



Enterprise Act 2002 (repealed)

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 5

SUPPLEMENTARY

Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

Merger notices

96 Merger notices

- (1) A person authorised to do so by regulations under section 101 may give notice to the OFT of proposed arrangements which might result in the creation of a relevant merger situation.
- (2) Any such notice (in this Part a "merger notice")—
 - (a) shall be in the prescribed form; and
 - (b) shall state that the existence of the proposal has been made public.
- (3) No reference shall be made under section 22, 33 or 45 in relation to—
 - (a) arrangements of which notice is given under subsection (1) above or arrangements which do not differ from them in any material respect; or

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(b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect;
if the period for considering the merger notice has expired without a reference being made under that section in relation to those arrangements.

- (4) Subsection (3) is subject to section 100.
- (5) In this section and sections 99(5)(c) and 100(1)(c) “prescribed” means prescribed by the OFT by notice having effect for the time being and published in the London, Edinburgh and Belfast Gazettes.
- (6) In this Part “notified arrangements” means arrangements of which notice is given under subsection (1) above or arrangements not differing from them in any material respect.

97 Period for considering merger notices

- (1) The period for considering a merger notice is, subject as follows, the period of 20 days beginning with the first day after—
- (a) the notice has been received by the OFT; and
 - (b) any fee payable by virtue of section 121 to the OFT in respect of the notice has been paid.
- (2) Where no intervention notice is in force in relation to the matter concerned, the OFT may by notice to the person who gave the merger notice extend by a further 10 days the period for considering the merger notice.
- (3) Where an intervention notice is in force in relation to the matter concerned and there has been no extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend by a further 20 days the period for considering the merger notice.
- (4) Where an intervention notice is in force in relation to the matter concerned and there has been an extension under subsection (2), the OFT may by notice to the person who gave the merger notice extend the period for considering the merger notice by a further number of days which, including any extension already made under subsection (2), does not exceed 20 days.
- (5) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT considers that the person has failed to provide, within the period stated in a notice under section 99(2) and in the authorised or required manner, information requested of him in that notice.
- (6) An extension under subsection (5) shall be for the period until the person concerned provides the information to the satisfaction of the OFT or, if earlier, the cancellation by the OFT of the extension.
- (7) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the OFT is seeking undertakings under section 73 or (as the case may be) the Secretary of State is seeking undertakings under paragraph 3 of Schedule 7.
- (8) An extension under subsection (7) shall be for the period beginning with the receipt of the notice under that subsection and ending with the earliest of the following events—
- (a) the giving of the undertakings concerned;

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- (b) the expiry of the period of 10 days beginning with the first day after the receipt by the OFT of a notice from the person from whom the undertakings are being sought stating that he does not intend to give the undertakings; or
 - (c) the cancellation by the OFT of the extension.
- (9) The Secretary of State may by notice to the person who gave the merger notice extend the period for considering a merger notice if, by virtue of paragraph 3(6) of Schedule 7, he decides to delay a decision as to whether to make a reference under section 45.
- (10) An extension under subsection (9) shall be for the period of the delay.
- (11) The OFT may by notice to the person who gave the merger notice extend the period for considering a merger notice if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article [F122(1) of the EC Merger Regulation](but is not yet proceeding with the matter in pursuance of such a request).
- (12) An extension under subsection (11) shall be for the period beginning with the receipt of the notice under that subsection and ending with the receipt of a notice under subsection (13).
- (13) The OFT shall, in connection with any notice given by it under subsection (11), by notice inform the person who gave the merger notice of the completion by the European Commission of its consideration of the request of the United Kingdom.

Textual Amendments

- F1** Words in s. 97(11) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, [Sch. para. 2\(22\)](#)

98 Section 97: supplementary

- (1) A notice under section 97(2), (3), (4), (5), (7), (9) or (11) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.
- (2) A notice under section 97(5)—
- (a) shall also be given within 5 days of the end of the period within which the information is to be provided and which is stated in the notice under section 99(2); and
 - (b) shall also inform the person who gave the merger notice of—
 - (i) the OFT's opinion as mentioned in section 97(5); and
 - (ii) the OFT's intention to extend the period for considering a merger notice.
- (3) In determining for the purposes of section 97(1), (2), (3), (4) or (8)(b) or subsection (2)
- (a) above any period which is expressed in the enactment concerned as a period of days or number of days no account shall be taken of—
 - (a) Saturday, Sunday, Good Friday and Christmas Day; and
 - (b) any day which is a bank holiday in England and Wales.
- (4) Any reference in this Part (apart from in section 97(1) and section 99(1)) to the period for considering a merger notice shall, if that period is extended by virtue of any one

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or more of subsections (2), (3), (4) (5), (7), (9) and (11) of section 97 in relation to a particular case, be construed in relation to that case as a reference to that period as so extended; but only one extension is possible under section 97(2), (3) or (4).

- (5) Where the period for considering a merger notice is extended or further extended by virtue of section 97, the period as extended or (as the case may be) further extended shall, subject to subsections (6) and (7), 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).
- (6) Subsection (7) applies where—
- (a) the period for considering a merger notice is further extended;
 - (b) the further extension and at least one previous extension is made under one or more of subsections (5), (7), (9) and (11) of section 97; 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.
- (7) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (6)(c) shall be disregarded.

99 Certain functions of OFT and Secretary of State in relation to merger notices

- (1) The OFT shall, so far as practicable and when the period for considering any merger notice begins, take such action as the OFT considers appropriate to bring—
- (a) the existence of the proposal;
 - (b) the fact that the merger notice has been given; and
 - (c) the date on which the period for considering the notice may expire;
- to the attention of those whom the OFT considers would be affected if the arrangements were carried into effect.
- (2) The OFT may by notice to the person who gave the merger notice request him to provide the OFT with such information as the OFT or (as the case may be) the Secretary of State may require for the purpose of carrying out its or (as the case may be) his functions in relation to the merger notice.
- (3) A notice under subsection (2) shall state—
- (a) the information required;
 - (b) the period within which the information is to be provided; and
 - (c) the possible consequences of not providing the information within the stated period and in the authorised or required manner.
- (4) A notice by the OFT under subsection (2) shall be given, before the end of the period for considering the merger notice, to the person who gave the merger notice.
- (5) The OFT may, at any time before the end of the period for considering any merger notice, reject the notice if—
- (a) the OFT suspects that any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading;
 - (b) the OFT suspects that it is not proposed to carry the notified arrangements into effect;

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- (c) any prescribed information is not given in the merger notice or any information requested by notice under subsection (2) is not provided as required; or
 - (d) the OFT considers that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of the [F2EC Merger Regulation] .
- (6) In this section and section 100 “connected person”, in relation to the person who gave a merger notice, means—
- (a) any person who, for the purposes of section 127, is associated with him; or
 - (b) any subsidiary of the person who gave the merger notice or of any person so associated with him.

Textual Amendments

- F2** Words in s. 99(5)(d) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, [Sch. para. 2\(23\)](#)

100 Exceptions to protection given by merger notices

- (1) Section 96(3) does not prevent any reference being made to the Commission if—
- (a) before the end of the period for considering the merger notice, the OFT rejects the notice under section 99(5);
 - (b) before the end of that period, any of the enterprises to which the notified arrangements relate cease to be distinct from each other;
 - (c) any information (whether prescribed information or not) that—
 - (i) is, or ought to be, known to the person who gave the merger notice or any connected person; and
 - (ii) is material to the notified arrangements;is not disclosed to the OFT by such time before the end of that period as may be specified in regulations under section 101;
 - (d) at any time after the merger notice is given but before the enterprises to which the notified arrangements relate cease to be distinct from each other, any of those enterprises ceases to be distinct from any enterprise other than an enterprise to which those arrangements relate;
 - (e) the six months beginning with the end of the period for considering the merger notice expires without the enterprises to which the notified arrangements relate ceasing to be distinct from each other;
 - (f) the merger notice is withdrawn; or
 - (g) any information given in respect of the notified arrangements (whether in the merger notice or otherwise) by the person who gave the notice or any connected person is in any material respect false or misleading.
- (2) Subsection (3) applies where—
- (a) two or more transactions which have occurred, or, if any arrangements are carried into effect, will occur, may be treated for the purposes of a reference under section 22, 33 or 45 as having occurred simultaneously on a particular date; and
 - (b) section 96(3) does not prevent such a reference in relation to the last of those transactions.

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- (3) Section 96(3) does not prevent such a reference in relation to any of those transactions which actually occurred less than six months before—
- (a) that date; or
 - (b) the actual occurrence of another of those transactions in relation to which such a reference may be made (whether or not by virtue of this subsection).
- (4) In determining for the purposes of subsections (2) and (3) the time at which any transaction actually occurred, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.
- (5) In this section references to the enterprises to which the notified arrangements relate are references to those enterprises that would have ceased to be distinct from one another if the arrangements mentioned in the merger notice concerned had been carried into effect at the time when the notice was given.

101 Merger notices: regulations

- (1) The Secretary of State may make regulations for the purposes of sections 96 to 100.
- (2) The regulations may, in particular—
- (a) provide for section 97(1), (2), (3) or (4) or section 100(1)(e) to apply as if any reference to a period of days or months were a reference to a period specified in the regulations for the purposes of the enactment concerned;
 - (b) provide for the manner in which any merger notice is authorised or required to be rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected;
 - (c) provide for the time at which any notice under section 97(7), (8)(b), (11) or (13) is to be treated as received;
 - (d) provide for the manner in which any information requested by the OFT or any other material information is authorised or required to be provided or disclosed, and the time at which such information is to be treated as provided or disclosed (including the time at which it is to be treated as provided to the satisfaction of the OFT for the purposes of section 97(6));
 - (e) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(6) applies—
 - (i) of the fact that the OFT is satisfied as to the provision of the information requested by the OFT or (as the case may be) of the OFT's decision to cancel the extension; and
 - (ii) of the time at which the OFT is to be treated as so satisfied or (as the case may be) of the time at which the cancellation is to be treated as having effect;
 - (f) provide for the person who gave the merger notice to be informed, in circumstances in which section 97(8) applies—
 - (i) of any decision by the OFT to cancel the extension; and
 - (ii) of the time at which such a cancellation is to be treated as having effect;
 - (g) provide for the time at which any fee is to be treated as paid;
 - (h) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person authorised by regulations under this section to give a merger notice or a person who has given such a notice.

