



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3 **U.K.**

#### MERGERS

### CHAPTER 4 **U.K.**

#### ENFORCEMENT

##### 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.)

*Powers exercisable before references under <sup>F1</sup>section 22, 33, 68B or 68C]*

##### Textual Amendments

- F1** Words in [Pt. 3 Ch. 4](#) heading substituted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 10](#)

### <sup>F2</sup>71 **Initial undertakings: completed mergers** **U.K.**

##### Textual Amendments

- F2** S. 71 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 30\(1\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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**72 Initial enforcement orders: [F3 completed or anticipated mergers] U.K.**

[F4(1) Subsection (2) applies where—

- (a) the CMA is considering whether to make a reference under [F5 section 22, 33, 68B or 68C]; and
- (b) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct.]

(2) The [F6CMA] may by order, for the purpose of preventing pre-emptive action—

- (a) prohibit or restrict the doing of things which the [F6CMA] considers would constitute pre-emptive action;
- (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
- (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
- (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

[F7(3) .....

[F8(3A) Subsection (3B) applies where—

- (a) subsection (1)(a) and (b) applies; and
- (b) the CMA also has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(3B) The CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.]

[F9(3C) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.]

(4) An order under this section—

- (a) shall come into force at such time as is determined by or under the order; and
- (b) may be varied or revoked by another order.

[F10(5) .....

(6) An order under this section shall, if it has not previously ceased to be in force and if it is not adopted under [F11... paragraph 2 of Schedule 7, cease to be in force—

- (a) where the [F6CMA] has decided to make the reference concerned under [F12section 22, 33, 68B or 68C][F13—
  - (i) if the CMA accepts an undertaking under section 80 or makes an order under section 81, on the acceptance of the undertaking or the making of the order, and
  - (ii) otherwise on the final determination of the reference concerned;]

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- (b) where the [F6CMA] has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;
  - (c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and
  - (d) where the [F6CMA] has otherwise decided not to make the reference concerned under [F14section 22, 33, 68B or 68C], on the making of that decision.
- (7) The [F15CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.
- [F16(8) In this section “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the CMA's decisions on the reference.]

#### Textual Amendments

- F3** Words in s. 72 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(9), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F4** S. 72(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(3), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F5** Words in s. 72(1)(a) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 11(2)
- F6** Word in s. 72(2)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 112 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** S. 72(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(4), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F8** S. 72(3A)(3B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(5), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F9** S. 72(3C) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(6), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F10** S. 72(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 7 para. 5(2); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in s. 72(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 7 para. 5(3)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** Words in s. 72(6)(a) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 11(3)
- F13** Words in s. 72(6)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 7 para. 5(3)(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14** Words in s. 72(6)(d) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 11(3)
- F15** Word in s. 72(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 112 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16** Words in s. 72(8) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 30(8), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

#### 73 Undertakings in lieu of references under section [F1722, 33, 68B or 68C] U.K.

- (1) Subsection (2) applies if the [F18CMA] considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the [F18CMA] under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).

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- (2) The [F18CMA] may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the [F18CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- [F19(3A) Subsection (3B) applies if the CMA considers that it is under a duty to make a reference under section 68B or 68C; and for the purposes of this subsection it must—
- (a) disregard the operation of section 22(3)(b) or 33(3)(b) (as applied by section 68B or 68C), but
  - (b) take account of its power under section 68B(2) or 68C(2) to decide not to make such a reference.
- (3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3C) In proceeding under subsection (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudice.
- (3D) Before proceeding under subsection (3B), the CMA must—
- (a) ask the Gas and Electricity Markets Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority's opinion.]
- (4) In proceeding under subsection (2) [F20or (3B)], the [F18CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (5) An undertaking under this section—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the [F21CMA].
- (6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.
- (7) The [F22CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

#### Textual Amendments

- F17** Words in s. 73 heading substituted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 12\(2\)](#)
- F18** Word in s. 73(1)-(4)(5)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), Sch. 5 para. 113 (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

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- F19** S. 73(3A)-(3D) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 12(3)  
**F20** Words in s. 73(4) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 12(4)  
**F21** Word in s. 73(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 113 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)  
**F22** Word in s. 73(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 113 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

[<sup>F23</sup>73A Time-limits for consideration of undertakings U.K.]

