



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 8

#### ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

##### *Introduction*

#### **210 Consumers**

- (1) In this Part references to consumers must be construed in accordance with this section.
- (2) In relation to a domestic infringement a consumer is an individual in respect of whom the first and second conditions are satisfied.
- (3) The first condition is that—
  - (a) goods are or are sought to be supplied to the individual (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or
  - (b) services are or are sought to be supplied to the individual in the course of a business carried on by the person supplying or seeking to supply them.
- (4) The second condition is that—
  - (a) the individual receives or seeks to receive the goods or services otherwise than in the course of a business carried on by him, or
  - (b) the individual receives or seeks to receive the goods or services with a view to carrying on a business but not in the course of a business carried on by him.
- <sup>F1</sup>(5) .....
- (6) In relation to a Community infringement a consumer is a person who is a consumer for the purposes of—
  - (a) the Injunctions Directive, and
  - (b) the listed Directive [<sup>F2</sup>or the listed Regulation] concerned.
- (7) A Directive is a listed Directive—

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- (a) if it is a Directive of the Council of the [<sup>F3</sup>European Union] 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.

[<sup>F4</sup>(7A) A Regulation is a listed Regulation—

- (a) if it is a Regulation of the Council of the [<sup>F3</sup>European Union] 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.]

(8) A business includes—

- (a) a professional practice;
- (b) any other undertaking carried on for gain or reward;
- (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.

(9) The Secretary of State may by order modify Schedule 13.

(10) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F1** S. 210(5) omitted (1.10.2015) by virtue of Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 2** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F2** Words in s. 210(6)(b) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 4**
- F3** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))
- F4** S. 210(7A) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), **reg. 5**

## 211 Domestic infringements

(1) In this Part a domestic infringement is an act or omission which—

- (a) is done or made by a person in the course of a business,
- (b) falls within subsection (2), and
- (c) harms the collective interests of consumers<sup>F5</sup> ....

[<sup>F6</sup>(1A) But an act or omission which satisfies the conditions in subsection (1) is a domestic infringement only if at least one of the following is satisfied—

- (a) the person supplying (or seeking to supply) goods or services has a place of business in the United Kingdom, or
- (b) the goods or services are supplied (or sought to be supplied) to or for a person in the United Kingdom (see section 232).]

(2) An act or omission falls within this subsection if it is of a description specified by the Secretary of State by order and consists of any of the following—

- (a) a contravention of an enactment which imposes a duty, prohibition or restriction enforceable by criminal proceedings;

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- (b) an act done or omission made in breach of contract;
  - (c) an act done or omission made in breach of a non-contractual duty owed to a person by virtue of an enactment or rule of law and enforceable by civil proceedings;
  - (d) an act or omission in respect of which an enactment provides for a remedy or sanction enforceable by civil proceedings;
  - (e) an act done or omission made by a person supplying or seeking to supply goods or services as a result of which an agreement or security relating to the supply is void or unenforceable to any extent;
  - (f) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to exercise a right or remedy relating to the supply in circumstances where the exercise of the right or remedy is restricted or excluded under or by virtue of an enactment;
  - (g) an act or omission by which a person supplying or seeking to supply goods or services purports or attempts to avoid (to any extent) liability relating to the supply in circumstances where such avoidance is restricted or prevented under an enactment.
- (3) But an order under this section may provide that any description of act or omission falling within subsection (2) is not a domestic infringement.
- (4) For the purposes of subsection (2) it is immaterial—
- (a) whether or not any duty, prohibition or restriction exists in relation to consumers as such;
  - (b) whether or not any remedy or sanction is provided for the benefit of consumers as such;
  - (c) whether or not any proceedings have been brought in relation to the act or omission;
  - (d) whether or not any person has been convicted of an offence in respect of the contravention mentioned in subsection (2)(a);
  - (e) whether or not there is a waiver in respect of the breach of contract mentioned in subsection (2)(b).
- (5) References to an enactment include references to subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).
- (6) The power to make an order under this section must be exercised by statutory instrument.
- (7) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

#### Textual Amendments

- F5** Words in s. 211(1)(c) omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 3\(2\)](#) (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F6** S. 211(1A) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 3\(3\)](#) (with s. 79(2)); S.I. 2015/1630, art. 3(i)

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## 212 Community infringements

- (1) In this Part a Community infringement is an act or omission which harms the collective interests of consumers and which—
- (a) contravenes a listed Directive as given effect by the laws, regulations or administrative provisions of an EEA State,<sup>F7</sup> . . .
  - (b) contravenes such laws, regulations or administrative provisions which provide additional permitted protections.
  - [<sup>F8</sup>(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.]
- (2) The laws, regulations or administrative provisions of an EEA State which give effect to a listed Directive provide additional permitted protections if—
- (a) they provide protection for consumers which is in addition to the minimum protection required by the Directive concerned, and
  - (b) such additional protection is permitted by that Directive.
- (3) The Secretary of State may by order specify for the purposes of this section the law in the United Kingdom which—
- (a) gives effect to the listed Directives;
  - (b) provides additional permitted protections [<sup>F9</sup>; or]
  - [<sup>F10</sup>(c) gives effect to a listed Regulation]
- (4) References to a listed Directive [<sup>F11</sup>or to a listed Regulation] must be construed in accordance with section 210.
- [<sup>F12</sup>(5) EEA State has the meaning given by Schedule 1 to the Interpretation Act 1978<sup>F13</sup>.]
- (6) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### Textual Amendments

- F7** Word in s. 212(1)(a) repealed (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 6**
- F8** S. 212(1)(c)(d) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 7**
- F9** Words in s. 212(3)(b) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 8**
- F10** S. 212(3)(c) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 8**
- F11** Words in s. 212(4) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 9**
- F12** S. 212(5) substituted (16.3.2007) by [The Enterprise Act 2002 \(EEA State\) \(Amendment\) Regulations 2007 \(S.I. 2007/528\)](#), **reg. 2**
- F13** 1978 c.30.

