



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Interim restrictions and powers

79 Sections 77 and 78: further interpretation provisions

- (1) For the purposes of this Part a reference under section 22 [^{F1}, 33, 68B or 68C] is finally determined if—
- (a) the reference is cancelled under section 37(1);
 - (b) the time within which the [^{F2}CMA] is to prepare and publish a report under section 38 in relation to the reference has expired and no such report has been prepared and published;
 - (c) the report of the [^{F2}CMA] under section 38 contains the decision that there is not an anti-competitive outcome;
 - (d) the report of the [^{F2}CMA] under section 38 contains the decision that there is an anti-competitive outcome and the [^{F2}CMA] has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84; or
 - (e) the report of the [^{F2}CMA] under section 38 contains the decision that there is an anti-competitive outcome and the [^{F2}CMA] has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.
- (2) For the purposes of this Part the time when a reference under section 22 [^{F3}, 33, 68B or 68C] is finally determined is—

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- (a) in a case falling within subsection (1)(a), the making of the decision concerned;
 - (b) in a case falling within subsection (1)(b), the expiry of the time concerned;
 - (c) in a case falling within subsection (1)(c), the publication of the report;
 - (d) in a case falling within subsection (1)(d), the making of the decision under section 41(2); and
 - (e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (3) For the purposes of section 78 and subject to subsection (4) below, the circumstances in which a person acquires an interest in shares include those where—
- (a) he enters into a contract to acquire the shares (whether or not for cash);
 - (b) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or
 - (c) he—
 - (i) acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares; or
 - (ii) assumes an obligation to acquire such an interest.
- (4) The circumstances in which a person acquires an interest in shares for the purposes of section 78 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the [^{F4}CMA] of the reference concerned.
- (5) The circumstances in which a person acquires a right mentioned in subsection (3)—
- (a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but
 - (b) do not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members.
- (6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.
- (7) References in sections 77 and 78 to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
- (8) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of sections 77 and 78 to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 26 to determine whether enterprises are brought under common control.
- (9) [^{F5}Section 1159 of, and Schedule 6 to, the Companies Act 2006] shall apply for the purposes of sections 77 and 78 to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company; and references to a subsidiary in [^{F6}paragraph 8 of Schedule 6] as so applied shall be construed accordingly.

Textual Amendments

F1 Words in s. 79(1) substituted (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2)(j), [Sch. 16 para. 17](#)

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- F2** Word in s. 79(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 119(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Words in s. 79(2) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), **Sch. 16 para. 17**
- F4** Word in s. 79(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 119(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in s. 79(9) 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(2)(a)** (with art. 10)
- F6** Words in s. 79(9) 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(2)(b)** (with art. 10)

Modifications etc. (not altering text)

- C1** S. 79 applied (with modifications) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 13, **Sch. 2 para. 8(9)(10)**
- C2** S. 79: amendment to earlier affecting provision S.I. 2003/1592, Sch. 2 para. 8(9)(10) (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **17(9)(10)** (with arts. 20-23)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 79.