



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 4

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

##### Textual Amendments

- F1** Words in Pt. 4 heading inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 8**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C1** Pt. 4 modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 73(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- C2** Pt. 4 modified in part (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 60(3)**, 110(1) (with ss. 60(4), 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(1)-(3)
- C3** Pt. 4 functions made exercisable concurrently (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 60(2)**, 110(1) (with s. 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(1)-(3)
- C4** Pt. 4 modified by 2012 c. 7, s. 73(3)(b) (as substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 189(4)(c)** (with art. 3))
- C5** Pt. 4 modified by 2000 c. 38, s. 86(4A) (as inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 154(6)** (with art. 3))
- C6** Pt. 4 modified (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 4 para. 57**; S.I. 2014/416, art. 2(1)(c) (with Sch.)
- C7** Pt. 4 modified by 2012 c. 19, s. 60(3A) (as inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 197(5)** (with art. 3))
- C8** Pt. 4 certain functions made exercisable concurrently (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **s. 59(1)-(5)**, 148(5); S.I. 2014/823, art.
- C9** Pt. 4 modified by 1991 c. 56, s. 31(4) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 84(5)(d)** (with art. 3))

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- C10** Pt. 4 modified by 1989 c. 29, s. 43(2B) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(4)(d)** (with art. 3))
- C11** Pt. 4 modified by 1986 c. 44, s. 36A (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 50(4)(d)** (with art. 3))
- C12** Pt. 4 modified by 1993 c. 43, s. 67(4)(d) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 105(4)(d)** (with art. 3))
- C13** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1988 c. 41, Sch. 7 para. 20(5)-(8) (as substituted by Enterprise Act 2002 (c. 40), ss. 185, 279, **Sch. 11 para. 11(3)**; S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C14** Pt. 4 (ss. 131-184) modified (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 23(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 22(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C15** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1993 c. 43, s. 67(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 21(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C16** Pt. 4 (ss. 131-184) modified (20.6.2003) by S.I. 1992/231 (N.I. 1), art. 46(2A)(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 20(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C17** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1991 c. 56, s. 31(4) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(3)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C18** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1991 c. 56, s. 31(2A) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 19(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C19** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1984 c. 12, s. 50(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 16(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.
- C20** Pt. 4 (ss. 131-184) modified (20.6.2003) by 1989 c. 29, s. 43(2B) (as substituted by Enterprise Act 2002 (c. 40), ss. 168(9), 279, **Sch. 9 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch.  
Pt. 4 (ss. 131-184) modified (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 370(3), 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(2)**  
Pt. 4 (ss. 131-184) modified (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), **29(4)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2)

## CHAPTER 1

### [<sup>F2</sup>MARKET STUDIES AND] MARKET INVESTIGATION REFERENCES

#### Textual Amendments

- F2** Words in Pt. 4 Ch. 1 heading inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 9**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### *[<sup>F3</sup>Market studies*

#### Textual Amendments

- F3** S. 130A and cross-heading inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 1**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### 130A Duty to publish market study notice

- (1) Where the CMA is proposing to carry out its functions under section 5 in relation to a matter for the purposes mentioned in subsection (2), the CMA must publish a notice under this section (referred to in this Part as a “market study notice”).
- (2) The purposes are—
  - (a) to consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the United Kingdom has or may have effects adverse to the interests of consumers; and
  - (b) to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.
- (3) A market study notice shall, in particular, specify—
  - (a) the matter in relation to which the CMA is proposing to carry out its functions under section 5;
  - (b) the period during which representations may be made to the CMA in relation to the matter; and
  - (c) the dates by which the CMA is required to comply with the requirements imposed on it by sections 131A and 131B.]