## 213 Enforcers

- (1) Each of the following is a general enforcer—
- (a) the [<sup>F14</sup>CMA];

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- (b) every local weights and measures authority in Great Britain;
  - (c) the Department of Enterprise, Trade and Investment in Northern Ireland.
- (2) A designated enforcer is any person or body (whether or not incorporated) which the Secretary of State—
- (a) thinks has as one of its purposes the protection of the collective interests of consumers, and
  - (b) designates by order.
- (3) The Secretary of State may designate a public body only if he is satisfied that it is independent.
- (4) The Secretary of State may designate a person or body which is not a public body only if the person or body (as the case may be) satisfies such criteria as the Secretary of State specifies by order.
- (5) A Community enforcer is a qualified entity for the purposes of the Injunctions Directive—
- (a) which is for the time being specified in the list published in the Official Journal of the <sup>[F3]</sup>European Union] in pursuance of Article 4.3 of that Directive, but
  - <sup>[F15]</sup>(b) which is not a general enforcer, a designated enforcer or a CPC enforcer.]
- <sup>[F16]</sup>(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 <sup>[F17]</sup>CMA];
  - (b) the Civil Aviation Authority;
  - (c) the <sup>[F18]</sup>Financial Conduct Authority] ;
  - (d) the Secretary of State for Health <sup>[F19]</sup>and Social Care];
  - (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;
  - <sup>[F20]</sup>(i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);]
  - <sup>[F21]</sup>(j) the Information Commissioner]
- (6) An order under this section may designate an enforcer in respect of—
- (a) all infringements;
  - (b) infringements of such descriptions as are specified in the order.
- (7) An order under this section may make different provision for different purposes.
- (8) The designation of a body by virtue of subsection (3) is conclusive evidence for the purposes of any question arising under this Part that the body is a public body.
- (9) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If requested to do so by a designated enforcer which is designated in respect of one or more Community infringements the Secretary of State must notify the Commission of the <sup>[F3]</sup>European Union] —
- (a) of its name and purpose;

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- (b) of the Community infringements in respect of which it is designated.
- (11) The Secretary of State must also notify the Commission—
- (a) of the fact that a person or body in respect of which he has given notice under subsection (10) ceases to be a designated enforcer;
  - (b) of any change in the name or purpose of a designated enforcer in respect of which he has given such notice;
  - (c) of any change to the Community infringements in respect of which a designated enforcer is designated.

#### Textual Amendments

- F3** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))
- F14** Word in s. 213(1)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 6](#) (with art. 3)
- F15** S. 213(5)(b) substituted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 10](#)
- F16** S. 213(5A) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 11](#)
- F17** Word in s. 213(5A)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 6](#) (with art. 3)
- F18** Words in s. 213(5A)(c) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 95\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F19** Words in s. 213(5A)(d) inserted (11.4.2018) by [The Secretaries of State for Health and Social Care and for Housing, Communities and Local Government and Transfer of Functions \(Commonhold Land\) Order 2018 \(S.I. 2018/378\)](#), art. 1(2), [Sch. para. 11](#) (with art. 14)
- F20** S. 213(5A)(i) substituted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 4](#) (with s. 79(2)); [S.I. 2015/1630](#), art. 3(i)
- F21** S. 213(5A)(j) inserted (26.5.2011) by [The Privacy and Electronic Communications \(EC Directive\) \(Amendment\) Regulations 2011 \(S.I. 2011/1208\)](#), regs. 1(1), [16\(a\)](#)

#### Enforcement procedure

### 214 Consultation

- [<sup>F22</sup>(1) An enforcer must not make an application for an enforcement order unless—
- (a) the enforcer has engaged in appropriate consultation with the person against whom the enforcement order would be made, and
  - (b) if the enforcer is not the [<sup>F23</sup>CMA], the enforcer has given notice to the [<sup>F23</sup>CMA] of the enforcer's intention to apply for the enforcement order, and the appropriate minimum period has elapsed.
- (1A) The appropriate minimum period is—
- (a) in the case of an enforcement order, 14 days beginning with the day on which notice under subsection (1)(b) is given;
  - (b) in the case of an interim enforcement order, seven days beginning with the day on which notice under subsection (1)(b) is given.]

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- (2) Appropriate consultation is consultation for the purpose of—
- (a) achieving the cessation of the infringement in a case where an infringement is occurring;
  - (b) ensuring that there will be no repetition of the infringement in a case where the infringement has occurred;
  - (c) ensuring that there will be no repetition of the infringement in a case where the cessation of the infringement is achieved under paragraph (a);
  - (d) ensuring that the infringement does not take place in the case of a Community infringement which the enforcer believes is likely to take place.
- (3) Subsection (1) does not apply if the [F24CMA] thinks that an application for an enforcement order should be made without delay.
- (4) [F25Subsection (1)(a)] ceases to apply—
- (a) for the purposes of an application for an enforcement order at the end of the period of 14 days [F26or, where subsection (4A) applies, 28 days] beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the enforcer;
  - (b) for the purposes of an application for an interim enforcement order at the end of the period of seven days beginning with the day after the person against whom the interim enforcement order would be made receives a request for consultation from the enforcer.

[F27(4A) This subsection applies where the person against whom the enforcement order would be made is a member of, or is represented by, a representative body, and that body operates a consumer code which has been approved by—

- (a) an enforcer, other than a designated enforcer which is not a public body,
- (b) a body which represents an enforcer mentioned in paragraph (a),
- (c) a group of enforcers mentioned in paragraph (a), or
- (d) a community interest company whose objects include the approval of consumer codes.

(4B) In subsection (4A)—

“consumer code” means a code of practice or other document (however described) intended, with a view to safeguarding or promoting the interests of consumers, to regulate by any means the conduct of persons engaged in the supply of goods or services to consumers (or the conduct of their employees or representatives), and

“representative body” means an organisation established to represent the interests of two or more businesses in a particular sector or area, and for this purpose “business” has the meaning it bears in section 210.]

- (5) The Secretary of State may by order make rules in relation to consultation under this section.
- (6) Such an order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section [F28(except subsections (1A) and (4))] and in sections 215 and 216 references to an enforcement order include references to an interim enforcement order.

