Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

EXITING THE EUROPEAN UNION CONSUMER PROTECTION

The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018 and come into force on exit day.

Interpretation

2. In these Regulations, "the 2002 Act" means the Enterprise Act 2002(**2**).

(**1**) 2018 c.16.

(**2**) 2002 c. 40. Part 8 amended by the Civil Partnership Act 2004 (c. 33), section 261(1), Schedule 27, paragraph 169, S.I. 2006/3363, S.I. 2007/528, S.I. 2008/1277, S.I. 2009/1941, S.I. 2011/1043, S.I. 2011/1208, the Financial Services Act 2012 (c. 21), section 114(1), Schedule 18, paragraphs 95(1) and (2), the Crime and Courts Act 2013 (c. 22), section 17(5), Schedule 9, Part 3, paragraphs 81(b) and (c), S.I. 2013/783, S.I. 2014/631, S.I. 2014/892, the Consumer Rights Act 2015 (c. 15), section 77(2), Schedule 6, paragraphs 67 to 80, section 79(1), Schedule 7, the Digital Economy Act 2017 (c. 30), section 4(10), Schedule 3, Part 2, paragraphs 42 and 44, and S.I. 2018/634. Section 243 amended by the Financial Services Act 2012 (c. 21), section 114(2), Schedule 19. Schedule 13 amended by S.I. 2004/2095, S.I. 2005/2759, S.I. 2006/3363, S.I. 2008/1277, S.I. 2009/2999, S.I. 2010/1010, S.I. 2010/2960, S.I. 2011/1208, S.I. 2014/2908, S.I. 2015/542, S.I. 2015/1392, S.I. 2015/1911,

PART 2

Amendment of primary legislation

Amendment of the Enterprise Act 2002

3.—(1) The 2002 Act is amended as follows.

(2) In section 210 (consumers)—

(a) in subsection (6)—

(i) for "Community infringement" substitute "Schedule 13 infringement";

(ii) for paragraphs (a) and (b) substitute "the listed enactment concerned";

(b) after subsection (6) insert—

"(6A) An enactment is a listed enactment if it is specified in Schedule 13 or to the extent that it is so specified.

(6B) References to an enactment include—

(a) references to subordinate legislation (within the meaning of the Interpretation Act 1978(**3**));

(b) for the purposes of paragraph 6 of Schedule 13, references to a rule of law in Scotland;

(c) for the purposes of paragraph 16 of Schedule 13, references to rules forming part of the law of any part of the United Kingdom made other than under an Act.";

(c) omit subsections (7) and (7A).

(3) For section 212 (Community infringements), substitute—

"**Schedule 13 infringements**

212.—(1) In this Part a Schedule 13 infringement is an act or omission which contravenes a listed enactment and which harms the collective interests of consumers.

(2) References to a listed enactment must be construed in accordance with section 210."

(4) In section 213 (enforcers)—

(a) omit subsection (5);

(b) in subsection (5A), for "(being bodies or persons designated by the Secretary of State under Article 4(1) or 4(2) of the CPC Regulation) is a CPC enforcer" substitute "is a Schedule 13 enforcer";

(c) omit subsections (10) and (11).

(5) In section 214 (consultation), in subsection (2)(d), for "Community infringement" substitute "Schedule 13 infringement".

(6) In section 215 (applications)—

(a) in subsection (1), for "Community infringement" substitute "Schedule 13 infringement" in both places where it occurs;

(b) omit subsection (4);

S.I. 2017/752, S.I. 2018/634 and S.I. 2018/1153. There are amendments to other provisions of the Act, but those amendments are not relevant to these Regulations.

(**3**) 1978 c.30; "subordinate legislation" is defined in section 21(1), as amended by the European Union (Withdrawal) Act 2018, section 23(5), Schedule 8, paragraphs 18 and 19.

(c) in subsection (4A)—

(i) for "CPC enforcer" substitute "Schedule 13 enforcer";

(ii) for "Community infringement" substitute "Schedule 13 infringement";

(d) omit subsections (6), (7) and (8).

(7) In section 216 (applications: directions by CMA), omit subsection (6).

