



Department
for Business
Innovation & Skills

**INVESTIGATORY POWERS OF
CONSUMER LAW ENFORCERS**

Guidance for businesses on the
Consumer Rights Act 2015

OCTOBER 2015

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1. Introduction

Purpose of this guidance

1. This guidance seeks to explain how the investigatory powers of consumer law enforcers contained in Schedule 5 to the Consumer Rights Act 2015 ('the Act') apply in practice. The guidance is aimed at businesses and their legal advisors or representatives to help them understand the investigatory powers that are available to consumer law enforcers, how enforcers can use these powers and what to expect when they are used.
2. As investigatory powers are used to investigate breaches of consumer law affecting a wide range of businesses, it is difficult to be precise in this guidance as to exactly how the powers should be used in each circumstance across all these sectors. So the guidance explains in general terms how enforcers might use the investigatory powers.
3. This guidance also explains how the Act enables local authority Trading Standards enforcers to more effectively and efficiently work across local authority boundaries.
4. Ultimately, only the courts can decide on how the powers in the Act should be interpreted. This guidance should not be regarded as a substitute for, or definitive interpretation of, the investigatory powers in the Act and should be read in conjunction with the Act. For detailed understanding of the provisions of the legislation to which the generic set of investigatory powers applies, the specific legislation itself should be consulted.

Scope of the guidance

5. The Act consolidates the investigatory powers of consumer law which regulates a diverse range of business sectors such as distance and doorstep sellers, timeshare and package travel companies, estate agents, public houses, bakeries, providers of consumer credit and retailers of cars, groceries and consumer goods, such as washing machines, toys, camping equipment and DIY tools. Rules governing intellectual property rights, product safety and rules to counter unfair trading also affect a wide variety of consumer facing businesses. The consolidated investigatory powers are set out in Schedule 5 to the Act and referred to as the "generic set".
6. Some specific investigatory powers contained in weights and measures and product safety legislation will be retained in that legislation alongside this generic set. These retained powers are also highlighted below.
7. Nothing in the Act overrides the need for enforcers to consider whether the Regulation of Investigatory Powers Act 2000 (RIPA) applies to the use of the investigatory powers set out here and to respect the limitations on the use of investigatory powers which are set out in the Protection of Freedoms Act 2012. This includes the requirement for local authorities to obtain judicial approval before using certain investigatory techniques. This guidance does not touch upon those requirements.

Why has the Government consolidated investigatory powers?

8. The investigatory powers have been consolidated, modernised and radically simplified to improve their transparency and accessibility for businesses and enforcers. In addition, stronger safeguards have been added to powers of entry in accordance with the Protection of Freedoms Act 2012. The powers and safeguards strike a balance between enabling effective and proportionate investigation of breaches of consumer law whilst protecting civil liberties and not disproportionately burdening compliant businesses.

When does the generic set of powers come into force?

9. The generic set of investigatory powers in Schedule 5 to the Act comes into force in October 2015.

2. How will enforcers use the investigatory powers?

Table 1: Summary of the investigatory powers contained in Schedule 5

Schedule 5 lists the investigatory powers that are available to enforcers, details what businesses can expect from enforcers when those powers are used and also specifies two offences.

1. Enforcers are likely to use investigatory powers in one of four situations:

I. *Without entering the trader's premises*

- The power to require information

II. *When entering premises and acting as a consumer*

- The power to observe the carrying on of a business
- The power to carry out a test purchase

III. *When entering a trader's premises to carry out inspections or conducting on-site investigations*

In order to exercise a power of entry, the enforcer must:

- Give **two working days' written notice** to the occupier of the premises for routine inspections (as defined in the Act), or
- **Obtain a court warrant**, to enter wholly or mainly private dwellings or where the enforcer may need to enter the premises by force

Enforcers can then use further powers, for example:

- The power to inspect products and test equipment
- The power to require production of documents
- The power to seize and detain goods and documents
- The power to break open a container which includes accessing electronic devices in which information may be stored or accessed

IV. *When Trading Standards use the powers above outside their local authority area*

2. It also specifies what businesses can expect from enforcers:

- Access to seized goods and documents
- Notice of testing of goods when proceedings or restriction notices result from the testing
- The right to appeal against detention of goods and documents
- Compensation for loss or damage in specified circumstances
- An automatic exemption from keeping records for certain packers of bread

3. In addition, it contains two offences:

- The offence of obstruction
- The offence of purporting to act as an officer.

Which enforcers have access to the generic set of investigatory powers?

10. There are a number of different types of enforcers which enforce consumer law and these are detailed in Part 1 of Schedule 5 to the Act. These include local authority Trading Standards Services ('Trading Standards'), the Competition and Markets Authority ('CMA') and the Department of Enterprise, Trade and Investment in Northern Ireland ('DETI').
11. The full list of the consumer law enforcers is provided in Annex 1.

When can the generic set of investigatory powers be used?

12. The generic set of powers can be used to ascertain compliance with, and investigate breaches of, consumer law which an enforcer has a duty or power to enforce, primarily those which are listed in paragraphs 10 and 11 of Schedule 5 to the Act.¹ Paragraphs 10 and 11 can be updated to include new or amended legislation in the future.
13. The investigatory powers described in this guidance include the power to inspect products and documents and to seize goods and documents to investigate breaches of consumer law. The powers can also facilitate the use of other powers such as the power to seize goods liable to forfeiture or to investigate failure on the part of a trader to comply with an undertaking given or an enforcement order.

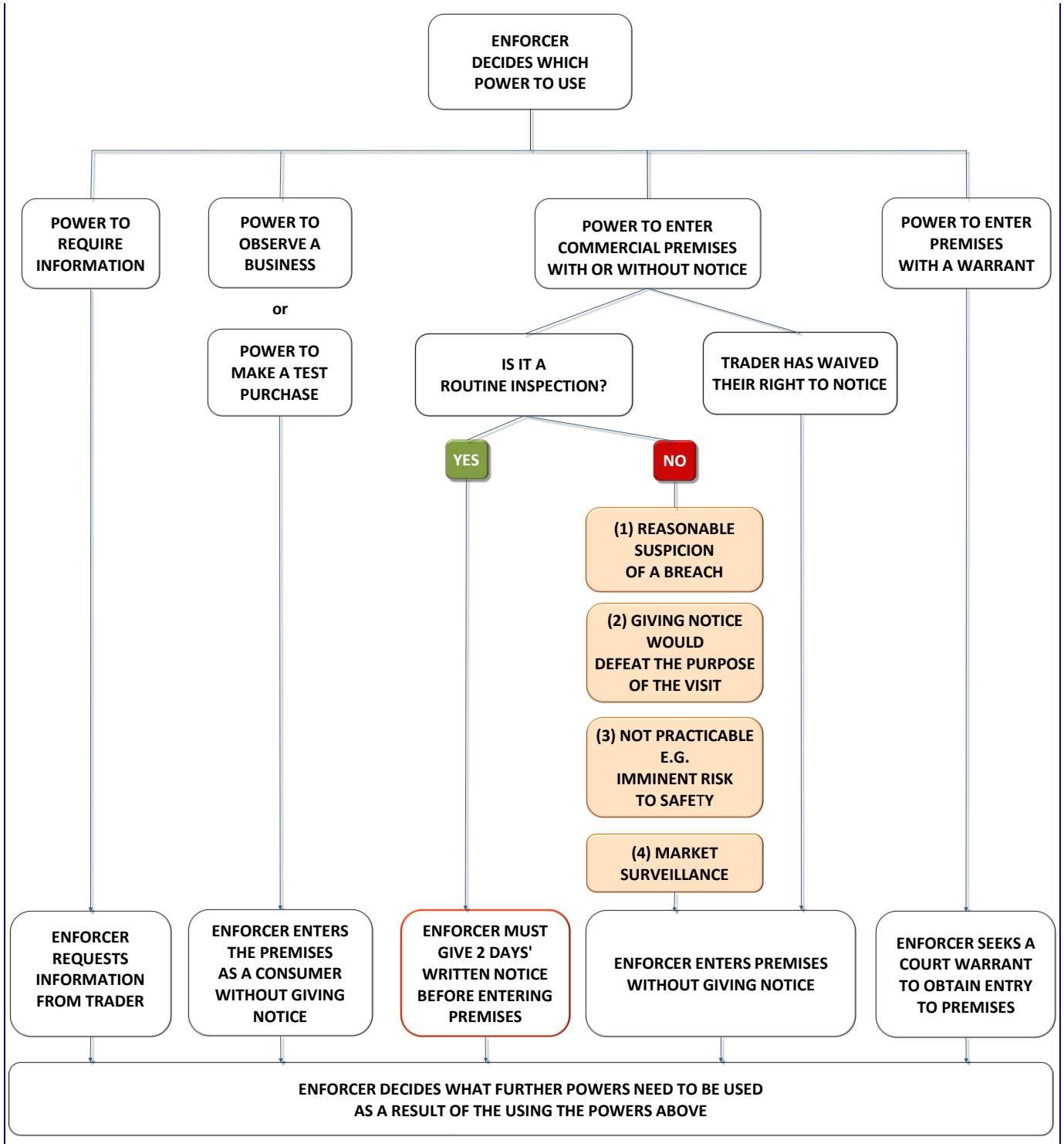
What type of powers might an enforcer use and when?