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102 Power to modify sections 97 to 101

The Secretary of State may, for the purposes of determining the effect of giving a merger notice and the action which may be or is to be taken by any person in connection with such a notice, by order modify sections 97 to 101.

General duties in relation to references

103 Duty of expedition in relation to references

- (1) In deciding whether to make a reference under section 22 or 33 the OFT shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.
- (2) In deciding whether to make a reference under section 45 or 62 the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a decision as soon as reasonably practicable.

Modifications etc. (not altering text)

- C1** S. 103 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)(k)(11)** (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))

104 Certain duties of relevant authorities to consult

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to be adverse to the interests of a relevant party.
- (2) The relevant authority shall, so far as practicable, consult that party about what is proposed before making that decision.
- (3) In consulting the party concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—
 - (a) any restrictions imposed by any timetable for making the decision; and
 - (b) any need to keep what is proposed, or the reasons for it, confidential.
- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section—
 - “the relevant authority” means the OFT, the Commission or the Secretary of State;
 - “relevant decision” means—
 - (a) in the case of the OFT, any decision by the OFT—

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- (i) as to whether to make a reference under section 22 or 33 or accept undertakings under section 73 instead of making such a reference; or
 - (ii) to vary under section 37 such a reference;
 - (b) in the case of the Commission, any decision on the questions mentioned in section 35(1) or (3), 36(1) or (2), 47 or 63; and
 - (c) in the case of the Secretary of State, any decision by the Secretary of State—
 - (i) as to whether to make a reference under section 45 or 62; or
 - (ii) to vary under section 49 or (as the case may be) 64 such a reference; and
- “relevant party” means any person who appears to the relevant authority to control enterprises which are the subject of the reference or possible reference concerned.

Modifications etc. (not altering text)

- C2** S. 104 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)(1)(12)** (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))

[^{F3}104A Public consultation in relation to media mergers

- (1) Subsection (2) applies where the Commission—
 - (a) is preparing—
 - (i) a report under section 50 on a reference which specifies a media public interest consideration; or
 - (ii) a report under section 65 on a reference which specifies a consideration specified in section 58(2A) to (2C); and
 - (b) is not under a duty to disregard the consideration concerned.
- (2) The Commission shall have regard (among other things) to the need to consult the public so far as they might be affected by the creation of the relevant merger situation or special merger situation concerned and so far as such consultation is practicable.
- (3) Any consultation of the kind mentioned in subsection (2) may be undertaken by the Commission by consulting such representative sample of the public or section of the public concerned as the Commission considers appropriate.]

Textual Amendments

- F3** S. 104A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 381**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

- C3** S. 104A applied (with modifications) (29.12.2003) by [S.I. 2003/1592](#), art. 15, **Sch. 3 para. 1(1)(1a)** (as inserted by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, **Sch. para. 10(9)** (with transitional provisions and savings in art. 3)

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S. 104A applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(12A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 10(12) (with transitional provisions and savings in art. 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))

Information and publicity requirements

105 General information duties of OFT and Commission

- (1) Where the OFT decides to investigate a matter so as to enable it to decide whether to make a reference under section 22 or 33, or so as to make a report under section 44 or 61, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.
- [^{F4}(1A) Where OFCOM decide to investigate a matter so as to make a report under section 44A or 61A, they shall, so far as practicable, take such action as they consider appropriate to bring information about the investigation to the attention of those who they consider might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.]
- (2) [^{F5}Subsections (1) and (1A) do] not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 96.
- (3) The OFT shall give the Commission [^{F6}or OFCOM]—
 - (a) such information in its possession as the Commission [^{F7}or (as the case may be) OFCOM] may reasonably require to enable the Commission [^{F7}or (as the case may be) OFCOM] to carry out its functions under this Part; and
 - (b) any other assistance which the Commission [^{F7}or (as the case may be) OFCOM] may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the OFT to give.
- [^{F8}(3A) OFCOM shall give the Commission or the OFT—
 - (a) such information in their possession as the Commission or (as the case may be) the OFT may reasonably require to enable the Commission or (as the case may be) the OFT to carry out its functions under this Part; and
 - (b) any other assistance which the Commission or (as the case may be) the OFT may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of OFCOM to give.]
- (4) The OFT shall give the Commission [^{F9}or OFCOM] any information in its possession which has not been requested by the Commission [^{F10}or (as the case may be) OFCOM] but which, in the opinion of the OFT, would be appropriate to give to the Commission [^{F10}or (as the case may be) OFCOM] for the purpose of assisting it in carrying out its functions under this Part.
- [^{F11}(4A) OFCOM shall give the Commission or the OFT any information in their possession which has not been requested by the Commission or (as the case may be) the OFT but which, in the opinion of OFCOM, would be appropriate to give to the Commission or

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(as the case may be) the OFT for the purpose of assisting it in carrying out its functions under this Part.]

- (5) The OFT [^{F12}, OFCOM] and the Commission shall give the Secretary of State—
- (a) such information in their possession as the Secretary of State may by direction reasonably require to enable him to carry out his functions under this Part; and
 - (b) any other assistance which the Secretary of State may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the OFT [^{F12}, OFCOM] or (as the case may be) the Commission to give.
- (6) The OFT [^{F13}and OFCOM] shall give the Secretary of State any information in [^{F14}their] possession which has not been requested by the Secretary of State but which, in the opinion of the OFT [^{F15}or (as the case may be) OFCOM] , would be appropriate to give to the Secretary of State for the purpose of assisting him in carrying out his functions under this Part.
- (7) The Commission shall have regard to any information given to it under subsection (3) [^{F16}, (3A), (4) or (4A)] ; and the Secretary of State shall have regard to any information given to him under subsection (5) or (6).
- [^{F17}(7A) OFCOM shall have regard to any information given to them under subsection (3) or (4); and the OFT shall have regard to any information given to it under subsection (3A) or (4A).]
- (8) Any direction given under subsection (5)—
- (a) shall be in writing; and
 - (b) may be varied or revoked by a subsequent direction.

Textual Amendments

- F4** S. 105(1A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(2)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F5** Words in s. 105(2) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(3)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F6** Words in s. 105(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(4)(a)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F7** Words in s. 105(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(4)(b)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F8** S. 105(3A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(5)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F9** Words in s. 105(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(6)(a)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F10** Words in s. 105(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(6)(b)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F11** S. 105(4A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(7)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F12** Words in s. 105(5) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(8)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F13** Words in s. 105(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(9)(a)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F14** Word in s. 105(6) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(9)(b)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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- F15** Words in s. 105(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(9)(c)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1
- F16** Words in s. 105(7) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(10)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F17** S. 105(7A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(11)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

- C4** S. 105 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)(m)(13)** (as amended by S.I. 2003/3180, art. 2, **Sch. para. 10(13)**) (with transitional provisions and savings in art. 3) and (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))

106 Advice and information about references under sections 22 and 33

- (1) As soon as reasonably practicable after the passing of this Act, the OFT shall prepare and publish general advice and information about the making of references by it under section 22 or 33.
- (2) The OFT may at any time publish revised, or new, advice or information.
- (3) As soon as reasonably practicable after the passing of this Act, the Commission shall prepare and publish general advice and information about the consideration by it of references under section 22 or 33 and the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.
- (4) The Commission may at any time publish revised, or new, advice or information.
- (5) Advice and information published under this section shall be prepared with a view to—
 - (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
 - (b) indicating how the OFT or (as the case may be) the Commission expects such provisions to operate.
- (6) Advice (or information) published by virtue of subsection (1) or (3) may include advice (or information) about the factors which the OFT or (as the case may be) the Commission may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (7) Any advice or information published by the OFT or the Commission under this section shall be published in such manner as the OFT or (as the case may be) the Commission considers appropriate.
- (8) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (9) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

[^{F18}106A Advice and information in relation to media mergers

- (1) The Secretary of State may prepare and publish general advice and information about the considerations specified in section 58(2A) to (2C).
- (2) The Secretary of State may at any time publish revised, or new, advice or information.
- (3) Advice or information published under this section shall be prepared with a view to—
 - (a) explaining the considerations specified in section 58(2A) to (2C) to persons who are likely to be affected by them; and
 - (b) indicating how the Secretary of State expects this Part to operate in relation to such considerations.
- (4) Any advice or information published by the Secretary of State under this section shall be published in such manner as the Secretary of State considers appropriate.
- (5) In preparing any advice or information under this section, the Secretary of State shall consult the OFT, OFCOM, the Commission and such other persons as he considers appropriate.]

Textual Amendments

F18 S. 106A inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 383, 411(2)(3)** (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (subject to arts. 3(3), 11)

[^{F19}106B General advisory functions of OFCOM

- (1) OFCOM may, in connection with any case on which they are required to give a report by virtue of section 44A or 61A, give such advice as they consider appropriate to the Secretary of State in relation to—
 - (a) any report made in such a case by the Commission under section 50 or 65; and
 - (b) the taking by the Secretary of State of enforcement action under Schedule 7.
- (2) OFCOM may, if requested to do so by the Secretary of State, give such other advice as they consider appropriate to the Secretary of State in connection with any case on which they are required to give a report by virtue of section 44A or 61A.
- (3) OFCOM shall publish any advice given by them under this section but advice given by them in relation to a report of the Commission under section 50 or 65 or related enforcement action shall not be published before the report itself is published.]

Textual Amendments

F19 S. 106B inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 384, 411(2)(3)** (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C5 S. 106B applied (with modifications) (29.12.2003) by [S.I. 2003/1592](#), art. 15, [Sch. 3 para. 1\(1\)\(ma\)](#) (as inserted by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, [Sch. para. 10\(10\)](#)) (with transitional provisions and savings in art. 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))

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

S. 106B applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(13A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 10(14) (with transitional provisions and savings in art. 3))

107 Further publicity requirements

(1) The OFT shall publish—

- (a) any reference made by it under section 22 or 33 or any decision made by it not to make such a reference (other than a decision made by virtue of subsection (2)(b) of section 33);
- (b) any variation made by it under section 37 of a reference under section 22 or 33;
- (c) such information as it considers appropriate about any decision made by it under section 57(1) to bring a case to the attention of the Secretary of State;
- (d) any enforcement undertaking accepted by it under section 71;
- (e) any enforcement order made by it under section 72 or 76 or paragraph 2 of Schedule 7;
- (f) any variation, release or revocation of such an undertaking or order;
- (g) any decision made by it as mentioned in section 76(6)(b); and
- (h) any decision made by it to dispense with the requirements of Schedule 10.