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

- C21** S. 130A applied (with modifications) by S.I. 2006/3336 (N.I. 21), art. 29(4A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(6\)](#) (with art. 3))
- C22** S. 130A applied (with modifications) by S.I. 1996/275 (N.I. 2), art. 23(2C) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 221\(5\)](#) (with art. 3))
- C23** S. 130A applied (with modifications) by S.I. 1992/231 (N.I. 1), art. 46(2C) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 216\(5\)](#) (with art. 3))
- C24** S. 130A applied (with modifications) by 2012 c. 19, s. 60(4A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 197\(7\)](#) (with art. 3))
- C25** S. 130A applied (with modifications) by 2012 c. 7, s. 73(3A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 189\(5\)](#) (with art. 3))
- C26** S. 130A applied (with modifications) by 2003 c. 21, s. 370(3A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 161\(5\)](#) (with art. 3))
- C27** S. 130A applied (with modifications) by 2000 c. 38, s. 86(5A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 154\(8\)](#) (with art. 3))
- C28** S. 130A applied (with modifications) by 1993 c. 43, s. 67(2C) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 105\(5\)](#) (with art. 3))
- C29** S. 130A applied (with modifications) by 1991 c. 56, s. 31(4ZA) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 84\(6\)](#) (with art. 3))
- C30** S. 130A applied (with modifications) by 1989 c. 29, s. 43(2C) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 65\(5\)](#) (with art. 3))

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- C31** S. 130A applied (with modifications) by 1986 c. 44, s. 36A(2C) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 50(5)** (with art. 3))
- C32** S. 130A modified (1.4.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 59(6), 148(5)**; S.I. 2014/823, art. 2(a)

### *Making of references*

#### **131 Power of [<sup>F4</sup>CMA] to make references**

- (1) [<sup>F5</sup>The CMA may, subject to subsection (4), make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA] has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (2) For the purposes of this Part any reference to a feature of a market in the United Kingdom for goods or services shall be construed as a reference to—
  - (a) the structure of the market concerned or any aspect of that structure;
  - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned; or
  - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- [<sup>F6</sup>(2A) In a case where the feature or each of the features concerned falls within subsection (2) (b) or (c), a reference under subsection (1) may be made in relation to more than one market in the United Kingdom for goods or services.]
- (3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.
- (4) No reference shall be made under this section if—
  - (a) the making of the reference is prevented by [<sup>F7</sup>section 156(A1) or (1)]; or
  - (b) a reference has been made under section 132 [<sup>F8</sup>or 140A(6)] in relation to the same matter but has not been finally determined.
- (5) References in this Part to a market investigation reference being finally determined shall be construed in accordance with section 183(3) to (6).
- (6) In this Part—
 

[<sup>F9</sup>“cross-market reference” means a reference under this section which falls within subsection (2A) or a reference under section 132 which falls within subsection (3A) of that section (and see section 140A);]

“market in the United Kingdom” includes—

  - (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory; and
  - (b) any market which operates only in a part of the United Kingdom;

“market investigation reference” means a reference under this section or section 132 [<sup>F10</sup>or 140A(6)];

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[<sup>F11</sup>“ordinary reference” means a reference under this section or section 132 which is not a cross-market reference (and see section 140A);] and references to a market for goods or services include references to a market for goods and services.

#### Textual Amendments

- F4** Word in s. 131 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 163\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in s. 131(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 163\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** S. 131(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(2\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F7** Words in s. 131(4)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(3\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F8** Words in s. 131(4)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 2\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(4\)\(a\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F10** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 2\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Words in s. 131(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 33\(4\)\(b\), 103\(3\)](#); S.I. 2014/416, art. 2(1)(b) (with Sch.)

#### [<sup>F12</sup>131A] Decisions about references under section 131: consultation

- (1) This section applies to a case where the CMA has published a market study notice and—
  - (a) the CMA is proposing to make a reference under section 131 in relation to the matter specified in the notice; or
  - (b) a representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that such a reference should be made but the CMA is proposing not to make such a reference.
- (2) The CMA shall—
  - (a) publish notice of the proposal concerned; and
  - (b) consult the relevant persons about the proposal, in such manner as it considers practicable, before deciding whether to make a reference.
- (3) The CMA may, for the purposes of subsection (1), ignore any representation which it considers to be frivolous or vexatious.
- (4) For the purposes of subsection (2), a person is a “relevant person” if the CMA considers that its decision whether to make a reference is likely to have a substantial impact on the person's interests.
- (5) In consulting a person for the purposes of this section, the CMA shall, so far as practicable, give its reasons for the proposal.
- (6) In considering what is practicable for the purposes of this section, the CMA shall, in particular, have regard to—

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- (a) the restrictions imposed by the time-table for making the decision (see section 131B); and
- (b) any need to keep what is proposed, or the reasons for it, confidential.

