

STATUTORY INSTRUMENTS

2006 No. 3363

CONSUMER PROTECTION

The Enterprise Act 2002 (Amendment) Regulations 2006

Made - - - - 14th December 2006
Laid before Parliament 15th December 2006
Coming into force - - 8th January 2007

The Secretary of State makes the following Regulations in exercise of the power conferred on him by section 2(2) of the European Communities Act 1972^{M1}, being a Minister designated for the purposes of section 2(2) of that Act in relation to matters relating to consumer protection^{M2}.

Marginal Citations

M1 1972 c.68.
M2 SI 1993/2661.

Citation and commencement **U.K.**

1.—(1) These Regulations may be cited as the Enterprise Act 2002 (Amendment) Regulations 2006.

(2) These Regulations shall come into force on 8th January 2007.

Interpretation **U.K.**

2. In these Regulations—

“the CPC Regulation” means Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws^{M3} as amended by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market^{M4};

“the 2001 Act” means the Criminal Justice and Police Act 2001^{M5};

“the 2002 Act” means the Enterprise Act 2002^{M6}.

Marginal Citations

- M3** OJ No. L364/1, 9.12.2004.
- M4** OJ No. L149/22, 11.6.2005.
- M5** 2001 c.16.
- M6** 2002 c.40.

Amendments to the 2002 Act **U.K.**

3. The 2002 Act is amended as set out in regulations 4 to 22.

U.K.

4. In section 210(6)(b) after the word “Directive” insert “ or the listed Regulation ”.

U.K.

5. After section 210(7) insert—
 - “(7A) A Regulation is a listed Regulation—
 - (a) if it is a Regulation of the Council of the European Communities or of the European Parliament and of the Council, and
 - (b) if it is specified in Schedule 13 or to the extent that any of its provisions is so specified.”.

U.K.

6. At the end of section 212(1)(a) after “EEA State,” repeal “ or ”.

U.K.

7. After section 212(1)(b) insert—
 - “(c) contravenes a listed Regulation, or
 - (d) contravenes any laws, regulations or administrative provisions of an EEA State which give effect to a listed Regulation.”.

U.K.

8. At the end of section 212(3)(b) after “permitted protections” insert “ ; or ” and then insert—
 - “(c) gives effect to a listed Regulation”.

U.K.

9. In section 212(4) after the words “listed Directive” insert “ or to a listed Regulation ”.

U.K.

10. In section 213(5) for paragraph (b) substitute—
 - “(b) which is not a general enforcer, a designated enforcer or a CPC enforcer.”.

U.K.

11. After section 213(5) insert—

“(5A) Each of the following (being bodies or persons designated by the Secretary of State under Article 4(1) or 4(2) of the CPC Regulation) is a CPC enforcer—

- (a) the OFT;
- (b) the Civil Aviation Authority;
- (c) the Financial Services Authority;
- (d) the Secretary of State for Health;
- (e) the Department of Health, Social Services and Public Safety in Northern Ireland;
- (f) the Office of Communications;
- (g) the Department of Enterprise, Trade and Investment in Northern Ireland;
- (h) every local weights and measures authority in Great Britain;
- (i) the Independent Committee for the Supervision of Standards of the Telephone Information Services.”.

U.K.

12. After section 215(4) insert—

“(4A) A CPC enforcer may make an application for an enforcement order in respect of a Community infringement.”.

U.K.

13. After section 219(5) insert—

“(5A) A CPC enforcer who has accepted an undertaking under this section may—

- (a) accept a further undertaking from the person concerned to publish the terms of the undertaking; or
- (b) take steps itself to publish the undertaking.

(5B) In each case the undertaking shall be published in such form and manner and to such extent as the CPC enforcer thinks appropriate for the purpose of eliminating any continuing effects of the Community infringement.”.

U.K.

14. After section 221(3)(b) insert—

“(c) every CPC enforcer.”.

U.K.

^{F1}15.

Textual Amendments

F1 Regs. 15-18 revoked (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 6 para. 85(f); S.I. 2015/1630, art. 3(i) (with art. 8)

U.K.

^{F1}16.