14. When deciding which powers an enforcer wishes to use the enforcer is likely to consider a number of factors, including the nature and seriousness of the suspected breach based on the intelligence or evidence they have received. This is likely to determine the nature of the additional information or evidence that the enforcer will need to gather in order to investigate the matter.
15. This guidance provides illustrative examples as to how enforcers might use certain powers and when, but this should not be taken as the only way in which the powers can be used by enforcers.
16. For example, an enforcer who wishes to investigate whether the terms and conditions of a consumer contract in relation to a kitchen fitting service are fair could use the **power to require information** from the trader in question, using a written notice to gather relevant information about the service. This may mean the enforcer does not need to visit the trader's premises.
17. Another example is where an enforcer discovers a business which is new to the local area and may wish to carry out an inspection. The enforcer could use the **power of entry without a warrant** having given two working days' written notice to the occupier to carry

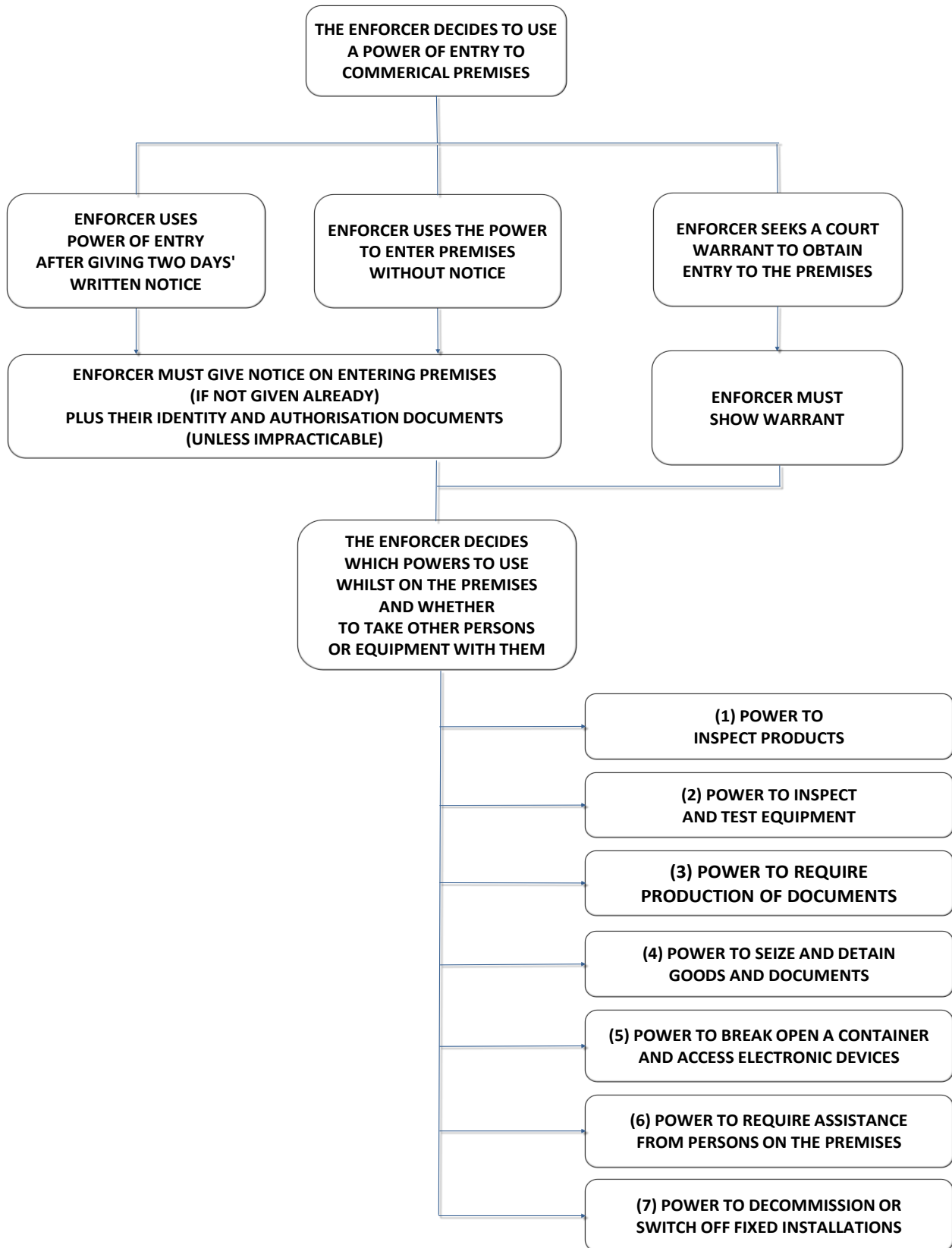
¹ This includes legislation not expressly listed in Schedule 5, such as regulations made under the Consumer Protection Act 1987 and the unfair terms provisions of Part 2 of the Act.

- out a routine inspection of the premises. On the other hand the enforcer could use the **power to observe the business** in order to get an overview of the business' operation.
18. An enforcer investigating suspected short measure sales at a petrol station could use the **power to carry out a test purchase**. If this indicates a breach, the enforcer may **use a power of entry without a warrant**. As the enforcer reasonably suspects a breach of consumer law, prior written notice need not be given. Once on-site the enforcer could inspect and test the petrol pumps.
 19. An enforcer investigating the sale of counterfeit DVDs could use a **power of entry with a warrant** to force entry to the trader's premises if entry to the premises has been refused or it is likely that evidence may be concealed or destroyed if notice of entry were given. Once on the premises the enforcer could use the **power to break open a container** where the DVDs may be stored and the **power to seize and detain goods and documents** to seize suspected counterfeit DVDs and associated invoices.
 20. Flowchart 1 below provides an overview of the powers an enforcer could consider using when initially investigating an alleged breach. Flowchart 2 below provides an overview of the powers an enforcer could use when on a trader's premises.
 21. Each power in the generic set is described below to give more detail on how it might be used by the enforcer.

Flowchart 1 - Powers an enforcer might initially consider using



Flowchart 2 - Powers an enforcer might consider using when on a trader's premises



What powers can enforcers use without entering business' premises?

Power to require information and its enforcement (Paragraphs 14-17)

22. This power enables an enforcer to issue a written notice requiring a person, including a company, to produce certain information. This power can therefore be used without the enforcer visiting a trader's premises. The notice must specify the purpose for which the information is required, for example, where the enforcer is investigating an alleged breach of legislation.
23. The notice may require documents or documents of a particular description, such as invoices, to be created. The notice may also specify the form in which the information must be provided, for example, in writing or on a USB stick. The information must be provided in legible form.
24. An enforcer might use this power to check terms and conditions used in contracts with consumers for a particular service or to check the previous prices charged by a trader for a specific product.
25. If a trader fails to comply with the request for information, the enforcer can apply for a court order to require the trader to comply.
26. Some enforcers² can only use this power if they reasonably suspect a breach of consumer law. The limitations are set out in full at the beginning of Part 3 of Schedule 5. Other enforcers have access only to this power in the generic set.³

Example – Power to require information

An enforcer has received a number of complaints from consumers who have purchased goods online from a UK online business. The enforcer suspects that consumers' cancellation rights, which provide consumers with 14 days to change their mind, are not being explained to customers in sales calls. The enforcer therefore sends a written notice to the trader to request information on the script used by call centre staff during the sales calls so that the enforcer can check what is said by sales staff in relation to consumers' cancellation rights, if anything.

