



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 8

#### ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

##### Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

##### *Introduction*

## **210 Consumers**

- (1) In this Part references to consumers must be construed in accordance with this section.
- (2) In relation to a domestic infringement a consumer is an individual in respect of whom the first and second conditions are satisfied.
- (3) The first condition is that—
  - (a) goods are or are sought to be supplied to the individual (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or
  - (b) services are or are sought to be supplied to the individual in the course of a business carried on by the person supplying or seeking to supply them.
- (4) The second condition is that—
  - (a) the individual receives or seeks to receive the goods or services otherwise than in the course of a business carried on by him, or

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- (b) the individual receives or seeks to receive the goods or services with a view to carrying on a business but not in the course of a business carried on by him.
- (5) For the purposes of a domestic infringement it is immaterial whether a person supplying goods or services has a place of business in the United Kingdom.
- (6) In relation to a Community infringement a consumer is a person who is a consumer for the purposes of—
  - (a) the Injunctions Directive, and
  - (b) the listed Directive concerned.
- (7) A Directive is a listed Directive—
  - (a) if it is a Directive of the Council of the European Communities or of the European Parliament and of the Council, and
  - (b) if it is specified in Schedule 13 or to the extent that any of its provisions is so specified.
- (8) A business includes—
  - (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;
  - (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) The Secretary of State may by order modify Schedule 13.
- (10) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **211 Domestic infringements**

- (1) In this Part a domestic infringement is an act or omission which—
  - (a) is done or made by a person in the course of a business,
  - (b) falls within subsection (2), and
  - (c) harms the collective interests of consumers in the United Kingdom.
- (2) An act or omission falls within this subsection if it is of a description specified by the Secretary of State by order and consists of any of the following—
  - (a) a contravention of an enactment which imposes a duty, prohibition or restriction enforceable by criminal proceedings;
  - (b) an act done or omission made in breach of contract;
  - (c) an act done or omission made in breach of a non-contractual duty owed to a person by virtue of an enactment or rule of law and enforceable by civil proceedings;
  - (d) an act or omission in respect of which an enactment provides for a remedy or sanction enforceable by civil proceedings;
  - (e) an act done or omission made by a person supplying or seeking to supply goods or services as a result of which an agreement or security relating to the supply is void or unenforceable to any extent;
  - (f) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to exercise a right or remedy relating to the supply in circumstances where the exercise of the right or remedy is restricted or excluded under or by virtue of an enactment;

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- (g) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to avoid (to any extent) liability relating to the supply in circumstances where such avoidance is restricted or prevented under an enactment.
- (3) But an order under this section may provide that any description of act or omission falling within subsection (2) is not a domestic infringement.
- (4) For the purposes of subsection (2) it is immaterial—
- (a) whether or not any duty, prohibition or restriction exists in relation to consumers as such;
  - (b) whether or not any remedy or sanction is provided for the benefit of consumers as such;
  - (c) whether or not any proceedings have been brought in relation to the act or omission;
  - (d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (2)(a);
  - (e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (2)(b).
- (5) References to an enactment include references to subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).
- (6) The power to make an order under this section must be exercised by statutory instrument.
- (7) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

## **212 Community infringements**

- (1) In this Part a Community infringement is an act or omission which harms the collective interests of consumers and which—
- (a) contravenes a listed Directive as given effect by the laws, regulations or administrative provisions of an EEA State, or
  - (b) contravenes such laws, regulations or administrative provisions which provide additional permitted protections.
- (2) The laws, regulations or administrative provisions of an EEA State which give effect to a listed Directive provide additional permitted protections if—
- (a) they provide protection for consumers which is in addition to the minimum protection required by the Directive concerned, and
  - (b) such additional protection is permitted by that Directive.
- (3) The Secretary of State may by order specify for the purposes of this section the law in the United Kingdom which—
- (a) gives effect to the listed Directives;
  - (b) provides additional permitted protections.
- (4) References to a listed Directive must be construed in accordance with section 210.
- (5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

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- (6) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## 213 Enforcers

