

SCHEDULES

SCHEDULE 7

Section 79

ENTERPRISE ACT 2002: ENHANCED CONSUMER MEASURES AND OTHER ENFORCEMENT

- 1 Part 8 of the Enterprise Act 2002 (enforcement of certain consumer legislation) is amended as follows.
- 2 In section 210 (consumers), omit subsection (5).
- 3 (1) Section 211 (domestic infringements) is amended as follows.
 - (2) In subsection (1)(c), omit “in the United Kingdom”.
 - (3) After subsection (1) insert—
 - “(1A) But an act or omission which satisfies the conditions in subsection (1) is a domestic infringement only if at least one of the following is satisfied—
 - (a) the person supplying (or seeking to supply) goods or services has a place of business in the United Kingdom, or
 - (b) the goods or services are supplied (or sought to be supplied) to or for a person in the United Kingdom (see section 232).”
- 4 In section 213(5A) (CPC enforcers), for paragraph (i) substitute—
 - “(i) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);”.
- 5 (1) Section 214 (consultation) is amended as follows.
 - (2) In subsection (4)(a), after “14 days” insert “or, where subsection (4A) applies, 28 days”.
 - (3) After subsection (4) insert—
 - “(4A) This subsection applies where the person against whom the enforcement order would be made is a member of, or is represented by, a representative body, and that body operates a consumer code which has been approved by—
 - (a) an enforcer, other than a designated enforcer which is not a public body,
 - (b) a body which represents an enforcer mentioned in paragraph (a),
 - (c) a group of enforcers mentioned in paragraph (a), or
 - (d) a community interest company whose objects include the approval of consumer codes.
 - (4B) In subsection (4A)—
 - “consumer code” means a code of practice or other document (however described) intended, with a view to safeguarding or promoting the interests of consumers, to regulate by any means the conduct of persons engaged in the supply of goods or services to

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consumers (or the conduct of their employees or representatives),
and

“representative body” means an organisation established to represent the interests of two or more businesses in a particular sector or area, and for this purpose “business” has the meaning it bears in section 210.”

6 In section 217 (enforcement orders), after subsection (10) insert—

“(10A) An enforcement order may require a person against whom the order is made to take enhanced consumer measures (defined in section 219A) within a period specified by the court.

(10B) An undertaking under subsection (9) may include a further undertaking by the person to take enhanced consumer measures within a period specified in the undertaking.

(10C) Subsections (10A) and (10B) are subject to section 219C in a case where the application for the enforcement order was made by a designated enforcer which is not a public body.

(10D) Where a person is required by an enforcement order or an undertaking under this section to take enhanced consumer measures, the order or undertaking may include requirements as to the provision of information or documents to the court by the person in order that the court may determine if the person is taking those measures.”

7 In section 219 (undertakings), after subsection (5) insert—

“(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.”

8 After section 219 insert—

“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—

- (a) measures offering compensation or other redress to consumers who have suffered loss as a result of the conduct which has given rise to the enforcement order or undertaking,

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- (b) where the conduct referred to in paragraph (a) relates to a contract, measures offering such consumers the option to terminate (but not vary) that contract,
 - (c) where such consumers 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 CPC enforcer as described in section 219(5A)(a).

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) An 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.

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- (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
 - (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.

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.

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- (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,
 - (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.”
- 9 (1) Section 220 (further proceedings) is amended as follows.
- (2) After subsection (1) insert—
- “(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).”

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- (3) In subsection (2), for “In such a case the CMA” substitute “Any CPC enforcer”.
- (4) In subsection (5)—
- (a) in the opening words, for “sections 215 and 217 or 218 (as the case may be)” substitute “sections 215, 217 or 218 (as the case may be) and 219A, 219B and 219C”,
 - (b) for paragraph (c) substitute—
 - “(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);”,
 - (c) after paragraph (d) insert—
 - “(e) sections 219A, 219B and 219C must be ignored to the extent that they relate to an undertaking under section 217(9) or 219.”
- 10 In section 229 (advice and information), after subsection (1) insert—
- “(1A) As soon as is reasonably practicable after the commencement of Schedule 5 to the Consumer Rights Act 2015 (investigatory powers etc.) the CMA must prepare and publish advice and information with a view to—
- (a) explaining the provisions of that Schedule, so far as they relate to investigatory powers exercised for the purposes set out in paragraphs 13(2) and (3) and 19 of that Schedule, to persons who are likely to be affected by them, and
 - (b) indicating how the CMA expects such provisions to operate.”