

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Enforcement of Certain Consumer Legislation

Enforcement procedure

Section 216: Applications: directions by OFT

525. This section provides that, if the OFT believes that an enforcer or enforcers other than itself intends to apply for an enforcement order in respect of a particular infringement, it may direct which enforcer may bring such proceedings, or that only it may do so (*subsections (1) and (2)*). Where the OFT directs that only it may make such application, that does not prevent it from seeking a voluntary undertaking from the trader or from taking other steps to bring the infringement to an end (*subsection (3)*). The OFT may vary or withdraw any direction made under this section (*subsection (4)*).
526. The effect is that if the OFT becomes aware that an enforcer (other than a Community enforcer) is intending to make an application, but there are regulatory or self-regulatory mechanisms that the enforcer has not attempted to use, the OFT could make a direction to the effect that only it can make a court application. This will be the case even if the OFT had no prior knowledge, and therefore no intention to apply itself, before it became aware of the alleged infringement or the other enforcer's intention. This will ensure that existing regulatory and self-regulatory mechanisms, such as that operated by the Independent Television Commission (ITC) in relation to broadcast advertising and sponsorship, are not by-passed.
527. The section will also allow the OFT to prevent businesses being faced with multiple applications in respect of the same infringement. The OFT can decide which enforcer is best placed to proceed with the application. It may be, if, for example, a majority of the trader's customers are in another EEA State, that the OFT could direct that if an application is to be made, then it should be a Community enforcer that brings proceedings and not others, but this is not likely to happen very often.
528. The OFT may take such steps as it thinks appropriate for bringing a direction given under this section to the attention of other enforcers who may be affected by it. This will minimise the risk that others will seek to enter into informal negotiations with the trader over the same infringement (*subsection (5)*).
529. This section does not prevent an application for an enforcement order being made by a Community enforcer (*subsection (6)*). This is because the only constraint permitted by the Injunctions Directive on such bodies is the requirement to give the OFT two weeks' notice of their intention to make an application to the courts (see section 214).