

*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 8. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 8 **U.K.**

Section 32(2)

#### MERGERS: TIME-LIMITS

1 Part 3 of the 2002 Act (mergers) is amended as follows.

##### Commencement Information

**I1** Sch. 8 para. 1 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

2 In section 22 (duty to make references in relation to completed mergers), in subsection (3)—

(a) before paragraph (a) insert—

“(za) the period within which the CMA is required by section 34ZA to decide whether the duty to make the reference applies has expired without such a decision having been made;”, and

(b) in paragraph (a) omit “or 96(3)”.

##### Commencement Information

**I2** Sch. 8 para. 2 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

3 In section 33 (duty to make references in relation to anticipated mergers), in subsection (3)—

(a) before paragraph (a) insert—

“(za) the period within which the CMA is required by section 34ZA to decide whether the duty to make the reference applies has expired without such a decision having been made;”, and

(b) in paragraph (a) omit “or 96(3)”.

##### Commencement Information

**I3** Sch. 8 para. 3 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

4 After section 34 insert—

##### “34ZA Time-limits for decisions about references

(1) In carrying out its function of deciding whether to make a reference under section 22 or 33, the CMA shall, within the initial period—

(a) decide whether the duty to make a reference under the section applies (taking account of the power under section 22(2) or (as the

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- case may be) 33(2) and the operation of section 22(3) or (as the case may be) 33(3)); and
- (b) inform the persons carrying on the enterprises concerned by notice of the decision and of the reasons for it.
- (2) Nothing in this section prevents the CMA from making a reference under section 22 or 33 in the event that—
- (a) it decides that the duty to make a reference does not apply because it is considering whether to accept undertakings under section 73; but
- (b) no such undertakings are offered or accepted.
- (3) In this section—
- “the initial period” means (subject to any extension under section 34ZB) the period of 40 working days beginning with—
- (a) where the CMA is carrying out its function in consequence of the giving of a merger notice under section 96, the first working day after the day on which the CMA gives notice under section 96(2A) to the person who gave the merger notice, and
- (b) in any other case, the first working day after the day on which the CMA informs the persons carrying on the enterprises concerned by notice that it has sufficient information to enable it to begin an investigation for the purposes of deciding whether to make a reference;
- “working day” means any day which is not—
- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
- (b) a day which is a bank holiday in England and Wales.
- (4) For the purposes of paragraph (a) in the definition of “initial period” in subsection (3), the CMA is carrying out its function in consequence of the giving of a merger notice under section 96 if it is considering whether to make a reference under section 22 or 33 in relation to—
- (a) arrangements of which notice is given in the merger notice or arrangements which do not differ from them in any material respect, or
- (b) the creation of any relevant merger situation which is, or may be, created in consequence of carrying such arrangements into effect.
- (5) Nothing in this section applies where section 34A(2) or 46A(2) applies (duties where case referred by the European Commission).

### **34ZB Extension of time-limits**

- (1) The CMA may extend the initial period mentioned in section 34ZA(1) if it considers that a relevant person has failed (with or without a reasonable excuse) to comply with any requirement of a notice under section 109 in relation to the case in question.
- (2) In subsection (1), “relevant person” means—
- (a) any person carrying on any of the enterprises concerned;
- (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or

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- (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (3) For the purposes of subsection (2), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (4) Where an intervention notice is in force in relation to the matter concerned, the CMA may extend the initial period by no more than 20 working days.
- (5) The CMA may by notice extend the initial period if the European Commission is considering a request made, in relation to the matter concerned, by the United Kingdom (whether alone or with others) under article 22(1) of the EC Merger Regulation (but is not yet proceeding with the matter in pursuance of such a request).
- (6) An extension under subsection (1) or (4) comes into force when published under section 107.
- (7) An extension under subsection (1) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.
- (8) An extension under subsection (5) shall be for the period which—
  - (a) begins when notice is given under that subsection, and
  - (b) ends when the CMA gives notice of the completion by the European Commission of its consideration of the request of the United Kingdom.
- (9) In this section, “working day” has the same meaning as in section 34ZA.

### **34ZC Sections 34ZA and 34ZB: supplementary**

- (1) An extension of the period mentioned in section 34ZA(1) may be made under each of subsections (1), (4) or (5) of section 34ZB.
- (2) No more than one extension is possible under section 34ZB(4).
- (3) Where a period is extended or further extended under section 34ZB(1), (4) or (5), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period mentioned in section 34ZA(1) is further extended;
  - (b) the further extension and at least one previous extension is made under one or more of subsections (1) and (5) of section 34ZB; and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.