- (1) A party concerned who wishes to offer an undertaking to the CMA for the purposes of section 73(2) [<sup>F24</sup>or (3B)] must do so before the end of the period of 5 working days beginning with—
  - (a) the day after the CMA gives the person the notice required by section 34ZA(1)
  - (b); <sup>F25</sup> ...
  - <sup>F25</sup>(b) .....
- (2) If an undertaking is offered for [<sup>F26</sup>the purposes of section 73(2) or (3B)], the CMA shall, before the end of the period of 10 working days beginning with the day mentioned in subsection (1)—
  - (a) decide whether there are reasonable grounds for believing that the undertaking or a modified version of it might be accepted by the CMA under section 73(2), and
  - (b) if it considers that it might be, give notice to the person who offered the undertaking that it is considering it.
- (3) If such a notice is given, the CMA shall decide whether to accept the undertaking before the end of the period of 50 working days beginning with the day mentioned in subsection (1).
- (4) The CMA may extend the period mentioned in subsection (3), by no more than 40 working days, if it considers that there are special reasons for doing so.
- (5) The CMA shall prepare and publish guidance in relation to the exercise of its power under subsection (4).
- (6) The CMA may revise any such guidance and, where it does so, shall publish the revised statement.
- (7) The CMA may extend the period mentioned in subsection (3) if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice given under section 109 in relation to the case in question.
- (8) In subsection (7), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (9) For the purposes of subsection (8), a person or group of persons able, directly or indirectly, to control or materially influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.

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- (10) An extension under subsection (4) or (7) comes into force when published under section 107.
- (11) An extension under subsection (7) continues in force until—
- (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.
- (12) In this section and section 73B, “working day” means any day which is not—
- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
  - (b) a day which is a bank holiday in England and Wales.

#### Textual Amendments

- F23** Ss. 73A, 73B 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 8 para. 7](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Words in s. 73A(1) inserted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 13\(2\)](#)
- F25** S. 73A(1)(b) and word omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), [48](#) (with Sch. 4 paras. 24, 28) (as amended by S.I. 2020/1343, regs. 1(1), [35-59](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F26** Words in s. 73A(2) substituted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 13\(3\)](#)

### 73B Section 73A: supplementary **U.K.**

- (1) A period extended under section 73A(4) may also be extended under section 73A(7), and a period extended under section 73A(7) may also be extended under section 73A(4).
- (2) No more than one extension is possible under section 73A(4).
- (3) Where a period is extended or further extended under section 73A(4) or (7), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
- (a) the period within which the CMA must discharge its duty under section 73A(3) is further extended,
  - (b) the further extension and at least one previous extension is made under section 73A(7), and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 73A so as to alter one or more of the periods for the time being mentioned in the section.
- (7) But no alteration may be made by virtue of subsection (6) which results in—

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- (a) the period mentioned in section 73A(1) exceeding 5 working days;
  - (b) the period mentioned in section 73A(2) exceeding 10 working days;
  - (c) the period mentioned in section 73A(3) exceeding 50 working days;
  - (d) the period mentioned in section 73A(4) exceeding 40 working days.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.]

#### Textual Amendments

**F23** Ss. 73A, 73B 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), s. 103(1)(i)(3), Sch. 8 para. 7; S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 74 Effect of undertakings under section 73 **U.K.**

- (1) The relevant authority shall not make a reference under section 22, 33 <sup>[F27]</sup>, 45, 68B or 68C] in relation to the creation of a relevant merger situation if—
- (a) the <sup>[F28]</sup>CMA] has accepted an undertaking or group of undertakings under section 73; and
  - (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.
- (2) Subsection (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the <sup>[F28]</sup>CMA] or made public before any undertaking concerned was accepted.
- (3) For the purposes of subsection (2) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.
- (4) In subsection (2) “made public” means so publicised as to be generally known or readily ascertainable.
- (5) In this section “relevant authority” means—
- (a) in relation to a possible reference under section 22 <sup>[F29]</sup>, 33, 68B or 68C], the <sup>[F30]</sup>CMA]; and
  - (b) in relation to a possible reference under section 45, the Secretary of State.