(2) The Commission shall publish—

- (a) any cancellation by it under section 37(1) of a reference under section 33;
- (b) any decision made by it under section 37(2) to treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22;
- (c) any extension by it under section 39 of the period within which a report under section 38 is to be prepared and published;
- (d) any decision made by it to cancel an extension as mentioned in section 39(8)(b);
- (e) any decision made by it under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
- (f) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 41 or there is another special reason as mentioned in that subsection of that section;
- (g) any cancellation by it under section 48(1) or 53(1) of a reference under section 45 or any cancellation by it under section 64(1) of a reference under section 62;
- (h) any decision made by it under section 49(1) to treat—
 - (i) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
 - (ii) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;
- (i) any extension by it under section 51 of the period within which a report under section 50 is to be prepared and published;
- (j) any decision made by it under section 51(8)(b) to cancel such an extension;
- (k) any extension by it under section 51 as applied by section 65(3) of the period within which a report under section 65 is to be prepared and published;

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- (l) any decision made by it under section 51(8)(b) as applied by section 65(3) to cancel such an extension;
 - (m) any decision made by it under section 64(2) to treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section;
 - (n) any decision made by it as mentioned in section 76(6)(b);
 - (o) any enforcement order made by it under section 76 or 81;
 - (p) any enforcement undertaking accepted by it under section 80;
 - (q) any variation, release or revocation of such an order or undertaking; and
 - (r) any decision made by it to dispense with the requirements of Schedule 10.
- (3) The Secretary of State shall publish—
- (a) any intervention notice or special intervention notice given by him;
 - (b) any report of the OFT under section 44 or 61 which has been received by him;
 - [^{F20}(ba) any report of OFCOM under section 44A or 61A which has been received by him;]
 - (c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
 - (d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
 - (e) any report of the Commission under section 50 or 65 which has been received by him;
 - (f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
 - (g) any notice given by him under section 56(1);
 - (h) any enforcement undertaking accepted by him under paragraph 1 of Schedule 7;
 - (i) any variation or release of such an undertaking;
 - (j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
 - (k) any decision made by him to dispense with the requirements of Schedule 10.
- (4) Where any person is under a duty by virtue of subsection (1), (2) or (3) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (5) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.
- (6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(c).
- (7) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 54(2) or 66(2); or
 - (b) any decision to make an order under section 58(3) or vary or revoke such an order.
- (8) Such reasons may be published after—
- (a) in the case of subsection (7)(a), the publication of the decision concerned; and

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (b) in the case of subsection (7)(b), the making of the order or of the variation or revocation;
- if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.
- (9) The Secretary of State shall publish—
- (a) the report of the OFT under section 44 [^{F21}, and any report of OFCOM under section 44A,] in relation to a matter no later than publication of his decision as to whether to make a reference under section 45 in relation to that matter; and
- (b) the report of the Commission under section 50 in relation to a matter no later than publication of his decision under section 54(2) in relation to that matter.
- (10) The Secretary of State shall publish—
- (a) the report of the OFT under section 61 [^{F22}, and any report of OFCOM under section 61A,] in relation to a matter no later than publication of his decision as to whether to make a reference under section 62 in relation to that matter; and
- (b) the report of the Commission under section 65 in relation to a matter no later than publication of his decision under section 66(2) in relation to that matter.
- (11) Where the Secretary of State has decided under section 55(2) or 66(6) to accept an undertaking under paragraph 9 of Schedule 7 or to make an order under paragraph 11 of that Schedule, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the Commission's report under section 50 or (as the case may be) 65, before each House of Parliament.

Textual Amendments

- F20** S. 107(3)(ba) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(2\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F21** Words in s. 107(9)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(3\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)
- F22** Words in s. 107(10)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(4\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)

108 Defamation

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, [^{F23} OFCOM,] the Commission or the Secretary of State in the exercise of any of their functions under this Part.

Textual Amendments

- F23** Word in s. 108 inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 19](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

Modifications etc. (not altering text)

- C6 S. 108 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\(1\)\(n\)\(14\)](#) (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))

Investigation powers

109 Attendance of witnesses and production of documents etc.

- (1) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
 - (a) to attend at a time and place specified in the notice; and
 - (b) to give evidence to the Commission or a person nominated by the Commission for the purpose.
- (2) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person requiring him—
 - (a) to produce any documents which—
 - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
 - (ii) are in that person's custody or under his control; and
 - (b) to produce them at a time and place so specified and to a person so specified.
- (3) The Commission may, for the purpose of any investigation on a reference made to it under this Part, give notice to any person who carries on any business requiring him—
 - (a) to supply to the Commission such estimates, forecasts, returns or other information as may be specified or described in the notice; and
 - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (4) A notice under this section shall include information about the possible consequences of not complying with the notice.
- (5) The Commission or any person nominated by it for the purpose may, for the purpose of any investigation on a reference made to it under this Part, take evidence on oath, and for that purpose may administer oaths.
- (6) The person to whom any document is produced in accordance with a notice under this section may, for the purpose of any investigation on a reference made to the Commission under this Part, copy the document so produced.
- (7) No person shall be required under this section—
 - (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
 - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (8) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (9) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (10) 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)

- C7** S. 109 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C8** S. 109 applied (20.6.2003) by 2000 c. 38, s. 12(B)(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C9** S. 109 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C10** S. 109 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C11** S. 109 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), s. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C12** S. 109 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35(B)(1)(4)(5) as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C13** S. 109 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C14** S. 109 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C15** S. 109 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C16** S. 109 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C17** S. 109 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C18** S. 109 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C19** S. 109 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C20** S. 109 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C21** S. 109 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C22** S. 109 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C23** S. 109 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C24** S. 109 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C25** S. 109 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C26** S. 109 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C27** S. 109 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C28** S. 109 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C29** S. 109 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (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. 109 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
 S. 109 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
 S. 109 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
 S. 109 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(a), 27(6)(a)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C30** S. 109 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)(o)(15)** (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))
 S. 109 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
 S. 109 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(a)(17) (18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
 S. 109 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(a)(20) (21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
 S. 109 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(a)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
 S. 109 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(a)-(10) (as inserted by Water Act 2003 (c. 37), ss. **55(4)**, 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), ss. **60(9)**, 211(2) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))
- C32** S. 109 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(a)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)(4) (with art. 3))
- C33** S. 109 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 10 para. 10(1)(a)(**12**); S.I. 2012/2657, art. 2(2)

110 Enforcement of powers under section 109: general

- (1) Where the Commission considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109, it may impose a penalty in accordance with section 111.
- (2) The Commission may proceed (whether at the same time or at different times) under subsection (1) and section 39(4) or (as the case may be) 51(4) (including that enactment as applied by section 65(3)) in relation to the same failure.

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (3) Where the Commission considers that a person has intentionally obstructed or delayed another person in the exercise of his powers under section 109(6), it may impose a penalty in accordance with section 111.
- (4) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the Commission on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (5) A person, subject to subsection (6), commits an offence if he intentionally alters, suppresses or destroys any document which he has been required to produce by a notice under section 109.
- (6) A person does not commit an offence under subsection (5) in relation to any act which constitutes a failure to comply with a notice under section 109 if the Commission has proceeded against that person under subsection (1) above in relation to that failure.
- (7) A person who commits an offence under subsection (5) shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (8) The Commission shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (5) if that person has been found guilty of that offence.
- (9) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 39(4) or 51(4) (including that enactment as applied by section 65(3)), the Commission shall have regard to the statement of policy which was most recently published under section 116 at the time when the failure concerned or (as the case may be) the obstruction or delay concerned occurred.
- (10) The reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), [ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), [art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), [art. 1\(1\)](#), [Sch. 1 para. 177](#) (with [art. 3](#), [Sch. 2 para. 2](#)))
- C34** S. 110 applied (with modifications) (20.6.2003) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 15B\(1\)\(2\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 28\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 8\)](#)
- C35** S. 110 applied (with modifications) (20.6.2003) by [1991 c. 56](#), [s. 14B\(1\)\(2\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 25\(5\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 8\)](#)
- C36** S. 110 applied (with modifications) (20.6.2003) by [1990 c. 42](#), [Sch. 4 para. 4A\(1\)\(2\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 24\(9\)\(e\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 8\)](#)

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C37** S. 110 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C38** S. 110 applied (with modifications) (20.6.2003.) by 1989 c. 29, s. 14A(11F)(11G)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C39** S. 110 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 12B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C40** S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C41** S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 26A(11F)(11G)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C42** S. 110 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 24B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C43** S. 110 applied (with modifications) (20.6.2003) by 1986 c. 31, s. 44B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C44** S. 110 applied (with modifications) (20.6.2003) by 1984 c. 12, s. 13B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C45** S. 110 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(6)(7)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C46** S. 110 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C47** S. 110 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(6)(7)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C48** S. 110 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C49** S. 110 applied (with modifications) (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C50** S. 110 applied (with modifications) (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(2)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C51** S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 15(2D)(2E)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C52** S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(2)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C53** S.110 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2D)(2E)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); 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 (repealed), Chapter 5. (See end of Document for details)

- C54** S. 110 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C55** S. 110 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(2)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C56** S. 110 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (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. 110 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)(p)(16)** (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))
S. 110 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 110 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(b)(2)(3)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
S. 110 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(b)(18)(19)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 110 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(b)(15)(16)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
S. 110 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(b)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
S. 110 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17M(1)(2) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 110 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17Q(6)(7) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 110 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
S. 110 applied (with modifications) (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(b)(2)**, **27(6)(b)(7)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C57** S. 110 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(b)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)(4) (with art. 3))
- C58** S. 110 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 10 para. 10(1)(b)(2)-(4)(12); S.I. 2012/2657, art. 2(2)

111 Penalties

- (1) A penalty imposed under section 110(1) or (3) shall be of such amount as the Commission considers appropriate.
- (2) The amount may, in the case of a penalty imposed under section 110(1), be a fixed amount, an amount calculated by reference to a daily rate or a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) The amount shall, in the case of a penalty imposed under section 110(3), be a fixed amount.

