

ENTERPRISE AND REGULATORY REFORM ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Competition and Markets Authority and Part 4: Competition Reform

Part 4: Competition Reform

Chapter 2: Markets

Interim measures

Section 37: Interim measures: pre-emptive action: markets

293. The purpose of this section is to ensure that the CMA's powers to impose interim measures include the power to require parties to take steps to reverse pre-emptive action taken, or to reverse the effects of such action, following a market investigation reference being made. The intent is to prevent parties from taking pre-emptive action which may impede implementation of measures required by the CMA following a market investigation.
294. The section enables the CMA to order actions to be taken which may either restore the position to what it otherwise would have been, or, if this is not possible, to mitigate the effects of the pre-emptive action.
295. *Subsections (2) and (3)* apply to interim undertakings (section 157 of the EA 2002) and *subsections (4) and (5)* to interim orders (section 158 of the EA 2002), so enforcement action can flow from a failure to comply with an interim order or an interim undertaking. The powers only apply to actions taken after the order (or undertaking) has been issued.
296. The powers will also apply in cases where the Secretary of State is the relevant authority, that is, if he/she has made a market investigation reference under the new section 140A in a case where he/she gave a public interest intervention notice.