- (1) Each of the following is a general enforcer—
- (a) the OFT;
  - (b) every local weights and measures authority in Great Britain;
  - (c) the Department of Enterprise, Trade and Investment in Northern Ireland.
- (2) A designated enforcer is any person or body (whether or not incorporated) which the Secretary of State—
- (a) thinks has as one of its purposes the protection of the collective interests of consumers, and
  - (b) designates by order.
- (3) The Secretary of State may designate a public body only if he is satisfied that it is independent.
- (4) The Secretary of State may designate a person or body which is not a public body only if the person or body (as the case may be) satisfies such criteria as the Secretary of State specifies by order.
- (5) A Community enforcer is a qualified entity for the purposes of the Injunctions Directive—
- (a) which is for the time being specified in the list published in the Official Journal of the European Communities in pursuance of Article 4.3 of that Directive, but
  - (b) which is not a general enforcer or a designated enforcer.
- (6) An order under this section may designate an enforcer in respect of—
- (a) all infringements;
  - (b) infringements of such descriptions as are specified in the order.
- (7) An order under this section may make different provision for different purposes.
- (8) The designation of a body by virtue of subsection (3) is conclusive evidence for the purposes of any question arising under this Part that the body is a public body.
- (9) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If requested to do so by a designated enforcer which is designated in respect of one or more Community infringements the Secretary of State must notify the Commission of the European Communities—
- (a) of its name and purpose;
  - (b) of the Community infringements in respect of which it is designated.
- (11) The Secretary of State must also notify the Commission—
- (a) of the fact that a person or body in respect of which he has given notice under subsection (10) ceases to be a designated enforcer;
  - (b) of any change in the name or purpose of a designated enforcer in respect of which he has given such notice;

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- (c) of any change to the Community infringements in respect of which a designated enforcer is designated.

### *Enforcement procedure*

## **214 Consultation**

- (1) An enforcer must not make an application for an enforcement order unless he has engaged in appropriate consultation with—
  - (a) the person against whom the enforcement order would be made, and
  - (b) the OFT (if it is not the enforcer).
- (2) Appropriate consultation is consultation for the purpose of—
  - (a) achieving the cessation of the infringement in a case where an infringement is occurring;
  - (b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred;
  - (c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a);
  - (d) ensuring that the infringement does not take place in the case of a Community infringement which the enforcer believes is likely to take place.
- (3) Subsection (1) does not apply if the OFT thinks that an application for an enforcement order should be made without delay.
- (4) Subsection (1) ceases to apply—
  - (a) for the purposes of an application for an enforcement order at the end of the period of 14 days beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the enforcer;
  - (b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the enforcer.
- (5) The Secretary of State may by order make rules in relation to consultation under this section.
- (6) Such an order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section (except subsection (4)) and in sections 215 and 216 references to an enforcement order include references to an interim enforcement order.

## **215 Applications**

- (1) An application for an enforcement order must name the person the enforcer thinks—
  - (a) has engaged or is engaging in conduct which constitutes a domestic or a Community infringement, or
  - (b) is likely to engage in conduct which constitutes a Community infringement.

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- (2) A general enforcer may make an application for an enforcement order in respect of any infringement.
- (3) A designated enforcer may make an application for an enforcement order in respect of an infringement to which his designation relates.
- (4) A Community enforcer may make an application for an enforcement order in respect of a Community infringement.
- (5) The following courts have jurisdiction to make an enforcement order—
  - (a) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in England and Wales or Northern Ireland;
  - (b) the Court of Session or the sheriff if the person against whom the order is sought carries on business or has a place of business in Scotland.
- (6) If an application for an enforcement order is made by a Community enforcer the court may examine whether the purpose of the enforcer justifies its making the application.
- (7) If the court thinks that the purpose of the Community enforcer does not justify its making the application the court may refuse the application on that ground alone.
- (8) The purpose of a Community enforcer must be construed by reference to the Injunctions Directive.
- (9) An enforcer which is not the OFT must notify the OFT of the result of an application under this section.

