
DRAFT STATUTORY INSTRUMENTS

2008 No.

**The Business Protection from
Misleading Marketing Regulations 2008**

PART 4

INVESTIGATION POWERS

Powers of Enforcement Authorities to obtain information

21.—(1) For the purpose of determining whether to bring proceedings for an injunction under regulation 15, an enforcement authority may by notice in writing require a person to provide to it such information as may be specified or described in the notice or to produce to it any documents so specified or described.

(2) A notice under paragraph (1) may—

- (a) specify the way in which and the time within which it is to be complied with; and
- (b) be varied or revoked by a subsequent notice.

(3) Nothing in this regulation gives an enforcement authority any power to require another person to provide or produce any information or document which the other person would be entitled to refuse to provide or produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(4) In paragraph (3) “communications” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(5) Nothing in this regulation shall be construed as requiring a person to provide information if to do so might incriminate him.

(6) If a person does not comply with a notice under paragraph (1) the court may, on the application of an enforcement authority, make such order as the court thinks fit for requiring the default to be made good, and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

Power to make test purchases

22. An enforcement authority may or may authorise any of its officers on its behalf to—

- (a) make a purchase of a product; or
- (b) enter into an agreement to secure the provision of a product,

for the purposes of determining whether these Regulations are being complied with.

Power of entry and investigation, etc.

23.—(1) A duly authorised officer of an enforcement authority may at all reasonable hours exercise the following powers—

- (a) he may, for the purpose of ascertaining whether a breach of these Regulations has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
- (b) if he has reasonable cause to suspect that a breach of these Regulations has been committed, he may, for the purpose of ascertaining whether it has been committed, require any trader to produce any documents relating to his trade, business, craft or profession and may take copies of, or of any entry in, any such document;
- (c) if he has reasonable cause to believe that a breach of these Regulations has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the breach has been committed; and
- (d) he may seize and detain goods or documents which he has reason to believe may be required as evidence in proceedings for a breach of these Regulations.

(2) If and to the extent that it is reasonably necessary to do so to secure that the provisions of these Regulations are observed, the officer may for the purpose of exercising his powers under paragraphs (1) (c) and (d) to seize goods or documents—

- (a) require any person having authority to do so to break open any container or open any vending machine; and
- (b) himself open or break open any such container or open any vending machine where a requirement made under sub-paragraph (a) in relation to the container or vending machine has not been complied with.

(3) An officer seizing any goods or documents in exercise of his powers under this regulation shall—

- (a) inform the person from whom they are seized; and
- (b) where goods are seized from a vending machine, inform—
 - (i) the person whose name and address are stated on the vending machine as being the proprietor's, or
 - (ii) if there is no such name or address stated on the vending machine, the occupier of the premises on which the machine stands or to which it is affixed,

that the goods or documents have been so seized.

(4) In this regulation “document” includes information recorded in any form.

(5) The reference in paragraph (1)(b) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(6) An officer seeking to exercise a power under this regulation must produce evidence of his identity and authority to a person (if there is one) who appears to the officer to be the occupier of the premises.

(7) Where an officer seizes goods or documents in exercise of a power under this regulation they may not be detained—

- (a) for a period of more than 3 months; or
- (b) where the goods or documents are reasonably required by the enforcement authority in connection with the enforcement of these Regulations, for longer than they are so required.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) Nothing in this regulation or in regulation 24 gives any power to an officer of an enforcement authority—

- (a) to require any person to produce, or
- (b) to seize from another person,

any document which the other person would be entitled to refuse to produce in proceedings in the High Court on the grounds of legal professional privilege or (in Scotland) in proceedings in the Court of Session on the grounds of confidentiality of communications.

(10) In paragraph (9) “communications” means—

- (a) communications between a professional legal adviser and his client; or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(11) If any person who is not an officer of an enforcement authority purports to act as such under this regulation or regulation 24 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Power to enter premises with a warrant

24.—(1) If a justice of the peace by a written information on oath is satisfied—

- (a) that there are reasonable grounds for believing that Condition A or B is met, and
- (b) that Condition C, D or E is met,

the justice may by warrant under his hand authorise an officer of an enforcement authority to enter the premises at all reasonable times, if necessary by force.

(2) Condition A is that there are on any premises goods or documents which a duly authorised officer of the enforcement authority has power under regulation 23(1) to inspect and that their inspection is likely to disclose evidence of a breach of these Regulations.

(3) Condition B is that a breach of these Regulations has occurred, is occurring or is about to occur on any premises.

(4) Condition C is that the admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this regulation has been given to the occupier.

(5) Condition D is that an application for admission, or the giving of a notice of intention to apply for a warrant, would defeat the object of the entry.

(6) Condition E is that the premises are unoccupied or that the occupier is absent and it might defeat the object of the entry to await his return.

(7) A warrant under paragraph (1)—

- (a) ceases to have effect at the end of the period of one month beginning with the day it is issued;
- (b) must be produced for inspection to the person (if there is one) who appears to the officer to be the occupier of the premises.

(8) An officer entering any premises under this regulation may take with him such other persons and such equipment as may appear to him to be necessary.

(9) On leaving any premises which an officer is authorised to enter by warrant under this regulation the officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(10) In its application to Scotland, this regulation has effect as if—

- (a) the references in paragraph (1) to a justice of the peace included references to a sheriff; and

(b) the reference in paragraph (1) to information on oath were a reference to evidence on oath.

(11) In its application to Northern Ireland, this regulation has effect as if the references in paragraph (1) to a justice of the peace were references to a lay magistrate.

Obstruction of authorised officers

25.—(1) Any person who—

- (a) intentionally obstructs an officer of an enforcement authority acting in pursuance of these Regulations;
- (b) intentionally fails to comply with any requirement properly made of him by such an officer under regulation 23; or
- (c) without reasonable cause fails to give such an officer any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under these Regulations,

is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) Any person who, in giving any information which is required of him under paragraph (1)(c), makes any statement which he knows to be false in a material particular is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(3) Nothing in this regulation shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

(4) Paragraph (1)(a) does not apply in relation to the exercise by an enforcement authority of its power to require information under regulation 21.

Notice of test and intended proceedings

26.—(1) Where goods purchased by an officer pursuant to regulation 22 are submitted to a test and the test leads to the institution of any proceedings for a breach of these Regulations the officer shall inform—

- (a) the person from whom the goods were purchased; or
- (b) where the goods were sold through a vending machine, the person mentioned in regulation 23(3)(b);

of the result of the test.

(2) Where goods seized by an officer pursuant to regulation 23 are submitted to a test then the officer shall inform the person mentioned in regulation 23(3) of the result of the test.

(3) Where, as a result of the test, proceedings for a breach of these Regulations are taken against any person, the officer shall allow him to have the goods tested on his behalf if it is reasonably practicable to do so.

Compensation

27.—(1) Where an officer of an enforcement authority seizes and detains goods in exercise of the powers under regulation 23 the enforcement authority shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no breach of these Regulations in relation to the goods, and
 - (b) the exercise of that power is not attributable to any neglect or default by that person.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this provision shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Crown

- 28.**—(1) The powers conferred by regulations 23 and 24 are not exercisable in relation to premises occupied by the Crown.
- (2) The Crown is not criminally liable as a result of any provision of these Regulations.
 - (3) Paragraph (2) does not affect the application of any provision of these Regulations in relation to a person in the public service of the Crown.

Validity of agreements

- 29.** An agreement shall not be void or unenforceable by reason only of a breach of these Regulations.