² Such as domestic enforcers

³ The investigatory powers of Public Designated Enforcers, Unfair Contract Terms Enforcers and Ofgem are limited to the power to require information. The Consumers' Association (Which?) is not a public designated enforcer for the purposes of Schedule 5 to the Act.

FAQ 1 - What types of information can an enforcer ask for?

- An enforcer can ask for the information it needs to carry out its investigation. Information has a very wide meaning.
- Enforcers can require businesses to supply the information in a particular format, for example, on a USB stick, by email or in writing.
- Enforcers can require businesses, to create documents, for example, a spread sheet which brings together various separate pieces of information.
- The power provides that the notice may require the creation of documents, or documents of a description, specified in the notice.
- Enforcers cannot require a business to provide legally privileged information.

Limitations on the use of the information provided using the information power

27. An investigation into a potential breach using these investigatory powers may lead to enforcement action being taken against a trader. The exact nature of that enforcement action, if any, will depend on the circumstances. Any resulting civil law enforcement action could include seeking an undertaking from the trader or obtaining an enforcement order from a court. As a last resort a criminal prosecution may result.
28. However, information provided in response to a written notice requiring the production of information as detailed above cannot be used by the prosecution in criminal proceedings against the person on whom the notice was served and no questions may be asked about it by the prosecution. This protects a trader from self-incrimination. Information obtained from a third party using this power can, however, be used by the prosecution in proceedings against a trader.
29. This limitation does not apply to prosecutions in relation to obstruction of an enforcer or for perjury. In addition, it does not apply where a defendant adduces the evidence in proceedings themselves.
30. It is also worth noting that this does not prevent an enforcer from re-acquiring the information using on-site powers, such as the power to require production of documents under paragraph 27 or the power to seize and detain documents under paragraph 29 (see below). The prosecution in criminal proceedings will be able to adduce evidence and ask questions relating to information re-acquired using these powers.

What powers do enforcers have in relation to business' premises?

31. Most enforcers⁴ also have access to the following investigatory powers. Which powers an enforcer uses will depend on the circumstances and what they are investigating.
32. There are some limitations on the use of the powers by certain enforcers and this is detailed in Table 5 in Annex 2.

Power to purchase products (test purchases) (Paragraph 21)

33. An enforcer can use the power to purchase a product or to enter into an agreement with a trader to purchase a product, for example, to test purchase a bottle of vodka being sold in a shop to check whether it is counterfeit. This power can also be used by enforcers to enlist the help of volunteers to carry out test purchases to check whether cigarettes are being sold by a trader to under age persons.
34. Enforcers can also inspect products on the premises in the same way as a member of the public may do. This power and the power to observe the carrying on of a business (see below) can be used by enforcers to enter premises (or parts of premises), such as a shop, open to the public to inspect products or buy an item on sale in the shop without first giving notice or obtaining a warrant. When using these powers the enforcer is not using a power of entry for which a notice or warrant requirement applies.
35. Enforcers can use these powers only at reasonable times. What is a reasonable time will depend on the size and type of the business due to be inspected. As these powers are used to inspect a wide range of businesses, it is difficult to specify particular times when the power can be used across all these sectors. That said, a reasonable time is generally taken as meaning when a business is open for trade. However, enforcers will need to consider what is reasonable in the circumstances and for that particular business sector.

Power to observe the carrying on of a business (Paragraph 22)

36. An enforcer can enter premises (or parts of premises) accessible to the public in the same way as a consumer to observe a business. This power could be used by an enforcer to observe a business that is new to a local area or where the enforcer has little intelligence about the business in question. Again, enforcers can use this power at all reasonable times and without first giving notice or obtaining a warrant.

Example – Power to observe the carrying on of a business

A domestic enforcer (e.g. a Trading Standards officer) visits a small grocery store, which has newly opened in the area, acting as a normal customer. To check compliance with relevant legislation the enforcer enters those parts of the store accessible to the public and looks at products on the shelves and price displays. The enforcer also witnesses sales made by the trader.

⁴ This means Domestic and EU Enforcers. However, enforcers from Ofgem do not have access to these powers

FAQ 2 - What can enforcers do when observing the business?

- This enables an enforcer, such as a Trading Standards officer, much in the same way as an ordinary consumer, to enter public parts of the premises to view products and services on show.
- A Trading Standards officer could use the power to observe a business or the power to test purchase, to determine whether the risk profile of the business has changed.
- Enforcers cannot use this power to gain access to premises not normally accessible to the public, such as a factory floor or shop store room.
- The Bill does not change the requirement on enforcers to seek authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) as considered necessary.

Power of entry without a warrant (Paragraph 23)

37. An enforcer could check a business' compliance with consumer law, with an enforcement order previously issued or with an undertaking given by a business. In order to do this the enforcer may wish to use a power of entry to enter the business' premises.
38. The Act provides enforcers with a power to enter commercial premises. This means that an enforcer can access commercial premises or parts of those premises, including those parts not normally accessible to the public, such as a factory floor or shop store room, without the need for consent from the trader or a court warrant.
39. An enforcer can only use the power of entry to enter premises at reasonable times.

Can enforcers enter wholly or mainly private dwellings?

40. To protect civil liberties of people in their own homes, enforcers cannot under a power of entry enter premises which are wholly or mainly used as private dwellings without a warrant. This includes where a business is run from home. Instead, enforcers must either seek consent from the occupier or obtain a court warrant to enter these premises.

Example – Inspections at wholly or mainly private dwellings

A UK online business, which is run from a flat above a shop, supplies items to consumers for parties, such as costumes, balloons, soft toys and stationery. An enforcer can enter the shop premises without a warrant, but before an enforcer can enter the flat above the shop, which is also the traders' home, to carry out an inspection there they must either seek consent from the occupier or obtain a court warrant.

Notice requirements (Paragraph 23(4))

41. The Act introduces a requirement for enforcers to give two working days' written notice to the occupier of commercial premises before using a power of entry without a warrant. There must be at least two working days' between the occupier receiving the notice and the enforcer using the power to enter the premises. An occupier means, for example, the owner or manager of the business.

42. This requirement applies to routine inspections only. Routine inspections under the Act are any inspections that do not fall within the circumstances set out in paragraphs 23(6)(a) – (d) of Schedule 5. Routine inspections include, for example, where the enforcers' risk assessment indicates that an inspection is due, but records held by the enforcer of the previous compliance history of the business indicates that the business is broadly compliant.
43. Giving notice enables traders to make arrangements to ensure any necessary documentation and staff are available to support enforcers without unnecessarily impacting on the smooth operation of the business. This will minimise the impact of such inspections on compliant businesses whilst increasing levels of compliance.
44. The notice must be given in writing. Giving notice includes sending it in the post or delivering it by hand, and also sending it by email or text message. However, as this concerns notice of entry to particular premises, to ensure that the occupier of that premises does receive the notice, it is best practice for the notice to be delivered by hand or by post. This ensures certainty of service whilst allowing enforcers and traders the flexibility to agree alternative methods.
45. The notice must state the purpose of the visit and details of the offence of obstruction. An example notice is provided in Annex 3.

FAQ 3 - What is written notice?

- A written notice explains the purpose of the visit by the enforcer and provides details of the offence of obstruction.
- Written notice must be given to the occupier at least two working days before the enforcer can use a power of entry without a warrant, unless the visit is not for a routine inspection.
- It is best practice that enforcers deliver the notice by hand or by post to ensure it is properly received, however the notice could be delivered by email or other electronic methods in appropriate circumstances, e.g. if the trader has agreed and notified the enforcer of an email address for electronic service of notices.

FAQ 4 - How far in advance can notice be given?

- It is difficult to be precise as to how far in advance notice should be given as it will depend on the individual circumstances. However, a notice which is so vague that a trader cannot identify a potential date for the inspection may not amount to giving notice under the Act.
- One business may find it helpful to know that an enforcer will visit in six months' time, whereas, another may find it more helpful for the enforcer to make an appointment at a specific date or time so that it can make arrangements to ensure the appropriate staff and paperwork is available during the inspection. This will mean that the inspection is more productive for the enforcer and the business.
- Although it is not a legal requirement, an enforcer and business can always agree a mutually convenient appointment for an inspection to take place.