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (4) No penalty imposed under section 110(1) shall—
- (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
 - (b) in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) In imposing a penalty by reference to a daily rate—
- (a) no account shall be taken of any days before the service of the notice under section 112 on the person concerned; and
 - (b) unless the Commission determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of—
 - (i) the day on which the requirement of the notice concerned under section 109 is satisfied or (as the case may be) the obstruction or delay is removed; or
 - (ii) if earlier, the day on which the report of the Commission on the reference concerned is published (or, in the case of a report under section 50 or 65, given) or, if no such report is published (or given) within the period permitted for that purpose by this Part, the latest day on which the report may be published (or given) within the permitted period.
- (6) No penalty imposed under section 110(3) shall exceed such amount as the Secretary of State may by order specify.
- (7) An order under subsection (4) or (6) shall not specify—
- (a) in the case of a fixed amount, an amount exceeding £30,000;
 - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
 - (c) in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (8) Before making an order under subsection (4) or (6) the Secretary of State shall consult the Commission and such other persons as he considers appropriate.

Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\), ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250, art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 177](#) (with [art. 3, Sch. 2 para. 2](#)))
- C59** S. 111 applied (with modifications) (20.6.2003) by [S.I. 1992/231 \(N.I. 1\), art. 15B\(1\)\(3\)-\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 28\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch. \(with art. 8\)](#) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\), art. 1\(1\), Sch. 1 para. 213\(5\)](#) (with [art. 3, Sch. 2 para. 2](#)))
- C60** S. 111 applied (with modifications) (20.6.2003) by [1991 c. 56, s. 14B\(1\)\(3\)-\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(5\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch. \(with](#)

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- art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2))
- C61** S. 111 applied (with modifications) (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C62** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(5)** (with art. 3, Sch. 2 para. 2))
- C63** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 14A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C64** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 12B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C65** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 51(5)** (with art. 3, Sch. 2 para. 2))
- C66** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 26A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C67** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 24B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C68** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 31, s. 44B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C69** S. 111 applied (with modifications) (20.6.2003) by 1984 c. 12, s. 13B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C70** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(6)(8)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C71** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 150(5)** (with art. 3, Sch. 2 para. 2))
- C72** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(6)(8)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C73** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C74** S. 111 applied (with modifications) (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 218(5)** (with art. 3, Sch. 2 para. 2))

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C75** S. 111 applied (with modifications) (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(3)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C76** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C77** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(3)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 111(5)** (with art. 3, Sch. 2 para. 2))
- C78** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C79** S.111 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C80** S. 111 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11B(1)(3) (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) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 36(6)** (with art. 3, Sch. 2 para. 2))
- C81** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 101(5)** (with art. 3, Sch. 2 para. 2))
- S. 111 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)(q)(17)** (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))
- S. 111 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(c)(2)(3)(5)(6)}; S.R. 2004/71, **art. 2**, Sch. (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 243(5)** (with art. 3, Sch. 2 para. 2))
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(c)(18)(19)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(c)(15)(16)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 111 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(c)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17M(1)(3) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 78(5)** (with art. 3, Sch. 2 para. 2))

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17Q(6)(8) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
- S. 111 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 111 applied (with modifications) (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(c)(3), 27(6)(c)(8)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 250(5)** (with art. 3, Sch. 2 para. 2))
- C82** S. 111 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(c)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)(4) (with art. 3))
- C83** S. 111 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(c)(2)(5)-(7)(12)**; S.I. 2012/2657, art. 2(2) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 195(8)** (with art. 3, Sch. 2 para. 2))

112 Penalties: main procedural requirements

- (1) As soon as practicable after imposing a penalty under section 110(1) or (3), the Commission shall give notice of the penalty.
- (2) The notice shall state—
 - (a) that the Commission has imposed a penalty on the person concerned;
 - (b) whether the penalty is of a fixed amount, of an amount calculated by reference to a daily rate or of both a fixed amount and an amount calculated by reference to a daily rate;
 - (c) the amount or amounts concerned and, in the case of an amount calculated by reference to a daily rate, the day on which the amount first starts to accumulate and the day or days on which it might cease to accumulate;
 - (d) the failure or (as the case may be) the obstruction or delay which the Commission considers gave it the power to impose the penalty;
 - (e) any other facts which the Commission considers justify the imposition of a penalty and the amount or amounts of the penalty;
 - (f) the manner in which, and place at which, the penalty is required to be paid to the Commission;
 - (g) the date or dates, no earlier than the end of the relevant period beginning with the date of service of the notice on the person concerned, by which the penalty or (as the case may be) different portions of it are required to be paid;
 - (h) that the penalty or (as the case may be) different portions of it may be paid earlier than the date or dates by which it or they are required to be paid; and
 - (i) that the person concerned has the right to apply under subsection (3) below or to appeal under section 114 and the main details of those rights.
- (3) The person against whom the penalty was imposed may, within 14 days of the date of service on him of a notice under subsection (1), apply to the Commission for it to specify a different date or (as the case may be) different dates by which the penalty or (as the case may be) different portions of it are to be paid.
- (4) A notice under this section shall be given by—

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (a) serving a copy of the notice on the person on whom the penalty was imposed; and
- (b) publishing the notice.

(5) In this section “relevant period” means the period of 28 days mentioned in subsection (3) of section 114 or, if another period is specified by the Secretary of State under that subsection, that period.

Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\), ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250, art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), [art. 1\(1\), Sch. 1 para. 177](#) (with [art. 3, Sch. 2 para. 2](#)))
- C84** S. 112 applied (20.6.2003) by [S.I. 1992/231 \(N.I. 1\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 28\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C85** S. 112 applied (20.6.2003) by [1991 c. 56, s. 14B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(5\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C86** S. 112 applied (20.6.2003) by [1990 c. 42, Sch. 4 para. 4A\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 24\(9\)\(e\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C87** S. 112 applied (20.6.2003) by [1989 c. 29, s. 56CB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(12\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C88** S. 112 applied (20.6.2003) by [1989 c. 29, s. 14A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(6\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C89** S. 112 applied (20.6.2003) by [1989 c. 29, s. 12B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C90** S. 112 applied (20.6.2003) by [1986 c. 44, s. 41EB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(12\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C91** S. 112 applied (20.6.2003) by [1986 c. 44, s. 26A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(6\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C92** S. 112 applied (20.6.2003) by [1986 c. 44, s. 24B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C93** S. 112 applied (20.6.2003) by [1986 c. 31, s. 44B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 14\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C94** S. 112 applied (20.6.2003) by [1984 c. 12, s. 13B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 13\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C95** S. 112 applied (20.6.2003) by [2000 c. 38, s. 18\(6\)\(10\)\(11\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(5\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C96** S. 112 applied (20.6.2003) by [2000 c. 38, s. 12B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C97** S. 112 applied (20.6.2003) by [2000 c. 26, s. 19A\(6\)\(10\)\(11\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C98** S. 112 applied (20.6.2003) by [2000 c. 26, s. 15B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(2\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C99** S. 112 applied (20.6.2003) by [S.I. 1996/275 \(N.I. 2\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 36\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C100** S. 112 applied (20.6.2003) by [S.I. 1994/426 \(N.I. 1\), s. 35B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 33\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C101** S. 112 applied (20.6.2003) by [1993 c. 43, Sch. 4A para. 15\(2D\)\(2H\)\(2I\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(c\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))
- C102** S. 112 applied (20.6.2003) by [1993 c. 43, Sch. 4A para. 10A\(1\)\(5\)\(6\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#)))

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C103** S. 112 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C104** S. 112 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C105** S. 112 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C106** S. 112 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (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. 112 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 112 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
S. 112 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
S. 112 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(d), 27(6)(d)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C107** S. 112 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)(r)** (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))
S. 112 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
S. 112 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), Sch. 2 para. 5(1)(d)(5)(6); S.R. 2004/71, **art. 2**, Sch.
S. 112 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(d)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 36(2); S.R. 2004/71, **art. 2**, Sch.))
S. 112 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(d)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 37(2); S.I. 2004/71, **art. 2**, Sch.))
S. 112 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(d)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- C108** S. 112 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(d)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))
- C109** S. 112 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(d)(2)(8)(12)**; S.I. 2012/2657, art. 2(2)

113 Payments and interest by instalments

- (1) If the whole or any portion of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110).
- (2) Where an application has been made under section 112(3), the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with.

