



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Other

[^{F1}94A Interim undertakings and orders under this Part: penalties

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.
- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
 - (a) when an enterprise is to be treated as controlled by a person; and
 - (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—
 - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
 - (b) the date or dates by reference to which an enterprise's turnover is to be determined.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Section 94A. (See end of Document for details)

- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—
- “interim measure” means—
- (a) an undertaking under section 80; or
 - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;
- “appropriate authority” means—
- (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
 - (b) in relation to any other interim measure, the CMA.]

Textual Amendments

- F1** Ss. 94A, 94B inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 31(1)**, 103(1)(i)(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** Ss. 85-95: functions made exercisable concurrently (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), **15(2)** (with arts. 16(5)(6), 17)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 94A.