FAQ 5 - What is a routine inspection?

- Routine inspections under the Act are any inspections that do not fall within the circumstances set out in paragraphs 23(6)(a) – (d) of Schedule 5. They are typically made where an enforcer considers a business presents a risk simply due to the nature of the sector in which they operate, but there is no reason to doubt that the business is operating properly without any significant breaches of legislation. This could include an inspection at a DIY store.
- Written notice will be required whenever an enforcer wishes to use a power of entry without a warrant to commercial premises not normally accessible to the public. This includes a factory floor or shop store room.
- The key point is whether one of the exemptions to giving notice applies or whether entry with warrant is required. If an enforcer considers that one of the exemptions does apply, or entry with warrant is required, then the power of entry can be used without notice.

FAQ 6 - Can enforcers still carry out unannounced inspections?

- There are a number of clear exemptions to giving notice so that enforcers can carry out unannounced inspections to investigate potential breaches of consumer law and tackle rogue traders.

FAQ 7 - To whom should notice be given?

- Written notice must be given to the occupier of a premises.
- It should be sent to a senior person within the business at the premises that the enforcer intends to enter. This could be the owner of the business or a manager.
- If the name or position of the occupier is not known, then the notice should be sent to the address of the business, addressed to the occupier of the premises.
- Where a business has a Primary Authority relationship with a local authority, the business may agree with the Primary Authority that such notices are sent to the business' head office.

FAQ 8 - What happens if a trader says they did not receive a notice?

- Procedure rules on giving notice can be relied upon here. These provide that where a document is sent to the last known address by first class post, it can be presumed that the notice arrived within the normal postage period - i.e. the second day after it was posted.
- Notice can also be given by hand and if agreed with the trader it could also be sent by email or other electronic methods.

FAQ 9 - What happens if the owner is away when notice is given?

- There are well established procedure rules on giving notice which can be applied in these circumstances.
- These rules provide that where a document is sent to the last known address by first class post, it can be presumed that the notice arrived within the normal postage period - i.e. the second day after it was posted.
- Once the notice has been received at the address, it is deemed that notice has been given thereby enabling the enforcer to use the power of entry after two working days from receipt of the notice.
- The owner and the enforcer can, of course, agree between them to arrange the visit for a day when the owner is available.

FAQ 10 - What happens if the occupier is away from the premises when the enforcer carries out an inspection?

- The Act requires that notice is given to the occupier at least two working days before the enforcer uses the power of entry to enter the premises.
- There is no requirement in the Act that the occupier must be present when the enforcer enters the premises.
- However, this does not prevent the occupier and the enforcer agreeing between themselves for the visit to take place on a day when the occupier is available.

Case study 1: When an enforcer might give notice of a routine inspection of premises

A DIY business is assessed as high risk under an enforcer's own risk assessment scheme. This risk assessment is based on a number of factors, including the type of business and its compliance history. The business is operating properly without any significant breaches of legislation, but is considered as high risk due to the nature of the sector in which it operates and the range and type of products it sells.

The enforcer has received no recent complaints about the business, but wishes to use the power to enter the premises in order to carry out a routine inspection. The enforcer therefore gives written notice to the business of the intention to carry out an inspection no earlier than two working days after receipt of the notice by the trader.

When the trader receives the notice, they contact the enforcer to request an appointment for the inspection. The enforcer is not required by law to make a specific appointment. However, the enforcer decides to agree a date when the manager is available so that the manager can take the enforcer through the store procedures which are used to ensure compliance with consumer law.

What are the circumstances in which notice need not be given? (Paragraph 23(5-6))

46. Enforcers must give notice when carrying out routine inspections, but there may be a number of reasons why enforcers may need to carry out unannounced inspections at business premises, for example, to investigate alleged breaches of consumer law. Therefore, the Act sets out the circumstances which under the Act do not constitute routine inspections. Each circumstance is described below.

The occupier of the premises has waived the requirement for notice (Paragraph 23(5))

47. For this situation to apply, an occupier of premises must communicate a positive statement to an enforcer to waive their right to receive prior written notice from an enforcer. Although it is not stated in the Act, it is best practice that the trader communicates the waiver in writing to the enforcer so that it can be kept on file for future reference.
48. Alternatively, a trader which has a number of branches may want written notice to be given to their head office rather than to their staff at each of their branches. Again, such arrangements are best agreed in writing and kept on file by a trader's local authority, or Primary Authority if it has one. A Primary Authority exists where a business forms a statutory partnership with one local authority. This local authority then takes the lead in providing advice to the business which other authorities must take into account when carrying out inspections or addressing non-compliance.
49. There is also nothing to prevent a trader withdrawing or amending the waiver or setting a date for the waiver to end. Again, this information is best communicated to the enforcer in writing.

Example – The occupier has waived the requirement for notice

A multi-site trader which has a Primary Authority relationship with one local authority wishes to waive its right to receive notice at each of its outlets. The trader writes to the Primary Authority to inform them of the waiver. The Primary Authority communicates this information to other local authorities and keeps it on file for future reference.

(a) *The enforcer reasonably suspects a breach of consumer law*

50. This applies where an enforcer reasonably suspects a breach of consumer law. As mentioned above, what amounts to reasonable suspicion will turn on the facts and circumstances of each case. Intelligence about a suspected breach may come from a number of sources, for example, one or more complainants, the enforcer's own knowledge of the businesses in the local area or from other sources, such as from other agencies, like the Police, Customs Officers or other local authorities. Intelligence of this nature is likely to be sufficient to amount to a reasonable suspicion of a breach.⁵
51. This intelligence may relate to a specific business or a type of business, for example, businesses in a local area, such as electrical or hardware stores.

⁵ See [O'Hara v Chief Constable of the Royal Ulster Constabulary \[1997\] A.C. 286](#)

Example – Reasonable suspicion of a breach of consumer law

An enforcer uses the power to observe a business to enter the premises of a newsagent to check compliance with tobacco advertising legislation. Whilst on the premises, the enforcer discovers fireworks on sale for which the trader has no licence. The enforcer decides to use the power to make a test purchase to buy one of the fireworks. The enforcer considers that the sale of the firework discloses a suspected breach by the trader. Therefore, the enforcer decides to use a power of entry without notice. The enforcer uses the evidence of the sale of the firework to support not giving notice - where the enforcer reasonably suspects a breach. This means that the enforcer can use the power of entry immediately to investigate the alleged breach without giving notice to the occupier, for example, to inspect the premises, including the stockroom or other non-public areas of the shop.

(b) The enforcer reasonably considers giving notice would defeat the purpose of the entry

52. This covers a wide range of circumstances. An enforcer may consider that giving notice would defeat the purpose of the entry, for example, where it is suspected that evidence which could indicate a breach of consumer law may be concealed, lost or destroyed.

Example – Giving notice would defeat the purpose of the entry

Intelligence suggests that local grocery stores are knowingly buying counterfeit vodka from a travelling salesman. An enforcer uses this intelligence and their knowledge and previous experience of the businesses in the local area to help focus enforcement activity on those stores in the locality that are likely to be selling the vodka. The enforcer considers that giving advance notice would defeat the purpose of the visit because the retailers concerned are likely to remove it from sale and conceal it. This means that the enforcer can use the power to enter these premises without giving notice.

FAQ 11 - What amounts to 'defeat the purpose of the visit' in relation to giving notice?

- An enforcer may consider that giving notice may defeat the purpose of the visit on the basis they consider that evidence may be concealed by the trader or lost or destroyed.
- An enforcer will have knowledge of the businesses in the local area and will gather intelligence from other sources, such as from other enforcement agencies, like the police or other local authorities or complaints they have received. An enforcer could use this intelligence to assess whether giving notice would defeat the purpose of the visit when targeting enforcement action to businesses that are likely to be in breach.

