



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 4

#### ENFORCEMENT

#### *Other*

#### **94 Rights to enforce undertakings and orders**

- (1) This section applies to any enforcement undertaking or enforcement order.
- (2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.
- (3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.
- (4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.
- (6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the [<sup>F1</sup>CMA] for an injunction or for interdict or for any other appropriate relief or remedy.

<sup>F2</sup>(7) .....

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- (8) Compliance with an undertaking under paragraph <sup>F3</sup>... 3 or 9 of Schedule 7, an order made by the Secretary of State under paragraph 2 of that Schedule or an order under paragraph 5, 6, 10 or 11 of that Schedule, shall also be enforceable by civil proceedings brought by the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.
- (9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.
- [<sup>F4</sup>(10) In subsection (8), “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

#### Textual Amendments

- F1** Word in s. 94(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 130\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** S. 94(7) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 130\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in s. 94(8) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 34](#); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F4** S. 94(10) inserted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), [Sch. para. 10\(6\)](#) (with art. 17)

#### Modifications etc. (not altering text)

- C1** Pt. 3 modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 4 para. 56](#); S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C2** S. 94 applied (with modifications) (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 15, [Sch. 3 para. 1\(1\)\(i\)\(9\)](#) (as amended (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, [18\(1\)-\(17\)](#) (with arts. 20-23))
- C3** S. 94 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), [Sch. 18 para. 62\(7\)\(e\)](#) (with transitional provisions in Sch. 18); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- C4** Ss. 85-95: functions made exercisable concurrently (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), [15\(2\)](#) (with arts. 16(5)(6), 17)
- C5** S. 94(1) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(3\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)
- S. 94(1) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(4\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)
- C6** S. 94(2) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(3\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)
- S. 94(2) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(4\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)
- C7** S. 94(3) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(3\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)
- S. 94(3) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 10\(4\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)

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- C8** S. 94(4) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)  
S. 94(4) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C9** S. 94(5) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)  
S. 94(5) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C10** S. 94(8) applied (20.6.2003) by 1980 c.21 s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)  
S. 94(8) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C11** S. 94(9) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)  
S. 94(9) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 10(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### [<sup>F5</sup>94A Interim undertakings and orders under this Part: penalties

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.
- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
  - (a) when an enterprise is to be treated as controlled by a person; and
  - (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—

“interim measure” means—

  - (a) an undertaking under section 80; or

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- (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;  
“appropriate authority” means—
- (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
- (b) in relation to any other interim measure, the CMA.

#### Textual Amendments

- F5** Ss. 94A, 94B inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 31(1)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with [Sch.](#))

#### Modifications etc. (not altering text)

- C4** Ss. 85-95: functions made exercisable concurrently (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), **15(2)** (with arts. 16(5)(6), 17)

### 94B Statement of policy in relation to powers under sections 94 and 94A

- (1) The CMA shall prepare and publish a statement of policy in relation to the use of its powers under—
  - (a) section 94, insofar as they relate to interim measures; and
  - (b) section 94A.
- (2) The CMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 94A.
- (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The CMA shall consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
- (5) A statement or revised statement of policy may not be published under this section unless the Secretary of State approves the statement.
- (6) In this section, “interim measure” has the same meaning as in section 94A.]

#### Textual Amendments

- F5** Ss. 94A, 94B inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 31(1)**, 103(1)(i)(3); S.I. 2014/416, art. 2(1)(b) (with [Sch.](#))

#### Modifications etc. (not altering text)

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## 95 Rights to enforce statutory restrictions

- (1) The obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 shall be a duty owed to any person who may be affected by a contravention of the enactment concerned.
- (2) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (3) In any proceedings brought under subsection (2) against a person who has an obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the enactment concerned.
- (4) Compliance with section 77(2) or (3) or 78(2) shall also be enforceable by civil proceedings brought by the [<sup>F6</sup>CMA] or the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
- (5) Compliance with paragraph 7(2) or (3) or 8(2) of Schedule 7 shall also be enforceable by civil proceedings brought by the [<sup>F7</sup>CMA] or the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.
- (6) Subsections (4) and (5) shall not prejudice any right that a person may have by virtue of subsection (2) to bring civil proceedings for contravention or apprehended contravention of section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7.

### Textual Amendments

- F6** Word in s. 95(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 131\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Word in s. 95(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 131\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- C12** S. 95 applied (with modifications) (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 15, [Sch. 3 para. 1\(1\)\(j\)\(10\)](#) (as amended (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, [18\(1\)-\(17\)](#) (with arts. 20-23))

**Changes to legislation:**

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Other.