

## SCHEDULES

### SCHEDULE 5

#### INVESTIGATORY POWERS ETC.

#### PART 3

##### POWERS IN RELATION TO THE PRODUCTION OF INFORMATION

###### *Exercise of powers in this Part*

- 13 (1) An enforcer of a kind mentioned in this paragraph may exercise a power in this Part of this Schedule only for the purposes and in the circumstances mentioned in this paragraph in relation to that kind of enforcer.
- (2) The Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—
- (a) to enable the Authority to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002;
  - (b) to enable a private designated enforcer to consider whether to exercise any function it has under that Part;
  - (c) to enable a Community enforcer to consider whether to exercise any function it has under that Part;
  - (d) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order;
  - (e) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9), 218(10) or 219 of the Enterprise Act 2002.
- (3) A public designated enforcer, a local weights and measures authority in Great Britain, the Department of Enterprise, Trade and Investment in Northern Ireland or an EU enforcer other than the Competition and Markets Authority may exercise the powers in this Part of this Schedule for any of the following purposes—
- (a) to enable that enforcer to exercise or to consider whether to exercise any function it has under Part 8 of the Enterprise Act 2002;
  - (b) to ascertain whether a person has complied with or is complying with an enforcement order or an interim enforcement order made on the application of that enforcer;
  - (c) to ascertain whether a person has complied with or is complying with an undertaking given under section 217(9) or 218(10) of the Enterprise Act 2002 following such an application;
  - (d) to ascertain whether a person has complied with or is complying with an undertaking given to that enforcer under section 219 of that Act.

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- (4) A domestic enforcer may exercise the powers in this Part of this Schedule for the purpose of ascertaining whether there has been a breach of the enforcer’s legislation.
- (5) But a domestic enforcer may not exercise the power in paragraph 14 (power to require the production of information) for the purpose in sub-paragraph (4) unless an officer of the enforcer reasonably suspects a breach of the enforcer’s legislation.
- (6) Sub-paragraph (5) does not apply if the enforcer is a market surveillance authority within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance and the power is exercised for the purpose of market surveillance within the meaning of Article 2(17) of that Regulation.
- (7) An unfair contract terms enforcer may exercise the powers in this Part of this Schedule for either of the following purposes—
  - (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under Schedule 3 (enforcement of the law on unfair contract terms and notices);
  - (b) to ascertain whether a person has complied with or is complying with an injunction or interdict (within the meaning of that Schedule) granted under paragraph 5 of that Schedule or an undertaking given under paragraph 6 of that Schedule.
- (8) But an unfair contract terms enforcer may not exercise the power in paragraph 14 for a purpose mentioned in sub-paragraph (7)(a) unless an officer of the enforcer reasonably suspects that a person is using, or proposing or recommending the use of, a contractual term or notice within paragraph 3 of Schedule 3.
- (9) A local weights and measures authority in Great Britain may exercise the powers in this Part of this Schedule for either of the following purposes—
  - (a) to enable it to determine whether to make an order under section 3 or 4 of the Estate Agents Act 1979;
  - (b) to enable it to exercise any of its functions under section 5, 6, 8, 13 or 17 of that Act.
- (10) In this paragraph—
  - “Community enforcer” has the same meaning as in the Enterprise Act 2002 (see section 213(5) of that Act);
  - “private designated enforcer” means a person or body which—
    - (a) is designated by order under subsection (2) of section 213 of that Act, and
    - (b) has been designated by virtue of subsection (4) of that section (which provides that the Secretary of State may designate a person or body which is not a public body only if it satisfies criteria specified by order).

*Power to require the production of information*

- 14 An enforcer or an officer of an enforcer may give notice to a person requiring the person to provide the enforcer with the information specified in the notice.

*Procedure for notice under paragraph 14*

- 15 (1) A notice under paragraph 14 must be in writing and specify the purpose for which the information is required.

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- (2) If the purpose is to enable a person to exercise or to consider whether to exercise a function, the notice must specify the function concerned.
- (3) The notice may specify—
  - (a) the time within which and the manner in which the person to whom it is given must comply with it;
  - (b) the form in which information must be provided.
- (4) The notice may require—
  - (a) the creation of documents, or documents of a description, specified in the notice, and
  - (b) the provision of those documents to the enforcer or an officer of the enforcer.
- (5) A requirement to provide information or create a document is a requirement to do so in a legible form.
- (6) A notice under paragraph 14 does not require a person to provide any information or create any documents which the person would be entitled to refuse to provide or produce—
  - (a) in proceedings in the High Court on the grounds of legal professional privilege, or
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (7) In sub-paragraph (6) “communications” means—
  - (a) communications between a professional legal adviser and the adviser’s client, or
  - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.

#### *Enforcement of notice under paragraph 14*

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- (1) If a person fails to comply with a notice under paragraph 14, the enforcer or an officer of the enforcer may make an application under this paragraph to the court.
  - (2) If it appears to the court that the person has failed to comply with the notice, it may make an order under this paragraph.
  - (3) An order under this paragraph is an order requiring the person to do anything that the court thinks it is reasonable for the person to do, for any of the purposes for which the notice was given, to ensure that the notice is complied with.
  - (4) An order under this paragraph may require the person to meet the costs or expenses of the application.
  - (5) If the person is a company, partnership or unincorporated association, the court in acting under sub-paragraph (4) may require an official who is responsible for the failure to meet the costs or expenses.
  - (6) In this paragraph—

“the court” means—

    - (a) the High Court,
    - (b) in relation to England and Wales, the county court,

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- (c) in relation to Northern Ireland, a county court,
  - (d) the Court of Session, or
  - (e) the sheriff;
- “official” means—
- (a) in the case of a company, a director, manager, secretary or other similar officer,
  - (b) in the case of a limited liability partnership, a member,
  - (c) in the case of a partnership other than a limited liability partnership, a partner, and
  - (d) in the case of an unincorporated association, a person who is concerned in the management or control of its affairs.

*Limitations on use of information provided in response to a notice under paragraph 14*

- 17 (1) This paragraph applies if a person provides information in response to a notice under paragraph 14.
- (2) This includes information contained in a document created by a person in response to such a notice.
- (3) In any criminal proceedings against the person—
- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and
  - (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (4) Sub-paragraph (3) does not apply if, in the proceedings—
- (a) evidence relating to the information is adduced by or on behalf of the person providing it, or
  - (b) a question relating to the information is asked by or on behalf of that person.
- (5) Sub-paragraph (3) does not apply if the proceedings are for—
- (a) an offence under paragraph 36 (obstruction),
  - (b) an offence under section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath),
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
  - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (SI 1979/1714 (NI 19)) (false statutory declarations and other false unsworn statements).

*Application to Crown*

- 18 In its application in relation to—
- (a) an enforcer acting for a purpose within paragraph 13(2) or (3), or
  - (b) an enforcer acting for the purpose of ascertaining whether there has been a breach of the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277),
- this Part binds the Crown.