



Enterprise Act 2002

2002 CHAPTER 40

PART 8

ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

[^{F1}Enforcement procedure: supplementary]

Textual Amendments

- F1** S. 218A crossheading inserted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(6)** (with reg. 8)

[^{F2}218A Unfair commercial practices: substantiation of claims

- (1) This section applies where an application for [^{F3}an enforcement order, an interim enforcement order, an online interface order or an interim online interface order] is made in respect of a [^{F4}Schedule 13 infringement] involving a contravention of [^{F5}the Consumer Protection from Unfair Trading Regulations 2008].
- (2) For the purposes of considering the application the court may require [^{F6}the relevant person] 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.

[In subsection (2), “the relevant person”, in relation to an application, means—

- F7(2A)**
- (a) where the application is for an enforcement order or an interim enforcement order, the person named in the application under section 215(1);
 - (b) where the application is for an online interface order or an interim online interface order, the person alleged by the CMA to have engaged, be engaging or be likely to engage in conduct which constitutes the [^{F8}Schedule 13 infringement], provided that person is either the person against whom the order is sought or otherwise a party to the proceedings.]

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- (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

- F2** 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))
- F3** Words in s. 218A(1) substituted (2.6.2020) by The Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484), regs. 1(2), **2(7)(a)** (with reg. 8)
- F4** Words in s. 218A(1) substituted (31.12.2020) by The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/203), regs. 1, **3(10)(a)(i)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), **3(3)(c)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F5** Words in s. 218A(1) substituted (31.12.2020) by The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/203), regs. 1, **3(10)(a)(ii)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), **3(3)(c)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F6** Words in s. 218A(2) substituted (2.6.2020) by The Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484), regs. 1(2), **2(7)(b)** (with reg. 8)
- F7** S. 218A(2A) inserted (2.6.2020) by The Consumer Protection (Enforcement) (Amendment etc.) Regulations 2020 (S.I. 2020/484), regs. 1(2), **2(7)(c)** (with reg. 8)
- F8** Words in s. 218A(2A)(b) substituted (31.12.2020) by The Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/203), regs. 1, **3(10)(b)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), **3(3)(c)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**

219 Undertakings

- (1) This section applies if an enforcer has power to make an application [^{F9}for an enforcement order or an interim enforcement order under section 215 or for an online interface order or an interim online interface order under section 218ZA].
- (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 [^{F10}Schedule 13 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;

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- (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).
- [^{F11}(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.
- (5ZB) Subsection (5ZA) is subject to section 219C in a case where the enforcer is a designated enforcer which is not a public body.]
- [^{F12}(5A) A [^{F13}Schedule 13 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 [^{F14}Schedule 13 enforcer] thinks appropriate for the purpose of eliminating any continuing effects of the [^{F15}Schedule 13 infringement].]
- (6) If an enforcer accepts an undertaking under this section it must notify the [^{F16}CMA]—
- (a) of the terms of the undertaking;
 - (b) of the identity of the person who gave it.

Textual Amendments

- F9** Words in s. 219(1) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(8)** (with reg. 8)
- F10** Words in s. 219(3)(c) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(11)(a)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)
- F11** 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)
- F12** S. 219(5A)(5B) inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), **reg. 13**
- F13** Words in s. 219(5A) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(11)(b)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in s. 219(5B) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(11)(c)(i)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Words in s. 219(5B) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(11)(c)(ii)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)
- F16** 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)

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[^{F17}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—
 - ^{F18}(a) measures offering compensation or other redress to consumers—
 - (i) who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking, or
 - (ii) where that conduct constitutes a [^{F19}Schedule 13 infringement], who have been affected in any other way by that conduct.]
 - ^{F20}(b) where the conduct which has given rise to the enforcement order or undertaking relates to a contract, measures offering consumers falling within paragraph (a)(i) or (ii) the option to terminate (but not vary) that contract,]
 - (c) where [^{F21}consumers falling within paragraph (a)(i) or (ii)] 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).
- (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 [^{F22}Schedule 13 enforcer] as described in section 219(5A)(a).

Textual Amendments

- F17** 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)
- F18** S. 219A(2)(a) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(9)(a)** (with reg. 8)
- F19** Words in s. 219A(2)(a)(ii) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(12)(a)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), **3(3)(d)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F20** S. 219A(2)(b) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(9)(b)** (with reg. 8)
- F21** Words in s. 219A(2)(c) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(9)(c)** (with reg. 8)

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F22 Words in s. 219A(5)(c) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/203), regs. 1, **3(12)(b)** (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), **3(3)(d)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**

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) ^{F23}Where the conduct which has given rise to an enforcement order or undertaking constitutes a domestic infringement and not a ^{F24}Schedule 13 infringement], the 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.

^{F25}(4A) [Where the conduct which has given rise to an enforcement order or undertaking constitutes a ^{F26}Schedule 13 infringement], the enforcement order or undertaking may include enhanced consumer measures in the redress category for the benefit of consumers who have been affected by that conduct.]

- (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.
- (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

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- (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

- F17** 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)
- F23** Words in s. 219B(4) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), [2\(10\)\(a\)](#) (with reg. 8)
- F24** Words in s. 219B(4) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, [3\(12A\)](#) (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), [3\(3\)\(e\)\(8\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F25** S. 219B(4A) inserted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), [2\(10\)\(b\)](#) (with reg. 8)
- F26** Words in s. 219B(4A) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, [3\(12A\)](#) (with reg. 9) (as amended by [S.I. 2020/1347](#), regs. 1(3), [3\(3\)\(e\)\(8\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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 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—
 - (a) improve the availability to consumers of redress for infringements to which the enforcer's designation relates,

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- (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

F17 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,^{F27} ...
 - (c) accepts an undertaking under either of those sections^{F28} ... [^{F29}, or]
 - [^{F30}(d) makes an online interface order under section 218ZB or an interim online interface order under section 218ZC.]

