



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 8

#### ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

##### *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
  - (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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;
  - (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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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;

---

*Status: This is the original version (as it was originally enacted).*

---

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