(8) In section 217 (enforcement orders), in subsection (2), for "Community infringement" substitute "Schedule 13 infringement".

(9) In section 218 (interim enforcement order)—

(a) in subsection (1)(a), for "Community infringement" substitute "Schedule 13 infringement" in both places where it occurs;

(b) in subsection (4), for "Community infringement" substitute "Schedule 13 infringement".

(10) In section 218A (unfair commercial practices: substantiation of claims), in subsection (1)—

(a) for "Community infringement" substitute "Schedule 13 infringement";

(b) for the words from "Directive 2005/29/EC of the European Parliament" to the end of the subsection, substitute "the Consumer Protection from Unfair Trading Regulations 2008(**4**)".

(11) In section 219 (undertakings)—

(a) in subsection (3)(c), for "Community infringement" substitute "Schedule 13 infringement";

(b) in subsection (5A), for "CPC enforcer" substitute "Schedule 13 enforcer";

(c) in subsection (5B)—

(i) for "CPC enforcer" substitute "Schedule 13 enforcer";

(ii) for "Community infringement" substitute "Schedule 13 infringement".

(12) In section 219A (definition of enhanced consumer measures), in subsection (5)(c), for "CPC enforcer" substitute "Schedule 13 enforcer".

(13) In section 220 (further proceedings), in subsection (2), for "CPC enforcer" substitute "Schedule 13 enforcer".

(14) Omit section 221 (Community infringements: proceedings).

(15) In section 222 (bodies corporate: accessories), in subsection (1), for "Community infringement" substitute "Schedule 13 infringement".

(16) In section 229 (advice and information), in subsection (6), for "general or CPC enforcer or a designated enforcer" substitute "enforcer".

(17) Omit sections 235 (Injunctions Directive) and 235A (CPC Regulation).

(18) In section 235B (dual enforcers), for "CPC enforcer" substitute "Schedule 13 enforcer" in both places where it occurs.

(19) In section 243(**5**) (overseas disclosures), in subsection (12)(c), for "an order under section 212(3)" substitute "Schedule 13".

(20) For Schedule 13 (Listed Directives and Regulations), substitute the Schedule set out in the Schedule to these Regulations.

(**4**) S.I. 2008/1277, as amended by S.I. 2011/1043, S.I. 2011/2085, S.I. 2013/783, S.I. 2013/3134, S.I. 2014/549, S.I. 2014/870, the Consumer Rights Act 2015 (c.15), section 60, Schedule 1, paragraph 55(b), section 77(2), Schedule 6, paragraph 85(j), S.I. 2015/1629 and S.I. 2015/1630.

(**5**) Section 243 amended by the Financial Services Act 2012 (c. 21), section 114(2), Schedule 19.

Amendment of the Consumer Rights Act 2015

4.—(1) Schedule 5 (investigatory powers etc.) to the Consumer Rights Act 2015(**6**) is amended as follows.

(2) In paragraph 2 (enforcers), for "an EU enforcer" substitute "a Schedule 13 enforcer" in both places where it occurs.

(3) In the italic heading before paragraph 4, for "EU enforcers" substitute "Schedule 13 enforcers".

(4) For paragraph 4 substitute—

> "**4.** In this Schedule "Schedule 13 enforcer" means a person or body which is a Schedule 13 enforcer under section 213(5A) of the Enterprise Act 2002."

(5) In paragraph 8 (interpretation of other terms), for "Community infringement" substitute "Schedule 13 infringement".

(6) In paragraph 13 (exercise of powers in this Part)—

(a) omit sub-paragraph (2)(c);

(b) in sub-paragraph (3), for "an EU enforcer" substitute "a Schedule 13 enforcer";

(c) in sub-paragraph (10), omit the definition of "Community enforcer".

(7) In the heading of Part 4, for "EU enforcers" substitute "Schedule 13 enforcers".

(8) In the italic heading before paragraph 20, for "EU enforcers" substitute "Schedule 13 enforcers".

