

ANGUS COUNCIL

ENVIRONMENTAL AND LEISURE SERVICES COMMITTEE – 28 AUGUST 2003

THE ENTERPRISE ACT 2002-Part 8 –IMPROVING CONSUMER PROTECTION

REPORT BY THE DIRECTOR OF ENVIRONMENTAL AND CONSUMER PROTECTION

Abstract

This report advises the Committee of new powers being given to Local Authorities to tackle certain breaches of Consumer Protection legislation, and seeks approval to give delegated authority to certain officers for enforcement purposes.

1. RECOMMENDATION

It is recommended that the Committee grant delegated authority to all Trading Standards Officers, Senior Enforcement Officers and Trading Standards Advisers within the Environmental & Consumer Protection Department to act as enforcers under Part 8 of the Enterprise Act 2002 in respect of the legislation listed in the attached Appendices 1 & 2.

2. INTRODUCTION AND BACKGROUND

The Enterprise Act 2002 contains 281 sections and 26 schedules, and covers issues such as competition laws, mergers, market investigations, cartels, insolvency and consumer protection. Part 8 of the Act, with which we are concerned in this report, came into effect on 20 June 2003.

Part 8 of the Enterprise Act 2002 improves consumer protection by giving enforcers, including Angus Council, strengthened powers to obtain court orders against businesses that do not comply with their legal obligations to consumers. The provisions establish a consistent enforcement regime, with a more refined and efficient procedure. It enables injunctive (interdict) action to be taken against businesses, through the Civil Court process.

Part 8 infringements are classed in two different ways, namely:-

- a domestic infringement (UK originated legislation), or
- a community infringement (EU originated legislation)

Domestic infringements relate to breaches of a wide range of UK laws, listed in Appendix 1 to this Report.

Some of the legislation is civil, and some criminal. Many of the statutes, regulations, or orders listed is not legislation which we currently enforce or can enforce under existing rules.

However, using the Civil Court process to pursue resolution of acts or omissions by businesses opens up a whole new chapter in Consumer Protection terms.

Community infringements are acts or omissions that breach the legislation of the European Economic Area (EEA) and these Directives are listed in Appendix 2 to this report.

The Office of Fair Trading plays a pivotal role in taking action under Part 8 of the Act. It takes the lead in coordinating action by all enforcers, and publishes advice and information on how the provisions will work.

Apart from the OFT having an enforcing role, the other named “general enforcers” are the Trading Standards Service in Great Britain, and the equivalent in Northern Ireland. Specifically, Section 213 of the Enterprise Act 2002 says that “every local Weights & Measures Authority in Great Britain” is a general enforcer: Angus Council is such an authority.

3. GENERAL ENFORCEMENT PRINCIPLES

Action under Part 8 of the Act is only taken where the collective interests of consumers are at risk. Individual consumers' complaints may not be able to be resolved under this legislation unless the circumstances are such that other consumers could be harmed if the breach is not remedied.

Action must be necessary and proportionate, as set out in the Enforcement Concordat, and business will normally be given reasonable opportunity to put matters right. Whenever possible, court action will only be taken after undertakings, that matters will be rectified, have been sought

The OFT will ensure that any action under Part 8 is coordinated and will publicise cases as appropriate.

4. ENFORCEMENT ACTION

The steps which need to be taken by enforcers are as follows:-

1. Possible infringement identified – entry put on OFT's Consumer regulation website.
2. Consult with OFT – or decide not to proceed.
3. Approach the business to seek an undertaking to cease the breach or remedy the situation. (14 days minimum response time for business, or 7 days if an interim Order is sought).
4. If the business provides an undertaking, the OFT is informed – if it refuses, the OFT is informed of possible court action.
5. Council applies to court for an enforcement order which may include an interim Enforcement Order.
6. Court accepts undertaking or a court order is obtained.
7. A breach of an earlier undertaking given at 4 above results in application to the Court as in 5 above.
8. Notify OFT of outcome/monitor undertaking.

5. RESOURCES

Implementation of Part 8 of this Act will require additional resources not only within the ECP Department, but also within the Law & Administration Department whose officers will require to prepare writs and attend Court for all callings of the case and prepare and present the Council's case at any hearing.

Procedures under Part 8 are an alternative to prosecution via the Procurator Fiscal.

It is envisaged that as the provisions of the Act are more widely accepted, and used, prosecution reports will reduce in number. The Procurator Fiscal will more than likely expect enforcers to use these civil powers rather than criminal powers, moving the burden from the PF Service across to Local Authorities. At this point in time it is not possible to measure the resource burden on both Angus Council Departments. However, once the new arrangements are firmly in place, a better picture will emerge of the resource implications. It is envisaged that a further report on resources will be made to Committee in light of experiences.

6. PROPOSAL

As already stated, Angus Council is a local Weights & Measures Authority and the Head of Consumer Protection, as the Council's Chief Inspector of Weights & Measures, has delegated authority to carry out the functions of the Council in this respect.

However, for the avoidance of doubt, it is proposed that additional properly qualified officers in the Trading Standards section also be given delegated authority to act for Angus Council specifically and solely for the

purposes of Part 8 of the Act. The legislation listed within both appendices would be effective for this purpose.

7. FINANCIAL IMPLICATIONS

There will be resource implications both for this Department and the Law & Administration Department in respect of this legislation, but these cannot be quantified at this stage.

8. CONSULTATION

The Chief Executive, The Director of Finance and the Director of Law & Administration have been consulted on the contents of this report.

9. HUMAN RIGHTS

It is not envisaged that there are any human rights implications in respect of this report.

S R Heggie
Director of Environmental and Consumer Protection

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing this report.

JM/HA