



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 4

#### [<sup>F1</sup>MARKET STUDIES AND] MARKET INVESTIGATIONS

### CHAPTER 2

#### PUBLIC INTEREST CASES

##### *Intervention notices*

#### **139 Public interest intervention by Secretary of State**

[<sup>F1</sup>(A1) This section applies where—

- (a) the CMA has published a market study notice in relation to a matter; or
- (b) the CMA has begun the process of consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section.]

[<sup>F1</sup>(1) The Secretary of State may, within the permitted period, give a notice to the CMA if the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the matter.]

[<sup>F1</sup>(1A) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (a) of subsection (A1), is the period beginning with the publication of the market study notice and ending with—

- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter;
- (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter;
- (c) the making of such a reference in relation to the matter; or
- (d) in a case where the period permitted by section 131B for the preparation and publication by the CMA of the market study report in relation to the matter

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has expired and no such report has been prepared or published, the end of that period.

(1B) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (b) of subsection (A1), is the period beginning with the date on which the CMA begins the process of consultation concerned and ending with—

- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter concerned;
- (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter; or
- (c) the making of such a reference in relation to the matter.]

(2) The Secretary of State may<sup>[F2]</sup>, within the permitted period,] give a notice to the <sup>[F3]</sup>CMA] if—

- (a) the <sup>[F3]</sup>CMA] is considering whether to accept—
  - (i) an undertaking under section 154 instead of making a reference under section 131 <sup>[F4]</sup>in relation to the matter]; or
  - (ii) an undertaking varying or superseding any such undertaking;
- (b) the <sup>[F3]</sup>CMA] has published a notice under section 155(1) or (4); and
- (c) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the <sup>[F5]</sup>proposal to accept the undertaking].

<sup>[F6]</sup>(2A) For the purposes of subsection (2), the permitted period is—

- (a) where the CMA publishes a notice under section 155(1), the period within which representations may be made in relation to the proposed undertaking (as to which, see section 155(2)(f));
- (b) where the CMA publishes a notice under section 155(4), the period within which representations may be made in relation to the proposed modifications to the proposed undertaking (as to which, see section 155(5)(c)).]

(3) In this Part “intervention notice” means a notice under subsection (1) or (2).

<sup>[F7]</sup>(4) No more than one intervention notice shall be given under subsection (1) in relation to the same matter.

(4A) An intervention notice shall not be given under subsection (2) in relation to a proposal to accept an undertaking if the proposal relates to a matter in respect of which an intervention notice under subsection (1) has already been given.

(4B) No more than one intervention notice shall be given under subsection (2) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.]

<sup>[F8]</sup>(4C) In this section, a reference to the acceptance of an undertaking shall, in a case where the CMA has accepted a group of undertakings under section 154, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of this section.]

(5) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 153

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or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.

- (6) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (7) For the purposes of this Part a public interest consideration is finalised if—
- (a) it is specified in section 153 otherwise than by virtue of an order under subsection (3) of that section; or
  - (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (6) of section 181 and within the period mentioned in that subsection.

#### Textual Amendments

- F1** Ss. 139(A1)-(1B) substituted for (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(3\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F2** Words in s. 139(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(4\)\(a\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F3** Word in s. 139(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 172 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F4** Words in s. 139(2)(a)(i) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(4\)\(b\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F5** Words in s. 139(2)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(4\)\(c\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F6** S. 139(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(5\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F7** S. 139(4)(4A)(4B) substituted (1.4.2014) for s. 139(4) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 35\(6\)](#)
- F8** S. 139(4C) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(7\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002, Section 139.