

Guidance for the use of on-site inspection powers under the Consumer Protection Cooperation Regulation

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1 INTRODUCTION TO THE GUIDANCE

- 1.1 The EU Regulation on Consumer Protection Cooperation ('the CPC') was formally adopted by the European Parliament and Council in October 2004. It aims to improve and formalise co-operation between Member States on cross-border infringements of EU consumer law.
- 1.2 This guidance is primarily intended to provide guidance to businesses about how these powers will be exercised and how businesses will be affected by them. The guidance should not be regarded as a substitute for, or a definitive interpretation of, the CPC or of the implementing legislation discussed below. It should be read in conjunction with it. Legal advice should be sought in the event of doubt about the interpretation of rights and obligations under the legislation.
- 1.3 The CPC requires the creation of a network of public enforcement bodies ('competent authorities') across the Union. These bodies are responsible for the enforcement of consumer protection legislation in Member States. A member of the network can call upon a member in another Member State to supply information about, or to take action against, a trader in their jurisdiction whose acts and or omissions may be causing detriment to the consumers in another Member State in breach of specified EU consumer protection laws ¹ (an 'intra-Community infringement'). This is described in the CPC as 'mutual assistance'. Competent authorities (see paragraph 1.7 for a definition) receiving such a request (referred to in the CPC as 'requested authorities') effectively have to address and act upon the alleged breaches in the same way they would if they were dealing with a purely domestic case. Accordingly, the CPC creates a series of duties on the enforcement bodies in the network in order to deliver an effective EU wide enforcement system.

¹ See Annexe A for the list of Directives and Regulations covered by Article 3(a).

Implementation

- 1.4 The CPC was implemented in two stages. Chapters I, IV and V which relate to the designation of competent authorities and other enforcers and how they operate came into force on 29 December 2005. Chapters II and III dealing with the mutual assistance provisions which set out exactly how enforcers will work together, and what minimum powers they should have, came into force on 29 December 2006.

Competent Authorities and Single Liaison Office

- 1.5 The operation of the network involves the setting up and designation of various enforcement bodies, as below.
- 1.6 **Single Liaison Offices ('SLOs')** - this is the public authority in each Member State which has ultimate responsibility for coordinating the application of the CPC in their country. In the UK, the Office of Fair Trading (OFT) is the SLO.
- 1.7 **Competent Authorities** - these are the public authorities (whether at national, regional or local level) which have specific responsibilities to enforce the laws which protect consumers' interests and which have rights and duties under the mutual assistance provisions of the CPC. There is no limit on the number of competent authorities in each Member State. In the UK, competent authorities currently include the OFT, the Civil Aviation Authority, the Financial Services Authority, the Secretary of State for Health, the Department of Health, Social Services and Public Safety in Northern Ireland and the Office of Communications.
- 1.8 **'Article 8(3)' bodies.**² The CPC permits Member States to designate other public authorities or private enforcement bodies which have a legitimate interest in the cessation or prohibition of consumer law breaches in their jurisdiction, in order to help carry out Member States' obligations under the CPC. Under Article 8(3) competent authorities can

² A body designated in accordance with the second sentence of Article 4(2).

effectively sub-contract the enforcement of cross-border cases to such a body (subject to conditions), though ultimate responsibility for ensuring the case is dealt with remains with the competent authority which has received the mutual assistance request. In the UK, the following have been designated as Article 8(3) bodies:

- the Department of Enterprise, Trade and Investment in Northern Ireland
- every local weights and measures authority in Great Britain, and
- the Independent Committee for the Supervision of Standards of the Telephone Information Services

Enforcement powers in the UK

1.9 Part 8 of the Enterprise Act 2002 ('the Act') deals with provisions for the enforcement of consumer protection legislation.³ It gives specified enforcers powers to obtain court orders against businesses that do not comply with their legal obligations to consumers.

1.10 Part 8 of the Act enables specified enforcers to apply to the courts for an enforcement order to stop a business from breaching certain legislation, where the breach harms the collective interests of consumers. Such breaches are known as either domestic infringements or Community infringements.

