
DRAFT STATUTORY INSTRUMENTS

2008 No.

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

PART 4

INVESTIGATION POWERS

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.