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### Textual Amendments

- F22** S. 214(1)(1A) substituted for s. 214(1) (28.3.2013) by [The Public Bodies \(The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions\) Order 2013 \(S.I. 2013/783\)](#), arts. 1(2), **9(2)**
- F23** Word in s. 214(1)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 7** (with art. 3)
- F24** Word in s. 214(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 7** (with art. 3)
- F25** Words in s. 214(4) substituted (28.3.2013) by [The Public Bodies \(The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions\) Order 2013 \(S.I. 2013/783\)](#), arts. 1(2), **9(3)**
- F26** Words in s. 214(4)(a) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 7 para. 5(2)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F27** S. 214(4A)(4B) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), **Sch. 7 para. 5(3)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F28** Words in s. 214(7) substituted (28.3.2013) by [The Public Bodies \(The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions\) Order 2013 \(S.I. 2013/783\)](#), arts. 1(2), **9(4)**

## 215 Applications

- (1) An application for an enforcement order must name the person the enforcer thinks—
    - (a) has engaged or is engaging in conduct which constitutes a domestic or a Community infringement, or
    - (b) is likely to engage in conduct which constitutes a Community infringement.
  - (2) A general enforcer may make an application for an enforcement order in respect of any infringement.
  - (3) A designated enforcer may make an application for an enforcement order in respect of an infringement to which his designation relates.
  - (4) A Community enforcer may make an application for an enforcement order in respect of a Community infringement.
- [<sup>F29</sup>(4A) A CPC enforcer may make an application for an enforcement order in respect of a Community infringement.]
- (5) The following courts have jurisdiction to make an enforcement order—
    - [<sup>F30</sup>(za) the High Court or the county court if the person against whom the order is sought carries on business or has a place of business in England and Wales;]
    - (a) the High Court or a county court if the person against whom the order is sought carries on business or has a place of business in <sup>F31</sup>...Northern Ireland;
    - (b) the Court of Session or the sheriff if the person against whom the order is sought carries on business or has a place of business in Scotland.
  - (6) If an application for an enforcement order is made by a Community enforcer the court may examine whether the purpose of the enforcer justifies its making the application.



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- (7) If the court thinks that the purpose of the Community enforcer does not justify its making the application the court may refuse the application on that ground alone.
- (8) The purpose of a Community enforcer must be construed by reference to the Injunctions Directive.
- (9) An enforcer which is not the [F32CMA] must notify the [F32CMA] of the result of an application under this section.

#### Textual Amendments

- F29** S. 215(4A) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 12**
- F30** S. 215(5)(za) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 81(c)**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F31** Words in s. 215(5)(a) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 81(b)**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F32** Word in s. 215(9) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 8** (with art. 3)

#### 216 Applications: directions by [F33CMA]

- (1) This section applies if the [F34CMA] believes that an enforcer other than the [F34CMA] intends to apply for an enforcement order.
- (2) In such a case the [F34CMA] may direct that if an application in respect of a particular infringement is to be made it must be made—
  - (a) only by the [F34CMA], or
  - (b) only by such other enforcer as the [F34CMA] directs.
- (3) If the [F34CMA] directs that only it may make an application that does not prevent—
  - (a) the [F34CMA] or any enforcer from accepting an undertaking under section 219, or
  - (b) the [F34CMA] from taking such other steps it thinks appropriate (apart from making an application) for the purpose of securing that the infringement is not committed, continued or repeated.
- (4) The [F34CMA] may vary or withdraw a direction given under this section.
- (5) The [F34CMA] must take such steps as it thinks appropriate to bring a direction (or a variation or withdrawal of a direction) to the attention of enforcers it thinks may be affected by it.
- (6) But this section does not prevent an application for an enforcement order being made by a Community enforcer.

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### Textual Amendments

- F33** Word in s. 216 heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 9](#) (with art. 3)
- F34** Word in s. 216(1)-(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 9](#) (with art. 3)

## 217 Enforcement orders

- (1) This section applies if an application for an enforcement order is made under section 215 and the court finds that the person named in the application has engaged in conduct which constitutes the infringement.
- (2) This section also applies if such an application is made in relation to a Community infringement and the court finds that the person named in the application is likely to engage in conduct which constitutes the infringement.
- (3) If this section applies the court may make an enforcement order against the person.
- (4) In considering whether to make an enforcement order the court must have regard to whether the person named in the application—
  - (a) has given an undertaking under section 219 in respect of conduct such as is mentioned in subsection (3) of that section;
  - (b) has failed to comply with the undertaking.
- (5) An enforcement order must—
  - (a) indicate the nature of the conduct to which the finding under subsection (1) or (2) relates, and
  - (b) direct the person to comply with subsection (6).
- (6) A person complies with this subsection if he—
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (7) But subsection (6)(a) does not apply in the case of a finding under subsection (2).
- (8) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
  - (a) the order;
  - (b) a corrective statement.
- (9) If the court makes a finding under subsection (1) or (2) it may accept an undertaking by the person—
  - (a) to comply with subsection (6), or

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- (b) to take steps which the court believes will secure that he complies with subsection (6).
- (10) An undertaking under subsection (9) may include a further undertaking by the person to publish in such form and manner and to such extent as the court thinks appropriate for the purpose of eliminating any continuing effects of the infringement—
- (a) the terms of the undertaking;
  - (b) a corrective statement.
- [<sup>F35</sup>(10A) An enforcement order may require a person against whom the order is made to take enhanced consumer measures (defined in section 219A) within a period specified by the court.
- (10B) An undertaking under subsection (9) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.
- (10C) Subsections (10A) and (10B) are subject to section 219C in a case where the application for the enforcement order was made by a designated enforcer which is not a public body.
- (10D) Where a person is required by an enforcement order or an undertaking under this section to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.]
- (11) If the court—
- (a) makes a finding under subsection (1) or (2), and
  - (b) accepts an undertaking under subsection (9),
- it must not make an enforcement order in respect of the infringement to which the undertaking relates.
- (12) An enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

#### Textual Amendments

**F35** S. 217(10A)-(10D) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 6](#) (with s. 79(2)); [S.I. 2015/1630](#), art. 3(i)