#### **Textual Amendments**

**F12** Ss. 131A-131C 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 2](#); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

### **131B Market studies and the making of decisions to refer: time-limits**

- (1) Where the CMA has published a market study notice in a case to which section 131A applies, the CMA shall, within the period of 6 months beginning with the date on which it publishes the notice—
  - (a) publish the notice under section 131A(2)(a); and
  - (b) begin the process of consultation under section 131A(2)(b) (but the CMA need not complete the process within that period).
- (2) Subsection (3) applies where—
  - (a) the CMA has published a market study notice;
  - (b) no representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that a reference under section 131 should be made in relation to the matter specified in the notice; and
  - (c) the CMA has decided not to make such a reference.
- (3) The CMA shall, within the period of 6 months beginning with the date on which it publishes the market study notice, publish notice of the decision not to make a reference.
- (4) Where the CMA has published a market study notice it shall, within the period of 12 months beginning with the date on which it publishes the notice, prepare and publish a report (referred to in this Part as a “market study report”) which sets out—
  - (a) the findings of the CMA in relation to the matter specified in the notice; and
  - (b) the action (if any) which the CMA proposes to take in relation to the matter.
- (5) In a case to which section 131A applies, the market study report shall, in particular, contain—
  - (a) the decision of the CMA to make a reference under section 131 in relation to the matter specified in the market study notice, the decision to accept an undertaking under section 154 instead of making such a reference or (as the case may be) the decision otherwise not to make such a reference;
  - (b) the CMA's reasons for the decision; and
  - (c) such information as the CMA considers appropriate for facilitating a proper understanding of its reasons for the decision.
- (6) Where a market study report contains a decision of the CMA to make a reference under section 131 in relation to a matter, the CMA shall, at the same time as it publishes the report, make the reference.
- (7) This section is subject to section 140A (duty of Secretary of State to refer in public interest intervention cases).



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#### Textual Amendments

**F12** Ss. 131A-131C 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 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 12 para. 2**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 131C Time-limits under section 131B: supplementary

- (1) The Secretary of State may by order amend section 131B so as to alter one or more of the following periods—
  - (a) the period of 6 months mentioned in subsection (1) or (3) or any period for the time being mentioned in either of those subsections in substitution for that period;
  - (b) the period of 12 months mentioned in subsection (4) or any period for the time being there mentioned in substitution for that period.
- (2) But no alteration may be made by virtue of subsection (1) which results in—
  - (a) the period for the time being mentioned in subsection (1) or (3) exceeding 6 months; or
  - (b) the period for the time being mentioned in subsection (4) exceeding 12 months.
- (3) Before making an order under this section the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.]

#### Textual Amendments

**F12** Ss. 131A-131C 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 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 12 para. 2**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 132 Ministerial power to make references

- (1) Subsection (3) applies where, in relation to any goods or services<sup>[F13]</sup>—
  - (a)] the appropriate Minister is not satisfied with a decision of the [F14CMA] not to make a reference under section 131<sup>[F15]</sup>; and
  - (b) in a case in which the CMA has published a market study notice under section 130A, the period permitted by section 131B for the preparation and publication by the CMA of the market study report has expired.]
- (2) Subsection (3) also applies where, in relation to any goods or services, the appropriate Minister—
  - (a) has brought to the attention of the [F14CMA] information which the appropriate Minister considers to be relevant to the question of whether the [F14CMA] should make a reference under section 131; but
  - (b) is not satisfied that the [F14CMA] will decide, within such period as the appropriate Minister considers to be reasonable, whether [F16]to publish a market study notice in relation to the matter concerned].

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- (3) The appropriate Minister may, subject to subsection (4), make a reference to the [F17 chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013] if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in the United Kingdom for goods or services prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- [F18(3A) In a case where the feature or each of the features concerned falls within section 131(2) (b) or (c), a reference under subsection (3) may be made in relation to more than one market in the United Kingdom for goods or services.]
- (4) No reference shall be made under this section if[F19—
- (a) the making of the reference is prevented by [F20section 156(A1) or (1)][F21]; or
  - (b) a reference has been made under section 140A(6) in relation to the same matter but has not been finally determined.]
- (5) In this Part “the appropriate Minister” means—
- (a) the Secretary of State; or
  - (b) the Secretary of State and one or more than one other Minister of the Crown acting jointly.

