

## **ENTERPRISE ACT 2002**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

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

#### **Enforcement procedure**

#### ***Section 217: Enforcement orders***

530. Where the court is satisfied that the person against whom proceedings have been brought has engaged in conduct that constitutes an infringement or, in the case of a Community infringement, is likely to do so, the court may make an enforcement order against that person (*subsections (1) to (3)*). The Department considers that it is a requirement of the Injunctions Directive for the courts to be able to make orders to stop threatened Community infringements. This could be the case if an enforcer becomes aware that a misleading advertisement is about to be published in a newspaper or periodical.
531. In considering whether to make an enforcement order, the court must have regard to whether the defendant has failed to comply with any voluntary undertaking given under section 219 relating to any conduct that constitutes an infringement (*subsection (4)*). Failure to comply with an undertaking would be pertinent to the question of whether an enforcement order should be made (rather than another undertaking accepted). The order must indicate the nature of the conduct that the person has engaged in, or in the case of a Community infringement which is likely to engage in, that constitutes an infringement and must require the person against whom it is made:
- not to continue or repeat the conduct; or
  - not to engage in conduct of the nature indicated by the court if it has found that a Community infringement is likely to be committed; and
  - not to engage in conduct of the nature indicated by the court in the course of the business concerned or another business carried out by him in future; and
  - not to consent to, or connive in, the carrying out of such conduct by a body corporate with which he has a special relationship as defined in section 222(3),
- as provided by *subsections (5)-(7)*. The last element means that the defendant must not consent to, or connive in, the carrying out of such conduct by a body corporate of which he is a director or which he controls. This will prevent a sole trader from evading the scope of an enforcement order by acquiring a company with a nominal share capital to operate his business and continue the infringement.
532. In addition, the court may order the defendant (but not the enforcer) at his expense to publish its order (in full or in part) and/or a corrective statement in such form and manner as deemed adequate with a view to eliminating or reducing the continuing effects of the infringement (*subsection (8)*). The availability of this remedy is a requirement of the Injunctions Directive. An obvious example for its use would be in

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

respect of an advertisement that has been found to be misleading. It would be in the discretion of the courts when to exercise this power and how the information should best be published to bring it to the attention of consumers. However, whether or not the court exercises this power, enforcers would be free to publish the terms of court orders and undertakings given to the court (see below).

533. As an alternative to making an enforcement order, the court may accept an undertaking from the defendant. The undertaking may take the same form as the order, or may be to take such steps as the court considers will prevent him doing anything the order would have prohibited him from doing (*subsection (9)*). In these circumstances, the court may also accept a further undertaking from the defendant to publish at his expense the terms of the undertaking (in full or in part) or a corrective statement (*subsection (10)*).
534. Where the court accepts an undertaking from the defendant in respect of conduct that constitutes an infringement, it cannot make an enforcement order in respect of that finding (*subsection (11)*) except where further proceedings are brought under section 220.
535. An injunction (or interdict in Scotland) generally has effect only in the jurisdiction (England and Wales, or Scotland or Northern Ireland) in which it was granted. The effect of *subsection (12)* is that an enforcement order made under this Part will apply throughout the UK. It will therefore be capable of stopping a person who is the subject of an order in one jurisdiction of the UK from harming the collective interests of consumers in the other two jurisdictions.
536. This Part makes no special provisions for appeals. The normal rules will apply.