## 218 Interim enforcement order

- (1) The court may make an interim enforcement order against a person named in the application for the order if it appears to the court—
- (a) that it is alleged that the person is engaged in conduct which constitutes a domestic or Community infringement or is likely to engage in conduct which constitutes a Community infringement,
  - (b) that if the application had been an application for an enforcement order it would be likely to be granted,
  - (c) that it is expedient that the conduct is prohibited or prevented (as the case may be) immediately, and

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- (d) if no notice of the application has been given to the person named in the application that it is appropriate to make an interim enforcement order without notice.
- (2) An interim enforcement order must—
  - (a) indicate the nature of the alleged conduct, and
  - (b) direct the person to comply with subsection (3).
- (3) A person complies with this subsection if he—
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (4) But subsection (3)(a) does not apply in so far as the application is made in respect of an allegation that the person is likely to engage in conduct which constitutes a Community infringement.
- (5) An application for an interim enforcement order against a person may be made at any time before an application for an enforcement order against the person in respect of the same conduct is determined.
- (6) An application for an interim enforcement order must refer to all matters—
  - (a) which are known to the applicant, and
  - (b) which are material to the question whether or not the application is granted.
- (7) If an application for an interim enforcement order is made without notice the application must state why no notice has been given.
- (8) The court may vary or discharge an interim enforcement order on the application of—
  - (a) the enforcer who applied for the order;
  - (b) the person against whom it is made.
- (9) An interim enforcement order against a person is discharged on the determination of an application for an enforcement order made against the person in respect of the same conduct.
- (10) If it appears to the court as mentioned in subsection (1)(a) to (c) the court may instead of making an interim enforcement order accept an undertaking from the person named in the application—
  - (a) to comply with subsection (3), or
  - (b) to take steps which the court believes will secure that he complies with subsection (3).
- (11) An interim enforcement order made by a court in one part of the United Kingdom has effect in any other part of the United Kingdom as if made by a court in that part.

### <sup>F36</sup>218A Unfair commercial practices: substantiation of claims

- (1) This section applies where an application for an enforcement order or for an interim enforcement order is made in respect of a Community infringement involving a contravention of Directive [2005/29/EC](#) of the European Parliament and of the Council

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of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

- (2) For the purposes of considering the application the court may require the person named in the application to provide evidence as to the accuracy of any factual claim made as part of a commercial practice of that person if, taking into account the legitimate interests of that person and any other party to the proceedings, it appears appropriate in the circumstances.
- (3) If, having been required under subsection (2) to provide evidence as to the accuracy of a factual claim, a person—
  - (a) fails to provide such evidence, or
  - (b) provides evidence as to the accuracy of the factual claim that the court considers inadequate,the court may consider that the factual claim is inaccurate.
- (4) In this section “commercial practice” has the meaning given by regulation 2 of the Consumer Protection from Unfair Trading Regulations 2008.]

#### Textual Amendments

**F36** S. 218A inserted (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), [regs. 1, 27](#) (with [reg. 28\(2\)\(3\)](#))

## 219 Undertakings

- (1) This section applies if an enforcer has power to make an application under section 215.
- (2) In such a case the enforcer may accept from a person to whom subsection (3) applies an undertaking that the person will comply with subsection (4).
- (3) This subsection applies to a person who the enforcer believes—
  - (a) has engaged in conduct which constitutes an infringement;
  - (b) is engaging in such conduct;
  - (c) is likely to engage in conduct which constitutes a Community infringement.
- (4) A person complies with this subsection if he—
  - (a) does not continue or repeat the conduct;
  - (b) does not engage in such conduct in the course of his business or another business;
  - (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he has a special relationship (within the meaning of section 222(3)).
- (5) But subsection (4)(a) does not apply in the case of an undertaking given by a person in so far as subsection (3) applies to him by virtue of paragraph (c).

- [<sup>F37</sup>(5ZA) An undertaking under this section may include a further undertaking by the person—
- (a) to take enhanced consumer measures (defined in section 219A) within a period specified in the undertaking, and
  - (b) where such measures are included, to provide information or documents to the enforcer in order that the enforcer may determine if the person is taking those measures.

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(5ZB) Subsection (5ZA) is subject to section 219C in a case where the enforcer is a designated enforcer which is not a public body.]

[<sup>F38</sup>(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.]

(6) If an enforcer accepts an undertaking under this section it must notify the [<sup>F39</sup>CMA]—

- (a) of the terms of the undertaking;
- (b) of the identity of the person who gave it.

#### Textual Amendments

**F37** S. 219(5ZA)(5ZB) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), Sch. 7 para. 7 (with s. 79(2)); S.I. 2015/1630, art. 3(i)

**F38** S. 219(5A)(5B) inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), reg. 13

**F39** Word in s. 219(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 10 (with art. 3)

#### [<sup>F40</sup>219A Definition of enhanced consumer measures

(1) In this Part, enhanced consumer measures are measures (not excluded by subsection (5)) falling within—

- (a) the redress category described in subsection (2),
- (b) the compliance category described in subsection (3), or
- (c) the choice category described in subsection (4).

(2) The measures in the redress category are—

- (a) measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking,
- (b) where the conduct referred to in paragraph (a) relates to a contract, measures offering such consumers the option to terminate (but not vary) that contract,
- (c) where such consumers cannot be identified, or cannot be identified without disproportionate cost to the subject of the enforcement order or undertaking, measures intended to be in the collective interests of consumers.

(3) The measures in the compliance category are measures intended to prevent or reduce the risk of the occurrence or repetition of the conduct to which the enforcement order or undertaking relates (including measures with that purpose which may have the effect of improving compliance with consumer law more generally).

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- (4) The measures in the choice category are measures intended to enable consumers to choose more effectively between persons supplying or seeking to supply goods or services.
- (5) The following are not enhanced consumer measures—
  - (a) a publication requirement included in an enforcement order as described in section 217(8),
  - (b) a publication requirement included in an undertaking accepted by the court as described in section 217(10), or
  - (c) a publication requirement included in an undertaking accepted by a CPC enforcer as described in section 219(5A)(a).

