



# **The Consumer Rights Bill (second lecture)**

**CLAIRE ANDREWS AND IAIN MACDONALD  
GOUGH SQUARE CHAMBERS**



## Enforcement Powers

- Section 79 and Schedule 5
- Specify 4 types of enforcer (domestic, EU, public designated and unfair contract terms)
- The functions in Part 3 of the Schedule may be exercised "for a purpose relevant to that enforcer"
- Purpose relevant to a domestic enforcer set out in para 7 and Part 2

- “the enforcer’s legislation” (in Part 2)
- To consider whether to exercise a function under Part 8 EA 2002
- To ascertain if a person has complied/is complying with an enforcement order
- To ascertain whether a person has complied/is complying with undertakings either following an application under the Act or to the enforcer
- [also additional purposes for CMA]

**The Purposes (domestic enforcer)  
para 7(3) and (5)**

- To ascertain if there has been or is likely to be a community infringement
- To ascertain whether there has been a failure to comply with a relevant enforcement measure
- To enable the enforcer to consider whether to exercise functions under the EA 2002

**The Purposes (EU enforcer)  
para7(6) and (7)**

- To consider whether to exercise a function under Sched 3 [of the Bill]
- To ascertain whether a person has complied/is complying with an injunction or undertaking under that Schedule

**The Purposes (Unfair Contract Terms Enforcer [see Sched 3])  
(para 7(8))**

- **All** are available (unless expressly limited)
  - to a domestic enforcer enforcing the enforcer's legislation and ascertaining compliance with enforcement orders or undertakings
  - To an EU enforcer ascertaining whether there has been or is likely to be a community infringement or a failure to comply with an enforcement measure
- **Only** information powers to:
  - a WMA or EU enforcer when deciding whether to exercise an EA function
  - A UCT enforcer when deciding whether to exercise UCT functions under Sched 3 or ascertaining compliance with an injunction or undertaking
- **Limitations** on EU enforcers (except re information powers) – the enforcer must have *reasonable cause to suspect*

## The functions

- An “officer of an enforcer” (defined in para 10):
  - May make a purchase or agree to secure the provision of a product (defined in para 33)
  - May enter premises at any reasonable time (whether or not the public has access at that time and may inspect.

WHAT ABOUT

(1) Powers of entry – is para 20/30 engaged?

(2) Child volunteers for age-restricted products?

**The functions**  
**TEST PURCHASE**

- An officer of an enforcer may enter premises to which the public has access “in order to observe the carrying on of a business”
- At any reasonable time whether the public has access at that time or not

QUERY

Is para 20/30 engaged?

**The Functions**  
**OBSERVATIONS**



- An enforcer/officer of an enforcer may require information (including the creation of a document) by notice:
  - In writing
  - Specifying the purpose
  - The function concerned (if the information is required to enable a decision as to the exercise of a function)
- Domestic enforcer can use the power only where the DE/officer has *reasonable cause to suspect* a breach of the enforcer's legislation and correspondingly for UCT enforcer
- Non-compliance – application to county court/High Court – test of reasonableness
- Cannot be used in prosecution except obstruction or perjury

## The functions

# INFORMATION POWERS

- Query re observations (para 21)
- Without warrant at any reasonable time only (para 20) if
  - Notice in writing
  - Setting out why entry is necessary
  - Two [clear?] working days
    - Unless
  - Waiver by occupier
  - DE and officer has reasonable cause to suspect breach of enforcers legislation
  - Defeating the purpose esp if evidence likely to be destroyed
  - Not reasonably practicable esp reasonable cause ot suspect imminent risk to public health/safety
  - For market surveillance under art 2(18) Regulation on Accreditation and Market Surveillance
- Under warrant (para 30)