(c) It is not reasonably practicable in the circumstances to give notice, in particular because the enforcer reasonably suspects there is an imminent risk to public health or safety

53. There may be a number of reasons why it might not be reasonably practicable for the enforcer to give notice to an occupier of a premises. This could include situations where the nature of the trading activity makes it impractical for the enforcer to give notice. This might include for example, where the trader is a stall holder at an ad hoc market or where enforcement action needs to be taken quickly to remove unsafe products from sale to reduce the risk to consumers.

Example – It is not reasonably practicable to give notice

An enforcer wishes to carry out an inspection at a trader's clothing stall at a market which is only run at one or two weekends of the year. This means that it is not reasonably practicable for the enforcer to give two working days' written notice to the trader before the market has finished. So notice need not be given before the enforcer carries out an inspection at the trader's stall.

Example – Reasonable suspicion of an imminent risk to public health or safety

An enforcer receives information about unsafe mobile phone chargers being sold in electrical stores in the local area. The enforcer's intelligence suggests that the chargers catch fire in use and have already injured a customer who purchased one. The enforcer considers they need to act swiftly to ensure that the potentially unsafe chargers are removed from sale. In these circumstances the exemption from giving two working days' written notice where the enforcer has reasonable suspicion of a risk to public health or safety applies. So the enforcer can visit those traders' premises that are likely to be selling the chargers without giving notice.

(d) Entry is for market surveillance purposes

54. Under certain European safety legislation enforcers are required to carry out market surveillance activities. This means that, where it is necessary, enforcers are able to enter premises without notice to check that products are compliant with this legislation. Therefore, enforcers do not need to give notice to carry out inspections for market surveillance purposes. So, businesses subject to these inspections may not get advanced notice. However, this does not include inspections to ascertain compliance with domestic legislation which does not implement European law, such as checking the safety of sofas and cushions in accordance with the Furniture and Furnishings (Fire) (Safety) Regulations 1988.

Example – Entry is for market surveillance purposes

An enforcer wishes to carry out checks to ensure that electrical toasters and toys are correctly labelled with the CE marking in compliance with relevant safety regulations. The enforcer decides to use the power of entry without notice to visit the premises of a store selling the toasters and toys in order to carry out those checks without giving notice.

Requirement to give notice and to show identity documents when entering premises (Paragraph 23(7))

55. If two days' notice has not been given to the occupier by an enforcer, the enforcer must give a written notice to the occupier (if one is present) when entering the premises. The written notice could be given to the owner or manager of the business or a sales assistant. This notice must provide the same information as the two days' notice. Therefore, the notice must include details of the purpose of the visit and the offence of obstruction. However, this notice need not be given if it is not reasonably practicable to do so. For example, it may not be reasonably practicable to give notice if the occupier has already been arrested by the police.
56. When entering the premises enforcers must also show their identity and authorisation document(s), whether or not it is requested by the occupier. This is likely to be in the form of a photo identity or warrant card issued by the enforcer's employer. This must be provided in all cases, unless it is not reasonably practicable, but if an enforcer fails to give notice or show their identity card when entering premises, this will not invalidate subsequent proceedings taken against the trader.
57. An enforcer may also take other persons and equipment with them onto the premises as they consider necessary (paragraph 23(11)).

FAQ 12 - What powers can enforcers use to gather intelligence about non-compliant businesses?

- The enforcer can use the power to observe the carrying on of a business or the power to carry out a test purchase.
- These powers as well as other sources of intelligence can be used alongside the power of entry, in particular to determine whether a power of entry need be exercised and whether an exemption to the notice requirement might apply.

FAQ 13 - Can an enforcer deal with a potential breach under consumer law even if they have entered the premises to carry out, for example, a food inspection?

- Where an enforcer is carrying out a food law inspection without notice, but whilst on the premises spots a potential breach under consumer law, then the inspection is unlikely to be routine one, enabling the enforcer to use a power of entry without giving notice to tackle the alleged consumer law breach.
- However, enforcers should not be actively inspecting other areas of the store not related to checking compliance with food law when they have not given notice, unless they have already considered that the inspection would not be a routine one.

FAQ 14 - My business is assessed as high risk, does that mean an enforcer does not need to give me two days' notice?

- Not necessarily. It will depend on why the business is considered as high risk.
- An enforcer may use a variety of sources of information or intelligence to determine whether to use a power of entry and whether the inspection would be routine or not.
- Sources of information or intelligence include the complaint and compliance history of the business in question which forms part of the enforcer's risk profile of the businesses.

FAQ 15 - Does an enforcer have to give notice in order to check compliance with a previous undertaking or enforcement order?

- An enforcer would need to give notice to use a power of entry to check the business' compliance with an undertaking or enforcement order, unless the inspection was not routine.
- An enforcer could use the power to observe the carrying on of a business and the power to carry out test purchases to check whether an undertaking or enforcement order is being complied with.

FAQ 16 - How does the notice requirement fit with the Primary Authority scheme?

- The requirement for two working days' written notice does not affect the operation of the Primary Authority scheme.
- Where a Primary Authority inspection plan is in place covering consumer law, this must be considered by the enforcer when considering whether to carry out an inspection.
- If there is any deviation from the inspection plan the enforcer should give notice both to the trader and Primary Authority – unless urgent action is required to prevent harm.
- However, the Primary Authority and the business may voluntarily agree that such notices are sent to the business' head office, rather than to the individual outlets.

FAQ 17 - Will the Regulator's Code be amended to include the requirement for written notice?

- There are no plans to amend the Regulator's Code as the requirement for notice has been included in the Act in accordance with the Protection of Freedoms Act 2012.

FAQ 18 - How do these notice requirements fit with the Powers of entry: Code of Practice?

- The Powers of entry: Code of Practice provides guidance and sets out considerations that apply to the exercise of powers of entry including, where appropriate, the need to minimise disruption to business. It will ensure greater consistency in the exercise of powers of entry, and greater clarity for those affected by them, while upholding effective enforcement.⁶
- At the time of writing the Code is before Parliament. Subject to the approval of Parliament, the code is expected to come into force in April 2015.
- Regard should be had to this Code and, for example, PACE Code B issued under Section 66 of the Police and Criminal Evidence Act 1984 (PACE) or a code issued under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- These Codes do not override specific statutory powers to conduct routine inspections or to enter premises for enforcement purposes. Therefore, the provisions regarding the notice requirements in the Consumer Rights Act 2015 take precedence over these Codes.

What powers can enforcers use on business' premises?

58. There are a number of further powers that enforcers can use once they have entered a trader's premises (other than to make a test purchase or observe the carrying on of a business). These are described below.

Table 2: Summary of the powers an enforcer can use whilst on a trader's premises

1. To inspect products and test equipment
2. To require production of documents
3. To seize and detain goods and documents
4. To break open a container which includes accessing electronic devices in which information may be stored or accessed
5. To request assistance from persons on the premises
6. To decommission or switch of apparatus and fixed installations.

⁶ Powers of entry: code of practice, Link: <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

Power to inspect products on the premises (Paragraph 25)

59. Enforcers can inspect products, which includes (amongst others) goods and services:

- **Goods** include all tangible moveable items, such as toys, grocery products, electrical goods, paint and cosmetic products etc.
- **Services** include hairdressing, fitting kitchens and dry cleaning services.

60. So an enforcer can check, for example, that toys are labelled in compliance with safety legislation, that prices are properly indicated for grocery products and that a hairdresser or dry cleaner has displayed the prices for their services.

Example – Power to inspect products

An enforcer carries out an inspection at a large department store which sells non-food products to check compliance with relevant legislation. The enforcer checks, for example, that the toys, cosmetics and electrical goods on sale are labelled with the correct safety information and that the clothing on sale is correctly labelled with textile labelling. This includes the inspection of products in the stock room. The enforcer also checks that the prices for goods are correctly indicated and lastly that the prices for haircuts and colour treatments of the in-house hairdresser are clearly displayed.

61. Enforcers can also examine any procedure in relation to the production of a product at the premises of a manufacturer for product safety purposes. This includes observing the quality control checks carried out during production. This enables the enforcer to check that a product, such as a shampoo or shaving gel, is manufactured in a way which ensures it is correctly labelled in compliance with the relevant safety legislation.

62. Enforcers can also inspect and take copies of records kept by packers or importers to demonstrate that the weights of packages of products meet the requirements of average quantity legislation. For example, an enforcer can use the records to check that packs of sweets on a production line are made up to a constant quantity of 200g.