## **216 Applications: directions by OFT**

- (1) This section applies if the OFT believes that an enforcer other than the OFT intends to apply for an enforcement order.
- (2) In such a case the OFT may direct that if an application in respect of a particular infringement is to be made it must be made—
  - (a) only by the OFT, or
  - (b) only by such other enforcer as the OFT directs.
- (3) If the OFT directs that only it may make an application that does not prevent—
  - (a) the OFT or any enforcer from accepting an undertaking under section 219, or
  - (b) the OFT from taking such other steps it thinks appropriate (apart from making an application) for the purpose of securing that the infringement is not committed, continued or repeated.
- (4) The OFT may vary or withdraw a direction given under this section.
- (5) The OFT must take such steps as it thinks appropriate to bring a direction (or a variation or withdrawal of a direction) to the attention of enforcers it thinks may be affected by it.
- (6) But this section does not prevent an application for an enforcement order being made by a Community enforcer.

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## 217 Enforcement orders

- (1) This section applies if an application for an enforcement order is made under section 215 and the court finds that the person named in the application has engaged in conduct which constitutes the infringement.
- (2) This section also applies if such an application is made in relation to a Community infringement and the court finds that the person named in the application is likely to engage in conduct which constitutes the infringement.
- (3) If this section applies the court may make an enforcement order against the person.
- (4) In considering whether to make an enforcement order the court must have regard to whether the person named in the application—
  - (a) has given an undertaking under section 219 in respect of conduct such as is mentioned in subsection (3) of that section;
  - (b) has failed to comply with the undertaking.
- (5) An enforcement order must—
  - (a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and
  - (b) direct the person to comply with subsection (6).
- (6) A person complies with this subsection if he—
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (7) But subsection (6)(a) does not apply in the case of a finding under subsection (2).
- (8) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
  - (a) the order;
  - (b) a corrective statement.
- (9) If the court makes a finding under subsection (1) or (2) it may accept an undertaking by the person—
  - (a) to comply with subsection (6), or
  - (b) to take steps which the court believes will secure that he complies with subsection (6).
- (10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
  - (a) the terms of the undertaking;
  - (b) a corrective statement.
- (11) If the court—
  - (a) makes a finding under subsection (1) or (2), and
  - (b) accepts an undertaking under subsection (9),

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it must not make an enforcement order in respect of the infringement to which the undertaking relates.

- (12) An enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

## **218 Interim enforcement order**

- (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court—
- (a) that it is alleged that the person is engaged in conduct which constitutes a domestic or Community infringement or is likely to engage in conduct which constitutes a Community infringement,
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted,
  - (c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and
  - (d) if no notice of the application has been given to the person named in the application that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must—
- (a) indicate the nature of the alleged conduct, and
  - (b) direct the person to comply with subsection (3).
- (3) A person complies with this subsection if he—
- (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (4) But subsection (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct which constitutes a Community infringement.
- (5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.
- (6) An application for an interim enforcement order must refer to all matters—
- (a) which are known to the applicant, and
  - (b) which are material to the question whether or not the application is granted.
- (7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.
- (8) The court may vary or discharge an interim enforcement order on the application of—
- (a) the enforcer who applied for the order;
  - (b) the person against whom it is made.



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- (9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.
- (10) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application—
  - (a) to comply with subsection (3), or
  - (b) to take steps which the court believes will secure that he complies with subsection (3).
- (11) An interim enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

## 219 Undertakings

- (1) This section applies if an enforcer has power to make an application under section 215.
- (2) In such a case the enforcer may accept from a person to whom subsection (3) applies an undertaking that the person will comply with subsection (4).
- (3) This subsection applies to a person who the enforcer believes—
  - (a) has engaged in conduct which constitutes an infringement;
  - (b) is engaging in such conduct;
  - (c) is likely to engage in conduct which constitutes a Community infringement.
- (4) A person complies with this subsection if he—
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (5) But subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to him by virtue of paragraph (c).
- (6) If an enforcer accepts an undertaking under this section it must notify the OFT—
  - (a) of the terms of the undertaking;
  - (b) of the identity of the person who gave it.