1.11 Domestic infringements are breaches of a wide range of specified UK laws. **Community infringements** are acts or omissions that breach UK legislation implementing a number of listed EC consumer protection directives and which harm **the collective interests of consumers**. Part 8 is not a means of pursuing individual redress. It applies only to an

³ The OFT has published guidance on enforcement under Part 8 of the Enterprise Act 2002 (OFT512) and it is available on the OFT website:
www.offt.gov.uk/advice_and_resources/publications/guidance/enterprise_act/

infringement which harms the collective interests of consumers. It follows that the breach must affect, or have the potential to affect, consumers generally or a group of consumers. This must be established by the evidence gathered by the enforcer. The evidence must demonstrate how a particular infringement has, or may in the future have, an adverse effect upon consumers.

- 1.12 Part 8 of the Act has now been amended by the Enterprise Act 2002 (Amendment) Regulations 2006⁴ ('the Regulations') to fulfil the requirements of the CPC. The list of EC Directives, a breach of which can be a Community infringement, has been amended so that it includes all the EC consumer protection laws covered by the CPC.⁵ Community infringements are breaches which harm or are likely to harm the collective interests of consumers. Enforcement action against Community infringements can now be taken by enforcement bodies designated as competent authorities or Article 8(3) bodies under the CPC.⁶
- 1.13 There is a range of enforcement action from civil action (for example enforcement orders) to prosecution (where the infringement gives rise to criminal liability) which will normally be considered in respect of acts or omissions which are in breach of relevant EU consumer protection laws and which harm or are likely to harm the collective interests of consumers. As required by the CPC, the OFT will seek to achieve the cessation or prohibition of the infringement in a proportionate, efficient and effective way.
- 1.14 Under Part 8 of the Act, as amended by the Regulations, a 'CPC Enforcer' is a competent authority designated by the Secretary of State under Article 4(1) of the CPC or a body with a legitimate interest in the cessation or prohibition of Community infringements designated by the Secretary of State under Article 4(2) of the CPC. Any CPC Enforcer may

⁴ SI 2006 No. 3363.

⁵ See new section 210(7) of and Schedule 13 to Enterprise Act 2002 as amended by regulations 5 and 22.

⁶ See new section 215(4A) of Enterprise Act 2002 as amended by Regulation 12.

make an application for an enforcement order in respect of a Community infringement.

- 1.15 A key element of the CPC is that it sets down minimum investigation and enforcement powers that all competent authorities must possess in order to carry out their functions effectively, and so deliver a viable EU wide enforcement network. The relevant UK enforcers already had most of the powers further to Part 8 of the Act and the general law. But the amendments made to Part 8 by the Regulations conferred on the OFT and on other CPC Enforcers a new power to make on-site inspections.⁷ With minor exceptions⁸ inspection powers were not otherwise available to the OFT when enforcing consumer law.⁹ However, the OFT has significant experience of exercising comparable powers under the Competition Act 1998.
- 1.16 The inspection powers required under the CPC have been introduced not only in respect of infringements across borders, but also infringements of the relevant EU consumer protection laws by UK traders which harm only UK consumers (that is, even where no referral from another Member State is necessary or received).

⁷ To satisfy Article 4(6)(c) of the CPC.

⁸ These are provisions of s162 Consumer Credit Act 1974 and s11 Estate Agents Act 1979.

⁹ The OFT will also have similar new investigation powers for regulating businesses licensed by the OFT under the Consumer Credit Act 1974. These powers, which come into force in April 2008, were introduced through amendments to the 1974 Act made by the Consumer Credit Act 2006.

2 POWER OF INVESTIGATION

Access to information

2.1 At present, existing Part 8 enforcers, including the OFT, can request information, including documents, by means of a notice served on any person under section 224 or 225 of the Act or the equivalent provisions of other legislation, such as Regulation 7 of the Control of Misleading Advertisements Regulations 1988. If a person fails to comply with the notice then it is possible for the enforcer to make an application to the court under section 227 for an order to be granted requiring the person to provide the information. The enforcer has the power to require any person to answer questions in writing, or provide information, and to produce specified documents relevant to the investigation. This power must be exercised by serving a written notice under section 224 or 225. The power under section 225 is now available to every CPC Enforcer (new section 225(1)(c)).¹⁰

On-site inspection powers

2.2 The powers provided by Part 8 of the Act as amended by the Regulations give the OFT and other CPC Enforcers powers of investigation:

- to gain access to premises without a warrant (section 227A)
- to require persons to produce goods or documents (including information recorded in any form), and to require persons to give an explanation about such goods or documents, during inspections with and without a warrant (section 227B)

¹⁰ Inserted by regulation 15. References to section numbers are to the Enterprise Act 2002 as so amended.

