



Enterprise Act 2002

2002 CHAPTER 40

PART 8

ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

Enforcement procedure

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.

Status: This is the original version (as it was originally enacted).

- (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—
- “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;

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- (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.