



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 5

#### SUPPLEMENTARY

#### *General duties in relation to references*

### 103 Duty of expedition in relation to references

- (1) [<sup>F1</sup>In making any decision for the purposes of its functions of making and determining references under this Part, the CMA] 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.

#### Textual Amendments

- F1** Words in s. 103(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 32(1), 103(3)**; [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

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

- C1** Pt. 3 modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 4 para. 56**; [S.I. 2014/416](#), art. 2(1)(c) (with Sch.)
- C2** S. 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))

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*Changes to legislation:* There are currently no known outstanding effects for the Enterprise Act 2002, Cross Heading: General duties in relation to references. (See end of Document for details)

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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 [F<sup>2</sup>CMA], the Commission or the Secretary of State;

“relevant decision” means—

- (a) in the case of the [F<sup>3</sup>CMA], any decision by the [F<sup>3</sup>CMA]—
  - (i) as to whether to make a reference under section 22 [F<sup>4</sup>, 33, 68B or 68C] or accept undertakings under section 73 instead of making such a reference; or
  - (ii) to vary under section 37 such a reference[F<sup>5</sup>; or
  - (iii) on the questions mentioned in section 35(1) or (3), 36(1) or (2), 47 or 63;]
- (b) F<sup>6</sup> ...
- (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.

#### Textual Amendments

- F2** Word in s. 104(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 135(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Word in s. 104(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 135(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F4** Words in s. 104(6) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 23**
- F5** Words in s. 104(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 135(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Words in s. 104(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 135(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C3** 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)(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))
- C4** S. 104 modified by S.I. 2003/1592, art. 5A(d) (as inserted (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **7** (with arts. 20-23))

**[<sup>F7</sup>104A Public consultation in relation to media mergers**

- (1) Subsection (2) applies where the [<sup>F8</sup>CMA]—
- (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 [<sup>F8</sup>CMA] 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 [<sup>F8</sup>CMA] by consulting such representative sample of the public or section of the public concerned as the [<sup>F8</sup>CMA] considers appropriate.]

**Textual Amendments**

- F7** 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)
- F8** Word in s. 104A(1)-(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 26(3), **Sch. 5 para. 136**, (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

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

- C5** S. 104A modified by S.I. 2003/1592, art. 5A(d) (as inserted (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **7** (with arts. 20-23))
- C6** S. 104A applied (with modifications) (29.12.2003) by S.I. 2003/1592, art. 15, Sch. 3 para. 1(1)(la) (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)
- 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)

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(as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))

**Changes to legislation:**

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