## 220 Further proceedings

- (1) This section applies if the court—
  - (a) makes an enforcement order under section 217,
  - (b) makes an interim enforcement order under section 218, or
  - (c) accepts an undertaking under either of those sections.
- (2) In such a case the OFT has the same right to apply to the court in respect of a failure to comply with the order or undertaking as the enforcer who made the application for the order.

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- (3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.
- (4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).
- (5) In the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3) sections 214 and 216 must be ignored and sections 215 and 217 or 218 (as the case may be) apply subject to the following modifications—
  - (a) section 215(1)(b) must be ignored;
  - (b) section 215(5) must be ignored and the application must be made to the court which accepted the undertaking;
  - (c) section 217(9) to (11) must be ignored;
  - (d) section 218(10) must be ignored.
- (6) If an enforcer which is not the OFT makes an application in respect of the failure of a person to comply with an enforcement order, an interim enforcement order or an undertaking given under section 217 or 218 the enforcer must notify the OFT—
  - (a) of the application;
  - (b) of any order made by the court on the application.

## **221 Community infringements: proceedings**

- (1) Subsection (2) applies to—
  - (a) every general enforcer;
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this subsection applies has power to take proceedings in EEA States other than the United Kingdom for the cessation or prohibition of a Community infringement.
- (3) Subsection (4) applies to—
  - (a) every general enforcer;
  - (b) every designated enforcer.
- (4) An enforcer to which this subsection applies may co-operate with a Community enforcer—
  - (a) for the purpose of bringing proceedings mentioned in subsection (2);
  - (b) in connection with the exercise by the Community enforcer of its functions under this Part.
- (5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

## **222 Bodies corporate: accessories**

- (1) This section applies if the person whose conduct constitutes a domestic infringement or a Community infringement is a body corporate.

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- (2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.
- (3) A person has a special relationship with a body corporate if he is—
  - (a) a controller of the body corporate, or
  - (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.
- (4) A person is a controller of a body corporate if—
  - (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or
  - (b) either alone or with an associate or associates he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.
- (5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.
- (6) The court may accept an undertaking under section 217(9) or 218(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (7) An enforcer may accept an undertaking under section 219 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (8) Subsection (9) applies if—
  - (a) an order is made as mentioned in subsection (5), or
  - (b) an undertaking is accepted as mentioned in subsection (6) or (7).
- (9) In such a case for subsection (6) of section 217, subsection (3) of section 218 or subsection (4) of section 219 (as the case may be) there is substituted the following subsection—
  - (0) A person complies with this subsection if he—
    - (a) does not continue or repeat the conduct;
    - (b) does not in the course of any business carried on by him engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 222(1);
    - (c) does not consent to or connive in the carrying out of such conduct by another body corporate with which he has a special relationship (within the meaning of section 222(3)).”
- (10) A person is an associate of an individual if—
  - (a) he is the spouse of the individual;
  - (b) he is a relative of the individual;
  - (c) he is a relative of the individual's spouse;
  - (d) he is the spouse of a relative of the individual;
  - (e) he is the spouse of a relative of the individual's spouse;

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- (f) he lives in the same household as the individual otherwise than merely because he or the individual is the other's employer, tenant, lodger or boarder;
  - (g) he is a relative of a person who is an associate of the individual by virtue of paragraph (f);
  - (h) he has at some time in the past fallen within any of paragraphs (a) to (g).
- (11) A person is also an associate of—
- (a) an individual with whom he is in partnership;
  - (b) an individual who is an associate of the individual mentioned in paragraph (a);
  - (c) a body corporate if he is a controller of it or he is an associate of a person who is a controller of the body corporate.
- (12) A body corporate is an associate of another body corporate if—
- (a) the same person is a controller of both;
  - (b) a person is a controller of one and persons who are his associates are controllers of the other;
  - (c) a person is a controller of one and he and persons who are his associates are controllers of the other;
  - (d) a group of two or more persons is a controller of each company and the groups consist of the same persons;
  - (e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

## **223 Bodies corporate: orders**

- (1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and—
- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,
  - (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or
  - (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.
- (2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.
- (3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (4) Any two bodies corporate are interconnected—
- (a) if one of them is a subsidiary of the other, or
  - (b) if both of them are subsidiaries of the same body corporate.
- (5) "Subsidiary" must be construed in accordance with section 736 of the Companies Act 1985 (c. 6).