- to seize goods or documents for certain purposes during inspections with and without a warrant (section 227B)
- to enter and search premises under a warrant (section 227C).

These powers can be used in respect of premises including vehicles but not in respect of premises which are used only as a dwelling (section 227A(9)(b)).

2.3 The OFT has experience of using its powers for on-site inspections under the Competition Act 1998. Enforcement action using the powers to be given further to the CPC will take a similar approach to that used in competition law enforcement; it will be proportionate and in line with the principles set out in the Cabinet Office Enforcement Concordat. Other CPC Enforcers have inspection powers granted by this or other legislation.

3 POWER TO GAIN ACCESS TO PREMISES WITHOUT A WARRANT

- 3.1 The power to carry out an on-site inspection without a warrant is described in this Part of the guidance. The power to carry out an on-site inspection of premises when a warrant has been obtained is described in Part 4 of this guidance.

When the power can be used

- 3.2 The OFT (and any other CPC Enforcer) can exercise its on-site inspection powers if there is a '**reasonable suspicion**' that a Community infringement has been committed in order to investigate whether one has occurred (or, in the case of a reasonable suspicion that one is likely to be committed, to investigate whether it is likely to occur). The purpose of such an investigation will relate to the functions of the OFT (or CPC Enforcer) under Part 8, including considering whether to exercise its powers under Part 8.¹¹
- 3.3 The OFT (and any other CPC Enforcer) can also exercise this power, again with reasonable suspicion, to investigate whether a person has complied with or is complying with an enforcement order or an interim enforcement order which has already been made on its application, or an undertaking already given by the business to it or to the Court relating to Community infringements. This will enable the OFT (or CPC enforcer) to police its enforcement orders, interim enforcement orders, or undertakings which are already in place.

¹¹ The OFT has published guidance on enforcement under Part 8 of the Enterprise Act 2002 (OFT512) and it is available on the OFT website:
www.of.gov.uk/advice_and_resources/publications/guidance/enterprise_act/

The scope of the power

3.4 For the purposes set out above, any officer of a CPC Enforcer authorised in writing (referred to in the text below as 'an authorised officer') can enter premises in order to:

- observe the carrying on of a business on the premises
- inspect goods or documents on the premises
- require any person on the premises to produce goods or documents within such period as the officer considers to be reasonable. Where a document contains illegible information, a legible copy of the information can be required
- seize goods or documents in order to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere, or
- 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.

3.5 An authorised officer entering premises without a warrant may in addition require:

- any person who is required to produce any goods or documents by virtue of the exercise of the power
 - to state to the best of his knowledge and belief, where the goods or documents are
 - to provide an explanation of the goods and documents produced, and
 - to secure that any goods or documents produced are authenticated or verified in such a manner as the authorised officer considers appropriate

- an authorised officer may take copies of, or extracts from, any documents to which he has access by virtue of exercising his powers.

The procedure

- 3.6 An authorised officer may enter any premises in connection with an investigation if the occupier of the premises has been given at least two working days' written notice of the intended entry by delivering the notice or leaving it at the premises or by sending it by post. 'Working day' means a day which is not Saturday or Sunday or Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(a) in the part of the UK in which the premises are situated.
- 3.7 An authorised officer may enter premises without a warrant and without notice if the officer has taken all reasonably practicable steps to give notice but has been unable to do so.
- 3.8 In all cases, the authorised officer entering the premises must produce to any occupier evidence of his identity and authorisation if asked to do so.
- 3.9 If the authorised officer is carrying out an inspection of premises without a warrant the written notice of the intended entry must state:
- why the entry is necessary, and
 - the nature of the offence that may be committed if a person obstructs or fails to co-operate with an authorised officer when the powers of inspection are exercised (described in Part 6 below).
- 3.10 If the authorised officer is entering the premises without a warrant and without written notice, he must produce to any occupier that he finds on the premises a document containing the following information:
- the reasons why the entry is necessary

