

ENTERPRISE ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Enforcement of Certain Consumer Legislation

Enforcement procedure

Section 218: Interim enforcement order

537. This section provides that, where certain conditions are satisfied, the courts may make an interim enforcement order pending the determination of an application for an enforcement order.
538. Where it is alleged that a person is engaged in conduct that constitutes an infringement, or is likely to engage in conduct that constitutes a Community infringement, and it appears to the court that:
- an application for an enforcement order in respect of the alleged conduct would be likely to be successful; and
 - it is expedient that the conduct is prohibited or prevented immediately,
- the court may make an interim enforcement order. An interim order may be made without notice being given to the person named in the application if it appears to the court that it is appropriate to do so (*subsection (1)*). But *subsection (7)* requires that where an application for an interim enforcement order is made without notice being given to the person named in the application it must explain why no notice has been given.
539. An application for an interim enforcement order without notice may be necessary, for example, if an enforcer becomes aware that a misleading advertisement is about to be published in a national newspaper or if a trader sets up in temporary premises to sell goods of unsatisfactory quality or to mislead consumers as to the goods they are purchasing (so-called 'one day sales').
540. An interim enforcement order must indicate the nature of the alleged conduct and must require the person against whom it is made:
- not to continue or repeat the conduct; or
 - not to engage in conduct of the nature indicated by the court if it has found that a Community infringement is likely to be committed; and
 - not to engage in conduct of the nature indicated by the court in the course of the business concerned or another business carried out by him in future; and
 - not to consent to, or connive in, the carrying out of such conduct by a body corporate with which he has a special relationship as defined in section 222(3),
- as provided by *subsections (2) to (4)*.

*These notes refer to the Enterprise Act 2002 (c.40)
which received Royal Assent on 7 November 2002*

541. An interim enforcement order may be applied for before an application for an enforcement order is made and at any time until an application for an enforcement order is determined (*subsection (5)*). However, an enforcer other than the OFT must not make an application for an interim enforcement order without complying with the prior consultation requirements in section 214. A consultation period of 7 days is required under that section unless the OFT agrees that an application should be made without delay. The Department would expect enforcers to obtain OFT's agreement to an application being made without delay in cases of great urgency and whenever an application is made without notice.
542. An application for an interim enforcement order must refer to all matters which are known to the applicant and which are material to the question of whether or not the application should be granted (*subsection (6)*). This will enable the courts to consider all the relevant information known to the applicant when an application for an interim enforcement order is made without notice being given to the person named in the application, or where an application with notice is not defended.
543. The court may vary or discharge an interim enforcement order on the application of either the enforcer who applied for the order or the person against whom it is made (*subsection (8)*). An interim enforcement order ceases to have effect on the determination of the application for an enforcement order (*subsection (9)*).
544. As an alternative to making an interim enforcement order, the court may accept an undertaking from the defendant. The undertaking may take the same form as the interim order, or may be to take such steps as the court considers will prevent him doing anything the order would have prohibited him from doing (*subsection (10)*).
545. As with enforcement orders, an interim enforcement order made in one part of the UK will apply throughout the UK (*subsection (11)*).