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## Information

### 224 OFT

- (1) The OFT may for any of the purposes mentioned in subsection (2) give notice to any person requiring the person to provide it with the information specified in the notice.
- (2) The purposes are—
  - (a) to enable the OFT to exercise or to consider whether to exercise any function it has under this Part;
  - (b) to enable a designated enforcer to which section 225 does not apply to consider whether to exercise any function it has under this Part;
  - (c) to enable a Community enforcer to consider whether to exercise any function it has under this Part;
  - (d) to ascertain whether a person has complied with or is complying with an enforcement order, an interim enforcement order or an undertaking given under section 217(9), 218(10) or 219.

### 225 Other enforcers

- (1) This section applies to—
  - (a) every general enforcer (other than the OFT);
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this section applies may for any of the purposes mentioned in subsection (3) give notice to any person requiring the person to provide the enforcer with the information specified in the notice.
- (3) The purposes are—
  - (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under this Part;
  - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of the enforcer or an undertaking given under section 217(9) or 218(10) (as the case may be) following such an application or an undertaking given to the enforcer under section 219.

### 226 Notices: procedure

- (1) This section applies to a notice given under section 224 or 225.
- (2) The notice must—
  - (a) be in writing;
  - (b) specify the purpose for which the information is required.
- (3) If the purpose is as mentioned in section 224(2)(a), (b) or (c) or 225(3)(a) the notice must specify the function concerned.
- (4) A notice may specify the time within which and manner in which it is to be complied with.
- (5) A notice may require the production of documents or any description of documents.

*Status: Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)*

- (6) An enforcer may take copies of any documents produced in compliance with such a requirement.
- (7) A notice may be varied or revoked by a subsequent notice.
- (8) But a notice must not require a person to provide any information or produce any document which he would be entitled to refuse to provide or produce—
  - (a) in proceedings in the High Court on the grounds of legal professional privilege;
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

## 227 Notices: enforcement

- (1) If a person fails to comply with a notice given under section 224 or 225 the enforcer who gave the notice may make an application under this section.
- (2) If it appears to the court that the person to whom the notice was given has failed to comply with the notice the court may make an order under this section.
- (3) An order under this section may require the person to whom the notice was given to do anything the court thinks it is reasonable for him to do for any of the purposes mentioned in section 224 or 225 (as the case may be) to ensure that the notice is complied with.
- (4) An order under this section may require the person to meet all the costs or expenses of the application.
- (5) If the person is a company or association the court in proceeding under subsection (4) may require any officer of the company or association who is responsible for the failure to meet the costs or expenses.
- (6) The court is a court which may make an enforcement order.
- (7) In subsection (5) an officer of a company is a person who is a director, manager, secretary or other similar officer of the company.

VALID FROM 08/01/2007

### [<sup>F1</sup>227A Power to enter premises without warrant

- (1) An officer of a CPC enforcer who reasonably suspects that there has been, or is likely to be, a Community infringement may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether there has been, or is likely to be, such an infringement.
- (2) An officer of a CPC enforcer who reasonably suspects that there is, or has been, a failure to comply with a relevant enforcement measure may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether a person is complying with, or has complied with, the relevant enforcement measure.
- (3) An appropriate notice must be given to the occupier of the premises before an officer of a CPC enforcer enters them under subsection (1) and (2).