#### Textual Amendments

- F13** Word in s. 132(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 10(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14** Word in s. 132(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 164(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** S. 132(1)(b) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 10(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16** Words in s. 132(2)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 10(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17** Words in s. 132(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 164(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18** S. 132(3A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 34(2)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F19** Words in s. 132(4) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 3(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** Words in s. 132(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **ss. 34(3)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F21** Words in s. 132(4) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 3(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 133 Contents of references

- (1) A market investigation reference shall, in particular, specify—
- (a) the enactment under which it is made;
  - (b) the date on which it is made; F22...
  - (c) [F23; in the case of an ordinary reference,] the description of goods or services to which the feature or combination of features concerned relates[F24; and



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- (d) in the case of a cross-market reference, the feature or features concerned and the descriptions of goods or services to which it or they relate.]
- (2) A market investigation reference [F25] may be framed so as to require the [F25] group constituted by the chair of the CMA in respect of the reference] to confine its investigation into the effects of features of markets in the United Kingdom for goods or services of a description specified in the reference to the effects of features of such of those markets as exist in connection with—
- (a) a supply [F26] or, in the case of a cross-market reference, supplies], of a description specified in the reference, of the goods or services concerned; or
- (b) an acquisition [F27] or, in the case of a cross-market reference, acquisitions], of a description specified in the reference, of the goods or services concerned.
- (3) A description of the kind mentioned in subsection (2)(a) or (b) may, in particular, be by reference to—
- (a) the place where the goods or services are supplied or acquired; or
- (b) the persons by or to whom they are supplied or by or from whom they are acquired.

#### Textual Amendments

- F22** Word in s. 133(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F23** Words in s. 133(1)(c) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** S. 133(1)(d) and word inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(2\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F25** Words in s. 133(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 165](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F26** Words in s. 133(2)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Words in s. 133(2)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 2\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### *Determination of references*

#### [F28] 133A Functions to be exercised by CMA groups

- (1) Where a reference is made to the chair of the CMA under section 131, 132 or 140A for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions of this Part in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—
- (a) sections 134 to 138B, except for section 135(1);
- (b) sections 140B to 145, 148, 148A and 151;
- (c) sections 157 and 158;
- (d) section 159;
- (e) section 160, except for subsection (6) of that section;
- (f) section 161, except for subsection (5) of that section;

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- (g) section 162(4), so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
  - (h) section 164(2)(b), so far as relating to an enforcement order made on behalf of the CMA by the group;
  - (i) section 167, so far as relating to an enforcement undertaking or enforcement order made on behalf of the CMA by the group;
  - (j) section 168;
  - (k) section 169, so far as relating to a decision mentioned in paragraph (a)(iii) of the definition of relevant decision in subsection (6) of that section;
  - (l) section 172, so far as relating to anything done on behalf of the CMA by the group;
  - (m) section 174, where the permitted purpose in question relates to a function that (by virtue of this section) is being or is to be carried out on behalf of the CMA by the group;
  - (n) sections 174A to 174D, so far as relating to a notice given under section 174 on behalf of the CMA by the group;
  - (o) section 179(5)(b), so far as relating to a decision of the group;
  - (p) Schedule 10, so far as relating to an enforcement undertaking or enforcement order which the group is considering accepting or making, or which the group has accepted or made, on behalf of the CMA.
- (2) Nothing in subsection (1) prevents the CMA Board from carrying out a function of the CMA under or by virtue of the following provisions of this Part where the group constituted as mentioned in subsection (1) has ceased to exist—
- (a) section 160 and Schedule 10, so far as relating to the making of an order under section 160;
  - (b) sections 159 to 161 and Schedule 10, so far as relating to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
  - (c) section 162(4);
  - (d) section 164(2)(b);
  - (e) section 167.]