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (3) If a portion of a penalty has not been paid by the date required for it, the Commission may, where it considers it appropriate to do so, require so much of the penalty as has not already been paid (and is capable of being paid immediately) to be paid immediately.
- (4) Any sums received by the Commission in or towards the payment of a penalty, or interest on a penalty, shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), [ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250](#), [art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), [art. 1\(1\)](#), [Sch. 1 para. 177](#) (with [art. 3](#), [Sch. 2 para. 2](#)))
- C110** S. 113 applied (20.6.2003) by [1986 c. 44](#), [s. 41EB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 15\(12\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C111** S. 113 applied (20.6.2003) by [1986 c. 44](#), [s. 26A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 15\(6\)\(a\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C112** S. 113 applied (20.6.2003) by [1986 c. 44](#), [s. 24B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 15\(4\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C113** S. 113 applied (20.6.2003) by [1986 c. 31](#), [s. 44B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 14\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C114** S. 113 applied (20.6.2003) by [1984 c. 12](#), [s. 13B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 13\(4\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C115** S. 113 applied (20.6.2003) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 28\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C116** S. 113 applied (20.6.2003) by [1991 c. 56](#), [s. 14B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 25\(5\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C117** S. 113 applied (20.6.2003) by [1990 c. 42](#), [Sch. 4 para. 4A\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 24\(9\)\(e\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C118** S. 113 applied (20.6.2003) by [1989 c. 29](#), [s. 56CB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 20\(12\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C119** S. 113 applied (20.6.2003) by [1989 c. 29](#), [s. 14A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 20\(6\)\(a\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C120** S. 113 applied (20.6.2003) by [1989 c. 29](#), [s. 12B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 20\(4\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C121** S. 113 applied (20.6.2003) by [2000 c. 38](#), [s. 18\(6\)\(10\)\(11\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 44\(5\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C122** S. 113 applied (20.6.2003) by [2000 c. 38](#), [s. 12B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 44\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C123** S. 113 applied (20.6.2003) by [2000 c. 26](#), [s. 19A\(6\)\(10\)\(11\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 42\(4\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C124** S. 113 applied (20.6.2003) by [2000 c. 26](#), [s. 15B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 42\(2\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C125** S. 113 applied (20.6.2003) by [S.I. 1996/275 \(N.I. 2\)](#), [art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 36\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C126** S. 113 applied (20.6.2003) by [S.I. 1994/426 \(N.I. 1\)](#), [s. 35B\(1\)\(4\)\(5\)](#) as inserted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 33\(3\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C127** S. 113 applied (20.6.2003) by [1993 c. 43](#), [Sch. 4A para. 15\(2D\)\(2H\)\(2I\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 30\(15\)\(c\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))
- C128** S. 113 applied (20.6.2003) by [1993 c. 43](#), [Sch. 4A para. 10A\(1\)\(5\)\(6\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), [ss. 278, 279](#), [Sch. 25 para. 30\(15\)\(a\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C129** S. 113 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C130** S. 113 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C131** S. 113 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C132** S. 113 applied (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (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. 113 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 113 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 113 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 113 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(e), 27(6)(e)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C133** S. 113 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)(s)** (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))
- S. 113 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
- S. 113 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(e)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
- S. 113 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(e)(17) (18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 113 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(e)(20) (21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 113 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(e)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- C134** S. 113 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(e)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))
- C135** S. 113 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (12), s. 306(4), **Sch. 10 para. 10(1)(e)**; S.I. 2012/2657, art. 2(2)

114 Appeals in relation to penalties

- (1) This section applies if a person on whom a penalty is imposed under section 110(1) or (3) is aggrieved by—
- the imposition or nature of the penalty;
 - the amount or amounts of the penalty; or
 - the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
- (2) The person aggrieved may apply to the Competition Appeal Tribunal.

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- (3) If a copy of the notice under section 112(1) was served on the person on whom the penalty was imposed, the application to the Competition Appeal Tribunal shall, subject to subsection (4), be made within—
 - (a) the period of 28 days starting with the day on which the copy was served on the person concerned; or
 - (b) such other period as the Secretary of State may by order specify.
- (4) If the application relates to a decision of the Commission on an application by the person on whom the penalty was imposed under section 112(3), the application to the Competition Appeal Tribunal shall be made within—
 - (a) the period of 28 days starting with the day on which the person concerned is notified of the decision; or
 - (b) such other period as the Secretary of State may by order specify.
- (5) On an application under this section, the Competition Appeal Tribunal may—
 - (a) quash the penalty;
 - (b) substitute a penalty of a different nature or of such lesser amount or amounts as the Competition Appeal Tribunal considers appropriate; or
 - (c) in a case falling within subsection (1)(c), substitute for the date or dates imposed by the Commission an alternative date or dates;if it considers it appropriate to do so.
- (6) The Competition Appeal Tribunal shall not substitute a penalty of a different nature under subsection (5)(b) unless it considers that the person on whom the penalty is imposed will, or is likely to, pay less under the substituted penalty than he would have paid under the original penalty.
- (7) Where an application has been made under this section—
 - (a) the penalty shall not be required to be paid until the application has been determined, withdrawn or otherwise dealt with; and
 - (b) the Commission may agree to reduce the amount or amounts of the penalty in settlement of the application.
- (8) Where the Competition Appeal Tribunal substitutes a penalty of a different nature or of a lesser amount or amounts it may require the payment of interest on the substituted penalty at such rate or rates, and from such date or dates, as it considers appropriate.
- (9) Where the Competition Appeal Tribunal specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers appropriate.
- (10) An appeal lies to the appropriate court—
 - (a) on a point of law arising from a decision of the Tribunal in proceedings under this section; or
 - (b) from a decision of the Tribunal in such proceedings as to the amount or amounts of a penalty.
- (11) An appeal under subsection (10)—
 - (a) may be brought by a party to the proceedings before the Tribunal; and
 - (b) requires the permission of the Tribunal or the appropriate court.

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(12) In this section “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session.

Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\), ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250, art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), [art. 1\(1\), Sch. 1 para. 177](#) (with [art. 3, Sch. 2 para. 2](#)))
- C136** S. 114 applied (20.6.2003) by [S.I. 1992/231 \(N.I. 1\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 28\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C137** S. 114 applied (20.6.2003) by [1991 c. 56, s. 14B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(5\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C138** S. 114 applied (20.6.2003) by [1990 c. 42, Sch. 4 para. 4A\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 24\(9\)\(e\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C139** S. 114 applied (20.6.2003) by [1989 c. 29, s. 56CB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(12\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C140** S. 114 applied (20.6.2003) by [1989 c. 29, s. 14A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(6\)\(a\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C141** S. 114 applied (20.6.2003) by [1989 c. 29, s. 12B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(4\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C142** S. 114 applied (20.6.2003) by [1986 c. 44, s. 41EB\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(12\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C143** S. 114 applied (20.6.2003) by [1986 c. 44, s. 26A\(11F\)\(11I\)\(11J\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(6\)\(a\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C144** S. 114 applied (20.6.2003) by [1986 c. 44, s. 24B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(4\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C145** S. 114 applied (20.6.2003) by [1986 c. 31, s. 44B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 14\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C146** S. 114 applied (20.6.2003) by [1984 c. 12, s. 13B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 13\(4\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C147** S. 114 applied (20.6.2003) by [2000 c. 38, s. 18\(6\)\(10\)\(11\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(5\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C148** S. 114 applied (20.6.2003) by [2000 c. 38, s. 12B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C149** S. 114 applied (20.6.2003) by [2000 c. 26, s. 19A\(6\)\(10\)\(11\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(4\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C150** S. 114 applied (20.6.2003) by [2000 c. 26, s. 15B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(2\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C151** S. 114 applied (20.6.2003) by [S.I. 1996/275 \(N.I. 2\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 36\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C152** S. 114 applied (20.6.2003) by [S.I. 1994/426 \(N.I. 1\), art. 35B\(1\)\(4\)\(5\)](#) as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 33\(3\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C153** S. 114 applied (20.6.2003) by [1993 c. 43, Sch. 4A para 15\(2D\)\(2H\)\(2I\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(c\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C154** S. 114 applied (20.6.2003) by [1993 c. 43, Sch. 4A para. 10A\(1\)\(5\)\(6\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(a\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C155** S. 114 applied (20.6.2003) by [1993 c. 43, s. 15C\(2D\)\(2H\)\(2I\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(6\)](#)); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with [art. 8](#))
- C156** S.114 applied (20.6.2003) by [1993 c. 43, s. 13B\(1\)\(5\)\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(4\)](#)); [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 (repealed), Chapter 5. (See end of Document for details)

- C157** S. 114 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C158** S. 114 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (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. 114 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 114 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 114 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 114 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(f), 27(6)(f)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C159** S. 114 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)(t)** (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))
- S. 114 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
- S. 114 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(f)(5)(6)}; S.R. 2004/71, **art. 2**, Sch.
- S. 114 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(f)(17) (18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 114 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(f)(20) (21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 114 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(f)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- C160** S. 114 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(f)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))
- C161** S. 114 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (9), (12), s. 306(4), **Sch. 10 para. 10(1)(f)**; S.I. 2012/2657, art. 2(2)

115 Recovery of penalties

Where a penalty imposed under section 110(1) or (3), or any portion of such a penalty, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 114 during the period within which such an application may be made, or
- (b) any such application which has been made has been determined, withdrawn or otherwise dealt with,

the Commission may recover from the person on whom the penalty was imposed any of the penalty and any interest which has not been paid; and in England and Wales and Northern Ireland such penalty and interest may be recovered as a civil debt due to the Commission.

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Modifications etc. (not altering text)

- C31** Ss. 109-115 applied (with modifications) (1.1.2010) by [Legal Services Act 2007 \(c. 29\), ss. 60\(9\), 211\(2\)](#) (with [ss. 29, 192, 193](#)); [S.I. 2009/3250, art. 2\(c\)\(i\)](#) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 177 (with art. 3, Sch. 2 para. 2))
- C162** S. 115 applied (20.6.2003) by [S.I. 1992/231 \(N.I. 1\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 28\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C163** S. 115 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(5\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C164** S. 115 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 24\(9\)\(e\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C165** S. 115 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(12\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C166** S. 115 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(6\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C167** S. 115 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 20\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C168** S. 115 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(12\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C169** S. 115 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(6\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C170** S. 115 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 15\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C171** S. 115 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 14\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C172** S. 115 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 13\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C173** S. 115 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(5\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C174** S. 115 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 44\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C175** S. 115 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C176** S. 115 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 42\(2\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C177** S. 115 applied (20.6.2003) by [S.I. 1996/275 \(N.I. 2\), art. 15B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 36\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C178** S. 115 applied (20.6.2003) by [S.I. 1994/426 \(N.I. 1\), art. 35B\(1\)\(4\)\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 33\(3\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C179** S. 115 applied (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2H)(2I) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(c\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C180** S. 115 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(15\)\(a\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C181** S. 115 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(6\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C182** S. 115 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 30\(4\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C183** S. 115 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 40\(20\)\(b\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8))
- C184** S. 115 applied (20.6.2003) by 1980 c. 21, s. 11B(1)(2) (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))

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- S. 115 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
- S. 115 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
- S. 115 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 115 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(g), 27(6)(g)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C185** S. 115 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)(u)** (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))
- S. 115 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
- S. 115 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), Sch. 2 para. 5(1)(g)(5)(6); S.R. 2004/71, **art. 2**, Sch.
- S. 115 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(g)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 36(2); S.R. 2004/71, **art. 2**, Sch.)
- S. 115 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(g)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 37(2); S.R. 2004/71, **art. 2**, Sch.)
- S. 115 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(g)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- C186** S. 115 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(g)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))
- C187** S. 115 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (10), (12), s. 306(4), **Sch. 10 para. 10(1)(g)**; S.I. 2012/2657, art. 2(2)

116 Statement of policy

- (1) The Commission shall prepare and publish a statement of policy in relation to the enforcement of notices under section 109.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 110(1) or (3).
- (3) The Commission may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The Commission shall consult such persons as it considers appropriate when preparing or revising its statement of policy.