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- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order do either or both of the following—
- (a) amend section 34ZA so as to alter the period of 40 working days mentioned in subsection (3) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) amend section 34ZB so as to alter the period of 20 working days mentioned in subsection (4) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
- (a) the period for the time being mentioned in section 34ZA(3) exceeding 40 working days; or
  - (b) the period for the time being mentioned in section 34ZB(4) exceeding 20 working days.
- (8) Before making an order under subsection (6), the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.
- (9) In this section, “working day” has the same meaning as in section 34ZA.”

#### Commencement Information

- I4** Sch. 8 para. 4 partly in force; sch. 8 para. 4 in force for specified purposes at Royal Assent, see s.103(1)(i)
- I5** Sch. 8 para. 4 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 5 (1) Section 39 (time-limits for investigations and reports) is amended as follows.
- (2) In subsection (5) for “subsection (4)” substitute “ this section ”.
- (3) After subsection (8) insert—
- “(8A) In the case of a report on a reference under section 33, the CMA may provide that a specified period of no more than 3 weeks is to be disregarded for the purposes of any time-limit for the preparation and publication of the report which applies by virtue of this section if—
- (a) a relevant person has so requested before the end of the period of 3 weeks beginning with the date of the reference concerned; and
  - (b) the CMA reasonably believes that the arrangements in question might be abandoned.
- (8B) If the CMA exercises the power under subsection (8A), the CMA shall publish a notice to that effect.”

#### Commencement Information

- I6** Sch. 8 para. 5 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 6 After section 41 (duty to remedy effects of completed or anticipated mergers) insert—

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#### **“41A Time-limit for discharging duty under section 41**

- (1) The CMA shall discharge its duty under section 41(2) within the period of 12 weeks beginning with the date on which it publishes the report concerned under section 38.
- (2) The CMA may extend, by no more than 6 weeks, the period within which its duty under section 41(2) shall be discharged if it considers that there are special reasons for doing so.
- (3) The CMA may extend the period within which its duty under section 41(2) shall be discharged if it considers that a relevant person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 109 which is given in relation to the reference.
- (4) In subsection (3), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (5) For the purposes of subsection (4), a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (6) An extension under subsection (2) or (3) comes into force when published under section 107.
- (7) An extension under subsection (3) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.

#### **41B Section 41A: supplementary**

- (1) A period extended under section 41A(2) may also be extended under section 41A(3), and a period extended under section 41A(3) may also be extended under section 41A(2).
- (2) No more than one extension is possible under section 41A(2).
- (3) Where a period is extended or further extended under section 41A(2) or (3), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period within which the CMA must discharge its duty under section 41(2) is further extended;

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- (b) the further extension and at least one previous extension is made under section 41A(3); and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 41A so as to alter either or both of the following periods—
- (a) the period of 12 weeks mentioned in subsection (1) of that section or any period for the time being mentioned in that subsection in substitution for that period;
  - (b) the period of 6 weeks mentioned in subsection (2) of that section or any period for the time being mentioned in that subsection in substitution for that period.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
- (a) the period for the time being mentioned in section 41A(1) exceeding 12 weeks; or
  - (b) the period for the time being mentioned in section 41A(2) exceeding 6 weeks.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

**Commencement Information**

- I7** Sch. 8 para. 6 partly in force; sch. 8 para. 6 in force for specified purposes at Royal Assent, see s.103(1)(i)
- I8** Sch. 8 para. 6 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

7 After section 73 (undertakings in lieu of references under section 22 or 33) insert—

**“73A Time-limits for consideration of undertakings**

- (1) A party concerned who wishes to offer an undertaking to the CMA for the purposes of section 73(2) must do so before the end of the period of 5 working days beginning with—
- (a) the day after the CMA gives the person the notice required by section 34ZA(1)(b); or
  - (b) in a case where subsection (2) of section 34A applies, the day after the CMA gives the person the notice required by paragraph (b) of that subsection.
- (2) If an undertaking is offered for those purposes, the CMA shall, before the end of the period of 10 working days beginning with the day mentioned in subsection (1)—
- (a) decide whether there are reasonable grounds for believing that the undertaking or a modified version of it might be accepted by the CMA under section 73(2), and

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- (b) if it considers that it might be, give notice to the person who offered the undertaking that it is considering it.
- (3) If such a notice is given, the CMA shall decide whether to accept the undertaking before the end of the period of 50 working days beginning with the day mentioned in subsection (1).
- (4) The CMA may extend the period mentioned in subsection (3), by no more than 40 working days, if it considers that there are special reasons for doing so.
- (5) The CMA shall prepare and publish guidance in relation to the exercise of its power under subsection (4).
- (6) The CMA may revise any such guidance and, where it does so, shall publish the revised statement.
- (7) The CMA may extend the period mentioned in subsection (3) if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice given under section 109 in relation to the case in question.
- (8) In subsection (7), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (9) For the purposes of subsection (8), a person or group of persons able, directly or indirectly, to control or materially influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (10) An extension under subsection (4) or (7) comes into force when published under section 107.
- (11) An extension under subsection (7) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.
- (12) In this section and section 73B, “working day” means any day which is not—
  - (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
  - (b) a day which is a bank holiday in England and Wales.