Power to test equipment (Paragraph 26)

63. Where an enforcer reasonably believes that weighing or measuring equipment on a trader's premises is used for trade or is in possession for such use, they can inspect and test this equipment to check its accuracy. This includes, for example, a weighing scale in a delicatessen used to weigh un-packed cooked meat or measuring instruments used to dispense alcoholic spirits in a public house.

64. This power can also be used when an enforcer reasonably believes that such equipment has been passed as fit for use in trade.

Example – Power to test weighing and measuring equipment

An enforcer uses the power to inspect and test equipment to check that weighing scales for weighing fruit and vegetables in a grocery store are accurate and to test the accuracy of petrol pumps in a petrol station.

Power to require documents to be produced (Paragraph 27)

65. Where an enforcer has reasonable suspicion of a breach of consumer law they can require an occupier to produce documents. However, where documents are required to be held by statute or they are required for market surveillance purposes, an enforcer can require these documents to be produced even when they do not have suspicion of a breach.

Example – Requiring production of documents

An enforcer reasonably suspects that the mileage on the odometer of a second hand car offered for sale on a garage forecourt indicates that the car has travelled less than is usual for the age of the vehicle resulting in a potentially misleading indication in breach of consumer law. The enforcer therefore uses the power to require production of documents to request from the trader the log book details and the sales invoice for the vehicle in question to investigate the vehicle's previous history further.

Example – Requiring production of documents required to be held by statute

An enforcer wishes to check that skin lightening cream on sale at a beauty salon complies with product safety legislation. So the enforcer relies on the market surveillance exemption in order to use the power of entry without notice to visit the distributor in the UK. The enforcer then uses the power to require production of documents which are required to be held by the trader, to require them to produce the product information file for the product in question to check it has passed all the relevant safety tests.

66. An enforcer can also require a trader to provide an explanation of the documents which are produced. For example, this could include requiring the trader to explain a document which they have produced which contains information about the price history of a product.
67. However, unlike the written power to require information, this on-site power does not permit an enforcer to require a trader to create a document except where information is recorded electronically. This includes documents held electronically, for example, on a computer or on a Cloud-based system. In this case the enforcer can require a copy of the document to be produced in a legible form which can be taken away, for example, on a print out. The enforcer can also take copies of the documents produced.
68. This power applies not only to a trader under investigation, but also to any other person on the premises acting on behalf of a trader, such as a bookkeeper or shop assistant. This power can also be used against third parties, such as a bank or storage facility which may possess documents which are relevant to an investigation.

Power to seize and detain goods and documents (Paragraphs 28-29)

69. Enforcers can seize and detain goods where they reasonably suspect either that the goods may disclose a breach of consumer law, that the goods could be forfeited or where they may be required as evidence in proceedings. Documents can also be seized and detained when the enforcer reasonably suspects that they might be required as evidence. Documents include information recorded in any form. This could include information held electronically, for example, on a computer or on a Cloud-based system.
70. Enforcers must take reasonable steps to inform the person from whom goods or documents were seized of the seizure, even where goods have been seized from a vending machine, and provide a written record of the items seized.
71. When using these powers in England and Wales or Northern Ireland, enforcers must also have regard to the codes of practice under the Police and Criminal Evidence Act 1984, or the equivalent codes in Northern Ireland.⁷ These codes provide guidance on seizing goods or documents. Enforcers must also show their identity and authorisation document(s), whether or not it is requested, unless it is impractical to do so. Goods, except those that the enforcer reasonably suspects are liable to be forfeited, can only be detained for a maximum of three months, unless the enforcer reasonably needs them for longer, for example, to examine or test the goods. This paragraph should be read in conjunction with that on the right to appeal against the detention of goods or documents (paragraph 92 below).

Power to break open a container (Paragraph 31)

72. An enforcer can require a person who has authority, such as a manager of a shop or a public house, to break open a container or vending machine in order to use the powers of seizure and detention as well as the power to decommission or switch off fixed installations referred to below. An enforcer can also require that person to access information which may be held or stored on an electronic device, such as a computer, including those on a network. Where the trader fails to comply with such a request, the enforcer can personally break open the container, open the vending machine or access the electronic device.
73. A container means anything in which goods may be stored. As noted previously, 'goods' includes all tangible moveable items, therefore this power could cover a shipping container containing goods or a filing cabinet containing documents.
74. Enforcers can use this power to gain access to information held in digital form, such as on USB sticks, computer hard-drives and held in the Cloud or other electronic networks.
75. If, as a result of using this power, the enforcer seizes any goods or documents, the enforcer must adhere to the same principles discussed previously, such as taking reasonable steps to inform the trader from whom they are seized.

⁷ PACE Code B issued under Section 66 of the Police and Criminal Evidence Act 1984 (PACE) or a code issued under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989

Example – Power to break open a container

An enforcer uses a power of entry without notice to investigate the supply of suspected counterfeit DVDs from a shop. The power of entry enables the enforcer to enter the shop's store room. In the store room the enforcer finds a computer and DVD copying machines which are suspected to be those used to produce the counterfeit DVDs. The enforcer also finds a locked cabinet in the store room which is suspected to contain more counterfeit DVDs. The enforcer uses the power to request access to the computer and to have the trader open the locked cabinet. The trader fails to cooperate with the request from the enforcer so the enforcer can access the computer and break open the locked cabinet themselves. The enforcer can also seize and detain the suspected counterfeit DVDs as evidence.

FAQ 19 - Can enforcers seize information held in the Cloud?

- The power to break open containers includes access to electronic devices in which information may be stored or accessed.
- Enforcers can therefore access and seize information stored digitally such as on USB sticks containing software or software loaded onto a computer or information held in the Cloud.

FAQ 20 - Do enforcers have a power of search?

- The power to enter premises enables an enforcer to use other powers such as the power to seize goods. These powers taken together amount to an implied power of search.⁸

Power to require assistance from person on the premises (Paragraph 34)

76. Where an enforcer has entered premises (whether with a warrant or without) they can require any person on the premises to provide assistance or information which may be reasonably required by the enforcer.
77. The enforcer can also require a person on the premises to provide the name and address of the packer or importer of any packages found on the premises to enforce weights and measures legislation.

Power to enter premises with a warrant (Paragraphs 32-33)

78. An enforcer can seek a court warrant to enter premises, by use of reasonable force if necessary. Before granting a warrant a Justice of the Peace (commonly referred to as Magistrates⁹) must be satisfied that certain conditions have been met. These conditions are that either:

⁸ See the case of *Helidon Vuciterni & Alsat UK Ltd v Brent Trading Standards Service 2012*

⁹ In Scotland such warrants are granted by a Sheriff, and in Northern Ireland by a lay magistrate

- a. There are products on the premises that the enforcer has a power to inspect or that there are documents on the premises that the enforcer could require a person to produce, or
- b. There has been or is about to be a breach of legislation or a failure to comply with an enforcement measure (such as a prior order or undertaking),

and either;

- c. Access to the premises has been or is likely to be refused, and the enforcer has given the occupier notice of their intention to apply for a warrant, or
- d. It is likely that products or documents on the premises will be concealed or interfered with, if notice were given, or
- e. The premises are unoccupied or the occupier is temporarily absent and it might defeat the purpose of entry to wait for the occupier to return.

79. If the occupier is not on the premises when the enforcer enters, the enforcer must leave a notice when leaving the premises. The notice must state that the premises have been entered under a warrant. The enforcer must also leave the premises secured as found.

FAQ 21 - Can enforcers enter premises by force?

- It is best practice for enforcers to obtain a court warrant, where they may need to enter the premises by use of reasonable force.

Are all consumer law investigatory powers contained in the generic set?

80. There are certain specific powers contained in product safety and weights and measures legislation which are not included in the generic set of powers. For example, under product safety legislation an enforcer has the power to ask for documentation, such as the product information file, to check compliance or details of the supplier, where the enforcer has reasonable suspicion that the goods have not been placed on the market since they were manufactured or imported. This power will be retained in the product safety legislation.¹⁰

81. Also, enforcers have specific powers under the Weights and Measures Act 1985 to require traders to weigh, measure or count certain goods in the presence of the enforcer, and also powers to check the weight of goods carried on a vehicle. These powers are retained in the Weights and Measures Act 1985.¹¹

¹⁰ Section 29(4) of the Consumer Protection Act 1987

¹¹ Sections 38 – 41 and 80 – 81 for the purposes of sections 38 – 40 of the Weights and Measures Act 1985

Power to inspect any apparatus or fixed installations (Paragraph 25)

82. Enforcers can inspect any apparatus or fixed installations to check that electromagnetic emissions from such equipment are reasonable and that it is sufficiently immune from such emissions.