- the nature of the offence that may be committed if a person obstructs or fails to co-operate with an authorised officer when the powers of inspection are exercised (described in Part 6 below).
- 3.11 An authorised officer may only enter premises at a reasonable time and will normally arrive at the premises during office hours. On entering the premises, an officer will produce evidence of his identity and will also hand over a separate document which sets out the powers of the authorised officer. Where possible, the person in charge at the premises should designate an appropriate person to be a point of contact for the authorised officer during the inspection. At the end of the inspection, the authorised officer will provide, unless it is not practicable to do so, a list of goods and documents that have been seized, a list of extracts from documents of which copies have been taken and copies of documents that have been seized. In circumstances where it is not practicable to do so at the end of the inspection, a list will be provided as soon as possible afterwards.
- 3.12 If the premises are unoccupied or the occupier is temporarily absent, the authorised officer will take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

Access to legal advice

- 3.13 The CPC Enforcer is required to give at least two working days' notice of an intended entry for an inspection. A business is entitled to seek legal advice but as it has received prior notice of intended entry, the authorised officer will commence the inspection immediately on arrival at the premises.

4 POWER TO ENTER PREMISES UNDER A WARRANT

4.1 An application can be made to a justice of the peace (or to a sheriff in Scotland, and in Northern Ireland to a lay magistrate) for a warrant for an authorised officer to enter and search any premises including vehicles but other than premises used only as a dwelling.

When the power can be used

4.2 A warrant may be issued where the CPC Enforcer can show that there are reasonable grounds for believing that there are goods or documents on the premises to which they would be entitled to have access under sections 227A and 227B (see 3 above) and that any of the conditions detailed below are met.

These conditions are:

- that an authorised officer has been, or would be likely to be, refused admission to the premises or access to the goods or documents
- that the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given
- that there is likely to be nobody at the premises capable of granting admission.

The scope of the power

4.3 The warrant will authorise an authorised officer to:

- enter the premises specified in the warrant (using reasonable force if necessary)
- do anything on the premises that an authorised officer would be able to do if he had entered the premises under section 227A (see paragraphs 3.4 and 3.5 above)

- search for goods or documents which they have required a person on the premises to produce where that person has failed to comply with such a requirement
- take any other steps which he considers to be reasonably necessary for preserving such goods or documents or preventing interference with them
- to the extent that it is reasonably necessary to do so, require any person who is responsible for discharging any of the functions of the business carried on at the premises to break open a container and, if that person does not comply with the requirement or if such person cannot, despite all reasonably practicable steps taken, be identified, to do so himself.

Additional powers

4.4 For inspections both with and without a warrant, the authorised officer can take persons they consider necessary to assist in the search. Such persons may be needed to provide expertise which is not available within the CPC Enforcer's organisation but is necessary to exploit fully the terms of the warrant. For example, an IT expert who would assist the CPC Enforcer's officers to retrieve information from computers located on premises for which the warrant was issued. Or, such persons may be contracted from investigation agencies who accompany authorised officers to allow the search to proceed quickly and efficiently. These are illustrative examples and should not be read as limiting the exercise of this power.

4.5 An authorised officer may also take with him such equipment as he deems necessary. For inspections conducted under warrant this will include equipment that can be used to enter the premises using reasonable force if necessary (for example, equipment that can be used to break locks) as well as equipment that can be used to facilitate the search (for example, computer equipment).

4.6 In addition, for inspections conducted under warrant, an authorised officer will also have the power to remove material where it is not reasonably practicable to determine on the premises the extent to which it may be seized, if at all, but where there are reasonable grounds to believe that it may be or contain something authorised to be seized (section 50(1) of the CJPA)¹². The power is specified to ensure wide effect. The power also applies in relation to property which clearly can be seized but which is contained in something that cannot, and it is not reasonably practicable for the seizable property to be separated out (section 50(2) CJPA). This may be the case, for example, where there is a large bulk of material or where special technical equipment is needed to separate out material the authorised officer would be entitled to take from material which he is not (for example, material held on a computer). The factors that the authorised officer will take into account in deciding whether to exercise these seize and sift powers include:

- how long the determination or separation of material would take if carried out on the premises, and
- in the case of separation, whether carrying out the separation on the premises would prejudice the use of the material to be taken.