#### Textual Amendments

**F27** Words in s. 74(1) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 14(2)

**F28** Word in s. 74(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 114 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F29** Words in s. 74(5)(a) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 14(3)

**F30** Word in s. 74(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 114 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)



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## 75 Order-making power where undertakings under section 73 not fulfilled etc. **U.K.**

- (1) Subsection (2) applies where the [<sup>F31</sup>CMA] considers that—
  - (a) an undertaking accepted by it under section 73 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the [<sup>F31</sup>CMA] by the person giving the undertaking before the [<sup>F31</sup>CMA] decided to accept the undertaking.
- (2) The [<sup>F31</sup>CMA] may, for any of the purposes mentioned in section 73(2), make an order under this section.
- (3) Subsections (3) and (4) of section 73 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain—
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the [<sup>F32</sup>CMA] considers appropriate.
- (5) An order under this section—
  - (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (6) The [<sup>F32</sup>CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

### Textual Amendments

- F31** Word in s. 75(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 115](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F32** Word in s. 75(4)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 115](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

- C2** 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)
- C3** 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)
- C4** 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 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 18\(5\)\(a\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with art. 8)

## 76 Supplementary interim order-making power **U.K.**

- (1) Subsection (2) applies where—



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- (a) the [<sup>F33</sup>CMA] has the power to make an order under section 75 in relation to a particular undertaking and intends to make such an order; or
  - (b) the [<sup>F34</sup>CMA] has the power to make an order under section 83 in relation to a particular undertaking and intends to make such an order.
- (2) The [<sup>F35</sup>CMA] may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this section.
- (3) No order shall be made under subsection (2) unless the [<sup>F35</sup>CMA] has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under section 75 or (as the case may be) 83 is in progress or in contemplation.
- (4) An order under subsection (2) may—
- (a) prohibit or restrict the doing of things which the [<sup>F36</sup>CMA] considers would prejudice the making of the order under section 75 or (as the case may be) 83;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.
- (5) An order under this section—
- (a) shall come into force at such time as is determined by or under the order; and
  - (b) may be varied or revoked by another order.
- (6) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on—
- (a) the coming into force of an order under section 75 or (as the case may be) 83 in relation to the undertaking concerned; or
  - (b) the making of the decision not to proceed with such an order.
- (7) The [<sup>F37</sup>CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### Textual Amendments

- F33** Word in s. 76(1)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 116\(2\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Word in s. 76(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 116\(2\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** Word in s. 76(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 116\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** Word in s. 76(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 116\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Word in s. 76(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 116\(3\)](#) (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, Chapter 4. (See end of Document for details)

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*Interim restrictions and powers*

**77 Restrictions on certain dealings: completed mergers** **U.K.**

- (1) Subsections (2) and (3) apply where—
- (a) a reference has been made under section 22 [<sup>F38</sup>or 68B] but not finally determined; and
  - (b) no undertakings under section <sup>F39</sup>... 80 are in force in relation to the relevant merger situation concerned and no orders under section 72 or 81 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the [<sup>F40</sup>CMA] —
- (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;
  - (b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or
  - (c) transfer the ownership or control of any enterprises to which the reference relates.
- (3) No relevant person shall, without the consent of the [<sup>F40</sup>CMA], assist in any of the activities mentioned in paragraphs (a) to (c) of subsection (2).
- (4) The prohibitions in subsections (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.
- (5) The consent of the [<sup>F41</sup>CMA] under subsection (2) or (3)—
- (a) may be general or special;
  - (b) may be revoked by the [<sup>F41</sup>CMA]; and
  - (c) shall be published in such manner as the [<sup>F41</sup>CMA] considers appropriate for the purpose of bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of subsection (5) shall not apply if the [<sup>F41</sup>CMA] considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Subsections (2) and (3) shall apply 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.
- (8) In this section “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
  - (b) any subsidiary of any person falling within paragraph (a); or
  - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

**Textual Amendments**

**F38** Words in s. 77(1)(a) inserted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 15](#)

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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- F39** Words in s. 77(1)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 30**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F40** Word in s. 77(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 117** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Word in s. 77(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 117** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 78 Restrictions on certain share dealings: anticipated mergers **U.K.**

- (1) Subsection (2) applies where—
- a reference has been made under section 33 [<sup>F42</sup>or 68C]; and
  - no undertakings under section 80 are in force in relation to the relevant merger situation concerned and no orders under [<sup>F43</sup>section 72 or 81] are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the [<sup>F44</sup>CMA], directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (3) The consent of the [<sup>F44</sup>CMA] under subsection (2)—
- may be general or special;
  - may be revoked by the [<sup>F44</sup>CMA]; and
  - shall be published in such manner as the [<sup>F44</sup>CMA] considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of subsection (3) shall not apply if the [<sup>F44</sup>CMA] considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Subsection (2) shall apply to a person’s conduct outside the United Kingdom if (and only if) he is—
- a United Kingdom national;
  - a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
  - a person carrying on business in the United Kingdom.
- (6) In this section and section 79—
- “company” includes any body corporate;
- “relevant period” means the period beginning with the making of the reference concerned and ending when the reference is finally determined;
- “relevant person” means—
- any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
  - any subsidiary of any person falling within paragraph (a); or
  - any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and
- “share” means share in the capital of a company, and includes stock.

