



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 4

#### ENFORCEMENT

##### *Undertakings and orders: general provisions*

#### **86 Enforcement orders: general provisions**

- (1) An enforcement order may extend to a person's conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
  - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
  - (c) a person carrying on business in the United Kingdom.
- (2) Nothing in an enforcement order shall have effect so as to—
- (a) cancel or modify conditions in licences granted—
    - (i) under a patent granted under the Patents Act 1977 (c. 37) or a European patent (UK) (within the meaning of the Act of 1977); or
    - (ii) in respect of a design registered under the Registered Designs Act 1949 (c. 88);by the proprietor of the patent or design; or
  - (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002,  
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- (3) An enforcement order may prohibit the performance of an agreement already in existence when the order is made.
- (4) Schedule 8 (which provides for the contents of certain enforcement orders) shall have effect.
- (5) Part 1 of Schedule 9 (which enables certain enforcement orders to modify licence conditions etc. in regulated markets) shall have effect.
- (6) In this Part “enforcement order” means an order made under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

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

- C1** S. 86 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)(b)(3)** (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))
- C2** 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)
- C3** S. 86(2) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by [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. 86(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)
- C4** S. 86(3) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by [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. 86(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)

## **87 Delegated power of directions**

- (1) An enforcement order may authorise the person making the order to give directions falling within subsection (2) to—
  - (a) a person specified in the directions; or
  - (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this subsection if they are directions—
  - (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the enforcement order concerned; or
  - (b) to do, or refrain from doing, anything so specified or described which the person might be required by that order to do or refrain from doing.
- (3) An enforcement order may authorise the person making the order to vary or revoke any directions so given.
- (4) The court may by order require any person who has failed to comply with directions given by virtue of this section to comply with them, or otherwise remedy his failure, within such time as may be specified in the order.

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- (5) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.
- (6) An order under subsection (4) or (5) shall be made on the application of the person authorised by virtue of this section to give the directions concerned.
- (7) An order under subsection (4) or (5) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.
- (8) In this section “the court” means—
- (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

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

- C2** 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. 87 applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C6** S. 87 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. 87 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)(c)** (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))

## 88 Contents of certain enforcement orders

- (1) This section applies in relation to any order under section 75, 83 or 84 or under paragraph 5, 10 or 11 of Schedule 7.
- (2) The order or any explanatory material accompanying the order shall state—
- (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
  - (b) the date on which the order comes into force;
  - (c) the possible consequences of not complying with the order; and
  - (d) the section of this Part under which a review can be sought in relation to the order.

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

- C2** 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](#)

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- 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)
- C8** S. 88 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. 88 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)(d)(4)** (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))

## 89 Subject-matter of undertakings

- (1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.
- (2) In this Part “enforcement undertaking” means an undertaking under section <sup>F1</sup>... 73, 80 or 82 or under paragraph <sup>F2</sup>... 3 or 9 of Schedule 7.

### Textual Amendments

- F1** Word in s. 89(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 32(a)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F2** Word in s. 89(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 32(b)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

### Modifications etc. (not altering text)

- C2** 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)
- C10** S. 89 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)(e)(5)** (as amended by (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))
- C11** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C12** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C13** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), s. 278, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

## 90 Procedural requirements for certain undertakings and orders

Schedule 10 (which provides for the procedure for accepting certain enforcement undertakings and making certain enforcement orders and for their termination) shall have effect.

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

- C2** 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)
- C14** S. 90 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

## 91 Register of undertakings and orders

- (1) The [<sup>F3</sup>CMA] shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept in such form as the [<sup>F3</sup>CMA] considers appropriate.
- (3) The [<sup>F4</sup>CMA] shall ensure that the following matters are entered in the register—
- (a) the provisions of any enforcement undertaking accepted under this Part;
  - (b) the provisions of any enforcement order made under this Part;
  - (c) the details of any variation, release or revocation of such an undertaking or order; and
  - (d) the details of any consent given by the [<sup>F5</sup>CMA] under section 77(2) or (3) or 78(2) or by the Secretary of State under paragraph 7(2) or (3) or 8(2) of Schedule 7.
- (4) The duty in subsection (3) does not extend to anything of which the [<sup>F6</sup>CMA] is unaware.
- (5) The [<sup>F7</sup>Secretary of State] shall inform the [<sup>F8</sup>CMA] of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted [<sup>F9</sup>by the Secretary of State], enforcement orders made by them or consents given [<sup>F9</sup>by the Secretary of State].
- (6) The [<sup>F10</sup>CMA] shall ensure that the contents of the register are available to the public—
- (a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and
  - (b) subject to such reasonable fees (if any) as the [<sup>F10</sup>CMA] may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the [<sup>F10</sup>CMA] may determine, the [<sup>F10</sup>CMA] shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.
- [<sup>F11</sup>(8) In subsection (5), “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

#### Textual Amendments

- F3** Word in s. 91(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Word in s. 91(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Word in s. 91(3)(d) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002,  
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- F6** Word in s. 91(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 91(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 91(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 91(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(5)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Word in s. 91(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 126(6)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** S. 91(8) 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(4)** (with art. 17)

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

- C2** 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)
- C15** S. 91 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)(f)(6)**
- C16** S. 91 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11) (as amended by (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))
- C17** Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading:  
Undertakings and orders: general provisions.