What are apparatus and fixed installations?

These terms are defined in the Electromagnetic Compatibility Regulations 2006,¹² however, apparatus includes most domestic electrical appliances such as refrigerators, washing machines, kettles, hair dryers; electric power tools; commercial and industrial electrical equipment, whereas, fixed installations include industrial and power plants, telecommunication and computer networks.

Power to decommission or switch off fixed installations (Paragraph 30)

83. An enforcer can decommission or switch off fixed installations or parts of such installations where they suspect a breach of the Electromagnetic Compatibility Regulations 2006 or simply to check whether there has been a breach under these regulations.

What powers can Trading Standards use outside their local authority area?**Cross boundary investigatory powers (Paragraphs 44 to 46)**

84. Enforcers in local authority Trading Standards Services and enforcers in District Councils in Northern Ireland are able to investigate breaches and take either criminal or civil proceedings outside their local authority area. The exception is that Trading Standards in Scotland do not take criminal legal proceedings.¹³
85. Enforcers operating across their local authority boundaries are encouraged to liaise with enforcers in the relevant local authorities and Primary Authorities when considering operating outside their local area. This will help to avoid any likelihood of duplication of enforcement activities. Enforcers also need to have regard to the Primary Authority scheme in particular, to ensure they comply with the inspection plan agreed with the Primary Authority, unless an inspection needs to be carried out as a matter of urgency to prevent harm.

Example – Cross boundary investigatory powers

A Trading Standards enforcer has received information about a rogue trader who has caused harm to a number of consumers across a region by carrying out unnecessary roof repairs and charging excessive fees for the work. The enforcer liaises with other local authorities where the trader has caused consumer harm. The enforcer agrees to collate all the cases and take the lead in instituting legal proceedings against the perpetrator.

¹² S.I. 2006/3418

¹³ In Scotland, criminal proceedings are taken by the procurator fiscal

FAQ 22 - Can Trading Standards use their powers to investigate breaches across the whole of the UK?

- This power enables Trading Standards to investigate breaches of consumer law outside their local authority area.
- This power also allows Trading Standards in England and Wales to bring a prosecution within England and Wales, but Trading Standards in England and Wales would not, for example, be able to prosecute a case in Scotland. Trading Standards in Northern Ireland would not prosecute a case outside Northern Ireland. Similarly, the procurator fiscal in Scotland would not prosecute cases outside Scotland.
- However, if an offender is based in Scotland, but the offence has caused harm in England, the English enforcer could pursue a prosecution through the English courts. Similarly the procurator fiscal could prosecute a case where a trader is based in England, but the offence was committed in Scotland. In addition, the separate prosecution services have protocols in place for cross jurisdictional cases, including cases outside the UK.

FAQ 23 – How will the use of cross boundary powers of local authority Trading Standards be monitored?

- The National Trading Standards Board (NTSB) prioritises and coordinates serious national consumer protection investigations that cross local authority boundaries. Local authorities also work in partnership to tackle enforcement issues that cross local borders.
- Businesses that operate across local authority boundaries can form a Primary Authority relationship with a local authority which then takes the lead in providing advice and guidance to that business. This includes developing a national inspection plan between enforcers and the business concerned.
- In addition, the Enterprise and Regulatory Reform Act 2013, has put these inspection plans on a statutory footing. This will ensure that these businesses are not subjected to unnecessary or duplicate checks by Trading Standards enforcers.

Can investigatory powers be used against the Crown? (Paragraph 18)

86. Enforcers can only use the power to require information from the Crown, Government departments and other public bodies, when enforcing the Consumer Protection from Unfair Trading Regulations 2008 and Part 8 of the Enterprise Act 2002. No other powers in the Schedule can be used against the Crown.

Case study 2: How an enforcer might use a range of powers to investigate an alleged breach

Following a number of complaints from consumers who allege that a sofa at a local furniture store has not been offered for sale at the higher advertised price, an enforcer suspects that the trader is potentially misleading consumers into thinking the sofa has been reduced in price.

The enforcer reviews the enforcement body's own records of the previous history of the business and discovers that the trader has previously been warned about giving misleading price indications. The enforcer decides to visit the furniture store using the power to observe the carrying on of a business to look at the advertising in store for the sofa. The enforcer sees advertising which indicates that the sofa has been reduced in price from a higher previous price.

The enforcer decides to use a power of entry immediately without notice as they consider one of the exemptions applies, *i.e.* that the enforcer has a reasonable suspicion of a breach. The enforcer announces himself to the person present, which in this case is the store manager, and shows their identity and authorisation documents. The enforcer also gives a written notice to that person, which includes details of the purpose of the visit and details of the offence of obstruction.

The enforcer uses the power to require production of documents to request documentation from the trader detailing the price history in order to check the previous prices have been charged for the sofa by the trader. The enforcer also uses the power to access an electronic device in which information may be stored to require the trader to access the store's computer in which the price history information is held and requires the trader to make copies of the information by printing it.

The enforcer uses the power to seize and detain documents to seize the advertising materials in the store for the sofa which indicates the previous higher price and the documents produced by the trader.

Case study 3: How an enforcer might investigate an alleged breach connected with a business sector

An enforcer finds evidence of illicit tobacco products, including stubs and papers, in the local streets near suspected outlets. The enforcer uses this information together with intelligence with other agencies, such as the Police, Customs Officers, and other local authorities, and the enforcer's knowledge of the compliance history of local businesses. This helps the enforcer to determine which premises, or types of premises in the local area, are likely to be selling the illicit tobacco so they can target their inspections to those premises.

The enforcer decides to use the power to carry out a test purchase at a local tobacconist to ascertain whether illicit products are being sold in the premises.

The enforcer suspects that illicit tobacco has been sold as a result of the test purchase, and so decides to immediately exercise a power of entry without notice. This is because one of the exemptions to giving notice applies, such as where the enforcer reasonably considers that giving notice would defeat the purpose of the visit on the basis that the illicit tobacco may be concealed by the traders in question.

The enforcer announces himself to the person present, in this case a sales assistant, and shows their identity and authorisation documents. The enforcer also gives a written notice to that person, which includes details of the purpose of the visit and the offence of obstruction. The enforcer then inspects the premises, including products held in the storeroom and behind the counter. The enforcer also uses the power to break open a container to require the trader to open a cupboard in the storeroom in which it is suspected illicit tobacco is stored.

The enforcer uses the power to seize and detain suspected illicit tobacco products found on the premises. The enforcer also uses the power to require production of documents to require the trader to produce relevant invoices in relation to the illicit tobacco products.

3. What can businesses expect under Schedule 5?

Table 3: Summary of what businesses can expect under Schedule 5

Businesses can expect the following under Schedule 5:

- Access to seized goods and documents
- Notice of testing of goods when proceedings or restriction notices result from the testing
- The right to appeal against detention of goods and documents
- Compensation for loss or damage in specified circumstances
- An automatic exemption from keeping records for certain packers of bread

87. What businesses can expect under Schedule 5 is described below.

Access to seized goods and documents (Paragraph 38)

88. If requested, enforcers are required to let those persons from whom goods and documents have been seized have supervised access to the items once they have been detained. This means, for example, that the person can obtain photographs or copies of these items. Enforcers can recover the reasonable costs of complying with such requests.

Notice of testing of goods (Paragraph 39)

89. Where an enforcer has purchased or seized goods, including from a vending machine, submits them to a test and this leads to proceedings being instituted; a suspension notice being instituted; or the goods being forfeited, the enforcer must inform the person from whom the goods were purchased or seized, the results of the tests.

