

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, SCHEDULE 10. (See end of Document for details)*

## SCHEDULES

### F<sup>1</sup> SCHEDULE 10

Section 90

#### PROCEDURAL REQUIREMENTS FOR CERTAIN ENFORCEMENT UNDERTAKINGS AND ORDERS

##### Textual Amendments

- F1** Sch. 10 amendment to earlier affecting provision S.I. 2003/1592, art. 15, Sch. 3 para. 2 (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, **18(18)** (with arts. 20-23)

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

- C1** Sch. 10 applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)  
Sch. 10 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- C2** Sch. 10 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. 2(1)(b)(3)**
- C3** Sch. 10 modified by S.I. 2004/3202, reg. 36 (as inserted (18.12.2015) by [The Water Mergers \(Miscellaneous Amendments\) Regulations 2015 \(S.I. 2015/1936\)](#), regs. 1, **21**)

#### *Requirements for accepting undertakings and making orders*

- 1 Paragraph 2 applies in relation to—
- any undertaking under section 73 or 82 or paragraph 3 or 9 of Schedule 7 (other than an undertaking under the enactment concerned which varies an undertaking under that enactment but not in any material respect); and
  - any order under section 75, 83 or 84 or paragraph 5, 10 or 11 of Schedule 7 (other than an order under the enactment concerned which is a revoking order of the kind dealt with by paragraphs 6 to 8 below).
- 2 (1) Before accepting an undertaking to which this paragraph applies or making an order to which this paragraph applies, [F<sup>2</sup>the CMA] or (as the case may be) the Secretary of State (in this Schedule “the relevant authority”) shall—
- give notice of the proposed undertaking or (as the case may be) order; and
  - consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under sub-paragraph (1) shall state—
- that the relevant authority proposes to accept the undertaking or (as the case may be) make the order;
  - the purpose and effect of the undertaking or (as the case may be) order;
  - the situation that the undertaking or (as the case may be) order is seeking to deal with;

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- (d) any other facts which the relevant authority considers justify the acceptance of the undertaking or (as the case may be) the making of the order;
  - (e) a means of gaining access to an accurate version of the proposed undertaking or (as the case may be) order at all reasonable times; and
  - (f) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed undertaking or (as the case may be) order.
- (3) A notice under sub-paragraph (1) shall be given by—
- (a) in the case of a proposed order, serving on any person identified in the order as a person on whom a copy of the order should be served a copy of the notice and a copy of the proposed order; and
  - (b) in every case, publishing the notice.
- (4) The relevant authority shall not accept the undertaking with modifications or (as the case may be) make the order with modifications unless the relevant authority—
- (a) gives notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under sub-paragraph (4) shall state—
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period (not less than 7 days starting with the date of the publication of the notice under sub-paragraph (4)) within which representations may be made in relation to the proposed modifications.
- (6) A notice under sub-paragraph (4) shall be given by—
- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) in every case, publishing the notice.

#### Textual Amendments

**F2** Words in Sch. 10 para. 2(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\)](#), [Sch. 5 para. 162](#) (with [s. 28](#)); [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

- 3 (1) If, after giving notice under paragraph 2(1) or (4), the relevant authority decides—
- (a) not to accept the undertaking concerned or (as the case may be) make the order concerned; and
  - (b) not to proceed by virtue of paragraph 5;
- the relevant authority shall give notice of that decision.
- (2) A notice under sub-paragraph (1) shall be given by—
- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) in every case, publishing the notice.

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- 4 As soon as practicable after accepting an undertaking to which paragraph 2 applies or (as the case may be) making an order to which that paragraph applies, the relevant authority shall (except in the case of an order which is a statutory instrument)—
- (a) serve a copy of the undertaking on any person by whom it is given or (as the case may be) serve a copy of the order on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) publish the undertaking or (as the case may be) the order.
- 5 (1) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority—
- (a) has already given notice under paragraph 2(1) but not paragraph 2(4) in relation to the proposed undertaking or order; and
  - (b) considers that the modifications which are now being proposed are not material in any respect.
- (2) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority—
- (a) has already given notice under paragraphs 2(1) and (4) in relation to the matter concerned; and
  - (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 2(4).

#### *Termination of undertakings and orders*

- 6 Paragraph 7 applies where the relevant authority is proposing to—
- (a) release any undertaking under section 73 or 82 or paragraph 3 or 9 of Schedule 7 (other than in connection with accepting an undertaking under the enactment concerned which varies or supersedes an undertaking under that enactment); or
  - (b) revoke any order under section 75, 83 or 84 or paragraph 5, 10 or 11 of Schedule 7 (other than in connection with making an order under the enactment concerned which varies or supersedes an order under that enactment).
- 7 (1) Before releasing an undertaking to which this paragraph applies or (as the case may be) revoking an order to which this paragraph applies, the relevant authority shall—
- (a) give notice of the proposed release or (as the case may be) revocation; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under sub-paragraph (1) shall state—
- (a) the fact that a release or (as the case may be) revocation is proposed;
  - (b) the reasons for it; and
  - (c) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed release or (as the case may be) revocation.
- (3) If after giving notice under sub-paragraph (1) the relevant authority decides not to proceed with the release or (as the case may be) the revocation, the relevant authority shall give notice of that decision.

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- (4) A notice under sub-paragraph (1) or (3) shall be given by—
- (a) serving a copy of the notice on the person who gave the undertaking which is being released or (as the case may be) on any person identified in the order being revoked as a person on whom a copy of the order should be served; and
  - (b) publishing the notice.
- 8 As soon as practicable after releasing the undertaking or making the revoking order, the relevant authority shall (except in the case of an order which is a statutory instrument)—
- (a) serve a copy of the release of the undertaking on the person who gave the undertaking or (as the case may be) serve a copy of the revoking order on any person identified in the order being revoked as a person on whom a copy of that order should be served; and
  - (b) publish the release or (as the case may be) the revoking order.

*Power to dispense with the requirements of the Schedule*

- 9 The relevant authority may dispense with any or all of the requirements of this Schedule if the relevant authority considers that the relevant authority has special reasons for doing so.

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