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### Textual Amendments

- F42** Words in s. 78(1)(a) inserted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 16**

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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- F43** Words in s. 78(1)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 15 para. 31; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F44** Word in s.78(2)-(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 118 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 79 Sections 77 and 78: further interpretation provisions **U.K.**

- (1) For the purposes of this Part a reference under section 22 <sup>F45</sup>, 33, 68B or 68C] is finally determined if—
- (a) the reference is cancelled under section 37(1);
  - (b) the time within which the <sup>F46</sup>CMA] is to prepare and publish a report under section 38 in relation to the reference has expired and no such report has been prepared and published;
  - (c) the report of the <sup>F46</sup>CMA] under section 38 contains the decision that there is not an anti-competitive outcome;
  - (d) the report of the <sup>F46</sup>CMA] under section 38 contains the decision that there is an anti-competitive outcome and the <sup>F46</sup>CMA] has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84; or
  - (e) the report of the <sup>F46</sup>CMA] under section 38 contains the decision that there is an anti-competitive outcome and the <sup>F46</sup>CMA] has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.
- (2) For the purposes of this Part the time when a reference under section 22 <sup>F47</sup>, 33, 68B or 68C] is finally determined is—
- (a) in a case falling within subsection (1)(a), the making of the decision concerned;
  - (b) in a case falling within subsection (1)(b), the expiry of the time concerned;
  - (c) in a case falling within subsection (1)(c), the publication of the report;
  - (d) in a case falling within subsection (1)(d), the making of the decision under section 41(2); and
  - (e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (3) For the purposes of section 78 and subject to subsection (4) below, the circumstances in which a person acquires an interest in shares include those where—
- (a) he enters into a contract to acquire the shares (whether or not for cash);
  - (b) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or
  - (c) he—
    - (i) acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares; or
    - (ii) assumes an obligation to acquire such an interest.
- (4) The circumstances in which a person acquires an interest in shares for the purposes of section 78 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the <sup>F48</sup>CMA] of the reference concerned.
- (5) The circumstances in which a person acquires a right mentioned in subsection (3)—

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- (a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but
  - (b) do not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members.
- (6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.
- (7) References in sections 77 and 78 to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
- (8) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of sections 77 and 78 to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 26 to determine whether enterprises are brought under common control.
- (9) [<sup>F49</sup>Section 1159 of, and Schedule 6 to, the Companies Act 2006] shall apply for the purposes of sections 77 and 78 to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company; and references to a subsidiary in [<sup>F50</sup>paragraph 8 of Schedule 6] as so applied shall be construed accordingly.

#### Textual Amendments

- F45** Words in s. 79(1) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 17**
- F46** Word in s. 79(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 119(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F47** Words in s. 79(2) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 17**
- F48** Word in s. 79(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 119(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F49** Words in s. 79(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(2)(a)** (with art. 10)
- F50** Words in s. 79(9) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 199(2)(b)** (with art. 10)

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

- C5** S. 79 applied (with modifications) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 13, **Sch. 2 para. 8(9)(10)**
- C6** S. 79: amendment to earlier affecting provision S.I. 2003/1592, Sch. 2 para. 8(9)(10) (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **17(9)(10)** (with arts. 20-23)

## 80 Interim undertakings **U.K.**

- (1) [<sup>F51</sup>Subsections (2) and (2A)] apply where a reference under section 22 [<sup>F52</sup>, 33, 68B or 68C] has been made but is not finally determined.

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

- (2) The [<sup>F53</sup>CMA] may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- [<sup>F54</sup>(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.]
- [<sup>F55</sup>(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an undertaking under this section.]
- <sup>F56</sup>(3) .....
- <sup>F56</sup>(4) .....
- (5) [<sup>F57</sup>An undertaking] under this section—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the [<sup>F58</sup>CMA].
- <sup>F59</sup>(6) .....
- (7) An undertaking which is in force under this section in relation to a reference under section 22 [<sup>F60</sup>, 33, 68B or 68C] shall cease to be in force if an order under section 81 comes into force in relation to that reference.
- (8) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 [<sup>F61</sup>, 33, 68B or 68C] is finally determined.
- (9) The [<sup>F62</sup>CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (10) In this section and section 81 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the [<sup>F63</sup>CMA's] decisions on the reference.

