

2003 No. 1399

CONSUMER PROTECTION

**The Enterprise Act 2002 (Part 8 Designated Enforcers:
Criteria for Designation, Designation of Public Bodies
as Designated Enforcers and Transitional Provisions)
Order 2003**

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| <i>Made</i> - - - - - | <i>28th May 2003</i> |
| <i>Laid before Parliament</i> | <i>29th May 2003</i> |
| <i>Coming into force</i> - - | <i>20th June 2003</i> |

Whereas the Secretary of State thinks that each of the public bodies listed in the Schedule to this Order has as one of its functions the protection of the collective interests of consumers and she is satisfied that each of them is independent;

Now therefore the Secretary of State in exercise of her powers under sections 213 and 276 of the Enterprise Act 2002(a) hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Enterprise Act 2002 (Part 8 Designated Enforcers: Criteria for Designation, Designation of Public Bodies as Designated Enforcers and Transitional Provisions) Order 2003 and shall come into force on 20th June 2003.

2. In this Order:

“the Act” means the Enterprise Act 2002; and

“applicant” means a body or person which is not a public body seeking to be designated by the Secretary of State as a designated enforcer under section 213(2) of the Act.

Criteria for designation

3. The criteria that an applicant must satisfy in order that the Secretary of State may designate it as a designated enforcer under section 213(2) of the Act are as follows:

- (a) the applicant is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity and has established procedures to ensure that any potential conflicts of interest are properly dealt with;
- (b) the applicant has demonstrated experience, competence and expertise in promoting or protecting the collective interests of consumers in respect of domestic infringements or Community infringements, including, where the applicant is a successor to any person or body which had such expertise, by reference to that person or body;
- (c) the applicant has demonstrated the ability to protect the collective interests of consumers by promoting high standards of integrity and fair dealing in the conduct of business in relation to such consumers;

(a) 2002 c. 40.

- (d) the applicant has the capability to investigate infringements and carry out the enforcement procedures set out in Part 8 of the Act in respect of the types of infringement for which it seeks designation;
- (e) the applicant is ready and willing to follow best practice in enforcement;
- (f) the applicant is ready and willing to co-operate with the OFT and other general enforcers, designated enforcers and Community enforcers and any other person responsible for the regulation of matters in respect of which acts or omissions may constitute domestic or Community infringements including by:
 - (i) sharing information with such other enforcers and persons in so far as legally permitted; and
 - (ii) by participating in arrangements to co-ordinate action under Part 8 with other enforcers and persons acting or proposing to act in respect of the same person.

4. An applicant shall not be regarded as failing to meet the criteria set out in article 3(a) above by reason only of a connection with a person carrying on business of a kind that could be affected, directly or indirectly, by action taken under Part 8 of the Act so long as that person does not control the applicant and any profits of the business are used for the purposes of furthering the stated objectives of the applicant.

Designation of Public Bodies

5. The public bodies listed in the Schedule to this Order are hereby designated under section 213(2) of the Enterprise Act 2002 as designated enforcers in respect of all infringements.

Transitional Provision

6. In so far as any person or body has done any thing or taken any proceedings under the Stop Now Orders (EC Directive) Regulation 2001(a) which that person or body could following the coming into force of Part 8 of the Enterprise Act 2002 have done or taken under that Act then it shall have effect following the coming into force of Part 8 as if done or taken under Part 8.

28th May 2003

Stephen Timms
Minister of State for E-Commerce and Competitiveness
Department of Trade and Industry

(a) S.I. 2001/1422.

SCHEDULE

Article 5

Designated Public Bodies

The Civil Aviation Authority
The Director General of Electricity Supply for Northern Ireland
The Director General of Gas for Northern Ireland
The Director General of Telecommunications
The Director General of Water Services
The Gas and Electricity Markets Authority
The Information Commissioner
The Rail Regulator

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 of this Order sets out the criteria which a person or body (which is not a public body) must satisfy in order that the Secretary of State may designate it as a designated enforcer under Part 8 of the Enterprise Act 2002. The Order also designates the public bodies listed in the Schedule as designated enforcers for the purposes of all infringements. A designated enforcer may take action to obtain enforcement orders to restrain those Community and domestic infringements in respect of which the enforcer is designated.

The provisions in Part 8 of the Enterprise Act in respect of Community infringements implement the Injunctions Directive (Directive 98/27/EEC of the European Parliament and of the Council of 19th May 1998 on injunctions for the protection of consumers' interests) (OJ L 166, 11th June 1998, p.51). The Stop Now Orders (EC Directive) Regulations 2001 (S.I. 2001 No. 1422) ("SNORS") are accordingly revoked by the Enterprise Act.

The bodies listed in the Schedule were previously designated by SNORS as public UK qualified entities. Designation under this Order for the purpose of Part 8 supersedes designation under SNORS. Local weights and measures authorities in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland (which were designated under SNORS) are now general enforcers under Part 8 of the Act (section 213).

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