4.7 The exercise of seize and sift powers is subject to strict safeguards, which include a requirement by the authorised officer to provide a written notice to the occupier of the premises or the person from whom the material has been seized specifying:

- what has been seized
- the grounds for the exercise of the seize and sift powers
- the grounds for a person with a relevant interest in the seized property to apply to a judicial authority for the return of seized material

¹² Criminal Justice and Police Act 2001 (CJPA).

- the duty of officers to secure property in certain circumstances when such an application is made
- the name and address of the person to whom notice of such an application must be given, and
- to whom an application may be made to allow the attendance at the initial examination of the property to determine which of the property may be retained and which must be returned.

If it appears that legally privileged material has been seized, the CPC Enforcer has a duty to return this material as soon as reasonably practicable.

The procedure

- 4.8 Application for a warrant must be to a Justice of the Peace (in Scotland, a Sheriff and in Northern Ireland to a lay magistrate), supported by information on oath (in Scotland, evidence on oath) given by an officer of the OFT (or CPC Enforcer).
- 4.9 The warrant ceases to have effect at the end of the period of one month beginning with the day of issue.
- 4.10 The warrant will indicate:
- the premises to which it applies
 - the date of issue and the date of expiry
 - the reasons why the entry is necessary
 - the nature of the offences that may be committed if a person obstructs or fails to co-operate with an authorised officer when the powers of inspection are exercised (described in Part 6 below).
- 4.11 The authorised officer will normally arrive at the premises during office hours. On entering the premises, the authorised officer will produce evidence of his identity to any occupier of the premises. If requested

they must produce the warrant to the occupier of the premises for inspection. He will also hand over a separate document which sets out the powers of the authorised officer. Where possible, the occupier of the premises should designate an appropriate person to be a point of contact for the authorised officer during the search. At the end of the inspection, the authorised officer will provide, unless it is not practicable to do so, a list of goods and documents that have been seized, a list of extracts from documents of which copies have been taken and copies of documents that have been seized. In circumstances where it is not practicable to do so at the end of the inspection, a list will be provided as soon as possible afterwards.

- 4.12 If the premises are unoccupied or the occupier is temporarily absent, the authorised officer will take reasonable steps to ensure that when he leaves the premises they are as secure as they were before he entered.

Access to legal advice during searches

- 4.13 When carrying out a search, the authorised officer is not required to wait for an individual's or a business's legal advisers to arrive before commencing the search. That said, generally, the authorised officer will wait for legal advisers where to do so does not unreasonably delay the commencement of the search. If the authorised officer considers it reasonable in the circumstances to do so, and if that officer is satisfied that individual or business is complying with, or will comply with, such conditions as he considers it appropriate to impose,¹³ the authorised officer will grant a request to allow a reasonable time for a legal adviser to arrive at the premises before the inspection continues. For these purposes, a 'reasonable period' is such period of time as the authorised officer considers is reasonable in the circumstances.

- 4.14 If the search does commence prior to the arrival of a legal adviser, the authorised officer would, as far as practicable, avoid removing any

¹³ Typical conditions would be designed to ensure that documents were not subject to tampering.

material from the premises until the legal adviser has had the opportunity to make representations.

- 4.15 If the individual or business decides to seek legal advice it should do so promptly and this must not unduly delay or impede the inspection. Any delay must be kept to a strict minimum.
- 4.16 If the individual or business has an in-house legal adviser on the premises, or if it has received prior notice of the inspection, the authorised officer and other persons will not wait for an external legal adviser to arrive.
- 4.17 The authorised officer will not generally administer a caution during the course of a search under warrant. A caution may be administered during the course of a search under warrant if a person voluntarily decides to provide information to the authorised officer. In this case the officer may consider it appropriate to give a caution and advise the person that he is free to seek legal advice. A person is not required to be cautioned prior to being asked questions that are necessary solely for the purpose of furthering the proper and effective conduct of a search, such as to obtain computer passwords or safe combinations.

