

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Cartel Offence

Criminal investigations by OFT

Section 194: Power to enter premises under a warrant

420. This section makes provision for the OFT to make an application to a judge of the High Court, or in Scotland for the procurators fiscal to apply to the sheriff court, for a warrant authorising a named officer of the OFT to enter premises. The warrant may also cover any other person whom the OFT has authorised in writing to accompany the named officer. This section parallels section 28 CA 1998, which requires the OFT to seek a warrant from the High Court or the Court of Session in order to investigate infringements of the civil prohibitions in Chapter I of CA 1998.
421. *Subsection (1)* grants a judge of the High Court or a sheriff the power to issue a warrant if he or she is satisfied that there are reasonable grounds for believing there are documents on any premises that the OFT has the right to require under section 193. The judge or the sheriff must be satisfied that one of the following circumstances applies before he or she may issue a warrant: (i) that a person has failed to comply with a requirement under section 193 to produce documents; (ii) that it is not practicable to serve a notice under section 193; or (iii) that the service of such a notice might seriously prejudice the investigation (i.e. there are reasonable grounds to believe that information might be destroyed or tampered with).
422. *Subsection (4)* allows people who are not employees of the OFT to accompany and assist OFT officers who are exercising powers under this section. It is anticipated that such people will have expertise that is not available within the OFT but is required to exploit fully the terms of the warrant (e.g. IT experts).
423. *Subsection (6)* amends Part I of Schedule 1 of the Criminal Justice and Police Act 2001 ('CJPA 2001') to add to it the powers of seizure conferred by subsection (2). This will have the effect of incorporating the amendments to statutory powers of seizure introduced by section 50 CJPA 2001.
424. These amendments enable an officer to seize material if it is not reasonably practicable to determine on the premises whether the material is seizeable or not, or, in the case of property some of which is seizeable, which items he or she would be entitled to seize. The exercise of the powers is subject to strict safeguards, which include a requirement to give written notice (section 52 CJPA 2001) and a duty to return legally privileged material (section 55).
425. The OFT's existing civil powers of seizure under section 28(2) CA 1998 are already contained in Part I of Schedule 1 of the CJPA 2001.