#### Textual Amendments

- F51** Words in s. 80(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 2(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F52** Words in s. 80(1) substituted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), **Sch. 16 para. 18**
- F53** Word in s. 80(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 120(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F54** S. 80(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 2(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F55** S. 80(2B) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 2(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F56** S. 80(3)(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 2(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F57** Words in s. 80(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 2(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)



*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

- F58** Word in s. 80(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 120(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F59** S. 80(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 2(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F60** Words in s. 80(7) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 18**
- F61** Words in s. 80(8) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 18**
- F62** Word in s. 80(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 120(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F63** Word in s. 80(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 120(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 81 Interim orders **U.K.**

- (1) [<sup>F64</sup>Subsections (2) and (2A)] apply where a reference has been made under section 22 [<sup>F65</sup>, 33, 68B or 68C] but is not finally determined.
- (2) The [<sup>F66</sup>CMA] may by order, for the purpose of preventing pre-emptive action—
  - (a) prohibit or restrict the doing of things which the [<sup>F66</sup>CMA] considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

[<sup>F67</sup>(2A) Where the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken, it may by order, for the purpose of restoring the position to what it would have been had the action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.]

[<sup>F68</sup>(2B) A person may, with the consent of the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this section.]

<sup>F69</sup>(3) .....

<sup>F69</sup>(4) .....

- (5) [<sup>F70</sup>An order] under this section—
  - (a) shall come into force at such time as is determined by or under the order; and
  - (b) may be varied or revoked by another order.

<sup>F71</sup>(6) .....

- (7) An order which is in force under this section in relation to a reference under section 22 [<sup>F72</sup>, 33, 68B or 68C] shall cease to be in force if an undertaking under section 80 comes into force in relation to that reference.



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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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- (8) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 [<sup>F73</sup>, 33, 68B or 68C] is finally determined.
- (9) The [<sup>F74</sup>CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### Textual Amendments

- F64** Words in s. 81(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F65** Words in s. 81(1) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 19**
- F66** Word in s. 81(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 121(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F67** S. 81(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** S. 81(2B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** S. 81(3)(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F70** Words in s. 81(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F71** S. 81(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 7 para. 3(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** Words in s. 81(7) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 19**
- F73** Words in s. 81(8) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 19**
- F74** Word in s. 81(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 121(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### *Final powers*

## 82 Final undertakings **U.K.**

- (1) The [<sup>F75</sup>CMA] may, in accordance with section 41, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) An undertaking under this section—
- shall come into force when accepted;
  - may be varied or superseded by another undertaking; and
  - may be released by the [<sup>F75</sup>CMA].
- (3) An undertaking which is in force under this section in relation to a reference under section 22 [<sup>F76</sup>, 33, 68B or 68C] shall cease to be in force if an order under section 76(1) (b) or 83 comes into force in relation to the subject-matter of the undertaking.
- (4) No undertaking shall be accepted under this section in relation to a reference under section 22 [<sup>F77</sup>, 33, 68B or 68C] if an order has been made under—
- section 76(1)(b) or 83 in relation to the subject-matter of the undertaking; or
  - section 84 in relation to that reference.

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

- (5) The [F78CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

#### Textual Amendments

- F75** Word in s. 82(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 122** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F76** Words in s. 82(3) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 20**
- F77** Words in s. 82(4) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 20**
- F78** Word in s. 82(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 122** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 83 Order-making power where final undertakings not fulfilled **U.K.**

- (1) Subsection (2) applies where the [F79CMA] considers that—
- (a) an undertaking accepted by it under section 82 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the [F80CMA] by the person giving the undertaking before the [F81CMA decided] to accept the undertaking.
- (2) The [F82CMA] may, for any of the purposes mentioned in section 41(2), make an order under this section.
- (3) Subsections (3) to (5) of section 41 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the [F83CMA] considers appropriate.
- (5) An order under this section—
- (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.

F84(6) .....