5 LIMITATIONS ON THE USE OF THE POWERS OF INVESTIGATION

Legally privileged communications

- 5.1 The power of a Part 8 enforcer or a CPC Enforcer to obtain documents under the Act, whether by a section 224/225 written notice, or pursuant to the power to access premises or during the execution of a search warrant, does not extend to communications covered by legal professional privilege. A person is not required to produce or disclose any information or document which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or in the Scottish Court of Session on grounds of confidentiality of communications. This is generally defined to mean a confidential communication:
- between a professional legal adviser and his or her client for the dominant purpose of obtaining or giving legal advice, or
 - made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- 5.2 If the occupier of premises entered with or without a warrant considers that a document or information is subject to privilege, he should provide the authorised officer or accompanying persons with a sufficient explanation such as to demonstrate to his satisfaction that the document or information, or parts of it, for which privilege is claimed, fulfil the conditions for it being privileged.
- 5.3 If no agreement is reached during the inspection as to whether or not the conditions for privilege have been made out in relation to particular documents or information, the authorised officer will suggest to the occupier that the authorised officer makes a copy of the documents or information and places this in a sealed opaque bag in the presence of the occupier. The authorised officer will then discuss with the occupier the appropriate arrangements for the safe-keeping of the documents or information by the CPC Enforcer pending resolution of the issue of

privilege. The authorised officer may, if it is agreed that the disputed material will be retained by the occupier's legal adviser, require the occupier's legal adviser to give (or if no legal adviser is present, that the occupier give) a written undertaking that the disputed material will be retained safely and that its contents will not be concealed, removed, tampered with or destroyed until the issue of privilege is resolved.

- 5.4 In addition, where entry is made under warrant, and the authorised officer exercises the powers of seize and sift described at paragraphs 4.6 and 4.7 above, any legally privileged items which have been seized will be returned as soon as reasonably practicable.

Self-incrimination

- 5.5 CPC Enforcers may compel an individual or business to provide certain information or documents in the exercise of their powers. However, they cannot require the business or individual to provide information or documents (other than pre-existing documents) that might involve an admission on its or his part of the existence of a breach of consumer law, which it is incumbent upon the CPC Enforcer to prove. CPC Enforcers may, however, require information relating to facts and the production of pre-existing documents.
- 5.6 Documents produced by a person in response to a requirement imposed by the authorised officer in the exercise of their powers may, at the discretion of the judge, be admissible in evidence against the person in civil proceedings or on prosecution for an offence. However whilst statements made by a person in response to such a requirement may be used in civil proceedings (subject to the discretion of the judge), the OFT (and other CPC Enforcers) will not use such a statement on prosecution for an offence unless evidence relating to the statement is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person. This limitation to the use of statements in criminal proceedings does not apply to proceedings for an offence contrary to s.227E.

Disclosure of confidential information

5.7 Part 9 of the Act imposes limits on the disclosure of information that relates to the affairs of any individual or to any business of an undertaking which has been obtained by a Part 8 enforcer or CPC Enforcer which is a public authority as a result of using its powers of investigation under Part 8 as amended. The Act requires that such information must not be disclosed (subject to the gateways listed at paragraph 5.8 below) during the lifetime of that individual or while the undertaking continues in existence (section 237). Breach of this requirement is a criminal offence (section 245).

This prohibition does not apply if consent to disclose has been obtained from:

- the person that provided the information (if the information was lawfully obtained by the person and the person's identity is known) and,
- the individual to whose affairs the information relates, or
- the person carrying on the business to which the information relates.

5.8 There are certain circumstances under which the OFT may disclose confidential information without the consent described in 5.7 above. For example:

- the disclosure is required in order to fulfil an EC obligation e.g. the disclosure is required pursuant to a mutual assistance request from a competent authority in another member state
- the disclosure is made to facilitate the exercise of the disclosing authority's statutory functions. If information disclosed for this purpose is not made available to the public, there are restrictions on the recipient making further disclosure

- the disclosure is made to another person to facilitate the exercise of the recipient's functions under the Enterprise Act or other specified statutes or subordinate legislation. Information disclosed in this way must not be used for any purposes other than that for which it was disclosed
- the disclosure is made to an overseas public authority in certain limited circumstances
- the disclosure is made to any person in connection with the investigation of any criminal offence, or in connection with any criminal proceedings. Such disclosure may only be made if it is proportionate to do so. Once disclosed, the information must not be used by the recipient for any other purpose
- the disclosure is of a type of information prescribed by the Secretary of State and is made in connection with certain civil proceedings. Once disclosed, the information must not be used by the recipient for any other purpose.