#### Textual Amendments

**F28** S. 133A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 166](#) (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

### 134 Questions to be decided on market investigation references

- (1) The [<sup>F29</sup>CMA] shall, on [<sup>F30</sup>an ordinary] reference, decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- [<sup>F31</sup>(1A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection

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with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]

(2) For the purposes of this Part, in relation to [<sup>F32</sup>an ordinary] reference, there is an adverse effect on competition if any feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

[<sup>F33</sup>(2A) For the purposes of this Part, in relation to a cross-market reference, there is an adverse effect on competition if a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]

(3) In subsections (1) and (2) “relevant market” means—

(a) in the case of subsection (2) so far as it applies in connection with a possible reference, a market in the United Kingdom—

(i) for goods or services of a description to be specified in the reference; and

(ii) which would not be excluded from investigation by virtue of section 133(2); and

(b) in any other case, a market in the United Kingdom—

(i) for goods or services of a description specified in the reference concerned; and

(ii) which is not excluded from investigation by virtue of section 133(2).

(4) The [<sup>F34</sup>CMA] shall, if it has decided on a market investigation reference that there is an adverse effect on competition, decide the following additional questions—

(a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;

(b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and

(c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(5) For the purposes of this Part, in relation to a market investigation reference, there is a detrimental effect on customers if there is a detrimental effect on customers or future customers in the form of—

(a) higher prices, lower quality or less choice of goods or services in any market in the United Kingdom (whether or not the market [<sup>F35</sup>or markets] to which the feature or features concerned relate); or

(b) less innovation in relation to such goods or services.

(6) In deciding the questions mentioned in subsection (4), the [<sup>F36</sup>CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition and any detrimental effects on customers so far as resulting from the adverse effect on competition.

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- (7) In deciding the questions mentioned in subsection (4), the [<sup>F36</sup>CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [<sup>F37</sup>or markets] concerned.
- (8) For the purposes of this Part a benefit is a relevant customer benefit of a feature or features of a market if—
- (a) it is a benefit to customers or future customers in the form of—
    - (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom (whether or not the market [<sup>F38</sup>or markets] to which the feature or features concerned relate); or
    - (ii) greater innovation in relation to such goods or services; and
  - (b) the [<sup>F39</sup>CMA or (as the case may be) the Secretary of State] believes that—
    - (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
    - (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

#### Textual Amendments

- F29** Word in s. 134(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F30** Words in s. 134(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** S. 134(1A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F32** Words in s. 134(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** S. 134(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F34** Word in s. 134(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F35** Words in s. 134(5)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** Word in s. 134(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Words in s. 134(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Words in s. 134(8)(a)(i) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 3(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F39** Words in s. 134(8)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 167(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C33** Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

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### 135 Variation of market investigation references

- (1) The [F40CMA] or (as the case may be) the appropriate Minister may at any time vary a market investigation reference made [F41] by it under section 131 or (as the case may be) by the appropriate Minister under section 132].
- (2) The Office of Fair Trading<sup>F42</sup> ... appropriate Minister shall consult the [F43CMA] before varying any such reference [F44] made by him].
- (3) Subsection (2) shall not apply if the [F45CMA] has requested the variation concerned.
- <sup>F46</sup>(4) .....

#### Textual Amendments

- F40** Word in s. 135(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Word in s. 135(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 4**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F42** Words in s. 135(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F43** Word in s. 135(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F44** Words in s. 135(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F45** Word in s. 135(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 168(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F46** S. 135(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 11**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 136 Investigations and reports on market investigation references

- (1) The [F47CMA] shall prepare and publish a report on a market investigation reference within the period permitted by section 137.
- (2) The report shall, in particular, contain—
  - (a) the decisions of the [F47CMA] on the questions which it is required to answer by virtue of section 134;
  - (b) its reasons for its decisions; and
  - (c) such information as the [F47CMA] considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions.
- (3) The [F47CMA] shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.
- [F48](4) Where a reference has been made by the appropriate Minister under section 132 the CMA shall, at the same time as the report under this section is published, give it to the appropriate Minister.]
- (5) Where a reference has been made by the [F49CMA] under section 131 or by the appropriate Minister under section 132 in circumstances in which a reference could have been made by a relevant sectoral regulator under section 131 as it has effect by virtue of a relevant sectoral enactment, the [F50CMA] shall, at the same time as the

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report under this section is published, give a copy of it to the relevant sectoral regulator concerned.

<sup>F51</sup>(6) .....