#### Textual Amendments

- F79** Word in s. 83(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F80** Word in s. 83(1)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** Words in s. 83(1)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F82** Word in s. 83(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

- F83** Word in s. 83(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F84** S. 83(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 123(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C7** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), 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)
- C8** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), 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)
- C9** 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), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

**84 Final orders** **U.K.**

- (1) The [<sup>F85</sup>CMA] may, in accordance with section 41, make an order under this section.
- (2) An order under this section may contain—
- anything permitted by Schedule 8; and
  - such supplementary, consequential or incidental provision as the [<sup>F85</sup>CMA] considers appropriate.
- (3) An order under this section—
- shall come into force at such time as is determined by or under the order; and
  - may be varied or revoked by another order.
- <sup>F86</sup>(4) .....
- (5) No order shall be made under this section in relation to a reference under section 22 [<sup>F87</sup>, 33, 68B or 68C] if an undertaking has been accepted under section 82 in relation to that reference.

**Textual Amendments**

- F85** Word in s. 84(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 124(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F86** S. 84(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 124(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F87** Words in s. 84(5) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 21**

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

- C10** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 para. 5 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C11** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 para. 5 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)

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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**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, Sch. 2A(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

*Public interest and special public interest cases*

**85 Enforcement regime for public interest and special public interest cases** **U.K.**

- (1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.
- (2) The [<sup>F88</sup>CMA] may advise the Secretary of State [<sup>F89</sup>or the Chancellor of the Duchy of Lancaster] in relation to the taking by [<sup>F90</sup>either of them] of enforcement action under Schedule 7.

**Textual Amendments**

- F88** Word in s. 85(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 125 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Words in s. 85(2) 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(3)(a) (with art. 17)
- F90** Words in s. 85(2) substituted (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(3)(b) (with art. 17)

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

- C13** 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)

*Undertakings and orders: general provisions*

**86 Enforcement orders: general provisions** **U.K.**

- (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

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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- (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.
- (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)**

- C13** 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. 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))
- C15** 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)
- C16** 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** **U.K.**

- (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.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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- (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.
- (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)**

- C13** 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)
- C17** 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)
- C18** 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)
- C19** 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** **U.K.**

- (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.



*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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

- C13** 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)
- C20** 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)
- C21** 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 **U.K.**

- (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>F91</sup>... 73, 80 or 82 or under paragraph <sup>F92</sup>... 3 or 9 of Schedule 7.

#### Textual Amendments

- F91** 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.)
- F92** 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)

- C13** 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)
- C22** 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))
- C23** 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)
- C24** 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)
- C25** 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)



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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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## 90 Procedural requirements for certain undertakings and orders **U.K.**

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

### Modifications etc. (not altering text)

- C13** 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)
- C26** 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 **U.K.**

- (1) The [<sup>F93</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>F93</sup>CMA] considers appropriate.
- (3) The [<sup>F94</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>F95</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>F96</sup>CMA] is unaware.
- (5) The [<sup>F97</sup>Secretary of State] shall inform the [<sup>F98</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>F99</sup>by the Secretary of State], enforcement orders made by them or consents given [<sup>F99</sup>by the Secretary of State].
- (6) The [<sup>F100</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>F100</sup>CMA] may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the [<sup>F100</sup>CMA] may determine, the [<sup>F100</sup>CMA] shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.
- [<sup>F101</sup>(8) In subsection (5), “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

### Textual Amendments

- F93** 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.)
- F94** 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.)
- F95** 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.)
- F96** 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.)
- F97** 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.)
- F98** 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.)
- F99** 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.)
- F100** 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.)
- F101** 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)

### Modifications etc. (not altering text)

- C13** 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)
- C27** 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)**
- C28** 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))
- C29** 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)

## Enforcement functions of <sup>F102</sup>CMA]

### Textual Amendments

- F102** Word in s. 92 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 127** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 92 Duty of <sup>F103</sup>CMA] to monitor undertakings and orders **U.K.**

- (1) The <sup>F104</sup>CMA] shall keep under review—
- (a) the carrying out of any enforcement undertaking or any enforcement order; and

