

A GUIDE TO THE ENTERPRISE ACT 2002, PART 8

Background

This guide covers Part 8 of the Enterprise Act 2002. Part 8 came into force in June 2003 and replaces previous consumer provisions. The Enterprise Act improves consumer protection by giving enforcers strengthened powers to obtain court orders against traders that breach a range of consumer legislation. This includes such activities as misleading advertising, misleading pricing, breaches of contract for goods and services, trade descriptions, unfair terms in consumer contracts, doorstep selling, distance selling, package travel and consumer credit.

The Act allows specified enforcers, including Swindon Trading Standards, acting in the collective interests of consumers, to apply to the courts for an order to stop a trader from breaching certain specified consumer protection legislation.

How is the Enterprise Act different from other Criminal Legislation?

Any action taken by an enforcer is in addition to existing criminal legislation and would take place in the county court (which is a civil court and therefore has a lower standard of proof than in a criminal court).

Action under the Enterprise Act can be taken at the same time as a prosecution. Additionally under this Act it is possible to take action where only civil consumer legislation is breached (eg quality of workmanship, unfair contract terms, etc).

What does it mean to me?

Should you be engaged in a course of conduct which breaches consumer protection legislation, Trading Standards will attempt to 'consult' with you.

It is important that you do not ignore any attempts by Trading Standards to communicate with you. Failure to co-operate with Trading Standards is more likely to lead to court action against you.

What is Consultation?

This is an attempt by Trading Standards to communicate with you about possible infringements of consumer protection legislation. It is a chance for you to respond to the allegations made.

It could take the form of:

- A letter explaining where you appear to have breached legislation.

- A telephone call or personal visit to discuss consumers' complaints.
- A request to have a meeting.
- Requests for information about your business activities.

During consultation, Trading Standards may request information and documents about your business. This could be done informally or formally via a 'Section 225 Notice' under the Act. Any formal request is enforceable under the Act.

Once Trading Standards has identified the problem areas, these will be explained to you, together with any action that you may need to take. You will be given a reasonable time period within which to comply. You will normally be asked to give a written acknowledgement / assurance at this stage. However if the matter is considered to be more serious you may be asked to give an 'Undertaking' – see below.

If the initial consultation is unsuccessful

Should the complaints continue or you ignore advice from Trading Standards, then a written 'Undertaking' will be sought from you or the person running your business. This will seek to rectify any identified trading practices in order to comply with the relevant consumer laws.

Signing an Undertaking

By signing an Undertaking you would agree to correcting those identified problem areas and avoid future breaches of the specific legislation. Any Undertaking is recognised under the Act and is notified to the Office of Fair Trading. The Undertaking does not have a time limit and it should not be an unreasonable burden on you, as it only requires you to trade within the law and accepted best practice.

If, however, you do not give an Undertaking or do not take the necessary corrective steps (within the set time period), it is likely that you will be taken to court. Should you give an Undertaking to Trading Standards, which you later breach, this too is likely to result in court action. If you are taken to court an 'Order' may be granted against you. This will take the form of an Injunction against you or the individuals who run your business. You may also be liable for costs.

Should you subsequently breach a Court Order, you may be held in contempt of court, which could lead to imprisonment or unlimited fines.

This leaflet is not an authoritative interpretation of the law and is intended only for guidance. Further information can be obtained from the website: www.offt.gov.uk/Business/Legal/Enterprise/part+8.htm or please contact Swindon Trading Standards at Premier House, Station Road, Swindon SN1 1TZ. Tel: 01793 466155.
