



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 8

#### ENFORCEMENT OF CERTAIN CONSUMER LEGISLATION

##### *Information*

###### **Textual Amendments applied to the whole legislation**

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

#### **224 OFT**

- (1) The OFT may for any of the purposes mentioned in subsection (2) give notice to any person requiring the person to provide it with the information specified in the notice.
- (2) The purposes are—
  - (a) to enable the OFT to exercise or to consider whether to exercise any function it has under this Part;
  - (b) to enable a designated enforcer to which section 225 does not apply to consider whether to exercise any function it has under this Part;
  - (c) to enable a Community enforcer to consider whether to exercise any function it has under this Part;
  - (d) to ascertain whether a person has complied with or is complying with an enforcement order, an interim enforcement order or an undertaking given under section 217(9), 218(10) or 219.

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## **225 Other enforcers**

- (1) This section applies to—
  - (a) every general enforcer (other than the OFT);
  - (b) every designated enforcer which is a public body.
- (2) An enforcer to which this section applies may for any of the purposes mentioned in subsection (3) give notice to any person requiring the person to provide the enforcer with the information specified in the notice.
- (3) The purposes are—
  - (a) to enable the enforcer to exercise or to consider whether to exercise any function it has under this Part;
  - (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 the enforcer or an undertaking given under section 217(9) or 218(10) (as the case may be) following such an application or an undertaking given to the enforcer under section 219.

## **226 Notices: procedure**

- (1) This section applies to a notice given under section 224 or 225.
- (2) The notice must—
  - (a) be in writing;
  - (b) specify the purpose for which the information is required.
- (3) If the purpose is as mentioned in section 224(2)(a), (b) or (c) or 225(3)(a) the notice must specify the function concerned.
- (4) A notice may specify the time within which and manner in which it is to be complied with.
- (5) A notice may require the production of documents or any description of documents.
- (6) An enforcer may take copies of any documents produced in compliance with such a requirement.
- (7) A notice may be varied or revoked by a subsequent notice.
- (8) But a notice must not require a person to provide any information or produce any document which he would be entitled to refuse to provide or produce—
  - (a) in proceedings in the High Court on the grounds of legal professional privilege;
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.

## **227 Notices: enforcement**

- (1) If a person fails to comply with a notice given under section 224 or 225 the enforcer who gave the notice may make an application under this section.
- (2) If it appears to the court that the person to whom the notice was given has failed to comply with the notice the court may make an order under this section.

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- (3) An order under this section may require the person to whom the notice was given to do anything the court thinks it is reasonable for him to do for any of the purposes mentioned in section 224 or 225 (as the case may be) to ensure that the notice is complied with.
- (4) An order under this section may require the person to meet all the costs or expenses of the application.
- (5) If the person is a company or association the court in proceeding under subsection (4) may require any officer of the company or association who is responsible for the failure to meet the costs or expenses.
- (6) The court is a court which may make an enforcement order.
- (7) In subsection (5) an officer of a company is a person who is a director, manager, secretary or other similar officer of the company.

VALID FROM 08/01/2007

#### **[<sup>F1</sup>227A Power to enter premises without warrant**

- (1) An officer of a CPC enforcer who reasonably suspects that there has been, or is likely to be, a Community infringement may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether there has been, or is likely to be, such an infringement.
- (2) An officer of a CPC enforcer who reasonably suspects that there is, or has been, a failure to comply with a relevant enforcement measure may for any purpose relating to the functions of the CPC enforcer under this Part enter any premises to investigate whether a person is complying with, or has complied with, the relevant enforcement measure.
- (3) An appropriate notice must be given to the occupier of the premises before an officer of a CPC enforcer enters them under subsection (1) and (2).
- (4) An appropriate notice is a notice in writing given by an officer of a CPC enforcer which—
  - (a) gives at least two working days' notice of entry on the premises;
  - (b) sets out why the entry is necessary; and
  - (c) indicates the nature of the offence created by section 227E.
- (5) Subsection (3) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so.
- (6) In that case, the officer entering the premises must produce to any occupier that he finds on the premises a document setting out why the entry is necessary and indicating the nature of the offence created by section 227E.
- (7) In all cases, the officer entering the premises must produce to any occupier evidence of—
  - (a) his identity; and
  - (b) in the case of an authorised officer of a CPC enforcer, his authorisation; if asked to do so.

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(8) In this section—

“give”, in relation to the giving of a notice to the occupier of premises, includes delivering or leaving it at the premises or sending it there by post; and

“working day” means a day which is not—

- (a) Saturday or Sunday; or
- (b) Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 <sup>M1</sup> in the part of the United Kingdom in which the premises are situated.