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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- (b) compliance with the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (2) The [<sup>F104</sup>CMA] shall, in particular, from time to time consider—
- (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
  - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—
    - (i) one or more of the parties to it can be released from it; or
    - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
  - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The [<sup>F105</sup>CMA] shall give <sup>F106</sup>... the Secretary of State such advice as it considers appropriate in relation to—
- (a) any possible variation or release by <sup>F107</sup>... the Secretary of State of an enforcement undertaking accepted by <sup>F108</sup>... him;
  - (b) any possible new enforcement undertaking to be accepted by <sup>F109</sup>... the Secretary of State so as to supersede another enforcement undertaking given to <sup>F109</sup>... the Secretary of State;
  - (c) any possible variation or revocation by <sup>F109</sup>... the Secretary of State of an enforcement order made by <sup>F109</sup>... the Secretary of State;
  - (d) any possible enforcement undertaking to be accepted by <sup>F109</sup>... the Secretary of State instead of an enforcement order or any possible enforcement order to be made by <sup>F109</sup>... the Secretary of State instead of an enforcement undertaking;
  - (e) the enforcement by virtue of section 94(6) to (8) of any enforcement undertaking or enforcement order; or
  - (f) the enforcement by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (4) The [<sup>F110</sup>CMA] shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an enforcement undertaking accepted by it;
  - (b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
  - (c) any possible variation or revocation by it of an enforcement order made by it;
  - (d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;
  - (e) the enforcement by it by virtue of section 94(6) of any enforcement undertaking or enforcement order; or
  - (f) the enforcement by it by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (5) The [<sup>F110</sup>CMA] shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

- (6) The [<sup>F110</sup>CMA] shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The [<sup>F111</sup>CMA] shall—
- <sup>F112</sup>(a) . . . . .
  - (b) give a copy of [<sup>F113</sup> any report prepared by it under subsection (6)] to the Secretary of State; and
  - (c) publish the report.

[<sup>F114</sup>(8) In this section, “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

### Textual Amendments

- F103** Word in s. 92 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(6)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F104** Word in s. 92(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F105** Word in s. 92(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(a)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F106** Words in s. 92(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(a)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F107** Words in s. 92(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(b)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F108** Words in s. 92(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(b)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F109** Words in s. 92(3)(b)-(d) omitted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F110** Word in s. 92(4)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(4)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F111** Word in s. 92(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F112** S. 92(7)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F113** Word in s. 92(7)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F114** S. 92(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(5)** (with art. 17)

### Modifications etc. (not altering text)

- C13** 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)
- C30** S. 92 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)(g)(7)** (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))
- C31** S. 92 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

**C32** Ss. 91(3), 92(1)(a), 162(1) and 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

## 93 Further role of <sup>F115</sup>CMA] in relation to undertakings and orders **U.K.**

- (1) Subsections (2) and (3) apply where—
- <sup>F116</sup>(a) . . . . .
- (b) the Secretary of State is considering whether to accept undertakings under paragraph <sup>F117</sup>...3 or 9 of Schedule 7.
- (2) [<sup>F118</sup>The Secretary of State] may require the [<sup>F119</sup>CMA] to consult with such persons as the [<sup>F120</sup>Secretary of State] considers appropriate with a view to discovering whether they will offer undertakings which the [<sup>F120</sup>Secretary of State] would be prepared to accept under <sup>F121</sup>... paragraph <sup>F122</sup>... 3 or 9 of Schedule 7.
- (3) The [<sup>F123</sup>Secretary of State] may require the [<sup>F124</sup>CMA] to report to the relevant authority on the outcome of the [<sup>F125</sup>CMA's] consultations within such period as the relevant authority may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the [<sup>F126</sup>CMA] as to whether any undertakings offered should be accepted by the [<sup>F127</sup>Secretary of State] under <sup>F128</sup>... paragraph <sup>F129</sup>... 3 or 9 of Schedule 7.
- (5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.
- (6) If asked by the [<sup>F130</sup>Secretary of State] for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the [<sup>F131</sup>CMA] shall give such advice as it considers appropriate.

### Textual Amendments

- F115** Word in s. 93 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(7)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F116** S. 93(1)(a) and word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F117** Word in s. 93(1)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 33(2)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F118** Words in s. 93(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F119** Word in s. 93(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F120** Words in s. 93(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F121** Words in s. 93(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(3)(d)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F122** Word in s. 93(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 33(3)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F123** Words in s. 93(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(4)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F124** Word in s. 93(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(4)(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, Chapter 4. (See end of Document for details)*

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- F125** Word in s. 93(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(4)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F126** Word in s. 93(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F127** Words in s. 93(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F128** Words in s. 93(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(5)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F129** Word in s. 93(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 33(4)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F130** Words in s. 93(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F131** Word in s. 93(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 129(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C13** 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)
- C33** S. 93 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)(h)(8)** (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))
- C34** S. 93 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(d)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

#### *Other*

### **94 Rights to enforce undertakings and orders U.K.**

- (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>F132</sup>CMA] for an injunction or for interdict or for any other appropriate relief or remedy.