(7) In this Part “relevant sectoral enactment” means—

- (a) [<sup>F52</sup>in relation to the Director General of Telecommunications, section 50 of the Telecommunications Act 1984 (c. 12);]
- (b) in relation to the Gas and Electricity Markets Authority, section 36A of the Gas Act 1986 (c. 44) or (as the case may be) section 43 of the Electricity Act 1989 (c. 29);
- (c) in relation to [<sup>F53</sup>the Water Services Regulation Authority] , section 31 of the Water Industry Act 1991 (c. 56);
- (d) <sup>F54</sup> .....
- (e) in relation to the [<sup>F55</sup>Office of Rail Regulation], section 67 of the Railways Act 1993 (c. 43);
- (f) <sup>F56</sup> .....
- (g) in relation to the Civil Aviation Authority, section 86 of the Transport Act 2000 (c. 38). [<sup>F57</sup> or section 60 of the Civil Aviation Act 2012;]
- [<sup>F58</sup>(h) in relation to the Office of Communications, sections 370 and 371 of the Communications Act 2003.]
- [<sup>F59</sup>(h) in relation to the Northern Ireland Authority for Utility Regulation, Article 46 of the Electricity (Northern Ireland) Order 1992, Article 23 of the Gas (Northern Ireland) Order 1996 or Article 29 of the Water and Sewerage Services (Northern Ireland) Order 2006.]
- [<sup>F60</sup>(i) in relation to Monitor, section 73 of the Health and Social Care Act 2012.]
- [<sup>F61</sup>(j) in relation to the Payment Systems Regulator, section 59 of the Financial Services (Banking Reform) Act 2013.]

(8) In this Part “relevant sectoral regulator” means [<sup>F62</sup>the Director General of Telecommunications] , the Gas and Electricity Markets Authority, [<sup>F53</sup>the Water Services Regulation Authority], <sup>F63</sup> . . . , the [<sup>F55</sup>Office of Rail Regulation], <sup>F64</sup> . . . , the Civil Aviation Authority or the Office of [<sup>F65</sup>Communications,] the Northern Ireland Authority for Utility Regulation<sup>F66</sup>, Monitor or the Payment Systems Regulator.]

(9) The Secretary of State may by order modify subsection (7) or (8).

[<sup>F67</sup>(10) In this section “the Payment Systems Regulator” means the body established under section 40 of the Financial Services (Banking Reform) Act 2013.]

#### Textual Amendments

- F47** Word in s. 136(1)-(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(2013 c. 24\)](#), s. 26(3), **Sch. 5 para. 169(2)** (with s. 28); S.I. 2014/416, **art. 2(1)(d) Sch.**
- F48** S. 136(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 169(3)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F49** Word in s. 136(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 169(4)(a)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F50** Word in s. 136(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 169(4)(b)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F51** S. 136(6) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 169(5)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)



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- F52** S. 136(7)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F53** Words in s. 136(7)(c)(8) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(2)**; S.I. 2005/2714, **art. 4(f)**
- F54** S. 136(7)(d) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt II (subject to art. 3, Sch. 2)
- F55** Words in s. 136 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**
- F56** S. 136(7)(f) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F57** Words in s. 136(7)(g) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), **ss. 61(11)**, 110(1) (with s. 77(1)-(3), Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(1)-(3)
- F58** S. 136(7)(h) inserted (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(4)(a)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F59** S. 136: para. (h) added "at the end" of s. 136(7) (N.I.) (1.4.2007) by virtue of The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 408, **Sch. 12 para. 46(1)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F60** S. 136(7)(i) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(6)(a)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F61** S. 136(7)(j) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 67(3)(a)**, 148(5); S.I. 2014/823, art. 2(g)
- F62** S. 136(8): words "the Director of Telecommunications" are repealed (25.7.2003 for certain purposes and 29.12.2003 for certain further purposes) by virtue of Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)(2)** (with art. 11)
- F63** Words in s. 136(8) repealed (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F64** Words in s. 136(8) repealed (N.I.) (1.4.1007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 13** (arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F65** Words in s. 136(8) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(6)(b)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F66** Words in s. 136(8) substituted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 67(3)(b)**, 148(5); S.I. 2014/823, art. 2(g)
- F67** S. 136(10) inserted (1.4.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 67(3)(c)**, 148(5); S.I. 2014/823, art. 2(g)

### 137 Time-limits for market investigations and reports

- (1) The [<sup>F68</sup>CMA] shall prepare and publish its report under section 136 within the period of [<sup>F69</sup>18 months] beginning with the date of the market investigation reference concerned.
- (2) Subsection (1) is subject to section 151(3) and (5).