#### **Textual Amendments**

**F40** Ss. 219A-219C inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\), s. 100\(5\), Sch. 7 para. 8](#) (with s. 79(2)); [S.I. 2015/1630, art. 3\(i\)](#)

#### **219B Inclusion of enhanced consumer measures etc.**

- (1) An enforcement order or undertaking may include only such enhanced consumer measures as the court or enforcer (as the case may be) considers to be just and reasonable.
- (2) For the purposes of subsection (1) the court or enforcer must in particular consider whether any proposed enhanced consumer measures are proportionate, taking into account—
  - (a) the likely benefit of the measures to consumers,
  - (b) the costs likely to be incurred by the subject of the enforcement order or undertaking, and
  - (c) the likely cost to consumers of obtaining the benefit of the measures.
- (3) The costs referred to in subsection (2)(b) are—
  - (a) the cost of the measures, and
  - (b) the reasonable administrative costs associated with taking the measures.
- (4) An enforcement order or undertaking may include enhanced consumer measures in the redress category—
  - (a) only in a loss case, and
  - (b) only if the court or enforcer (as the case may be) is satisfied that the cost of such measures to the subject of the enforcement order or undertaking is unlikely to be more than the sum of the losses suffered by consumers as a result of the conduct which has given rise to the enforcement order or undertaking.
- (5) The cost referred to in subsection (4)(b) does not include the administrative costs associated with taking the measures.
- (6) Subsection (7) applies if an enforcement order or undertaking includes enhanced consumer measures offering compensation and a settlement agreement is entered into in connection with the payment of compensation.

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- (7) A waiver of a person's rights in the settlement agreement is not valid if it is a waiver of the right to bring civil proceedings in respect of conduct other than the conduct which has given rise to the enforcement order or undertaking.
- (8) The following definitions apply for the purposes of subsection (4)(a).
- (9) In the case of an enforcement order or undertaking under section 217, “a loss case” means a case in which—
- (a) subsection (1) of that section applies (a finding that a person has engaged in conduct which constitutes an infringement), and
  - (b) consumers have suffered loss as a result of that conduct.
- (10) In the case of an undertaking under section 219, “a loss case” means a case in which—
- (a) subsection (3)(a) or (b) of that section applies (a belief that a person has engaged or is engaging in conduct which constitutes an infringement), and
  - (b) consumers have suffered loss as a result of that conduct.

#### Textual Amendments

**F40** Ss. 219A-219C inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 8](#) (with s. 79(2)); [S.I. 2015/1630](#), art. 3(i)

### 219C Availability of enhanced consumer measures to private enforcers

- (1) An enforcement order made on the application of a designated enforcer which is not a public body may require a person to take enhanced consumer measures only if the following conditions are satisfied.
- (2) An undertaking given under section 217(9) following an application for an enforcement order made by a designated enforcer which is not a public body, or an undertaking given to such an enforcer under section 219, may include a further undertaking by a person to take enhanced consumer measures only if the following conditions are satisfied.
- (3) The first condition is that the enforcer is specified for the purposes of this section by order made by the Secretary of State.
- (4) The second condition is that the enhanced consumer measures do not directly benefit the enforcer or an associated undertaking.
- (5) Enhanced consumer measures which directly benefit an enforcer or an associated undertaking include, in particular, measures which—
  - (a) require a person to pay money to the enforcer or associated undertaking,
  - (b) require a person to participate in a scheme which is designed to recommend persons supplying or seeking to supply goods or services to consumers and which is administered by the enforcer or associated undertaking, or
  - (c) would give the enforcer or associated undertaking a commercial advantage over any of its competitors.
- (6) The Secretary of State may make an order under subsection (3) specifying an enforcer only if the Secretary of State is satisfied that to do so is likely to—



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- (a) improve the availability to consumers of redress for infringements to which the enforcer's designation relates,
  - (b) improve the availability to consumers of information which enables them to choose more effectively between persons supplying or seeking to supply goods or services, or
  - (c) improve compliance with consumer law.
- (7) The Secretary of State may make an order under subsection (3) specifying an enforcer only if the functions of the enforcer under this Part have been specified under section 24 of the Legislative and Regulatory Reform Act 2006 (functions to which principles under section 21 and code of practice under section 22 apply), to the extent that they are capable of being so specified.
- (8) The power to make an order under subsection (3)—
- (a) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) includes power to make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (9) Subsection (10) applies if—
- (a) an enforcer exercises a function in relation to a person by virtue of subsection (1) or (2),
  - (b) that function is a relevant function for the purposes of Part 2 (co-ordination of regulatory enforcement) of the Regulatory Enforcement and Sanctions Act 2008, and
  - (c) a primary authority (within the meaning of that Part) has given advice or guidance under section 27(1) of that Act—
    - (i) to that person in relation to that function, or
    - (ii) to other local authorities (within the meaning of that Part) with that function as to how they should exercise it in relation to that person.
- (10) The enforcer must, in exercising the function in relation to that person, act consistently with that advice or guidance.
- (11) In this section “associated undertaking”, in relation to a designated enforcer, means—
- (a) a parent undertaking or subsidiary undertaking of the enforcer, or
  - (b) a subsidiary undertaking of a parent undertaking of the enforcer,
- and for this purpose “parent undertaking” and “subsidiary undertaking” have the meanings given by section 1162 of the Companies Act 2006.]

#### **Textual Amendments**

**F40** Ss. 219A-219C inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 8](#) (with s. 79(2)); [S.I. 2015/1630](#), art. 3(i)

## **220 Further proceedings**

- (1) This section applies if the court—
- (a) makes an enforcement order under section 217,
  - (b) makes an interim enforcement order under section 218, or
  - (c) accepts an undertaking under either of those sections.