<sup>F133</sup>(7) .....



*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

(8) Compliance with an undertaking under paragraph <sup>F134</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>F135</sup>(10) In subsection (8), “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

#### Textual Amendments

- F132** 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.)
- F133** 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.)
- F134** 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.)
- F135** 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)

- C13** 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)
- C35** 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))
- C36** 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)
- C37** 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)
- C38** 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)
- C39** 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)
- C40** 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)



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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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- 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)
- C41** 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)
- C42** 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)
- C43** 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>F136</sup>**94A Interim undertakings and orders under this Part: penalties** **U.K.**]

- (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
  - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;

“appropriate authority” means—

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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- (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.

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**Textual Amendments**

**F136** 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.)

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

**C13** 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** **U.K.**

- (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.]

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**Textual Amendments**

**F136** 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.)

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

**C13** 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)

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)

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## 95 Rights to enforce statutory restrictions **U.K.**

- (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>F137</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>F138</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

**F137** 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.)

**F138** 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.)

### Modifications etc. (not altering text)

**C13** 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)

**C44** 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))

## <sup>F139</sup>Transferred EU merger commitments

### Textual Amendments

**F139** Ss. 95A, 95B and cross-heading inserted (31.12.2020) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), [48A](#) (with Sch. 4 para. 28) (as amended by S.I. 2020/1343, regs. 1(1), [8](#), 35-59)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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## **95A Transferred EU merger commitments** **U.K.**

- (1) The CMA must—
  - (a) monitor compliance with transferred EU merger commitments; and
  - (b) take such action (if any) under subsection (3) or section 95B as it considers appropriate.
- (2) Any person to whom transferred EU merger commitments relate has a duty to comply with those commitments.
- (3) Compliance with transferred EU merger commitments is enforceable by civil proceedings brought by the CMA for an injunction or for interdict or for any other appropriate relief or remedy.
- (4) The rights of the CMA under subsection (3) are not affected by any provisions of transferred EU merger commitments which provide for disputes relating to compliance with the commitments to be resolved by arbitration.
- (5) The CMA must ensure that the provisions of transferred EU merger commitments are entered and kept up to date in the register referred to in section 91.
- (6) In this Part “transferred EU merger commitments” means EU merger commitments—
  - (a) which are the subject of an Article 95(2) transfer decision (and, where those commitments are modified by, or as contemplated by, that decision or by a later Article 95(2) transfer decision, means those commitments as so modified); and
  - (b) which have not been waived or substituted by the European Commission.
- (7) In this section—

“Article 95(2) transfer decision” means an instrument issued by the European Commission in accordance with Article 95(2) of the EU withdrawal agreement transferring responsibility for the monitoring and enforcement of EU merger commitments to the CMA;

“EU merger commitments” means commitments attached to a decision adopted by the European Commission under Article 6(1)(b) and (2) or 8(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings.
- (8) So far as the context permits or requires, transferred EU merger commitments are to be treated for the purposes of this Part as if—
  - (a) any reference to the area of the European Union or of the European Economic Area included the United Kingdom;
  - (b) any reference to the internal market included the United Kingdom;
  - (c) any reference to a member State included the United Kingdom;
  - (d) any reference to a party to the EEA agreement included the United Kingdom.
- (9) Subsection (8) is subject to any different provision made by the Article 95(2) transfer decision in question.

## **95B Power of directions in connection with transferred EU merger commitments** **U.K.**

- (1) The CMA may give directions falling within subsection (2) to—
  - (a) a person specified in the directions; or

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4. (See end of Document for details)*

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- (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, transferred EU merger commitments; or
  - (b) to do, or refrain from doing, anything so specified or described which the person is required by transferred EU merger commitments to do or refrain from doing.
- (3) The CMA may vary or revoke any directions so given.
- (4) Directions under this section may extend to a person’s conduct outside the United Kingdom if (and only if) the person is—
- (a) a person bound by the transferred EU merger commitments concerned;
  - (b) a United Kingdom national;
  - (c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
  - (d) a person carrying on business in the United Kingdom.
- (5) The court may by order require any person who has failed to comply with directions given under this section to comply with them, or otherwise remedy the failure, within such time as may be specified in the order.
- (6) 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.
- (7) An order under subsection (5) or (6) may only be made on the application of the CMA.
- (8) An order under subsection (5) or (6) 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.
- (9) 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.]

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 4.