**Status:** Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)

- (4) An appropriate notice is a notice in writing given by an officer of a CPC enforcer which—
- (a) gives at least two working days' notice of entry on the premises;
  - (b) sets out why the entry is necessary; and
  - (c) indicates the nature of the offence created by section 227E.
- (5) Subsection (3) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so.
- (6) In that case, the officer entering the premises must produce to any occupier that he finds on the premises a document setting out why the entry is necessary and indicating the nature of the offence created by section 227E.
- (7) In all cases, the officer entering the premises must produce to any occupier evidence of—
- (a) his identity; and
  - (b) in the case of an authorised officer of a CPC enforcer, his authorisation; if asked to do so.
- (8) In this section—
- “give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post; and
- “working day” means a day which is not—
- (a) Saturday or Sunday; or
  - (b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>M1</sup> in the part of the United Kingdom in which the premises are situated.
- (9) In this section and sections 227B to 227F—
- “authorised officer of a CPC enforcer” means an officer of a CPC enforcer who is authorised by that enforcer for the purposes of this Part;
- “occupier” means any person whom the officer concerned reasonably suspects to be the occupier;
- “officer of a CPC enforcer” means—
- (a) an officer of a local weights and measures authority in Great Britain; or
  - (b) an authorised officer of a CPC enforcer which is not a local weights and measures authority in Great Britain;
- “premises” includes vehicles but does not include any premises which are used only as a dwelling; and
- “relevant enforcement measure” means—
- (a) an enforcement order made under section 217 on the application of the CPC enforcer;
  - (b) an interim enforcement order made under section 218 on the application of the CPC enforcer;
  - (c) an undertaking under section 217(9) in connection with an application made by the CPC enforcer for an enforcement order under section 217;
  - (d) an undertaking under section 218(10) in connection with an application made by the CPC enforcer for an interim enforcement order under section 218; or

*Status: Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)*

(e) an undertaking under section 219 to the CPC enforcer.

#### Textual Amendments

**F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

#### Marginal Citations

**M1** 1971 c.80.

VALID FROM 08/01/2007

### 227B Powers exercisable on the premises

- (1) An officer of a CPC enforcer may, in the exercise of his powers under section 227A—
  - (a) observe the carrying on of a business on the premises;
  - (b) inspect goods or documents on the premises;
  - (c) require any person on the premises to produce goods or documents within such period as the officer considers to be reasonable;
  - (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or
  - (e) seize, remove and retain goods or documents which he reasonably suspects may be required as evidence of a Community infringement or a breach of a relevant enforcement measure.
- (2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require him—
  - (a) to state, to the best of his knowledge and belief, where the goods or documents are;
  - (b) to give an explanation of the goods or documents; and
  - (c) to secure that any goods or documents produced are authenticated or verified in such manner as the officer considers appropriate.
- (3) An officer of a CPC enforcer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).
- (4) But nothing in this section authorises action to be taken in relation to anything which, in proceedings in the High Court, a person would be entitled to refuse to produce on the grounds of legal professional privilege.
- (5) In this section document includes information recorded in any form.
- (6) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.
- (7) In its application to Scotland, this section has effect as if the reference in subsection (4)—
  - (a) to proceedings in the High Court were a reference to proceedings in the Court of Session; and



**Status:** Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)

- (b) to an entitlement on the grounds of legal professional privilege were a reference to an entitlement on the grounds of confidentiality of communications.

#### Textual Amendments

- F1** Ss. 227A-227F inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), reg. 17

VALID FROM 08/01/2007

### 227C Power to enter premises with warrant

- (1) A justice of the peace may issue a warrant authorising an officer of a CPC enforcer to enter premises for purposes falling within section 227A(1) or (2) if the justice of the peace considers that there are reasonable grounds for believing that —
- (a) condition A is met; and
  - (b) either condition B, C or D is met.
- (2) Condition A is that there are, on the premises, goods or documents to which an officer of a CPC enforcer would be entitled to have access under sections 227A and 227B.
- (3) Condition B is that an officer of a CPC enforcer acting under sections 227A and 227B has been, or would be likely to be, refused admission to the premises or access to the goods or documents.
- (4) Condition C is that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 227A.
- (5) Condition D is that there is likely to be nobody at the premises capable of granting admission.
- (6) A warrant under this section authorises the officer of the CPC enforcer—
- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
  - (b) to do anything on the premises that an officer of the CPC enforcer would be able to do if he had entered the premises under section 227A;
  - (c) to search for goods or documents which he has required a person on the premises to produce where that person has failed to comply with such a requirement;
  - (d) to the extent that it is reasonably necessary to do so, to require any person to whom subsection (7) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself;
  - (e) to take any other steps which he considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which he would be entitled to have access under sections 227A and 227B.
- (7) This subsection applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.