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- [<sup>F41</sup>(1A) This section does not apply in the case of a failure to comply with an order or undertaking which consists only of a failure to provide information or documents required by the order or undertaking as described in section 217(10D).]
- (2) [<sup>F42</sup>Any CPC enforcer] has the same right [<sup>F42</sup>to apply to the court in respect of a failure to comply with the order or undertaking as the enforcer who made the application for the order.
- (3) An application to the court in respect of a failure to comply with an undertaking may include an application for an enforcement order or for an interim enforcement order.
- (4) If the court finds that an undertaking is not being complied with it may make an enforcement order or an interim enforcement order (instead of making any other order it has power to make).
- (5) In the case of an application for an enforcement order or for an interim enforcement order as mentioned in subsection (3) sections 214 and 216 must be ignored and [<sup>F43</sup>sections 215, 217 or 218 (as the case may be) and 219A, 219B and 219C] apply subject to the following modifications—
- (a) section 215(1)(b) must be ignored;
  - (b) section 215(5) must be ignored and the application must be made to the court which accepted the undertaking;
  - [<sup>F44</sup>(c) section 217(9), (10), (10B) and (11) must be ignored, and section 217(10C) and (10D) must be ignored to the extent that they relate to an undertaking under section 217(9);]
  - (d) section 218(10) must be ignored.
  - [<sup>F45</sup>(e) sections 219A, 219B and 219C must be ignored to the extent that they relate to an undertaking under section 217(9) or 219.]
- (6) If an enforcer which is not the [<sup>F46</sup>CMA] makes an application in respect of the failure of a person to comply with an enforcement order, an interim enforcement order or an undertaking given under section 217 or 218 the enforcer must notify the [<sup>F46</sup>CMA]—
- (a) of the application;
  - (b) of any order made by the court on the application.

#### Textual Amendments

- F41** S. 220(1A) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 9(2)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F42** Words in s. 220(2) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 9(3)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F43** Words in s. 220(5) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 9(4)(a)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F44** S. 220(5)(c) substituted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 9(4)(b)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F45** S. 220(5)(e) inserted (1.10.2015) by Consumer Rights Act 2015 (c. 15), s. 100(5), **Sch. 7 para. 9(4)(c)** (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F46** Word in s. 220(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 11** (with art. 3)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 8. (See end of Document for details)*

## 221 Community infringements: proceedings

- (1) Subsection (2) applies to—
  - (a) every general enforcer;
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this subsection applies has power to take proceedings in EEA States other than the United Kingdom for the cessation or prohibition of a Community infringement.
- (3) Subsection (4) applies to—
  - (a) every general enforcer;
  - (b) every designated enforcer.
  - [<sup>F47</sup>(c) every CPC enforcer.]
- (4) An enforcer to which this subsection applies may co-operate with a Community enforcer—
  - (a) for the purpose of bringing proceedings mentioned in subsection (2);
  - (b) in connection with the exercise by the Community enforcer of its functions under this Part.
- (5) An EEA State is a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993.

### Textual Amendments

- F47** S. 221(3)(c) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 14](#)

## 222 Bodies corporate: accessories

- (1) This section applies if the person whose conduct constitutes a domestic infringement or a Community infringement is a body corporate.
- (2) If the conduct takes place with the consent or connivance of a person (an accessory) who has a special relationship with the body corporate, the consent or connivance is also conduct which constitutes the infringement.
- (3) A person has a special relationship with a body corporate if he is—
  - (a) a controller of the body corporate, or
  - (b) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity.
- (4) A person is a controller of a body corporate if—
  - (a) the directors of the body corporate or of another body corporate which is its controller are accustomed to act in accordance with the person's directions or instructions, or
  - (b) either alone or with an associate or associates he is entitled to exercise or control the exercise of one third or more of the voting power at any general meeting of the body corporate or of another body corporate which is its controller.

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- (5) An enforcement order or an interim enforcement order may be made against an accessory in respect of an infringement whether or not such an order is made against the body corporate.
- (6) The court may accept an undertaking under section 217(9) or 218(10) from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (7) An enforcer may accept an undertaking under section 219 from an accessory in respect of an infringement whether or not it accepts such an undertaking from the body corporate.
- (8) Subsection (9) applies if—
- an order is made as mentioned in subsection (5), or
  - an undertaking is accepted as mentioned in subsection (6) or (7).
- (9) In such a case for subsection (6) of section 217, subsection (3) of section 218 or subsection (4) of section 219 (as the case may be) there is substituted the following subsection—
- “(0) A person complies with this subsection if he—
- does not continue or repeat the conduct;
  - does not in the course of any business carried on by him engage in conduct such as that which constitutes the infringement committed by the body corporate mentioned in section 222(1);
  - does not consent to or connive in the carrying out of such conduct by another body corporate with which he has a special relationship (within the meaning of section 222(3)).”
- (10) A person is an associate of an individual if—
- he is the spouse [<sup>F48</sup>or civil partner] of the individual;
  - he is a relative of the individual;
  - he is a relative of the individual’s spouse [<sup>F48</sup>or civil partner];
  - he is the spouse [<sup>F48</sup>or civil partner] of a relative of the individual;
  - he is the spouse [<sup>F48</sup>or civil partner] of a relative of the individual’s spouse [<sup>F48</sup>or civil partner] ;
  - he lives in the same household as the individual otherwise than merely because he or the individual is the other’s employer, tenant, lodger or boarder;
  - he is a relative of a person who is an associate of the individual by virtue of paragraph (f);
  - he has at some time in the past fallen within any of paragraphs (a) to (g).
- (11) A person is also an associate of—
- an individual with whom he is in partnership;
  - an individual who is an associate of the individual mentioned in paragraph (a);
  - a body corporate if he is a controller of it or he is an associate of a person who is a controller of the body corporate.
- (12) A body corporate is an associate of another body corporate if—
- the same person is a controller of both;
  - a person is a controller of one and persons who are his associates are controllers of the other;

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- (c) a person is a controller of one and he and persons who are his associates are controllers of the other;
  - (d) a group of two or more persons is a controller of each company and the groups consist of the same persons;
  - (e) a group of two or more persons is a controller of each company and the groups may be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.
- (13) A relative is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant.