5.9 A public authority must have regard to a number of considerations before disclosing any confidential information covered by Part 9 (section 244). These include the need to ensure that information the disclosure of which the authority thinks is contrary to the public interest is not disclosed, and the need to exclude from disclosure (so far as practicable) commercially sensitive information whose disclosure might significantly harm the business interests of the undertaking to which it relates, and personal information whose disclosure might significantly harm the individual's interests. The public authority must consider the extent to which disclosure of such commercially sensitive information or personal information is actually necessary.

5.10 The CPC also contains provisions (in Article 13) on use of information and protection of personal data and professional and commercial secrecy. If information communicated between the authorities in member states as a result of a request is confidential within the meaning of Article 13 of the

CPC, it may only be further disclosed if this is necessary to stop the intra-Community infringement and the authority communicating it consents to its disclosure.

- 5.11 As mentioned above (see paragraph 1.8) the CPC permits Member States to designate enforcement bodies which have a legitimate interest in the cessation or prohibition of consumer law breaches in their jurisdiction, to help carry out Member States' obligations under the CPC. Delegation of tasks to such bodies is only permitted if both applicant and requested authorities agree, among other things, that the delegation does not give rise to any disclosure to such body of any confidential information.

Retention of documents and goods

- 5.12 Documents seized under the powers described in chapters 3 and 4 above may be retained for no more than three months. The same time limit applies to goods seized under those powers unless the goods are reasonably required in connection with the exercise of any function of a CPC Enforcer under Part 8 of the Act. In such a case the goods may be retained for as long as they are so required.

Complaints procedure

- 5.13 Anyone who has a complaint about the conduct of the OFT in carrying out an on-site inspection can find details of the complaint procedure at: www.offt.gov.uk/about/governance/complaint

6 OFFENCES RELATING TO THE POWERS OF INVESTIGATION

Offences created by Part 8 of the Act as amended

6.1 The new section 227E creates a criminal offence which is committed where a person, without reasonable excuse, intentionally obstructs or fails to co-operate with an authorised officer who is exercising or seeking to exercise a power under sections 227A to 227D (outlined above).

A person guilty of such an offence is liable on summary conviction, to a fine not exceeding level 5 on the standard scale (currently £5000).

7 POWERS TO REQUIRE DEFENDANTS TO MAKE PAYMENTS INTO THE PUBLIC PURSE

- 7.1 In relation to Community infringements, Article 4(6)(g) of the CPC requires Competent Authorities to have the power themselves (or by applying to the courts) 'to require the losing defendant to make payments into the public purse or to any beneficiary designated in or under national legislation, in the event of failure to comply with the decision'. In the UK, this has been a role traditionally reserved for the courts, although some existing consumer protection enforcement authorities in the EU operate in regimes in which they are able to impose administrative penalties. In the UK, courts can impose fines for contempt of court consisting of disobedience of court orders to cease Community infringements.

ANNEXE(S)

A DIRECTIVES AND REGULATIONS COVERED BY ARTICLE 3(A)

- A.1 Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p. 17). Directive as last amended by Directive 97/55/EC of the European Parliament and of the Council (OJ L 290, 23.10.1997, p. 18).
- A.2 Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372, 31.12.1985, p. 31).
- A.3 Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ L 42, 12.2.1987, p. 48). Directive as last amended by Directive 98/7/EC of the European Parliament and of the Council (OJ L 101, 1.4.1998, p. 17).
- A.4 Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 10 to 21 (OJ L 298, 17.10.1989, p. 23). Directive as last amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).
- A.5 Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ L 158, 23.6.1990, p. 59).
- A.6 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29). Directive as amended by Commission Decision 2002/995/EC (OJ L 353, 30.12.2002, p. 1).
- A.7 Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ L 280, 29.10.1994, p. 83).

- A.8 Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19). Directive as amended by Directive 2002/65/EC (OJ L 271, 9.10.2002, p. 16).
- A.9 Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising.
- A.10 Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).
- A.11 Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p. 12).
- A.12 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L 178, 17.7.2000 p. 1).
- A.13 Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use: Articles 86 to 100 (OJ L 311, 28.11.2001, p. 67). Directive as last amended by Directive 2004/27/EC (OJ L 136, 30.4.2004, p. 34).
- A.14 Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.
- A.15 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (OJ L 46, 17.2.2004, p. 1).

