



Competition Act 1998

1998 CHAPTER 41

PART I

COMPETITION

CHAPTER III

INVESTIGATION AND ENFORCEMENT

Investigations

25 [F¹OFT's] power to investigate.

The [F¹OFT] may conduct an investigation if there are reasonable grounds for suspecting—

- (a) that the Chapter I prohibition has been infringed; or
- (b) that the Chapter II prohibition has been infringed.

Textual Amendments

- F1** Words in s. 25 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(19\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

26 Powers when conducting investigations.

- (1) For the purposes of an investigation under section 25, the [F²OFT] may require any person to produce to [F²it] a specified document, or to provide [F²it] with specified information, which [F²it] considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—

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- (a) the subject matter and purpose of the investigation; and
 - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—
- (a) specified, or described, in the notice; or
 - (b) falling within a category which is specified, or described, in the notice.
- (5) The [F3OFT] may also specify in the notice—
- (a) the time and place at which any document is to be produced or any information is to be provided;
 - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
- (a) if the document is produced—
 - (i) to take copies of it or extracts from it;
 - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
 - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

Textual Amendments

- F2** Words in s. 26(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(20\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F3** Word in s. 26(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(20\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

Modifications etc. (not altering text)

- C1** S. 26 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))

27 Power to enter premises without a warrant.

- (1) Any officer of the [F4OFT] who is authorised in writing by the [F4OFT] to do so (“an investigating officer”) may enter any premises in connection with an investigation under section 25.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
- (a) gives at least two working days’ notice of the intended entry;
 - (b) indicates the subject matter and purpose of the investigation; and
 - (c) indicates the nature of the offences created by sections 42 to 44.
- (3) Subsection (2) does not apply—
- (a) if the [F4OFT] has a reasonable suspicion that the premises are, or have been, occupied by—
 - (i) a party to an agreement which [F5it] is investigating under section 25(a); or

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- (ii) an undertaking the conduct of which [^{F5}it] is investigating under section 25(b); or
 - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
 - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
 - (b) require any person on the premises—
 - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
 - (ii) if the document is produced, to provide an explanation of it;
 - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
 - (d) take copies of, or extracts from, any document which is produced;
 - (e) require any information which is [^{F6}stored in any electronic form] and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible [^{F7}or from which it can readily be produced in a visible and legible form].

Textual Amendments

- F4** Word in s. 27 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(21\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F5** Word in s. 27(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(21\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F6** Words in s. 27(5)(e) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(a\)](#); [S.I. 2003/708, art. 2\(k\)](#)
- F7** Words in s. 27(5)(e) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(b\)](#); [S.I. 2003/708, art. 2\(k\)](#)

Modifications etc. (not altering text)

- C2** S. 27 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))

28 Power to enter premises under a warrant.

- (1) On an application made by the [^{F8}OFT] to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any premises documents—
 - (i) the production of which has been required under section 26 or 27; and
 - (ii) which have not been produced as required;
 - (b) there are reasonable grounds for suspecting that—

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- (i) there are on any premises documents which the [F⁸OFT] has power under section 26 to require to be produced; and
 - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
 - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the [F⁹OFT], and any other of [F¹⁰the OFT's officers whom the OFT] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
 - (c) to take possession of any documents appearing to be of the relevant kind if—
 - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
 - (ii) it is not reasonably practicable to take copies of the documents on the premises;
 - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
 - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
 - (f) to require any information which is [F¹¹stored in any electronic form] and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
 - (i) in which it can be taken away, and
 - (ii) in which it is visible and legible [F¹²or from which it can readily be produced in a visible and legible form].
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

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Textual Amendments

- F8** Word in s. 28(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(a\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F9** Word in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(b\)\(i\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F10** Words in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(b\)\(ii\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F11** Words in s. 28(2)(f) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(a\); S.I. 2003/708, art. 2\(k\)](#)
- F12** Words in s. 28(2)(f) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(b\); S.I. 2003/708, art. 2\(k\)](#)

Modifications etc. (not altering text)

- C3** S. 28 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))
- C4** S. 28(2): powers of seizure extended (*prosp.*) by [2001 c. 16, ss. 50, 52-54, 68, 138\(2\), Sch. 1 Pt. 1 para. 67](#)
- C5** S. 28(2)(f) modified (*prosp.*) by [2001 c. 16, ss. 63\(2\)\(h\), 138\(2\)](#)
- C6** S. 28(2)(f) modified (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 63, 138\(2\); S.I. 2003/708, art. 2\(a\)](#)
- C7** S. 28(7) applied (*prosp.*) by [2001 c. 16, ss. 57\(1\)\(n\)\(2\)\(4\), 138\(2\)](#)
- C8** S. 28(7) applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 57\(1\)\(n\), 138\(2\)](#) (with [s. 57\(4\); S.I. 2003/708, art. 2\(a\)](#))

29 Entry of premises under warrant: supplementary.

- (1) A warrant issued under section 28 must indicate—
 - (a) the subject matter and purpose of the investigation;
 - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
 - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
 - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—
 - “named officer” means the officer named in the warrant; and
 - “occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

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Modifications etc. (not altering text)

- C9** S. 29 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

30 Privileged communications.

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
 - (a) between a professional legal adviser and his client, or
 - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
 which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (3) In the application of this section to Scotland—
 - (a) references to the High Court are to be read as references to the Court of Session; and
 - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

Modifications etc. (not altering text)

- C10** S. 30 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

31 Decisions following an investigation.

- (1) Subsection (2) applies if, as the result of an investigation conducted under section 25, the [F13OFT] proposes to make—
 - (a) a decision that the Chapter I prohibition has been infringed, or
 - (b) a decision that the Chapter II prohibition has been infringed.
- (2) Before making the decision, the [F13OFT] must—
 - (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
 - (b) give that person (or those persons) an opportunity to make representations.

Textual Amendments

- F13** Word in s. 31 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(23)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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