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- [^{F31}(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) [^{F32}Any [^{F33}Schedule 13 enforcer]] has the same right to apply to the court in respect of a failure to comply with [^{F34}an order (apart from an online interface order or an interim online interface 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 [^{F35}an enforcement order, an interim enforcement order, an online interface order or an interim online interface order].
- (4) If the court finds that an undertaking is not being complied with it may make [^{F36}an enforcement order, an interim enforcement order, an online interface order or an interim online interface 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 [^{F37}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;
 - [^{F38}(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.
 - [^{F39}(e) sections 219A, 219B and 219C must be ignored to the extent that they relate to an undertaking under section 217(9) or 219.]
- [^{F40}(5A) In the case of an application for an online interface order or an interim online interface order as mentioned in subsection (3), section 218ZA applies subject to the following modifications—
- (a) in section 218ZA(1), the words “or is likely to be” must be ignored;
 - (b) in section 218ZA(2), the reference to the person the CMA thinks has engaged, is engaging or is likely to engage in conduct which constitutes the [^{F41}Schedule 13 infringement] is to be read as a reference to the person the CMA thinks has engaged or is engaging in such conduct;
 - (c) section 218ZA(3) must be ignored and the application must be made to the court which accepted the undertaking.]
- (6) If an enforcer which is not the [^{F42}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 [^{F42}CMA]—
- (a) of the application;
 - (b) of any order made by the court on the application.

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Textual Amendments

- F27** Word in s. 220(1)(b) omitted (2.6.2020) by virtue of [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(a)** (with reg. 8)
- F28** S. 220(1)(c) full stop omitted (2.6.2020) by virtue of [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(b)** (with reg. 8)
- F29** Word in s. 220(1)(c) inserted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(b)** (with reg. 8)
- F30** S. 220(1)(d) inserted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(c)** (with reg. 8)
- F31** 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)
- F32** 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)
- F33** Words in s. 220(2) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/203), regs. 1, **3(13)(a)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), **3(3)(f)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F34** Words in s. 220(2) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(d)** (with reg. 8)
- F35** Words in s. 220(3) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(e)** (with reg. 8)
- F36** Words in s. 220(4) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(f)** (with reg. 8)
- F37** 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)
- F38** 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)
- F39** 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)
- F40** S. 220(5A) inserted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020](#) (S.I. 2020/484), regs. 1(2), **2(11)(g)** (with reg. 8)
- F41** Words in s. 220(5A)(b) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/203), regs. 1, **3(13)(b)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), **3(3)(f)(8)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F42** 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)

^{F43}221 Community infringements: proceedings

Textual Amendments

- F43** S. 221 omitted (31.12.2020) by virtue of [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/203), regs. 1, **3(14)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Enforcement procedure: supplementary. (See end of Document for details)

222 Bodies corporate: accessories

- (1) This section applies if the person whose conduct constitutes a domestic infringement or a ^{F44}Schedule 13 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.
- (5) ^{F45}An enforcement order, an interim enforcement order, an online interface order or an interim online interface 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—
 - (a) ^{F46}an enforcement order or an interim enforcement order] is made as mentioned in subsection (5), or
 - (b) 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—

 - (a) does not continue or repeat the conduct;
 - (b) 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);
 - (c) 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—
 - (a) he is the spouse ^{F47}or civil partner] of the individual;

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Enforcement procedure: supplementary. (See end of Document for details)

- (b) he is a relative of the individual;
 - (c) he is a relative of the individual's spouse [^{F47}or civil partner];
 - (d) he is the spouse [^{F47}or civil partner] of a relative of the individual;
 - (e) he is the spouse [^{F47}or civil partner] of a relative of the individual's spouse [^{F47}or civil partner] ;
 - (f) 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;
 - (g) he is a relative of a person who is an associate of the individual by virtue of paragraph (f);
 - (h) he has at some time in the past fallen within any of paragraphs (a) to (g).
- (11) A person is also an associate of—
- (a) an individual with whom he is in partnership;
 - (b) an individual who is an associate of the individual mentioned in paragraph (a);
 - (c) 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—
- (a) the same person is a controller of both;
 - (b) a person is a controller of one and persons who are his associates are controllers of the other;
 - (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

- F44** Words in s. 222(1) substituted (31.12.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/203\)](#), regs. 1, **3(15)** (with reg. 9) (as amended by S.I. 2020/1347, regs. 1(3), 3(8)); 2020 c. 1, Sch. 5 para. 1(1)
- F45** Words in s. 222(5) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(12)(a)** (with reg. 8)
- F46** Words in s. 222(8)(a) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(12)(b)** (with reg. 8)
- F47** 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 [^{F48}an enforcement order, an interim enforcement order, an online interface order or an interim online interface order] against a body corporate and—

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: Enforcement procedure: supplementary. (See end of Document for details)

- (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.
- [^{F49}(5) In this section “subsidiary” has the meaning given by section 1159 of the Companies Act 2006.]

Textual Amendments

- F48** Words in s. 223(1) substituted (2.6.2020) by [The Consumer Protection \(Enforcement\) \(Amendment etc.\) Regulations 2020 \(S.I. 2020/484\)](#), regs. 1(2), **2(13)** (with reg. 8)
- 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)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading:
Enforcement procedure: supplementary.