(9) In paragraph 20—

(a) in sub-paragraph (1), for "an EU enforcer" substitute "a Schedule 13 enforcer";

(b) in sub-paragraph (2)—

(i) for "an EU enforcer" substitute "a Schedule 13 enforcer";

(ii) for "CPC enforcer" substitute "Schedule 13 enforcer";

(c) in sub-paragraph (3), for "EU enforcer" substitute "Schedule 13 enforcer";

(d) in sub-paragraph (3)(a), for "Community infringement" substitute "Schedule 13 infringement";

(e) in sub-paragraphs (4) and (5), for "An EU enforcer" substitute "A Schedule 13 enforcer";

(f) in sub-paragraph (5)(a), for "Community infringement" substitute "Schedule 13 infringement";

(g) in sub-paragraph (6), for "An EU enforcer" substitute "A Schedule 13 enforcer".

(10) In paragraph 32 (power to enter premises with warrant)—

(a) in sub-paragraph (3)(b)—

(i) for "an EU enforcer" substitute "a Schedule 13 enforcer";

(ii) for "Community infringement as defined in section 212 of the Enterprise Act 2002" substitute "Schedule 13 infringement";

(b) in sub-paragraph (3)(c), for "an EU enforcer" substitute "a Schedule 13 enforcer".

(11) In paragraph 41 (compensation)—

(a) in sub-paragraph (4), for "an EU enforcer" substitute "a Schedule 13 enforcer";

(**6**) 2015 c.15. Schedule 5 amended by S.I. 2015/1640, S.I. 2015/1726, the Enterprise Act 2016 (c. 12), section 25(2), the Housing and Planning Act 2016 (c. 22), section 132(4), S.I. 2016/1091, S.I. 2016/1092, S.I. 2016/1093, S.I. 2016/1101, S.I. 2016/1105, S.I. 2016/1152, S.I. 2016/1153, S.I. 2016/1259, S.I. 2017/737 and S.I. 2018/634. There are amendments to other provisions of the Act, but those amendments are not relevant to these Regulations.

(b) in sub-paragraph (4)(a), for "Community infringement" substitute "Schedule 13 infringement".

Amendment of the Data Protection Act 2018

5. In Part 2 of Schedule 2 (Exemptions etc from the GDPR) to the Data Protection Act 2018(**7**)—

(a) in the table in paragraph 11, omit row 10 (consumer protection enforcer);

(b) in paragraph 12, omit the definitions of "consumer protection enforcer" and "CPC Regulation".

PART 3

Amendment and revocation of subordinate legislation

Amendment of the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003

6. In the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003(**8**), in article 3 (criteria for designation)—

(a) in paragraph (b), for "Community infringements" substitute "Schedule 13 infringements";

(b) in paragraph (f)—

(i) omit "and Community enforcers";

(ii) for "Community infringements" substitute "Schedule 13 infringements".

Revocation of orders made under section 212(3) of the Enterprise Act 2002

7. The following are revoked—

(a) the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003(**9**);

(b) the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) (Amendment) Order 2005(**10**);

(c) the Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2006(**11**);

(d) the Enterprise Act 2002 (Part 8 EU Infringements) Order 2014(**12**);

(e) the Enterprise Act 2002 (Part 8 Community Infringements and Specified UK Laws) (Amendment) Order 2015(**13**).

(**7**) 2018 c.12.
(**8**) S.I. 2003/1399, as amended by the Railways and Transport Safety Act 2003 (c. 20), sections 16(4) and (5), Schedule 3, paragraph 4, S.I. 2003/3182, S.I 2006/522 and S.I. 2014/549.
(**9**) S.I. 2003/1374, as amended by S.I. 2004/2095, S.I. 2005/2418, S.I. 2008/1277, S.I. 2008/1816, S.I. 2010/1010, S.I. 2010/2960, S.I. 2011/1208, S.I. 2012/1916, S.I. 2013/472, S.I. 2015/1392, S.I. 2015/1628 and S.I. 2018/634.
(**10**) S.I. 2005/2418.
(**11**) S.I. 2006/3372.
(**12**) S.I. 2014/2908, as amended by S.I. 2015/1628 and S.I. 2017/752.
(**13**) S.I. 2015/1628.