

# ENTERPRISE ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 8: Enforcement of Certain Consumer Legislation**

##### **Introduction**

##### *Section 210: Consumers*

468. This section defines the class of consumers who are to benefit from the protection provided for in this Part. A distinction is made between a ‘consumer’ for the purposes of a ‘domestic infringement’ and a ‘consumer’ for the purposes of an infringement of the legislation to which the Injunctions Directive applies (a ‘Community infringement’).
469. A ‘consumer’ in relation to a domestic infringement is an individual who receives, or seeks to receive, goods or services other than in the course of his business, or with a view to setting up a business, from a person who supplies them in the course of business (*subsections (2) to (4)*). The definition of a consumer for the purposes of domestic infringements therefore excludes partnerships and corporate bodies.
470. The purpose of including prospective business people within the above definition of ‘consumer’ is to ensure that an enforcement order is available in respect of domestic infringements that harm the collective interests of individuals who participate in, for example, ‘homeworking schemes’ or who contract with so-called ‘vanity publishers’ or who purchase goods and services for the purpose of direct selling type schemes. As soon as an individual begins trading he will cease to be within the definition in respect of purchases for the purpose of his business, so business customers in general are not covered.
471. For the purpose of domestic infringements, it does not matter if the supplier has a place of business in the UK or not (*subsection (5)*). This means businesses will not be able to avoid the provisions of this Part by locating offshore.
472. The concept of “business” is relevant to the definition of a “consumer” for the purposes of a domestic infringement in two ways. The supply, actual or attempted, of goods or services must be “in the course of a business carried on” by the supplier, but the recipient must not receive them “in the course of a business carried on by him” at the time of receipt.
473. *Subsection (8)* defines a ‘business’ for the purpose of the definition of the supplier of goods and services and of a consumer in respect of domestic infringements. Any undertaking carried on ‘for gain or reward’ and any which charges for the supply of goods or services are businesses within the definition. This follows the existing definition in FTA 1973.
474. For the purposes of Community infringements, ‘consumers’ must include all persons who are consumers for the purposes of the individual directives listed in the annex to the Injunctions Directive; otherwise the Injunctions Directive would not be properly

implemented. *Subsection (6)* accordingly provides that the meaning of ‘consumer’ in relation to a Community infringement is to be determined by the Injunctions Directive and the relevant listed directives.

475. There is no reference in the Injunctions Directive to infringements having been committed by a person in the course of business, or any similar limitation. Although the directives listed in the annex to the Injunctions Directive mainly require Member States to impose obligations on persons carrying on business in the general sense, the identification and definition of those persons vary considerably. For this reason there is no express requirement in this section that persons only engage in conduct constituting a Community infringement if they do so in the course of business.
476. [Schedule 13](#) lists the individual directives, or parts of individual directives, to which the Injunctions Directive applies (*subsection (7)*). *Subsection (9)* provides the Secretary of State with an order-making power to modify Schedule 13 by adding or removing directives to reflect further amendments to the Injunctions Directive.