
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⁽¹⁾, being a Minister designated for the purposes of section 2(2) of that Act in relation to matters relating to consumer protection⁽²⁾.

Citation and commencement

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

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⁽³⁾ 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⁽⁴⁾;

“the 2001 Act” means the Criminal Justice and Police Act 2001⁽⁵⁾;

“the 2002 Act” means the Enterprise Act 2002⁽⁶⁾.

Amendments to the 2002 Act

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

(1) 1972 c.68.

(2) SI 1993/2661.

(3) OJ No. L364/1, 9.12.2004.

(4) OJ No. L149/22, 11.6.2005.

(5) 2001 c.16.

(6) 2002 c.40.

4. In section 210(6)(b) after the word “Directive” insert “or the listed Regulation”.
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.”.
6. At the end of section 212(1)(a) after “EEA State,” repeal “or”.
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.”.
8. At the end of section 212(3)(b) after “permitted protections” insert “; or” and then insert—
 - “(c) gives effect to a listed Regulation”.
9. In section 212(4) after the words “listed Directive” insert “or to a listed Regulation”.
10. In section 213(5) for paragraph (b) substitute—
 - “(b) which is not a general enforcer, a designated enforcer or a CPC enforcer.”.
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.”.
12. After section 215(4) insert—
 - “(4A) A CPC enforcer may make an application for an enforcement order in respect of a Community infringement.”.
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.”.

14. After section 221(3)(b) insert—

“(c) every CPC enforcer.”.

15. After section 225(1)(b) insert—

“(c) every CPC enforcer (other than the OFT).”.

16. After section 226(6) insert—

“(6A) A notice may specify the form in which information is to be provided.”.

17. After section 227 insert—

“Power to enter premises without warrant

227A.—(1) An officer of a CPC enforcer who reasonably suspects that there has been, or is likely to be, a Community infringement may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether there has been, or is likely to be, such an infringement.

(2) An officer of a CPC enforcer who reasonably suspects that there is, or has been, a failure to comply with a relevant enforcement measure may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether a person is complying with, or has complied with, the relevant enforcement measure.

(3) An appropriate notice must be given to the occupier of the premises before an officer of a CPC enforcer enters them under subsection (1) and (2).

(4) An appropriate notice is a notice in writing given by an officer of a CPC enforcer which—

- (a) gives at least two working days’ notice of entry on the premises;
- (b) sets out why the entry is necessary; and
- (c) indicates the nature of the offence created by section 227E.

(5) Subsection (3) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so.

(6) In that case, the officer entering the premises must produce to any occupier that he finds on the premises a document setting out why the entry is necessary and indicating the nature of the offence created by section 227E.

(7) In all cases, the officer entering the premises must produce to any occupier evidence of—

- (a) his identity; and
- (b) in the case of an authorised officer of a CPC enforcer, his authorisation;

if asked to do so.

(8) In this section—

“give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post; and

“working day” means a day which is not—

- (a) Saturday or Sunday; or
- (b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(7) in the part of the United Kingdom in which the premises are situated.

(9) In this section and sections 227B to 227F—

“authorised officer of a CPC enforcer” means an officer of a CPC enforcer who is authorised by that enforcer for the purposes of this Part;

“occupier” means any person whom the officer concerned reasonably suspects to be the occupier;

“officer of a CPC enforcer” means—

- (a) an officer of a local weights and measures authority in Great Britain; or
- (b) an authorised officer of a CPC enforcer which is not a local weights and measures authority in Great Britain;

“premises” includes vehicles but does not include any premises which are used only as a dwelling; and

“relevant enforcement measure” means—

- (a) an enforcement order made under section 217 on the application of the CPC enforcer;
- (b) an interim enforcement order made under section 218 on the application of the CPC enforcer;
- (c) an undertaking under section 217(9) in connection with an application made by the CPC enforcer for an enforcement order under section 217;
- (d) an undertaking under section 218(10) in connection with an application made by the CPC enforcer for an interim enforcement order under section 218; or
- (e) an undertaking under section 219 to the CPC enforcer.

Powers exercisable on the premises

227B.—(1) An officer of a CPC enforcer may, in the exercise of his powers under section 227A—

- (a) observe the carrying on of a business on the premises;
- (b) inspect goods or documents on the premises;
- (c) require any person on the premises to produce goods or documents within such period as the officer considers to be reasonable;
- (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or
- (e) seize, remove and retain goods or documents which he reasonably suspects may be required as evidence of a Community infringement or a breach of a relevant enforcement measure.

(2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require him—

- (a) to state, to the best of his knowledge and belief, where the goods or documents are;
- (b) to give an explanation of the goods or documents; and
- (c) to secure that any goods or documents produced are authenticated or verified in such manner as the officer considers appropriate.

(3) An officer of a CPC enforcer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).

(4) But nothing in this section authorises action to be taken in relation to anything which, in proceedings in the High Court, a person would be entitled to refuse to produce on the grounds of legal professional privilege.

(5) In this section document includes information recorded in any form.

