementation reviews of both the consolidated consumer law provisions in Schedule 5 to the Act and of the 2005 Regulations (regulation 32). The target date for both reviews is December 2019.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kelly Tolhurst MP, has made the following statement:
- “This instrument does not include a statutory review clause, because there is already a target date for reviewing the legislation it amends, and it would not be appropriate to review this instrument in isolation.”

15. Contact

- 15.1 Richard Mortimer at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 1397 or email: Richard.Mortimer@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sarah Smith, Deputy Director for the Office for Product Safety and Standards, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kelly Tolhurst MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.