(9) In this section and sections 227B to 227F—

“authorised officer of a CPC enforcer” means an officer of a CPC enforcer who is authorised by that enforcer for the purposes of this Part;

“occupier” means any person whom the officer concerned reasonably suspects to be the occupier;

“officer of a CPC enforcer” means—

- (a) an officer of a local weights and measures authority in Great Britain; or
- (b) an authorised officer of a CPC enforcer which is not a local weights and measures authority in Great Britain;

“premises” includes vehicles but does not include any premises which are used only as a dwelling; and

“relevant enforcement measure” means—

- (a) an enforcement order made under section 217 on the application of the CPC enforcer;
- (b) an interim enforcement order made under section 218 on the application of the CPC enforcer;
- (c) an undertaking under section 217(9) in connection with an application made by the CPC enforcer for an enforcement order under section 217;
- (d) an undertaking under section 218(10) in connection with an application made by the CPC enforcer for an interim enforcement order under section 218; or
- (e) an undertaking under section 219 to the CPC enforcer.

#### Textual Amendments

**F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

#### Marginal Citations

**M1** 1971 c.80.

VALID FROM 08/01/2007

#### 227B Powers exercisable on the premises

(1) An officer of a CPC enforcer may, in the exercise of his powers under section 227A—

- (a) observe the carrying on of a business on the premises;

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- (b) inspect goods or documents on the premises;
  - (c) require any person on the premises to produce goods or documents within such period as the officer considers to be reasonable;
  - (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or
  - (e) seize, remove and retain goods or documents which he reasonably suspects may be required as evidence of a Community infringement or a breach of a relevant enforcement measure.
- (2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require him—
- (a) to state, to the best of his knowledge and belief, where the goods or documents are;
  - (b) to give an explanation of the goods or documents; and
  - (c) to secure that any goods or documents produced are authenticated or verified in such manner as the officer considers appropriate.
- (3) An officer of a CPC enforcer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).
- (4) But nothing in this section authorises action to be taken in relation to anything which, in proceedings in the High Court, a person would be entitled to refuse to produce on the grounds of legal professional privilege.
- (5) In this section document includes information recorded in any form.
- (6) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.
- (7) In its application to Scotland, this section has effect as if the reference in subsection (4)—
- (a) to proceedings in the High Court were a reference to proceedings in the Court of Session; and
  - (b) to an entitlement on the grounds of legal professional privilege were a reference to an entitlement on the grounds of confidentiality of communications.

#### Textual Amendments

**F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

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#### 227C Power to enter premises with warrant

- (1) A justice of the peace may issue a warrant authorising an officer of a CPC enforcer to enter premises for purposes falling within section 227A(1) or (2) if the justice of the peace considers that there are reasonable grounds for believing that —

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- (a) condition A is met; and
  - (b) either condition B, C or D is met.
- (2) Condition A is that there are, on the premises, goods or documents to which an officer of a CPC enforcer would be entitled to have access under sections 227A and 227B.
- (3) Condition B is that an officer of a CPC enforcer acting under sections 227A and 227B has been, or would be likely to be, refused admission to the premises or access to the goods or documents.
- (4) Condition C is that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 227A.
- (5) Condition D is that there is likely to be nobody at the premises capable of granting admission.
- (6) A warrant under this section authorises the officer of the CPC enforcer—
- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
  - (b) to do anything on the premises that an officer of the CPC enforcer would be able to do if he had entered the premises under section 227A;
  - (c) to search for goods or documents which he has required a person on the premises to produce where that person has failed to comply with such a requirement;
  - (d) to the extent that it is reasonably necessary to do so, to require any person to whom subsection (7) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself;
  - (e) to take any other steps which he considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which he would be entitled to have access under sections 227A and 227B.
- (7) This subsection applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.
- (8) A warrant under this section—
- (a) is issued on information on oath given by an officer of a CPC enforcer;
  - (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
  - (c) must, on request, be produced to the occupier of the premises for inspection.
- (9) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.
- (10) In its application to Scotland, this section has effect as if—
- (a) the references in subsection (1) to a justice of the peace included references to a sheriff; and
  - (b) the reference in subsection (8) to information on oath were a reference to evidence on oath.
- (11) In its application to Northern Ireland, this section has effect as if the references in subsection (1) to a justice of the peace were references to a lay magistrate.

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#### **227D Ancillary provisions about powers of entry**

- (1) An officer of a CPC enforcer who enters premises by virtue of section 227A may only do so at a reasonable time.
- (2) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C may take with him such persons and equipment as he considers appropriate.
- (3) An officer of a CPC enforcer who enters premises by virtue of section 227A or 227C must, if the premises are unoccupied or the occupier is temporarily absent, take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

#### Textual Amendments

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

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#### **227E Obstructing, or failing to co-operate with, powers of entry**

- (1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, an officer of a CPC enforcer who is exercising or seeking to exercise a power under sections 227A to 227D.
- (2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

- F1** Ss. 227A-227F inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006 \(S.I. 2006/3363\)](#), [reg. 17](#)

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## **227F Retention of documents and goods**

- (1) No documents seized under sections 227A to 227D may be retained for a period of more than three months.
- (2) No goods seized under sections 227A to 227D may be retained for a period of more than three months unless they are reasonably required in connection with the exercise of any function of a CPC enforcer under this Part.
- (3) Where goods are so required they may be retained for as long as they are so required.]

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