

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Enforcement of Certain Consumer Legislation

Enforcement procedure

Section 214: Consultation

514. This section applies if an enforcer thinks that an infringement has occurred, is occurring, or, in the case of a Community infringement, is likely to occur. Except where the OFT thinks that an application for an enforcement order should be made without delay, enforcers must first consult the OFT (if it is not the enforcer) and the person against whom the enforcement order may be made and give the latter the opportunity to stop the infringement occurring, continuing or being repeated, as the case may be, without the need for court action (*subsections (1) to (3)*). It may be, for example, that the trader was not aware that his conduct constituted an infringement or that he is able to show that it was an isolated occurrence. The enforcer may then decide it is not necessary to make an application. It may also be that the trader decides to offer an undertaking to the enforcer under section 219.
515. After the end of 14 days beginning on the day after the request for consultation is received, the enforcer may make an application for an enforcement order under section 215 (subsection (4)(a)). This period is reduced to 7 days where the enforcer intends to make an application for an interim enforcement order (subsection (4)(b)) (see below). The Secretary of State may by order make rules as to consultation (*subsection (5)*). The Department plans to use this to provide for addresses for service of the request for consultation and to specify a deemed date of receipt of a request for consultation, for example two days after posting first class.
516. The purpose of enforcers being required to consult the OFT is to enable the OFT to perform a co-ordinating role in relation to proceedings under this Part. This will enable the OFT to facilitate the sharing of information between enforcers to promote consistent enforcement throughout the country and to make directions under section 216 to avoid the risk of traders facing multiple actions in relation to the same infringement. It is not envisaged that the OFT should become directly involved in the consultations with the trader except where it is the enforcer or has been asked to do so by the trader.