Textual Amendments

F1 Regs. 15-18 revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 6 para. 85(f)**; S.I. 2015/1630, art. 3(i) (with art. 8)

U.K.

^{F1}17.

Textual Amendments

F1 Regs. 15-18 revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 6 para. 85(f)**; S.I. 2015/1630, art. 3(i) (with art. 8)

U.K.

^{F1}18.

Textual Amendments

F1 Regs. 15-18 revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 6 para. 85(f)**; S.I. 2015/1630, art. 3(i) (with art. 8)

U.K.

19. In section 229(6) after “another general” insert “ or CPC ”.

U.K.

20. After section 235 insert—

“235A CPC Regulation

235A. In this Part—

- (a) the CPC Regulation is Regulation [\(EC\) No. 2006/2004](#) of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws as amended by the Unfair Commercial Practices Directive ^{M7};
- (b) the Unfair Commercial Practices Directive is Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ^{M8}.

235B Dual enforcers

235B. References in this Part to a general enforcer, a designated enforcer or a CPC enforcer are to be read, in the case of a person or body which is more than one kind of

enforcer, as references to that person or body acting in its capacity as a general enforcer, designated enforcer or (as the case may be) CPC enforcer.”.

Marginal Citations

- M7** OJ No. L364, 9.12.2004.
M8 OJ No. L149/22, 11.6.2005.

U.K.

21. For section 236 substitute—

“236 Crown

- (1) This Part binds the Crown.
(2) But the powers conferred by sections 227A to 227D are not exercisable in relation to premises occupied by the Crown.”.

U.K.

22.—(1) In Schedule 13 after “Listed Directives” in the heading insert “ and Regulations ”.

(2) In Part 1 of that Schedule—

- (a) after “Directives” in the heading insert “ and Regulations ”;
(b) after paragraph 7 insert—

“7A Directive [97/55/EC](#) of the European Parliament and of the Council of 6 October 1997 amending Directive [84/450/EEC](#) concerning misleading advertising so as to include comparative advertising ^{M9}.

7B Directive [98/6/EC](#) of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers ^{M10}.”;

(c) after paragraph 9A insert—

“9B Regulation [\(EC\) No. 261/2004](#) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights ^{M11}.”.

Marginal Citations

- M9** OJ No. L 290, 23.10.1997, p 18.
M10 OJ No. L 80, 18.3.1998, p. 27.
M11 OJ No. L 46, 17.2.2004, p 1.

[^{F2}Financial Conduct Authority] **U.K.**

23. The functions of the [^{F3}Financial Conduct Authority] which are exercisable by virtue of the CPC Regulation shall be treated as functions conferred on the Authority under provisions of the Financial Services and Markets Act 2000 ^{M12}.

Textual Amendments

- F2** Reg. 23 heading substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **art. 1(1), Sch. 2 para. 123**
- F3** Words in reg. 23 substituted (1.4.2013) by [The Financial Services Act 2012 \(Consequential Amendments and Transitional Provisions\) Order 2013 \(S.I. 2013/472\)](#), **art. 1(1), Sch. 2 para. 123**

Marginal Citations

M12 2000 c. 8.

Amendments to the 2001 Act **U.K.**

^{F4}24.

Textual Amendments

- F4** [Regs. 24-28](#) revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\)](#), **Sch. 6 para. 85(f)**; [S.I. 2015/1630, art. 3\(i\)](#) (with art. 8)

U.K.

^{F4}25.

Textual Amendments

- F4** [Regs. 24-28](#) revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\)](#), **Sch. 6 para. 85(f)**; [S.I. 2015/1630, art. 3\(i\)](#) (with art. 8)

U.K.

^{F4}26.

Textual Amendments

- F4** [Regs. 24-28](#) revoked (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\)](#), **Sch. 6 para. 85(f)**; [S.I. 2015/1630, art. 3\(i\)](#) (with art. 8)

U.K.

^{F4}27.

Textual Amendments

F4 Regs. 24-28 revoked (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 85(f)**; S.I. 2015/1630, art. 3(i) (with art. 8)

U.K.