## The functions

# POWERS OF ENTRY

- Applies where entry under paragraph 20 or 30
- Officer may inspect any product
- If acting under s27 CPA 1987 or GPSR to ascertain if there has been a breach of a safety provision or a requirement may inspect any record and examine any procedure
- If ECR 2006 to see if a breach also may inspect apparatus/fixed installation and examine procedures
- If WM(Packaged Goods) R2006 may inspect and take copies of records under those regulations or evidence under reg 9(3)

## **The functions**

# **POWER TO INSPECT GOODS para 21**

- An officer entering under reg 20/30 may require production of documents, take copies (including in a form of electronic document that can be easily taken away) and provide an explanation of them. Power does not permit requiring the creation of other documents
- If DE and the document is not required to be kept by enforcers legislation the power can only be exercised if reasonable cause to suspect breach or for ascertaining if documents required as evidence in proceedings;
- If EU enforcer power may be used to ascertain if breach or evidence of community infringement or failure to comply with enforcement measure.
- Additional powers under the Estate Agents A 1979

## **The functions**

## **PRODUCTION OF DOCUMENTS para**

- Officer of DE/CE with reas cause to suspect breach of enforcers legislation may seize and detain goods to see if breach/infringement or failure to comply with enforcement measure
- ID must be produced before seizing goods unless not reasonably practicable
- Must take reasonable steps to inform the person from whom seized and provide written record (includes vending machines)
- Must have regard to PACE codes
- Must not be detained for longer than 3 months or longer than purpose for which required
- Application/complaint can be made to a magistrates' court for release (para 38) and for compensation (para 39)
- Mandatory supervised access (para36)

## **The functions TO SEIZE AND DETAIN GOODS para 24**

- DE/EU if reasonable cause to suspect may be required as evidence in proceedings for breach of enforcers legislation or proceedings relating to Community infringement
- safeguards are similar to those relating to seizure and detention relating to the breach
- Additional provisions relating to Estate Agents
- Mandatory supervised access (para36)

**The functions**

**SEIZURE OF GOODS AND DOCTS  
REQUIRED AS EVIDENCE para 27**

- DE if officer has reasonable cause to suspect are liable to be forfeit (para 25)
- Must have regard to PACE codes
- Must not hold for longer than needed/3 months
- Application/complaint can be made to a magistrates' court for release (para 38) and for compensation (para 39)
- Mandatory supervised access (para36)

## **The functions**

**SEIZURE AND DETENTION OF GOODS  
LIABLE TO FORFEITURE para 27**

- Ancillary to the seizure of goods and documents
- Relates to
  - Container
  - Vending machine
  - Electronic device which may store information
- May require person with authority to do it or if the person does not, EO may do so

**The functions**

**POWER TO BREAK OPEN CONTAINERS**



- De UNDER Electromagnetic Compatibility  
Regs 2006 only

**The functions  
DECOMMISSIONING AND SWITCHING  
OFF para 26**

- **Intentionally obstructs** an officer seeking to exercise a function under Part 3
- **Intentionally fails to comply** with a requirement
- **Without reasonable cause** fails to give an enforcer any other assistance or information which he **reasonably** requires.
- In giving information a person commits an offence if he:
  - Makes a statement which he **knows** to be false **in a material respect**; and
  - Recklessly makes a statement which is false **in a material respect**

## Obstruction offences

- Offence of purporting to act as an enforcement officer (para 35)
- Mandatory duty to give access to seized material unless the enforcer has reasonable grounds to believe it would prejudice the investigation (para 36)
- Notice of testing goods (para 37)
- Appeals against detention (para 38)
- Compensation if no breach/community infringement and power not exercised as a result of neglect or default of person seeking it.

## **Further ancillary responsibilities (part 4)**

- .....may enforce outside their area
- In relation to civil proceedings
- In relation to criminal proceedings

**Area Enforcers**

- Enhanced consumer measures “as the court or enforcer considers to be just and reasonable” if proportionate taking into account likely benefit to consumers, costs incurred by the business, cost to consumers of obtaining the benefit of the measures
- The powers are:
  - Redress
  - Compliance
  - Choice

## Enterprise Act 2002