

# ENTERPRISE ACT 2002

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Enforcement procedure**

##### *Section 215: Applications*

517. This section is concerned with the person against whom an application for an enforcement order may be made, the types of infringement in respect of which particular enforcers are to have the power to make applications to the courts, and the courts that are to hear such proceedings.
518. An application for an enforcement order (including an interim enforcement order) must name the person the enforcer thinks has engaged or is engaging in conduct that constitutes an infringement, or who is likely to engage in conduct that would constitute a Community infringement (*subsection (1)*).
519. A general enforcer (that is, the OFT, a trading standards department or the Department of Enterprise, Trade and Investment in Northern Ireland) may make an application for an enforcement order in respect of all infringements to which this Part applies (*subsection (2)*).
520. A designated enforcer may make an application for an enforcement order only in respect of those infringements for which it is designated (*subsection (3)*).
521. A Community enforcer may make an application for an enforcement order only in respect of a Community infringement (*subsection (4)*).
522. An application for an enforcement order may be made to 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; or to the Court of Session or the sheriff if the person carries on business or has a place of business in Scotland (*subsection (5)*).
523. The court may examine whether the purpose of a Community enforcer justifies it taking action in the particular case (*subsection (6)*). Where the court thinks that the purpose of the Community enforcer does not justify it taking action, it may refuse the application solely on that ground (*subsection (7)*). The purpose of a Community enforcer in this context is the purpose of the body for the purpose of the Injunctions Directive. The Department believes that the Injunctions Directive only gives Community enforcers the right to make applications for enforcement orders in respect of those interests protected by the enforcer in its home State. The purpose of a Community enforcer would therefore, in particular, include the infringements in respect of which it has the power to act in its home State (*subsection (8)*).
524. An enforcer that is not the OFT must notify the OFT of the outcome of an application made under this section (*subsection (9)*). This would include the terms of any

*These notes refer to the Enterprise Act 2002 (c.40)  
which received Royal Assent on 7 November 2002*

undertaking given to, or order made by, the court. This is to assist the OFT in its co-ordination role.