### **73B Section 73A: supplementary**

- (1) A period extended under section 73A(4) may also be extended under section 73A(7), and a period extended under section 73A(7) may also be extended under section 73A(4).
- (2) No more than one extension is possible under section 73A(4).

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- (3) Where a period is extended or further extended under section 73A(4) or (7), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
- (a) the period within which the CMA must discharge its duty under section 73A(3) is further extended,
  - (b) the further extension and at least one previous extension is made under section 73A(7), and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 73A so as to alter one or more of the periods for the time being mentioned in the section.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
- (a) the period mentioned in section 73A(1) exceeding 5 working days;
  - (b) the period mentioned in section 73A(2) exceeding 10 working days;
  - (c) the period mentioned in section 73A(3) exceeding 50 working days;
  - (d) the period mentioned in section 73A(4) exceeding 40 working days.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

#### Commencement Information

**I9** Sch. 8 para. 7 partly in force; sch. 8 para. 7 in force for specified purposes at Royal Assent, see s.103(1)(i)

**I10** Sch. 8 para. 7 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 8 (1) Section 96 (merger notices) is amended as follows.
- (2) In subsection (1), for the words from “of proposed arrangements” to the end of the subsection substitute “ of arrangements or proposed arrangements which might have resulted or might result in the creation of a relevant merger situation. ”
- (3) In subsection (2) after paragraph (a) (and before the “and” immediately following it) insert—
- “(aa) shall contain the prescribed information;”.
- (4) After subsection (2) insert—
- “(2A) Where the CMA is satisfied that a merger notice meets the requirements of subsection (2), it shall give notice to that effect to the person who gave the merger notice.”
- (5) Omit subsections (3) and (4).



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**Commencement Information**

**I11** Sch. 8 para. 8 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

9 Sections 97 and 98 (period for considering merger notices) are omitted.

**Commencement Information**

**I12** Sch. 8 para. 9 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 10 (1) Section 99 (certain functions in relation to merger notices) is amended as follows.
- (2) In subsection (1), for “the period for considering any merger notice begins” substitute “the initial period (within the meaning of section 34ZA) begins in relation to the merger notice”.
- (3) In subsection (5), for “the period for considering any merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to a merger notice”.

**Commencement Information**

**I13** Sch. 8 para. 10 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 11 (1) Section 100 (exceptions to protection given by merger notices) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a), for “Section 96(3) does not” substitute “Sections 22(3)(za) and 33(3)(za) do not”,
- (b) in those words, for “to the Commission” substitute “under section 22 or (as the case may be) 33”,
- (c) in paragraph (a), for “the period for considering the merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to the merger notice”,
- (d) omit paragraph (b),
- (e) in paragraph (c), omit the words from “by such time” to the end of the paragraph, and
- (f) in paragraph (e), for “the period for considering the merger notice” substitute “the initial period (within the meaning of section 34ZA) in relation to the merger notice”.
- (3) In subsection (2)—
- (a) in paragraph (a), for “section 22, 33 or 45” substitute “section 22 or 33”, and
- (b) in paragraph (b), for “section 96(3) does not” substitute “sections 22(3)(za) and 33(3)(za) do not”.
- (4) In subsection (3), for “Section 96(3) does not” substitute “Sections 22(3)(za) and 33(3)(za) do not”.

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**Commencement Information**

**I14** Sch. 8 para. 11 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 12 (1) Section 101 (merger notices: regulations) is amended as follows.
- (2) In subsection (2), in paragraph (a), omit “section 97(1), (2), (3) or (4) or”.
- (3) In that subsection, omit paragraphs (c) to (f).

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**Commencement Information**

**I15** Sch. 8 para. 12 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 13 (1) Section 124 (order and regulations under Part 3) is amended as follows.
- (2) In subsection (4)—
- (a) after “section” insert “ 34ZC(6), ”,
- (b) after “40(8),” insert “ 41B(6), ”, and
- (c) after “68,” insert “ , 73B(6), ”.
- (3) In subsection (5)—
- (a) after “67(7),” insert “ 34ZC(6), ”,
- (b) after “40(8),” insert “ 41B(6), ”, and
- (c) after “65(3),” insert “ 73B(6), ”.

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**Commencement Information**

**I16** Sch. 8 para. 13 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

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