Modifications etc. (not altering text)

- C188** S. 116 applied (20.6.2003) by 1986 c. 31, s. 44B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- C189** S. 116 applied (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 28(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C190** S. 116 applied (20.6.2003) by 1991 c. 56, s. 14B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 25(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C191** S. 116 applied (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C192** S. 116 applied (20.6.2003) by 1989 c. 29, s. 56CB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C193** S. 116 applied (20.6.2003) by 1989 c. 29, s. 14A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C194** S. 116 applied (20.6.2003) by 1989 c. 29, s. 12B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C195** S. 116 applied (20.6.2003) by 1986 c. 44, s. 41EB(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C196** S. 116 applied (20.6.2003) by 1986 c. 44, s. 26A(11F)(11I)(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C197** S. 116 applied (20.6.2003) by 1986 c. 44, s. 24B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C198** S. 116 applied (20.6.2003) by 1984 c. 12, s. 13B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C199** S. 116 applied (20.6.2003) by 2000 c. 38, s. 18(6)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C200** S. 116 applied (20.6.2003) by 2000 c. 38, s. 12B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C201** S. 116 applied (20.6.2003) by 2000 c. 26, s. 19A(6)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C202** S. 116 applied (20.6.2003) by 2000 c. 26, s. 15B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C203** S. 116 applied (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C204** S. 116 applied (20.6.2003) by S.I. 1994/426 (N.I. 1), art. 35B(1)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C205** S. 116 applied (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C206** S. 116 applied (20.6.2003) by 1993 c. 43, s. 15C(2D)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C207** S. 116 applied (20.6.2003) by 1993 c. 43, s. 13B(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C208** S. 116 applied (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C209** S. 116 applied (20.6.2003) by 1980 c. 21, s. 11B(1) (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. 116 applied (1.10.2005) by 1991 c. 56, s. 17M(1) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 116 applied (1.10.2005) by 1991 c. 56, s. 17Q(6) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**); S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5)
- S. 116 applied (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 116 applied (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **23(1)(h), 27(6)(h)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C210** S. 116 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)(v)** (as amended (1.4.2014) by The

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23)

S. 116 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)

S. 116 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(h)(5)(6)}; S.R. 2004/71, **art. 2, Sch.**

S. 116 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(h)(17) (18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2, Sch.**)

S. 116 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(h)(20) (21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2, Sch.**)

S. 116 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(a)-(10) (as inserted by Water Act 2003 (c. 37), **ss. 55(4), 105(3)**; S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))

C211 S. 116 applied (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(h)** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 45(3)** (with art. 3))

C212 S. 116 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(2) (4), **Sch. 10 para. 10(1)(h)(2)(11)(12)**; S.I. 2012/2657, art. 2(2)

117 False or misleading information

(1) A person commits an offence if—

- (a) he supplies any information to the OFT, [^{F24}OFCOM,] the Commission or the Secretary of State in connection with any of their functions under this Part;
- (b) the information is false or misleading in a material respect; and
- (c) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect.

(2) A person commits an offence if he—

- (a) supplies any information to another person which he knows to be false or misleading in a material respect; or
- (b) recklessly supplies any information to another person which is false or misleading in a material respect;

knowing that the information is to be used for the purpose of supplying information to the OFT, [^{F25}OFCOM,] the Commission or the Secretary of State in connection with any of their functions under this Part.

(3) A person who commits an offence under subsection (1) or (2) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Textual Amendments

F24 Word in s. 117(1)(a) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 389(1), 411(2)(3), Sch. 16 para. 20(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1), Sch. 1** (subject to arts. 3(3), 11)

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Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- F25** Word in s. 117(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 20(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

- C213** S. 117 modified (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 23(7) (as substituted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 22(5)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C214** S. 117 modified (20.6.2003) by 1993 c. 43, s. 67(9) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 21(7)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C215** S. 117 modified (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 46(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 20(5)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C216** S. 117 modified (20.6.2003) by 1991 c. 56, s. 31(8A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 19(6)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C217** S. 117 modified (20.6.2003) by 1989 c. 29, s. 43(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 18(5)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C218** S. 117 modified (20.6.2003) by 1986 c. 44, s. 36A(8) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 17(6)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
- C219** S. 117 modified (20.6.2003) by 1984 c. 12, s. 50(6A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 9 para. 16(5)**); S.I. 2003/1397, **art. 2(1)**, Sch.)
S. 117 modified (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **29(10)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)
- C220** S. 117 modified (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. **370(10)**, 411 (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**
- C221** S. 117 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(9)-(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 94(4)(b)**); S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C222** S. 117 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 88(b)**); S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C223** S. 117 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(9)-(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C224** S. 117 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C225** S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2G)-(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 81(13)(c)(ii)**); S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C226** S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(4)-(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 81(6)(b)**); S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C227** S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2G)-(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 77(4)(b)**); S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C228** S. 117 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as

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- amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 72(1)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C229** S. 117 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C230** S. 117 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (as amended (E.W.S.) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 26(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.))
- C231** S. 117 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11C(1) (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))
- C232** S. 117 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(4)-(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- S. 117 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)(w)(18)** (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))
- S. 117 applied (with modifications) (20.6.2003) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), art. 2, {Sch. 2 para. 5(4)(6)}; S.R. 2003/203, **art. 2**, Sch.
- S. 117 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- C233** S. 117 applied (20.6.2003) by S.I. 1990/1715, reg. 5 (as inserted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 17(5)**)
- C234** S. 117 applied (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. **193(8)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**
- C235** S. 117 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(i)**, 4 (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)(4) (with art. 3))
- C236** S. 117 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), para. 10(2), (12), s. 306(4), **Sch. 10 para. 10(1)(i)**; S.I. 2012/2657, art. 2(2)

Reports

118 Excisions from reports

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish—
 - (a) a report of the OFT under section 44 or 61;
 - [^{F26}(aa) a report of OFCOM under section 44A or 61A;] or
 - (b) a report of the Commission under section 50 or 65.
- (2) The Secretary of State may exclude a matter from the report concerned if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.

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- (4) The body which has prepared the report shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 38(4) and 107(11) to the giving or laying of a report of the Commission shall be construed as references to the giving or laying of the report as published.

Textual Amendments

F26 S. 118(1)(aa) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), **Sch. 16 para. 21** (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C237 S. 118 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)(x)(19)** (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))

119 Minority reports of Commission

- (1) Subsection (2) applies where, on a reference to the Commission under this Part, a member of a group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41), disagrees with any decisions contained in the report of the Commission under this Part as the decisions of the Commission.
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

Modifications etc. (not altering text)

C238 S. 119 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)(y)(20)** (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))

[^{F27} Further provision about media mergers

Textual Amendments

F27 S. 119A and cross-heading inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 385, 411(2)(3) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

119A Other general functions of OFCOM in relation to this Part

- (1) OFCOM have the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of their functions under this Part.

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- (2) That function is to be carried out with a view to (among other things) ensuring that OFCOM have sufficient information to take informed decisions and to carry out their other functions effectively.
- (3) In carrying out that function OFCOM may carry out, commission or support (financially or otherwise) research.
- (4) Section 3 of the Communications Act 2003 (general duties of OFCOM) shall not apply in relation to functions of OFCOM under this Part.

Modifications etc. (not altering text)

- C239** S. 119A applied (with modifications) (29.12.2003) by S.I. 2003/1592, Sch. 3 para. 1(1)(ya) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 10(11) (with art. 3)
- S. 119A applied (with modifications) (29.12.2003) by S.I. 2003/1592, Sch. 3 para. 1(20A) (as inserted by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 2, Sch. para. 10(15) (with art. 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))

^{F28} **119B** Monitoring role for OFT in relation to media mergers

- (1) The OFT has the function of obtaining, compiling and keeping under review information about matters which may be relevant to the Secretary of State in deciding whether to give a special intervention notice mentioning a consideration specified in section 58(2A) to (2C).
- (2) That function is to be carried out with a view to (among other things) ensuring that the Secretary of State is aware of cases where, in the opinion of the OFT, he might wish to consider giving such a notice.
- (3) That function does not extend to obtaining, compiling or keeping under review information with a view to carrying out a detailed analysis in each case of the operation in relation to that case of the consideration specified in section 58(2A) to (2C).]]

Textual Amendments

- F28** S. 119B inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 386, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (subject to arts. 3(3), 11)

Miscellaneous

120 Review of decisions under Part 3

- (1) Any person aggrieved by a decision of the OFT, [^{F29}OFCOM,] the Secretary of State or the Commission under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision”—

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- (a) does not include a decision to impose a penalty under section 110(1) or (3); but
 - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may—
- (a) dismiss the application or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section—
- “the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and
 - “Tribunal rules” has the meaning given by section 15(1).

Textual Amendments

F29 Word in s. 120(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 22](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\), 11](#))

Modifications etc. (not altering text)

C240 S. 120 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\(1\)\(z\)\(21\)](#) (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](#)))

C241 S. 120(6)-(8) applied (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), ss. 141, 198(2), [Sch. 18 para. 15](#); S.I. 2004/2184, [art. 2\(2\)](#), [Sch. 2](#)

C242 S. 120(6)-(8) applied (N.I.) (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), [reg. 28](#)

C243 S. 120(6)-(8) applied (N.I.) (prosp.) by [The Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), [arts. 1, 5](#), {[Sch. 1 para. 15](#)}

C244 S. 120(6)-(8) applied (N.I.) (15.4.2011) by [The Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 1](#), [Sch. 1 para. 14](#)

121 Fees

- (1) The Secretary of State may by order require the payment to him or the OFT of such fees as may be prescribed by the order in connection with the exercise by the Secretary

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of State, the OFT [^{F30}, OFCOM] and the Commission of their functions under or by virtue of this Part, ^{F31} . . . and sections 32 to 34 of, and Schedule 4ZA to, the Water Industry Act 1991 (c. 56).