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- [<sup>F70</sup>(2A) The CMA may extend, by no more than 6 months, the period within which its report under section 136 is to be prepared and published if it considers that there are special reasons for doing so.
- (2B) An extension under subsection (2A) shall come into force when published under section 172.
- (2C) No more than one extension is possible under subsection (2A).]
- [<sup>F71</sup>(3) The Secretary of State may by order amend this section so as to alter one or more of the following periods—
- (a) the period of 18 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
  - (b) the period of 6 months mentioned in subsection (2A) or any period for the time being there mentioned in substitution for that period.]

[<sup>F72</sup>(4) But no alteration shall be made by virtue of subsection (3) which results in—

    - (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
    - (b) the period for the time being mentioned in subsection (2A) exceeding 6 months.]

(5) An order under subsection (3) shall not affect any period of time within which the [<sup>F73</sup>CMA] is under a duty to prepare and publish its report under section 136 in relation to a market investigation reference if the [<sup>F73</sup>CMA] is already under that duty in relation to that reference when the order is made.

(6) Before making an order under subsection (3) the Secretary of State shall consult the [<sup>F74</sup>CMA] and such other persons as he considers appropriate.

(7) References in this Part to the date of a market investigation reference shall be construed as references to the date specified in the reference as the date on which it is made.

#### Textual Amendments

- F68** Word in s. 137(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** Words in s. 137(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F70** S. 137(2A)-(2C) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F71** S. 137(3) substituted (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), s. 103(1)(i)(3), **Sch. 12 para. 3(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** S. 137(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 3(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F73** Word in s. 137(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F74** Word in s. 137(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 170** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### 138 Duty to remedy adverse effects

- (1) Subsection (2) applies where a report of the [F75CMA] has been prepared and published under section 136 within the period permitted by section 137 and contains the decision that there is one or more than one adverse effect on competition.
- (2) The [F75CMA] shall, [F76within the period permitted by section 138A,] in relation to each adverse effect on competition, take such action under section 159 or 161 as it considers to be reasonable and practicable—
  - (a) to remedy, mitigate or prevent the adverse effect on competition concerned; and
  - (b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the adverse effect on competition.
- (3) The decisions of the [F75CMA] under subsection (2) shall be consistent with its decisions as included in its report by virtue of section 134(4) unless there has been a material change of circumstances since the preparation of the report or the [F75CMA] otherwise has a special reason for deciding differently.
- (4) In making a decision under subsection (2), the [F75CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (5) In making a decision under subsection (2), the [F75CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [F77or markets] concerned.
- (6) The [F75CMA] shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
  - (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.

#### Textual Amendments

- F75** Word in s. 138(1)-(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(2013 c. 24\), s. 26\(3\), Sch. 5 para. 171](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\) Sch.](#)
- F76** Words in s. 138(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 12 para. 4](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)
- F77** Words in s. 138(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 9 para. 4](#); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with Sch.)

### [F78]138A Time-limits for discharging duty under section 138

- (1) The CMA shall discharge its duty under section 138(2) within the period of 6 months beginning with the date on which it publishes the report concerned under section 136.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (2) The CMA may extend, by no more than 4 months, the period within which its duty under section 138(2) is required to 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 138(2) is required to be discharged if it considers that—
  - (a) a person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 174 which was given in relation to the reference; and
  - (b) the failure is preventing the CMA from properly discharging its duty under section 138(2).
- (4) An extension under subsection (2) or (3) shall come into force when published under section 172.
- (5) 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.

#### **Textual Amendments**

**F78** Ss. 138A, 138B 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 5](#); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

#### **138B Section 138A: supplementary**

- (1) A period extended under section 138A(2) may also be extended under section 138A(3), and a period extended under section 138A(3) may also be extended under section 138A(2).
- (2) No more than one extension is possible under section 138A(2).
- (3) Where a period is extended or further extended under section 138A(2) or (3), 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 within which the CMA shall discharge its duty under section 138(2) is further extended;
  - (b) the further extension and at least one previous extension is made under section 138A(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) shall be disregarded.
- (6) The Secretary of State may by order amend section 138A so as to alter one or more of the following periods—

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (a) the period of 6 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
  - (b) the period of 4 months mentioned in subsection (2) or any period for the time being there mentioned in substitution for that period.
- (7) But no alteration shall be made by virtue of subsection (6) which results in—
- (a) the period for the time being mentioned in section 138A(1) exceeding 6 months; or
  - (b) the period for the time being mentioned in section 138A(2) exceeding 4 months.
- (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.]

