



Enterprise Act 2002

2002 CHAPTER 40

PART 4

MARKET INVESTIGATIONS

CHAPTER 4

SUPPLEMENTARY

Consultation, information and publicity

169 Certain duties of relevant authorities to consult: Part 4

- (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 have a substantial impact on the interests of any person.
- (2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.
- (3) In consulting the person 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—

Status: This is the original version (as it was originally enacted).

“the relevant authority” means the OFT, the appropriate Minister or the Commission; and

“relevant decision” means—

- (a) in the case of the OFT, any decision by the OFT—
 - (i) as to whether to make a reference under section 131 or accept undertakings under section 154 instead of making such a reference; or
 - (ii) to vary under section 135 such a reference;
- (b) in the case of the appropriate Minister, any decision by the appropriate Minister—
 - (i) as to whether to make a reference under section 132; or
 - (ii) to vary under section 135 such a reference; and
- (c) in the case of the Commission, any decision on the questions mentioned in section 134 or 141.

170 General information duties

- (1) The OFT shall give the Commission—
 - (a) such information in its possession as the Commission may reasonably require to enable the Commission to carry out its functions under this Part; and
 - (b) any other assistance which the Commission 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.
- (2) The OFT shall give the Commission any information in its possession which has not been requested by the Commission but which, in the opinion of the OFT, would be appropriate to give to the Commission for the purpose of assisting it in carrying out its functions under this Part.
- (3) The OFT and the Commission shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone—
 - (a) such information in their possession as the Secretary of State or (as the case may be) the appropriate Minister concerned 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 or (as the case may be) the appropriate Minister concerned 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 or (as the case may be) the Commission to give.
- (4) The OFT shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the OFT, would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.
- (5) The Commission shall have regard to any information given to it under subsection (1) or (2); and the Secretary of State or (as the case may be) the appropriate Minister concerned shall have regard to any information given to him under subsection (3) or (4).

- (6) Any direction given under subsection (3)—
 - (a) shall be in writing; and
 - (b) may be varied or revoked by a subsequent direction.

171 Advice and information: Part 4

- (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 131.
- (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 market investigation references 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 and information published by virtue of subsection (1) or (3) shall include such advice and information about the effect of Community 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.
- (7) 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.
- (8) 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.
- (9) In preparing any advice or information under this section, the OFT shall consult the Commission and such other persons as it considers appropriate.
- (10) In preparing any advice or information under this section, the Commission shall consult the OFT and such other persons as it considers appropriate.
- (11) In this section “Community 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.

172 Further publicity requirements: Part 4

- (1) The OFT shall publish—
 - (a) any reference made by it under section 131;
 - (b) any variation made by it under section 135 of a reference under section 131;
 - (c) any decision of a kind mentioned in section 149(5)(b); and
 - (d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.
- (2) The Commission shall publish—
 - (a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;
 - (c) any termination under section 145(1) of an investigation by it;
 - (d) such information as it considers appropriate about any decision made by it under section 152(2) to bring a case to the attention of the Secretary of State;
 - (e) any enforcement undertaking accepted by it under section 157;
 - (f) any enforcement order made by it under section 158; and
 - (g) any variation, release or revocation of such an undertaking or order.
- (3) The Secretary of State shall publish—
 - (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132;
 - (c) any intervention notice given by him;
 - (d) any decision made by him to revoke such a notice;
 - (e) any decision made by him under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (f) any enforcement undertaking accepted by him under section 157;
 - (g) any variation or release of such an undertaking; and
 - (h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—
 - (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132; and
 - (c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) 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 (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (6) 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.

- (7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) or (2)(d).
- (8) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 146(2); or
 - (b) any decision to make an order under section 153(3) or vary or revoke such an order.
- (9) Such reasons may be published after—
- (a) in the case of subsection (8)(a), the publication of the decision concerned; and
 - (b) in the case of subsection (8)(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.
- (10) Where the Secretary of State has decided under section 147(2) to accept an undertaking under section 159 or to make an order under section 161, 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 142, before each House of Parliament.

173 Defamation: Part 4

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, by the Secretary of State, by the appropriate Minister (other than the Secretary of State acting alone) or by the Commission in the exercise of any of their functions under this Part.