#### Textual Amendments

**F48** Words in s. 222(10)(a)(c)(d)(e) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), ss. 261\(1\), 263, Sch. 27 para. 169](#); S.I. 2005/3175, [art. 2, Sch. 1](#)

## 223 Bodies corporate: orders

- (1) This section applies if a court makes an enforcement order or an interim enforcement order against a body corporate and—
- (a) at the time the order is made the body corporate is a member of a group of interconnected bodies corporate,
  - (b) at any time when the order is in force the body corporate becomes a member of a group of interconnected bodies corporate, or
  - (c) at any time when the order is in force a group of interconnected bodies corporate of which the body corporate is a member is increased by the addition of one or more further members.
- (2) The court may direct that the order is binding upon all of the members of the group as if each of them were the body corporate against which the order is made.
- (3) A group of interconnected bodies corporate is a group consisting of two or more bodies corporate all of whom are interconnected with each other.
- (4) Any two bodies corporate are interconnected—
- (a) if one of them is a subsidiary of the other, or
  - (b) if both of them are subsidiaries of the same body corporate.
- [<sup>F49</sup>(5) In this section “subsidiary” has the meaning given by section 1159 of the Companies Act 2006.]

#### Textual Amendments

**F49** S. 223(5) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\), art. 1\(2\), Sch. 1 para. 199\(4\)](#) (with [art. 10](#))

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## Information

### F<sup>51</sup>224 [F<sup>50</sup>CMA]

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#### Textual Amendments

- F50** Word in s. 224 heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 12](#) (with art. 3)
- F51** S. 224 omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 68](#); S.I. 2015/1630, art. 3(i) (with art. 8)

### F<sup>52</sup>225 Other enforcers

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#### Textual Amendments

- F52** S. 225 omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 69](#); S.I. 2015/1630, art. 3(i) (with art. 8)

### F<sup>53</sup>226 Notices: procedure

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#### Textual Amendments

- F53** S. 226 omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 70](#); S.I. 2015/1630, art. 3(i) (with art. 8)

### F<sup>54</sup>227 Notices: enforcement

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#### Textual Amendments

- F54** S. 227 omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 71](#); S.I. 2015/1630, art. 3(i) (with art. 8)

### F<sup>55</sup>227A Power to enter premises without warrant

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*Status: Point in time view as at 11/04/2018.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 8. (See end of Document for details)*

**Textual Amendments**

**F55** S. 227A omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 72](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

**<sup>F56</sup>227B Powers exercisable on the premises**

.....

**Textual Amendments**

**F56** S. 227B omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 73](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

**<sup>F57</sup>227C Power to enter premises with warrant**

.....

**Textual Amendments**

**F57** S. 227C omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 74](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

**<sup>F58</sup>227D Ancillary provisions about powers of entry**

.....

**Textual Amendments**

**F58** S. 227D omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 75](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

**<sup>F59</sup>227E Obstructing, or failing to co-operate with, powers of entry**

.....

**Textual Amendments**

**F59** S. 227E omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 76](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

**<sup>F60</sup>227F Retention of documents and goods**

.....

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 8. (See end of Document for details)*

#### Textual Amendments

**F60** S. 227F omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 77](#); S.I. 2015/1630, art. 3(i) (with art. 8)

#### Miscellaneous

### [<sup>F61</sup>223A Investigative powers

For the investigatory powers available to enforcers for the purposes of enforcers' functions under this Part, see Schedule 5 to the Consumer Rights Act 2015.]

#### Textual Amendments

**F61** S. 223A inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 78](#); S.I. 2015/1630, art. 3(i)

### 228 Evidence

- (1) Proceedings under this Part are civil proceedings for the purposes of—
  - (a) section 11 of the Civil Evidence Act 1968 (c. 64) (convictions admissible as evidence in civil proceedings);
  - (b) section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 (c. 70) (corresponding provision in Scotland);
  - (c) section 7 of the Civil Evidence Act (Northern Ireland) 1971 (c. 36 (N.I.)) (corresponding provision in Northern Ireland).
- (2) In proceedings under this Part any finding by a court in civil proceedings that an act or omission mentioned in section 211(2)(b), (c) or (d) or 212(1) has occurred—
  - (a) is admissible as evidence that the act or omission occurred;
  - (b) unless the contrary is proved, is sufficient evidence that the act or omission occurred.
- (3) But subsection (2) does not apply to any finding—
  - (a) which has been reversed on appeal;
  - (b) which has been varied on appeal so as to negative it.

<sup>F62</sup>(4) .....

#### Textual Amendments

**F62** S. 228(4) omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 79](#); S.I. 2015/1630, art. 3(i) (with art. 8)

### 229 Advice and information

- (1) [<sup>F63</sup>The CMA] must prepare and publish advice and information with a view to—
  - (a) explaining the provisions of this Part to persons who are likely to be affected by them, and



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- (b) indicating how the [F64CMA] expects such provisions to operate.
- [F65(1A) As soon as is reasonably practicable after the commencement of Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc.) the CMA must prepare and publish advice and information with a view to—
- (a) explaining the provisions of that Schedule, so far as they relate to investigatory powers exercised for the purposes set out in paragraphs 13(2) and (3) and 19 of that Schedule, to persons who are likely to be affected by them, and
  - (b) indicating how the CMA expects such provisions to operate.]
- (2) The [F66CMA] may at any time publish revised or new advice or information.
- (3) Advice or information published in pursuance of subsection (1)(b) may include advice or information about the factors which the [F66CMA] may take into account in considering how to exercise the functions conferred on it by this Part.
- (4) Advice or information published by the [F66CMA] under this section is to be published in such form and in such manner as it considers appropriate.
- (5) In preparing advice or information under this section the [F66CMA] must consult such persons as it thinks are representative of persons affected by this Part.
- (6) If any proposed advice or information relates to a matter in respect of which another general [F67 or CPC] enforcer or a designated enforcer may act the persons to be consulted must include that enforcer.