*Status: Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)*

- (8) A warrant under this section—
- (a) is issued on information on oath given by an officer of a CPC enforcer;
  - (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
  - (c) must, on request, be produced to the occupier of the premises for inspection.
- (9) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.
- (10) In its application to Scotland, this section has effect as if—
- (a) the references in subsection (1) to a justice of the peace included references to a sheriff; and
  - (b) the reference in subsection (8) to information on oath were a reference to evidence on oath.
- (11) In its application to Northern Ireland, this section has effect as if the references in subsection (1) to a justice of the peace were references to a lay magistrate.

#### Textual Amendments

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

VALID FROM 08/01/2007

#### 227D Ancillary provisions about powers of entry

- (1) An officer of a CPC enforcer who enters premises by virtue of section 227A may only do so at a reasonable time.
- (2) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C may take with him such persons and equipment as he considers appropriate.
- (3) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C must, if the premises are unoccupied or the occupier is temporarily absent, take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

#### Textual Amendments

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

**Status:** Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)

VALID FROM 08/01/2007

### **227E Obstructing, or failing to co-operate with, powers of entry**

- (1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, an officer of a CPC enforcer who is exercising or seeking to exercise a power under sections 227A to 227D.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### **Textual Amendments**

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

VALID FROM 08/01/2007

### **227F Retention of documents and goods**

- (1) No documents seized under sections 227A to 227D may be retained for a period of more than three months.
- (2) No goods seized under sections 227A to 227D may be retained for a period of more than three months unless they are reasonably required in connection with the exercise of any function of a CPC enforcer under this Part.
- (3) Where goods are so required they may be retained for as long as they are so required.]

#### **Textual Amendments**

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

## *Miscellaneous*

### **228 Evidence**

- (1) Proceedings under this Part are civil proceedings for the purposes of—
  - (a) section 11 of the Civil Evidence Act 1968 (c. 64) (convictions admissible as evidence in civil proceedings);
  - (b) section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) (corresponding provision in Scotland);
  - (c) section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.)) (corresponding provision in Northern Ireland).
- (2) In proceedings under this Part any finding by a court in civil proceedings that an act or omission mentioned in section 211(2)(b), (c) or (d) or 212(1) has occurred—

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*Status: Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.*

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- (a) is admissible as evidence that the act or omission occurred;
  - (b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.
- (3) But subsection (2) does not apply to any finding—
- (a) which has been reversed on appeal;
  - (b) which has been varied on appeal so as to negative it.

## **229 Advice and information**

- (1) As soon as is reasonably practicable after the passing of this Act the OFT must prepare and publish advice and information with a view to—
- (a) explaining the provisions of this Part to persons who are likely to be affected by them, and
  - (b) indicating how the OFT expects such provisions to operate.
- (2) The OFT may at any time publish revised or new advice or information.
- (3) Advice or information published in pursuance of subsection (1)(b) may include advice or information about the factors which the OFT may take into account in considering how to exercise the functions conferred on it by this Part.
- (4) Advice or information published by the OFT under this section is to be published in such form and in such manner as it considers appropriate.
- (5) In preparing advice or information under this section the OFT must consult such persons as it thinks are representative of persons affected by this Part.
- (6) If any proposed advice or information relates to a matter in respect of which another general enforcer or a designated enforcer may act the persons to be consulted must include that enforcer.

## **230 Notice to OFT of intended prosecution**

- (1) This section applies if a local weights and measures authority in England and Wales intends to start proceedings for an offence under an enactment or subordinate legislation specified by the Secretary of State by order for the purposes of this section.
- (2) The authority must give the OFT—
- (a) notice of its intention to start the proceedings;
  - (b) a summary of the evidence it intends to lead in respect of the charges.
- (3) The authority must not start the proceedings until whichever is the earlier of the following—
- (a) the end of the period of 14 days starting with the day on which the authority gives the notice;
  - (b) the day on which it is notified by the OFT that the OFT has received the notice and summary given under subsection (2).
- (4) The authority must also notify the OFT of the outcome of the proceedings after they are finally determined.
- (5) But such proceedings are not invalid by reason only of the failure of the authority to comply with this section.