- (2) An order under this section may, in particular, provide for fees to be payable—
- (a) in respect of a merger notice; [^{F32} or]
 - (b) ^{F33}
 - (c) on the occurrence of any event specified in the order.
- (3) The events that may be specified in an order under this section by virtue of subsection (2)(c) include, in particular—
- (a) the decision by the OFT in relation to a possible reference under section 22 or 33 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the decision by the Secretary of State in relation to a possible reference under section 45 that it is or may be the case that a relevant merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (c) the decision by the Secretary of State in relation to a possible reference under section 62 that—
 - (i) it is or may be the case that a special merger situation has been created or (as the case may be) that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation; and
 - (ii) one or more than one consideration mentioned in the special intervention notice is relevant to a consideration of the special merger situation concerned; and
 - (d) the decision by the OFT in relation to a possible reference under section 32 of the Act of 1991 that it is or may be the case that arrangements are in progress which, if carried into effect, will result in a merger of any two or more water enterprises or that such a merger has taken place otherwise than as a result of the carrying into effect of arrangements that have been the subject of a reference by virtue of paragraph (a) of that section.
- (4) An order under this section may, in particular, contain provision—
- (a) for ascertaining the persons by whom fees are payable;
 - (b) specifying whether any fee is payable to the Secretary of State or the OFT;
 - (c) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) ^{F34}
 - (ii) ^{F35} . . . , the value of the turnover of the enterprises concerned;
 - (d) as to the time when any fee is to be paid; and
 - (e) for the repayment by the Secretary of State or the OFT of the whole or part of any fee in specified circumstances.
- (5) For the purposes of subsection (4)(c)(ii) the turnover of an enterprise shall be determined in accordance with such provisions as may be specified in an order under this section.

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- (6) Provision made by virtue of subsection (5) may, in particular, include provision—
 - (a) as to the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
 - (b) as to the date or dates by reference to which an enterprise's turnover is to be determined;
 - (c) restricting the turnover to be taken into consideration to turnover which has a connection of a particular description with the United Kingdom.
- (7) An order under this section may, in particular, in connection with provisions of the kind mentioned in subsection (5) make provision enabling the Secretary of State or the OFT to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) to (c) of subsection (6)).
- (8) In determining the amount of any fees to be prescribed by an order under this section, the Secretary of State may take into account all costs incurred by him and by the OFT in respect of the exercise by him, the OFT [^{F36}, OFCOM] and the Commission of their respective functions under or by virtue of this Part ^{F37} . . . and sections 32 to 34 of, and Schedule 4ZA to, the Act of 1991.
- (9) Fees paid to the Secretary of State or the OFT under this section shall be paid into the Consolidated Fund.
- (10) ^{F38}

Textual Amendments

- F30** Word in s. 121(1) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 23\(2\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F31** Words in s. 121(1) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(2\)\(b\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Note 1 Sch. 19](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F32** Word in s. 121(2)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 23\(3\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F33** S. 121(2)(b) and word repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(3\)\(b\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F34** S. 121(4)(c)(i) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(4\)\(a\)\(b\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F35** Words in s. 121(4)(c)(ii) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(4\)\(c\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F36** Word in s. 121(8) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 23\(5\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))
- F37** Words in s. 121(8) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(5\)\(b\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), [11](#))

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F38 S. 121(10) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 406, 411(2)(3), [Sch. 16 para. 23\(6\)](#), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)

122 Primacy of [^{F39}EU] law

- (1) Advice and information published by virtue of section 106(1) or (3) shall include such advice and information about the effect of [^{F39}EU] law, and anything done under or in accordance with it, on the provisions of this Part as the OFT or (as the case may be) the Commission considers appropriate.
- (2) Advice and information published by the OFT by virtue of section 106(1) shall, in particular, include advice and information about the circumstances in which the duties of the OFT under sections 22 and 33 do not apply as a result of the [^{F40}EC Merger Regulation] or anything done under or in accordance with them.
- (3) The duty or power to make a reference under section 22 or 45(2) or (3), and the power to give an intervention notice under section 42, shall apply in a case in which the relevant enterprises ceased to be distinct enterprises at a time or in circumstances not falling within section 24 if the condition mentioned in subsection (4) is satisfied.
- (4) The condition mentioned in this subsection is that, because of the [^{F40}EC Merger Regulation] or anything done under or in accordance with them, the reference, or (as the case may be) the reference under section 22 to which the intervention notice relates, could not have been made earlier than 4 months before the date on which it is to be made.
- (5) Where the duty or power to make a reference under section 22 or 45(2) or (3), or the power to give an intervention notice under section 42, applies as mentioned in subsection (3), references in this Part to the creation of a relevant merger situation shall be construed accordingly.

Textual Amendments

- F39** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 2, 3, 6](#) (with [art. 3\(2\)\(3\)](#), [4\(2\)](#), [6\(4\)\(5\)](#))
- F40** Words in s. 122(2)(4) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), [reg. 2](#), [Sch. para. 2\(24\)](#)

123 Power to alter share of supply test

- (1) The Secretary of State may by order amend or replace the conditions which determine for the purposes of this Part whether a relevant merger situation has been created.
- (2) The Secretary of State shall not exercise his power under subsection (1)—
 - (a) to amend or replace the conditions mentioned in paragraphs (a) and (b) of subsection (1) of section 23;
 - (b) to amend or replace the condition mentioned in paragraph (a) of subsection (2) of that section.
- (3) In exercising his power under subsection (1) to amend or replace the condition mentioned in paragraph (b) of subsection (2) of section 23 or any condition which for the time being applies instead of it, the Secretary of State shall, in particular, have

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regard to the desirability of ensuring that any amended or new condition continues to operate by reference to the degree of commercial strength which results from the enterprises concerned having ceased to be distinct.

- (4) Before making an order under this section the Secretary of State shall consult the OFT and the Commission.
- (5) An order under this section may provide for the delegation of functions to the decision-making authority.

Other

124 Orders and regulations under Part 3

- (1) Any power of the Secretary of State to make an order or regulations under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order or regulations under this Part—
 - (a) may be exercised so as to make different provision for different cases or different purposes; and
 - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) The power of the Secretary of State under section 34 [F41, 59(6A)] or 123 (including that power as extended by subsection (2) above) may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (4) The power of the Secretary of State under section 40(8), [F42 44(11),] 52(8) (including that enactment as applied by section 65(3)), 58(3), 68 or 102 as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (5) An order made by the Secretary of State under section 28 (including that enactment as applied by section 42(5), 59(5) and 67(7)), 40(8), 52(8) (including that enactment as applied by section 65(3)), 111(4) or (6), 114(3)(b) or (4)(b) or 121 or Schedule 7 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) No order shall be made by the Secretary of State under section 34, [F43 44(11), 59(6A),] 68, 102, 123 or 128(6) unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (7) An order made by the Secretary of State under section 58(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.
- (8) In calculating the period of 28 days mentioned in subsection (7), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) If an order made by the Secretary of State ceases to have effect by virtue of subsection (7), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in

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connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.

- (10) If, apart from this subsection, an order made by the Secretary of State under section 58(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

Textual Amendments

- F41** Word in s. 124(3) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 24\(2\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F42** Word in s. 124(4) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 24\(3\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F43** Words in s. 124(6) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 24\(4\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

- C245** S. 124 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\(1\)\(aa\)\(22\)](#) (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))

125 Offences by bodies corporate

- (1) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in such a capacity,
- he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, he as well as the partnership commits the offence and shall be liable to be proceeded against and punished accordingly.
- (4) In subsection (3) “partner” includes a person purporting to act as a partner.

Modifications etc. (not altering text)

- C246** S. 125 applied (20.6.2003) by 1980 c. 21, s. 11B(2) (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)

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- S. 125 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)(bb)(23)** (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))
- S. 125 applied (S.) (11.11.2005) by [The Water Services etc. \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/3172\)](#), **art. 5**
- S. 125 applied (S.) (11.11.2005) by [The Water Services etc. \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2005 \(S.I. 2005/3172\)](#), **art. 10(3)-(7)**
- C247** S. 125 applied (with modifications) (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 10 para. 10(1)(j)(2)(12)**; S.I. 2012/2657, art. 2(2)

126 Service of documents

- (1) Any document required or authorised by virtue of this Part to be served on any person may be served—
 - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
 - (b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body;
 - (c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or
 - (d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
 - (a) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
 - (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
 - (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) Subsection (5) applies if a person to be served under this Part with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined under subsection (2)) as the one at which he or someone on his behalf will accept documents of the same description as that document.
- (5) In relation to that document, that address shall be treated as his proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section, instead of that determined under subsection (2).

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- (6) Any notice in writing or other document required or authorised by virtue of this Part to be served on any person may be served on that person by transmitting the text of the notice or other document to him by means of [^{F44}an electronic communications network] or by other means but while in electronic form provided the text is received by that person in legible form and is capable of being used for subsequent reference.
- (7) This section does not apply to any document if rules of court make provision about its service.
- (8) In this section references to serving include references to similar expressions (such as giving or sending).

