



Enterprise Act 2002

2002 CHAPTER 40

PART 8

ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

Enforcement procedure

214 Consultation

- (1) An enforcer must not make an application for an enforcement order unless he has engaged in appropriate consultation with—
 - (a) the person against whom the enforcement order would be made, and
 - (b) the OFT (if it is not the enforcer).
- (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 OFT thinks that an application for an enforcement order should be made without delay.
- (4) Subsection (1) ceases to apply—
 - (a) for the purposes of an application for an enforcement order at the end of the period of 14 days beginning with the day after the person against whom the enforcement order would be made receives a request for consultation from the enforcer;

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- (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.
- (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 (except subsection (4)) and in sections 215 and 216 references to an enforcement order include references to an interim enforcement order.

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.
- (5) The following courts have jurisdiction to make an enforcement order—
 - (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 England and Wales or 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.
- (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 OFT must notify the OFT of the result of an application under this section.

216 Applications: directions by OFT

- (1) This section applies if the OFT believes that an enforcer other than the OFT intends to apply for an enforcement order.
- (2) In such a case the OFT may direct that if an application in respect of a particular infringement is to be made it must be made—

- (a) only by the OFT, or
 - (b) only by such other enforcer as the OFT directs.
- (3) If the OFT directs that only it may make an application that does not prevent—
- (a) the OFT or any enforcer from accepting an undertaking under section 219, or
 - (b) the OFT 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 OFT may vary or withdraw a direction given under this section.
- (5) The OFT 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.

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—

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- (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
 - (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.
- (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.

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
 - (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.

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)).

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- (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).
- (6) If an enforcer accepts an undertaking under this section it must notify the OFT—
 - (a) of the terms of the undertaking;
 - (b) of the identity of the person who gave it.

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.
- (2) In such a case the OFT has the same right 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 sections 215 and 217 or 218 (as the case may be) 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;
 - (c) section 217(9) to (11) must be ignored;
 - (d) section 218(10) must be ignored.
- (6) If an enforcer which is not the OFT 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 OFT—
 - (a) of the application;
 - (b) of any order made by the court on the application.

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.
- (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.

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.
- (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—
 - (a) an 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—

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“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 of the individual;
- (b) he is a relative of the individual;
- (c) he is a relative of the individual’s spouse;
- (d) he is the spouse of a relative of the individual;
- (e) he is the spouse of a relative of the individual’s spouse;
- (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.

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.
- (5) “Subsidiary” must be construed in accordance with section 736 of the Companies Act 1985 (c. 6).