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*Status:* Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)

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- (6) Subordinate legislation has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30).
- (7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **231 Notice of convictions and judgments to OFT**

- (1) This section applies if—
  - (a) a person is convicted of an offence by or before a court in the United Kingdom, or
  - (b) a judgment is given against a person by a court in civil proceedings in the United Kingdom.
- (2) The court may make arrangements to bring the conviction or judgment to the attention of the OFT if it appears to the court—
  - (a) having regard to the functions of the OFT under this Part or under the Estate Agents Act 1979 (c. 38) that it is expedient for the conviction or judgment to be brought to the attention of the OFT, and
  - (b) without such arrangements the conviction or judgment may not be brought to the attention of the OFT.
- (3) For the purposes of subsection (2) it is immaterial that the proceedings have been finally disposed of by the court.
- (4) Judgment includes an order or decree and references to the giving of the judgment must be construed accordingly.

### *Interpretation*

### **232 Goods and services**

- (1) References in this Part to goods and services must be construed in accordance with this section.
- (2) Goods include—
  - (a) buildings and other structures;
  - (b) ships, aircraft and hovercraft.
- (3) The supply of goods includes—
  - (a) supply by way of sale, lease, hire or hire purchase;
  - (b) in relation to buildings and other structures, construction of them by one person for another.
- (4) Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5).
- (5) Arrangements fall within this subsection if they are made by any means and—
  - (a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or

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- (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom.

### **233 Person supplying goods**

- (1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under—
  - (a) a hire-purchase agreement;
  - (b) a credit-sale agreement;
  - (c) a conditional sale agreement.
- (2) The references include references to a person who conducts any antecedent negotiations relating to the agreement.
- (3) The following expressions must be construed in accordance with section 189 of the Consumer Credit Act 1974 (c. 39) —
  - (a) hire-purchase agreement;
  - (b) credit-sale agreement;
  - (c) conditional sale agreement;
  - (d) antecedent negotiations.

### **234 Supply of services**

- (1) References in this Part to the supply of services must be construed in accordance with this section.
- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes—
  - (a) performing for gain or reward any activity other than the supply of goods;
  - (b) rendering services to order;
  - (c) the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.
- (5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of section 189(2) of the Broadcasting Act 1990 (c. 42)) for sharing the use of telecommunications apparatus.
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State specifies by order.
- (7) The power to make an order under subsection (6) must be exercised by statutory instrument.
- (8) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

**Status:** Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8. (See end of Document for details)

## 235 Injunctions Directive

In this Part the Injunctions Directive is Directive [98/27/EC](#) of the European Parliament and of the Council on injunctions for the protection of consumers' interests.

VALID FROM 08/01/2007

### [<sup>F2</sup>235A CPC Regulation

In this Part—

- (a) the CPC Regulation is Regulation [\(EC\) No. 2006/2004](#) of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as amended by the Unfair Commercial Practices Directive <sup>M2</sup>;
- (b) the Unfair Commercial Practices Directive is Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market <sup>M3</sup>.

#### Textual Amendments

**F2** Ss. 235A, 235B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 20](#)

#### Marginal Citations

**M2** OJ No. L364, 9.12.2004.

**M3** OJ No. L149/22, 11.6.2005.

VALID FROM 08/01/2007

## 235B Dual enforcers

References in this Part to a general enforcer, a designated enforcer or a CPC enforcer are to be read, in the case of a person or body which is more than one kind of enforcer, as references to that person or body acting in its capacity as a general enforcer, designated enforcer or (as the case may be) CPC enforcer.]

#### Textual Amendments

**F2** Ss. 235A, 235B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 20](#)

*Crown*

## 236 Crown

This Part binds the Crown.

**Status:**

Point in time view as at 20/06/2003. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Part 8.