Textual Amendments

F44 Words in s. 126(6) substituted (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by [Communications Act 2003 \(c. 21\), ss. 406\(1\), 411\(2\)\(3\), Sch. 17 para. 174\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), 3\(1\), Sch. 1](#) (with [arts. 3-6](#) (as amended (8.12.2003) by [S.I. 2003/3142, art. 1\(3\)](#))); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

Modifications etc. (not altering text)

C248 S. 126 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\(1\)\(cc\)\(24\)](#) (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](#)))

127 Associated persons

- (1) Associated persons, and any bodies corporate which they or any of them control, shall be treated as one person—
- (a) for the purpose of deciding under section 26 whether any two enterprises have been brought under common ownership or common control;
 - [^{F45}(aa) for the purposes of section 58(2C); and]
 - (b) for the purpose of determining what activities are carried on by way of business by any one person so far as that question arises in connection with paragraph 13(2) of Schedule 8.
- (2) Subsection (1) shall not exclude from section 26 any case which would otherwise fall within that section.
- (3) A reference under section 22, 33, 45 or 62 (whether or not made by virtue of this section) may be framed so as to exclude from consideration, either altogether or for a specified purpose or to a specified extent, any matter which, apart from this section, would not have been taken into account on that reference.
- (4) For the purposes of this section—
- (a) any individual and that individual's spouse [^{F46}, civil partner] or partner and any relative, or spouse or partner of a relative, of that individual or of that individual's spouse [^{F46}, civil partner] or partner;
 - (b) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
 - (c) persons carrying on business in partnership and the spouse [^{F46}, civil partner] or partner and relatives of any of them; or

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- (d) two or more persons acting together to secure or exercise control of a body of persons corporate or unincorporate or to secure control of any enterprise or assets,
shall be regarded as associated with one another.
- (5) The reference in subsection (1) to bodies corporate which associated persons control shall be construed in accordance with section 26(3) and (4).
- (6) In this section “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as his child being regarded as a relative or taken into account to trace a relationship in the same way as that person’s child); and references to a spouse [^{F46}, civil partner] or partner shall include a former spouse [^{F46}, civil partner] or partner.

Textual Amendments

- F45** S. 127(1)(aa) substituted (29.12.2003) for word by [Communications Act 2003 \(c. 21\)](#), **ss. 375(3), 411(2)(3)** (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (subject to [arts. 3\(3\), 11](#))
- F46** Words in s. 127(4)(a)(c)(6) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), **ss. 261(1), 263, Sch. 27 para. 168**; [S.I. 2005/3175](#), **art. 2**, [Sch. 1](#)

Modifications etc. (not altering text)

- C249** S. 127 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)(dd)(25)** (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](#)))
- C250** S. 127 applied (20.6.2003) by [The Enterprise Act 2002 \(Merger Fees and Determination of Turnover\) Order 2003 \(S.I. 2003/1370\)](#), **art. 2, Sch. para. 7**
S. 127 applied (29.12.2004) by [The Water Mergers \(Determination of Turnover\) Regulations 2004 \(S.I. 2004/3206\)](#), **reg. 2(b), Sch. para. 7**

128 Supply of services and market for services etc.

- (1) References in this Part to the supply of services shall be construed in accordance with this section; and references in this Part to a market for services and other related expressions shall be construed accordingly.
- (2) The supply of services does not include the provision of services under a contract of service or of apprenticeship whether it is express or implied and (if it is express) whether it is oral or in writing.
- (3) The supply of services includes—
- performing for gain or reward any activity other than the supply of goods;
 - rendering services to order;
 - the provision of services by making them available to potential users.
- (4) The supply of services includes making arrangements for the use of computer software or for granting access to data stored in any form which is not readily accessible.

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- (5) The supply of services includes making arrangements by means of a relevant agreement (within the meaning of [F47] paragraph 29 of Schedule 2 to the Telecommunications Act 1984] for sharing the use of telecommunications apparatus.
- (6) The supply of services includes permitting or making arrangements to permit the use of land in such circumstances as the Secretary of State may by order specify.

Textual Amendments

F47 Words in s. 128(5) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2)(3), [Sch. 17 para. 174\(3\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), Sch. 1 (subject to arts. 3(3), 11)

Modifications etc. (not altering text)

C251 S. 128 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\(1\)\(ee\)\(26\)](#) (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))

129 Other interpretation provisions

- (1) In this Part, unless the context otherwise requires—
- “action” includes omission; and references to the taking of action include references to refraining from action;
- “agreement” means any agreement or arrangement, in whatever way and whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;
- “business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;
- “change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;
- “[F39]EU] law” means—
- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
 - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties;
- “consumer” means any person who is—
- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
 - (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;
- and who does not receive or seek to receive the goods or services in the course of a business carried on by him;
- “customer” includes a customer who is not a consumer;

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[^{F48}“the EC Merger Regulation” means Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings;]

“enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

“enterprise” means the activities, or part of the activities, of a business;

[^{F49}“the European Merger Regulations” means Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997;]

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“modify” includes amend or repeal;

“notice” means notice in writing;

“price” includes any charge or fee (however described);

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation;

“subsidiary” has the meaning given by [^{F50}section 1159 of the Companies Act 2006] (c. 6);

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person;

[^{F51}“the UK financial system” means the financial system in the United Kingdom;] and

“United Kingdom national” means an individual who is—

- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
- (b) a person who under the British Nationality Act 1981 (c. 61) is a British subject; or
- (c) a British protected person within the meaning of that Act.

(2) For the purposes of this Part any two bodies corporate are interconnected if—

- (a) one of them is a body corporate of which the other is a subsidiary; or
- (b) both of them are subsidiaries of one and the same body corporate;

and in this Part “interconnected bodies corporate” shall be construed accordingly and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.

(4) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as he considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

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Textual Amendments

- F39** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F48** S. 129(1): definition of "the EC Merger Regulation" inserted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, **Sch. para. 2(25)(b)**
- F49** S. 129(1): definition of "the European Merger Regulations" ceased to have effect (1.5.2004) by virtue of [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 2, **Sch. para. 2(25)(a)**
- F50** Words in s. 129(1) 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(3)** (with art. 10)
- F51** Words in s. 129(1) inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by [The Enterprise Act 2002 \(Specification of Additional Section 58 Consideration\) Order 2008 \(S.I. 2008/2645\)](#), arts. 1(1), **3(1)**

Modifications etc. (not altering text)

- C252** S. 129 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)(ff)(27)** (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))

130 Index of defined expressions

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 129(1)
Adverse public interest finding	Section 54(3)
Agreement	Section 129(1)
Anti-competitive outcome	Section 35(2)
[^{F52} Broadcasting	Section 44(9)]
Business (and carrying on business)	Section 129(1) and (3)
Change of circumstances	Section 129(1)
The Commission	Section 273
[^{F39} EU] law	Section 129(1)
Consumer	Section 129(1)
Customer	Section 129(1)
Date of reference	Section 39(9)
The decision-making authority	Section 22(7)
[^{F53} EC Merger Regulation	Section 129(1)]

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Enactment	Section 129(1)
Enforcement order	Section 86(6)
Enforcement undertaking	Section 89(2)
Enterprise	Section 129(1)
Enterprises ceasing to be distinct	Section 26(1)
[^{F54} European Merger Regulations	Section 129(1)]
Final determination of matter to which intervention notice relates	Section 43(4) and (5)
Final determination of matter to which special intervention notice relates	Section 60(4) and (5)
Final determination of reference under section 22 or 33	Section 79(1) and (2)
Goods	Section 129(1)
Interconnected bodies corporate (and a group of interconnected bodies corporate)	Section 129(2)
Intervention notice	Section 42(2)
Market for goods or services	Section 22(6)
Market in the United Kingdom	Section 22(6)
[^{F55} Media public interest consideration	Section 44(8)]
Merger notice	Section 96(2)
Modify	Section 129(1)
[^{F56} Newspaper	Section 44(10)]
[^{F57} Newspaper enterprise	Section 58A(3)]
Notice	Section 129(1)
Notified arrangements	Section 96(6)
[^{F58} OFCOM	Section 43(6)]
The OFT	Section 273
Orders under section 81	Section 81(6)
Orders under paragraph 2 of Schedule 7	Paragraph 2(7) of Schedule 7
The period for considering a merger notice	Sections 97 and 98
Price	Section 129(1)
Public interest consideration	Sections 42(3) and 67(9)
Public interest consideration being finalised	Section 42(8)
Publish	Section 129(4)

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References under section 22, 33, 45 or 62	Sections 37(2), 49(1), 56(8) and 64(2)
Relevant customer benefit	Section 30
Relevant merger situation	Section 23 (as read with other enactments)
Reports of the Commission	Section 118(5)
Special intervention notice	Section 59(2)
Special merger situation	Section 59(3)
Subordinate legislation	Section 129(1)
Subsidiary	Section 129(1)
Supply (in relation to the supply of goods)	Section 129(1)
The supply of services (and a market for services etc.)	Section 128
The turnover in the United Kingdom of an enterprise	Section 28(2)
[^{F59} The UK financial system]	[^{F60} Section 129(1)]
Undertakings under section 80	Section 80(6)
Undertakings under paragraph 1 of Schedule 7	Paragraph 1(7) of Schedule 7
United Kingdom national	Section 129(1)

Textual Amendments

- F39** Word in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F52** S. 130: entry inserted (29.12.2003) by [Communications Act 2003](#) (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F53** S. 130: entry inserted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004](#) (S.I. 2004/1079), reg. 2, **Sch. para. 2(26)(b)**
- F54** S. 130: entry ceased to have effect (1.5.2004) by virtue of [The EC Merger Control \(Consequential Amendments\) Regulations 2004](#) (S.I. 2004/1079), reg. 2, **Sch. para. 2(26)(a)**
- F55** S. 130: entry inserted (29.12.2003) by [Communications Act 2003](#) (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F56** S. 130: entry inserted (29.12.2003) by [Communications Act 2003](#) (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F57** S. 130: entry inserted (29.12.2003) by [Communications Act 2003](#) (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(4)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F58** S. 130: entry inserted (29.12.2003) by [Communications Act 2003](#) (c. 21), ss. 389(1), 411(2)(3), **Sch. 16 para. 25(5)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

Status: Point in time view as at 01/11/2012.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5. (See end of Document for details)

- F59** S. 130 entry inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by [The Enterprise Act 2002 \(Specification of Additional Section 58 Consideration\) Order 2008 \(S.I. 2008/2645\)](#), arts. 1(1), **3(2)**
- F60** S. 130 entry inserted (24.10.2008) (with application in accordance with art. 1(2) of the amending S.I.) by [The Enterprise Act 2002 \(Specification of Additional Section 58 Consideration\) Order 2008 \(S.I. 2008/2645\)](#), arts. 1(1), **3(2)(b)**

Status:

Point in time view as at 01/11/2012.

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 5.