90. An enforcer must also allow that person to get the goods tested themselves, if this is reasonably practicable.

The right to appeal against detention of goods and documents (Paragraph 40)

91. Where goods or documents have been detained by an enforcer, a person with an interest in those items can apply to a court to get them released. A court may order the release of the items where certain conditions are met. These conditions include where no proceedings have been brought by the enforcer and six months have elapsed since the items were seized; or proceedings have been brought but have not resulted in the items being forfeited. The court can also specify when the order comes into force. There is also an appeal procedure so that person affected can appeal against that decision of the court.

Compensation (Paragraph 41)

92. Where goods have been seized and detained by an enforcer, a person with an interest in those goods is entitled to compensation for any loss or damage caused by the seizure and detention. This will arise when no breach of legislation nor a failure to comply with an enforcement measure has been found and the seizure and detention was not caused by the interested person's neglect or default.

Automatic exemption from keeping records for certain packers of bread (Section 78)

93. Bakers which make up bread sold unwrapped or in open packs are automatically exempt from the requirement to keep records of checks they carry out on the weight of the bread. This means these packers do not need to apply for a certificate from their local Trading Standards Service to exempt them from keeping such records as was previously the case. However, packers are still required to either measure their loaves or carry out checks on the weight of loaves using a suitable sampling system to ensure the batches of bread comply with average weight regulations. Also, enforcers can use the power of entry to carry out compliance checks on batches of the bread.

Example – Automatic exemption from keeping records for certain bakers

A baker of bread which is sold unwrapped or in open packs either measures the loaves or carries out checks using a suitable sampling system to ensure that batches of the bread comply with the average weight rules. However, the baker does not need to keep a record of those checks.

4. What offences are contained in Schedule 5?

Table 4: Details of the offences contained in Schedule 5

Schedule 5 of the Act contains two offences. These are:

- The offence of obstruction, and
- The offence of purporting to act as an officer.

These offences are described below.

94. The following offences are contained in Schedule 5.

Offence of obstruction (Paragraph 36)

95. A person commits an obstruction offence if they:

- Intentionally obstruct an enforcer;
- Intentionally fail to comply with a requirement properly imposed by an enforcer;
- Without good reason fails to give an enforcer assistance or information reasonably required. This would include where a person recklessly makes a false or misleading statement, or makes a statement which they know is false or misleading.

Offence of purporting to act as an officer (Paragraph 37)

96. It is an offence for a person to falsely act as an officer of an enforcer by purporting to use the powers in Schedule 5 when not authorised to do so.

Annex 1: The different types of enforcers

97. There are four types of enforcers referred to in Schedule 5. The type of enforcer is determined by what is being investigated and enforced. This also determines what investigatory powers are available to the enforcer.

98. These are:

- **Domestic Enforcers** are general enforcement bodies that have a power or duty to enforce consumer law within the UK, *i.e.* legislation which is caught by the listings in paragraphs 10 and 11 of Schedule 5 to the Act, They include Trading Standards Services, the CMA, DETI, District Councils in Northern Ireland, the British Hallmarking Council, the assay offices and the Gas and Electricity Market Authority (Ofgem).
- **EU Enforcers** are UK consumer enforcement bodies that have been designated for the purposes of the regulation on consumer protection cooperation¹⁴. This regulation sets out the framework for designated authorities in EU member states to cooperate with each other on the enforcement of consumer protection laws. Breaches of these laws are called 'Community infringements.' These include the CMA, Trading Standards, DETI, and also the Financial Conduct Authority (FCA), Civil Aviation Authority (CAA) and the Office of Communications (Ofcom).
- **Public Designated Enforcers** are designated by the Secretary of State, under the Enterprise Act 2002.¹⁵ These include the FCA, the Information Commissioner (ICO), the Consumers' Association (Which?), Ofcom, Ofgem, the Office of Rail Regulation, the Water Services Regulation Authority, the Director General of Electricity Supply for Northern Ireland and the Director General of Gas for Northern Ireland.
- **Unfair Contract Terms Enforcers**, including the CMA, Trading Standards, DETI , FCA, CAA, Ofcom, Ofgem, ICO, the Office of Rail Regulation, the Consumers' Association (Which?), the Water Services Regulation Authority and the Northern Ireland Authority for Utility Regulation.

¹⁴ EC No. 2006/2004

¹⁵ Section 213

Annex 2: Limitations on the use of the powers by certain enforcers

99. Some enforcers will need to have reasonable suspicion before they can use certain investigatory powers. These enforcers are set out in Table 5 below.

Table 5: Details of which enforcers need reasonable suspicion to use certain powers

Enforcers requiring reasonable suspicion before using the power	Power
<p style="text-align: center;">Domestic Enforcer¹⁶ where there is a breach of the enforcer’s legislation -----</p> <p style="text-align: center;">Unfair Contract Terms Enforcer where a person is using or proposing or recommending the use of an unfair contract term or notice</p>	<p style="text-align: center;">Part 3 Power Power to require information (Paragraph 14)</p>
	Part 4 Powers
<p style="text-align: center;">EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking</p>	<p style="text-align: center;">Power to make a test purchase (Paragraph 21)</p>
<p style="text-align: center;">EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking</p>	<p style="text-align: center;">Power to inspect products (Paragraph 25)</p>
<p style="text-align: center;">Domestic Enforcer¹⁶ where there is a breach of the enforcer’s legislation (but not required if the trader is required by the legislation to keep the document) -----</p> <p style="text-align: center;">EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking (but not required if seeking documents for proceedings under Part 8 Enterprise Act 2002)</p>	<p style="text-align: center;">Power to require production of documents (Paragraph 27)</p>

¹⁶ Does not include domestic enforcers acting as market surveillance authorities within the meaning of Article 2(18) of the Regulation on Accreditation and Market Surveillance

Enforcers requiring reasonable suspicion before using the power	Power
<p>Domestic Enforcer where the goods may disclose a breach, are liable to forfeiture or may be required as evidence</p> <p>-----</p> <p>EU Enforcer where the goods may disclose a community infringement or where the goods may be required as evidence</p>	<p>Power to seize and detain goods (Paragraph 28)</p>
<p>Domestic Enforcer EU Enforcer where the documents may be required as evidence</p>	<p>Power to seize documents required as evidence (Paragraph 29)</p>
<p>Domestic Enforcer where there is a breach</p>	<p>Power to decommission or switch off fixed installations (Paragraph 30)</p>
<p>EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking</p>	<p>Power to break open a container (Paragraph 31)</p>
<p>EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking</p>	<p>Power to enter premises with a warrant (Paragraphs 32-33)</p>
<p>EU Enforcer where there has been, or is likely to be a breach or a failure to comply with an enforcement order or undertaking</p>	<p>Power to require assistance from person on the premises (Paragraph 34)</p>

Annex 3: Example Notice

The Act does not specify a template for the written notice of an inspection. The example given below is provided for guidance only. There is no requirement for enforcers to use this example, and enforcers are free to create their own.

Certain information must be included in the notice, such as the purpose of the entry and details of the obstruction offence. Other information is optional which an enforcer can decide whether or not to include in their notice.

.....

Schedule 5 Consumer Rights Act - Entry Notice

Name & Address & Contact Details of Enforcement Body:

This notice is given in compliance with:

Paragraph 23(3) of Schedule 5 to the Consumer Rights Act 2015 which requires the enforcer to give written notice to the occupier of a commercial premises at least two working days' before using the power of entry to enter the premises

OR

Paragraph 23(7) of Schedule 5 to the Consumer Rights Act 2015 which requires written notice to the occupier (if present) when entering commercial premises.*

(*delete as appropriate)

To:

(To the occupier)

Date:

Address:

(Address of premises to be entered)

Purpose of entry:

(Details of why entry is necessary, e.g. to carry out an inspection to check compliance with consumer legislation the officer (stated below) is authorised to enforce as detailed in schedule 5 of the Consumer Rights Act 2015 or to ascertain compliance with an undertaking or to ascertain whether goods are liable to be forfeit)

[Note: Enforcers may list particular legislation where an inspection is for a specific purpose]

Obstruction offence: Obstructing a duly authorised officer is an offence. Obstruction includes where a person intentionally obstructs an officer; intentionally fails to comply with instructions given by an officer; without good reason fails to give an officer assistance or information reasonably required; makes a statement or a reckless statement which they know is false or misleading.

Signed:

(Authorised officer)

Print Name:

Job Title:

Name of Enforcement Body:

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