^{F4}**28.**

Textual Amendments

F4 Regs. 24-28 revoked (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 6 para. 85(f)**; S.I. 2015/1630, art. 3(i) (with art. 8)

Amendment to Data Protection Act 1998 **U.K.**

29. In Part 4 of the Data Protection Act 1998 ^{M13} after section 31(5) insert—

“(5A) Personal data processed by a CPC enforcer for the purpose of discharging any function conferred on such a body by or under the CPC Regulation are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.

(5B) In subsection (5A)—

- (a) “CPC enforcer” has the meaning given to it in section 213(5A) of the Enterprise Act 2002 but does not include the Office of Fair Trading;
- (b) “CPC Regulation” has the meaning given to it in section 235A of that Act.”.

Marginal Citations

M13 1998 c.29.

Ian McCartney
Minister of State for Trade, Investment and
Foreign Affairs
Department of Trade and
Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Articles 4(6) and 13(4) of Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, as amended by Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the “CPC Regulation”).

The CPC Regulation creates a network of enforcers which are responsible for taking action to stamp out cross border infringements of the EC consumer protection legislation set out in the Annex to the said Regulation. Article 4(6), which prescribes the powers which enforcers under the CPC Regulation must have, requires further implementation.

Part 8 of the Enterprise Act 2002 (the “2002 Act”) confers some of the enforcement powers referred to in the CPC Regulation on certain bodies in relation to most (but not all) of the EC consumer protection legislation which the CPC Regulation applies to. Most of the Regulations amend Part 8 to ensure that the powers set out in Article 4(6) of the CPC Regulation may be exercised in accordance with the terms of the said Regulation.

Regulation 17 adds entry and inspection powers to Part 8 of the 2002 Act along with certain procedural safeguards and a criminal offence of obstructing officers of enforcers Part 8 to give effect to Article 4(6)(c) of the CPC Regulation, since Part 8 does not contain entry and inspection powers.

Regulation 11 gives details of the bodies which are entitled to exercise those powers. Regulation 12 restricts the scope of CPC enforcers' activities by providing that they may only apply for an enforcement order in relation to Community infringements.

Regulation 13 gives effect to Article 4(6)(e) of the CPC Regulation by giving CPC enforcers the power to publish (or to obtain an undertaking to publish) an undertaking obtained other than in connection with proceedings to obtain an enforcement order. Regulation 16 extends the power in section 226 of the 2002 Act to enable enforcers to obtain information in any form (in accordance with Article 4(6)(a) of the CPC Regulation).

Regulation 20 clarifies how references to those bodies, where they already act as enforcers under Part 8 are to be interpreted. The remainder of regulations 4 to 19 make amendments to Part 8 which are ancillary to the substantive provisions described above. Regulation 21 ensures that the entry and inspection powers do not apply to premises occupied by the Crown. Regulation 22 adds the three pieces of Community legislation to Schedule 13 of the 2002 Act to which CPC applies but Part 8 does not.

Regulation 23 ensures that certain powers and protections which the Financial Service Authority enjoys under the Financial Services and Markets Act 2000 which are necessary for the proper discharge of its functions under the CPC Regulation will apply to the discharge of those functions. Regulation 28 applies the enhanced seizure powers contained in section 50 of the Criminal Justice and Police Act 2001 (the “2001 Act”) to the power of entry and inspection under warrant set out in regulation 17. Regulation 26(1) ensures that the definition of legal professional privilege in regulation 17 applies where the issue of privilege arises in the context of the exercise of powers under the 2001 Act by CPC enforcers. Regulations 25, 26(2) and (3) and 27 make certain ancillary amendments to the 2001 Act.

Regulation 29 implements Article 13(4) of the CPC Regulation by ensuring that the subject access provisions in the Data Protection Act 1998 do not obstruct the proper functioning of the CPC Regulation.

Document Generated: 2024-04-25

Changes to legislation: *There are currently no known outstanding effects for the The Enterprise Act 2002 (Amendment) Regulations 2006. (See end of Document for details)*

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Duncan Lawson, Bay 407, Department of Trade & Industry, 1 Victoria Street, London, SW1H 0ET.

Changes to legislation:

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