

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Enforcement of Certain Consumer Legislation

Enforcement procedure

Section 222: Bodies corporate: accessories

554. This section provides that if a body corporate engages in conduct that constitutes a domestic or Community infringement with the consent or connivance of a person (an accessory) who has a special relationship with that body corporate, the consent or connivance is also conduct that constitutes the infringement (*subsections (1) and (2)*). The effect is that an application can be made under section 215 for an enforcement order against an accessory who consents to, or connives at, the conduct of the body corporate.
555. The court will have the power to make an order against, or to accept an undertaking from, an accessory whether or not it has made an order or accepted an undertaking from the body corporate (*subsections (5) and (6)*). Similarly, an enforcer may accept an undertaking from an accessory regardless of whether it accepts an undertaking from the body corporate (*subsection (7)*).
556. The provisions of this Part apply to infringements consisting of consent or connivance as they apply to other infringements with the exception that the terms of orders and undertakings are modified slightly by *subsections (8) and (9)* of this section.
557. Where an order is made as referred to in *subsection (5)* or an undertaking is accepted as referred to in *subsections (6) or (7)*, it must require the accessory:
- not to continue to consent to, or connive at, the body corporate's conduct or repeat the consent or connivance;
 - not to engage in conduct of the kind committed by the body corporate in the course of any business that may be carried out by him (i.e. as sole trader or in partnership); and
 - not to consent to, or connive at, conduct of that kind by any other body corporate with which he has a special relationship, as defined in section 222(3).
558. An accessory may be either a controller of a company or a director, manager, secretary or other similar officer (or a person purporting to act in such a capacity). A 'controller' means someone who instructs the directors of a company as to how to act or someone who, together with any associates, controls one third or more of the voting power in the company (*subsections (3) and (4)*). 'Associate' is defined in *subsections (10) to (13)* and principally covers husbands and wives, and cohabitants (including ones of the same sex who live together in a settled relationship), relatives and business partners, and companies who share a 'controller'.