(6) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(7) In its application to Scotland, this section has effect as if the reference in subsection (4)—

- (a) to proceedings in the High Court were a reference to proceedings in the Court of Session; and
- (b) to an entitlement on the grounds of legal professional privilege were a reference to an entitlement on the grounds of confidentiality of communications.

Power to enter premises with warrant

227C.—(1) A justice of the peace may issue a warrant authorising an officer of a CPC enforcer to enter premises for purposes falling within section 227A(1) or (2) if the justice of the peace considers that there are reasonable grounds for believing that —

- (a) condition A is met; and
- (b) either condition B, C or D is met.

(2) Condition A is that there are, on the premises, goods or documents to which an officer of a CPC enforcer would be entitled to have access under sections 227A and 227B.

(3) Condition B is that an officer of a CPC enforcer acting under sections 227A and 227B has been, or would be likely to be, refused admission to the premises or access to the goods or documents.

(4) Condition C is that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 227A.

(5) Condition D is that there is likely to be nobody at the premises capable of granting admission.

(6) A warrant under this section authorises the officer of the CPC enforcer—

- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
- (b) to do anything on the premises that an officer of the CPC enforcer would be able to do if he had entered the premises under section 227A;
- (c) to search for goods or documents which he has required a person on the premises to produce where that person has failed to comply with such a requirement;
- (d) to the extent that it is reasonably necessary to do so, to require any person to whom subsection (7) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself;
- (e) to take any other steps which he considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which he would be entitled to have access under sections 227A and 227B.

(7) This subsection applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.

(8) A warrant under this section—

- (a) is issued on information on oath given by an officer of a CPC enforcer;
 - (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
 - (c) must, on request, be produced to the occupier of the premises for inspection.
- (9) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.
- (10) In its application to Scotland, this section has effect as if—
- (a) the references in subsection (1) to a justice of the peace included references to a sheriff; and
 - (b) the reference in subsection (8) to information on oath were a reference to evidence on oath.
- (11) In its application to Northern Ireland, this section has effect as if the references in subsection (1) to a justice of the peace were references to a lay magistrate.

Ancillary provisions about powers of entry

- 227D.**—(1) An officer of a CPC enforcer who enters premises by virtue of section 227A may only do so at a reasonable time.
- (2) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C may take with him such persons and equipment as he considers appropriate.
- (3) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C must, if the premises are unoccupied or the occupier is temporarily absent, take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

Obstructing, or failing to co-operate with, powers of entry

- 227E.**—(1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, an officer of a CPC enforcer who is exercising or seeking to exercise a power under sections 227A to 227D.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Retention of documents and goods

- 227F.**—(1) No documents seized under sections 227A to 227D may be retained for a period of more than three months.
- (2) No goods seized under sections 227A to 227D may be retained for a period of more than three months unless they are reasonably required in connection with the exercise of any function of a CPC enforcer under this Part.
- (3) Where goods are so required they may be retained for as long as they are so required.

18. After section 228(3) insert—

“(4) This section does not apply to proceedings for an offence under section 227E.”.

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

20. After section 235 insert—

“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⁽⁸⁾;
- (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⁽⁹⁾.

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.”.

21. For section 236 substitute—

“Crown

236.—(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.”.

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⁽¹⁰⁾.

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⁽¹¹⁾.

(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⁽¹²⁾.”.

⁽⁸⁾ OJ No. L364, 9.12.2004.

⁽⁹⁾ OJ No. L149/22, 11.6.2005.

⁽¹⁰⁾ OJ No. L 290, 23.10.1997, p 18.

⁽¹¹⁾ OJ No. L 80, 18.3.1998, p. 27.

⁽¹²⁾ OJ No. L 46, 17.2.2004, p 1.

Financial Services Authority

23. The functions of the Financial Services 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**(13)**.

Amendments to the 2001 Act

24. The 2001 Act is amended as set out in regulations 25 to 28.

25. After section 57(1)(p) insert—

“(pa) section 227F of the Enterprise Act 2002**(14)**.”.

26.—(1) In section 65 after subsection (8) insert—

“(8A) An item which is, or is comprised in, property which has been seized in exercise, or purported exercise, of the power of seizure conferred by section 227C of the Enterprise Act 2002 **(c.40)** shall be taken for the purposes of this Part to be an item subject to legal privilege if, and only if, the seizure of that item was in contravention of section 227B(4) of that Act (privileged items).”.

(2) In that section at the end of subsection (9)(d) repeal “or”.

(3) In that section at the end of subsection (9)(e) insert “or” and then insert—

“(f) section 227C of the Enterprise Act 2002.”.

27. After section 66(4)(m) insert—

“(ma) section 227C of the Enterprise Act 2002 (power to enter premises with warrant);

28. In Part 1 of Schedule 1 (powers of seizure to which section 50 applies) after paragraph 73B insert—

“**73BA** The power of seizure conferred by section 227C of the Enterprise Act 2002 (entry to premises with warrant to seize goods or documents etc).”.

Amendment to Data Protection Act 1998

29. In Part 4 of the Data Protection Act 1998**(15)** 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.”.

(13) 2000 c. 8.
(14) 2002 c.40.
(15) 1998 c.29.

14th December 2006

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 give 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.

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.