#### Textual Amendments

- F63** Words in s. 229(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 14\(2\)\(a\)](#) (with art. 3)
- F64** Word in s. 229(1)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 14\(2\)\(b\)](#) (with art. 3)
- F65** S. 229(1A) inserted (1.10.2015) by [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 7 para. 10](#) (with s. 79(2)); S.I. 2015/1630, art. 3(i)
- F66** Word in s. 229(2)-(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 14\(3\)](#) (with art. 3)
- F67** Words in s. 229(6) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 19](#)

### 230 Notice to OFT of intended prosecution

- (1) This section applies if a local weights and measures authority in England and Wales intends to start proceedings for an offence under an enactment or subordinate legislation specified by the Secretary of State by order for the purposes of this section.
- (2) The authority must give the [F68CMA]—
- (a) notice of its intention to start the proceedings;
  - <sup>F69</sup>(b) .....
- (3) The authority must not start the proceedings until whichever is the earlier of the following—

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- (a) the end of the period of 14 days starting with the day on which the authority gives the notice;
  - (b) the day on which it is notified by the [<sup>F70</sup>CMA] that the [<sup>F70</sup>CMA] has received the notice <sup>F71</sup>... given under subsection (2).
- (4) The authority must also notify the [<sup>F72</sup>CMA] of the outcome of the proceedings after they are finally determined.
- (5) But such proceedings are not invalid by reason only of the failure of the authority to comply with this section.
- (6) Subordinate legislation has the same meaning as in section 21(1) of the Interpretation Act 1978 (c. 30).
- (7) An order under this section must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F68** Word in s. 230(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 15\(2\)\(a\)](#) (with art. 3)
- F69** S. 230(2)(b) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 15\(2\)\(b\)](#) (with art. 3)
- F70** Word in s. 230(3)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 15\(3\)\(a\)](#) (with art. 3)
- F71** Words in s. 230(3)(b) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 15\(3\)\(b\)](#) (with art. 3)
- F72** Word in s. 230(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 15\(4\)](#) (with art. 3)

#### Modifications etc. (not altering text)

- C1** S. 230 continued (23.2.2011) by [The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 \(S.I. 2010/2960\)](#), reg. 1(2), [Sch. 7 para. 2](#)

### 231 Notice of convictions and judgments to [<sup>F73</sup>CMA]

- (1) This section applies if—
- (a) a person is convicted of an offence by or before a court in the United Kingdom, or
  - (b) a judgment is given against a person by a court in civil proceedings in the United Kingdom.
- (2) The court may make arrangements to bring the conviction or judgment to the attention of the [<sup>F74</sup>CMA] if it appears to the court—
- (a) having regard to the functions of the [<sup>F74</sup>CMA] under this Part <sup>F75</sup>... that it is expedient for the conviction or judgment to be brought to the attention of the [<sup>F74</sup>CMA], and

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- (b) without such arrangements the conviction or judgment may not be brought to the attention of the [F74CMA].
- (3) For the purposes of subsection (2) it is immaterial that the proceedings have been finally disposed of by the court.
- (4) Judgment includes an order or decree and references to the giving of the judgment must be construed accordingly.

#### Textual Amendments

- F73** Word in s. 231 heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 16](#) (with art. 3)
- F74** Word in s. 231(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 16](#) (with art. 3)
- F75** Words in s. 231(2) omitted (31.3.2014) by virtue of [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(5), [Sch. 2 para. 4](#) (with Sch. 1 para. 28, 2 paras. 13-15)

### Interpretation

#### 232 Goods and services

- (1) References in this Part to goods and services must be construed in accordance with this section.
- (2) Goods include—
  - (a) buildings and other structures;
  - (b) ships, aircraft and hovercraft.
- (3) The supply of goods includes—
  - (a) supply by way of sale, lease, hire or hire purchase;
  - (b) in relation to buildings and other structures, construction of them by one person for another.
- (4) Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5).
- (5) Arrangements fall within this subsection if they are made by any means and—
  - (a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or
  - (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom.

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### 233 Person supplying goods

- (1) This section has effect for the purpose of references in this Part to a person supplying or seeking to supply goods under—
  - (a) a hire-purchase agreement;
  - (b) a credit-sale agreement;
  - (c) a conditional sale agreement.
- (2) The references include references to a person who conducts any antecedent negotiations relating to the agreement.
- (3) The following expressions must be construed in accordance with section 189 of the Consumer Credit Act 1974 (c. 39) —
  - (a) hire-purchase agreement;
  - (b) credit-sale agreement;
  - (c) conditional sale agreement;
  - (d) antecedent negotiations.

### 234 Supply of services

- (1) References in this Part to the supply of services must be construed in accordance with this section.
- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes—
  - (a) performing for gain or reward any activity other than the supply of goods;
  - (b) rendering services to order;
  - (c) the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.
- (5) The supply of services includes making arrangements by means of a relevant agreement [<sup>F76</sup>(within the meaning of paragraph 17 of Schedule 3A to the Communications Act 2003 (the electronic communications code)) for sharing the use of electronic communications apparatus.]
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State specifies by order.
- (7) The power to make an order under subsection (6) must be exercised by statutory instrument.
- (8) But no such order may be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.

#### Textual Amendments

**F76** Words in s. 234(5) substituted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), [Sch. 3 para. 44](#); S.I. 2017/1286, reg. 2(d)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 8. (See end of Document for details)*

## 235 Injunctions Directive

In this Part the Injunctions Directive is Directive [98/27/EC](#) of the European Parliament and of the Council on injunctions for the protection of consumers' interests.

### [<sup>F77</sup>235ACPC Regulation

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 <sup>M1</sup>;
- (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 <sup>M2</sup>.

#### Textual Amendments

**F77** Ss. 235A, 235B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 20](#)

#### Marginal Citations

**M1** OJ No. L364, 9.12.2004.

**M2** OJ No. L149/22, 11.6.2005.

## 235B Dual enforcers

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.]

#### Textual Amendments

**F77** Ss. 235A, 235B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 20](#)

*Crown*

### [<sup>F78</sup>236 Crown

(1) This Part binds the Crown.

<sup>F79</sup>(2) . . . . .]

#### Textual Amendments

**F78** S. 236 substituted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 21](#)

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*Changes to legislation: There are currently no known outstanding effects  
for the Enterprise Act 2002, Part 8. (See end of Document for details)*

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**F79** S. 236(2) omitted (1.10.2015) by virtue of [Consumer Rights Act 2015 \(c. 15\)](#), s. 100(5), [Sch. 6 para. 80](#); [S.I. 2015/1630](#), art. 3(i) (with art. 8)

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