#### Textual Amendments

**F78** Ss. 138A, 138B 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 5](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## CHAPTER 2

### PUBLIC INTEREST CASES

#### *Intervention notices*

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

[<sup>F79</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>F79</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>F79</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 has expired and no such report has been prepared or published, the end of that period.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (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>[F80]</sup>, within the permitted period,] give a notice to the <sup>[F81]</sup>CMA] if—
- (a) the <sup>[F81]</sup>CMA] is considering whether to accept—
    - (i) an undertaking under section 154 instead of making a reference under section 131 <sup>[F82]</sup>in relation to the matter]; or
    - (ii) an undertaking varying or superseding any such undertaking;
  - (b) the <sup>[F81]</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>[F83]</sup>proposal to accept the undertaking].
- <sup>[F84]</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>[F85]</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>[F86]</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 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (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

- F79** 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.)
- F80** 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.)
- F81** 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.)
- F82** 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.)
- F83** 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.)
- F84** 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.)
- F85** 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)**
- F86** 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.)

#### *Intervention notices under section 139(1)*

#### **140 Intervention notices under section 139(1)**

- (1) An intervention notice under section 139(1) shall state—
- <sup>F87</sup>(a) the matter to which the market study notice or (as the case may be) the consultation under section 169 concerned relates;
  - (b) the date of publication of that notice or (as the case may be) on which the process of consultation began;
  - (c) the public interest consideration or considerations which are, or may be, relevant to the <sup>F88</sup>matter]; and
  - (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the <sup>F89</sup>matter], he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

(3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(1) and which is in force.

(4) An intervention notice under section 139(1) shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.

[<sup>F90</sup>(4A) An intervention notice under section 139(1) shall also cease to be in force if—

- (a) it mentions a public interest consideration which was not finalised on the giving of the notice or public interest considerations which, at that time, were not finalised;
- (b) no other public interest consideration is mentioned in the notice;
- (c) at least 24 weeks has elapsed since the giving of the notice;
- (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks; and
- (e) the Secretary of State has not, by the end of that period of 24 weeks, made a reference under section 140A in relation to the matter.

(4B) Subsection (4D) applies in a case where—

- (a) an intervention notice ceases to be in force in accordance with subsection (4A);
- (b) the CMA has, before the time at which the notice ceases to be in force, prepared a market study report in relation to the matter within the period permitted by section 131B(4) and given it to the Secretary of State in accordance with section 140A(3)(b); and
- (c) the report contains the decision of the CMA that it should make a reference in relation to the matter concerned under section 131.

(4C) Subsection (4D) also applies in a case where—

- (a) an intervention notice ceases to be in force in accordance with subsection (4A); and
- (b) the CMA has, before the time at which the notice ceases to be in force—
  - (i) decided that it should make an ordinary reference or a cross-market reference under section 131 in relation to the matter concerned; and
  - (ii) given a document containing its decision, the reasons for it and such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision to the Secretary of State in accordance with section 140A(3)(c).

(4D) In a case to which this subsection applies—

- (a) the CMA shall, as soon as reasonably practicable, make a reference in relation to the matter under section 131; and
- (b) the reference is to be treated for the purposes of this Part as having been made in accordance with the requirements imposed by this Part.]

(5) For the purposes of subsection (4) a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter if—

- [<sup>F91</sup>(za) the CMA accepts an undertaking under section 154 instead of making a reference under section 131 in relation to the matter;

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*Status: Point in time view as at 01/04/2014.*

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- (zb) the CMA publishes notice that it has otherwise decided not to make a reference under section 131 in relation to the matter;
- (zc) the period permitted for the preparation by the CMA of the market study report in relation to the matter and for the report to be published under section 131B(4) or (as the case may be) given to the Secretary of State under section 140A(3) has expired and no such report has been so prepared or no such action has been taken;
- (zd) the Secretary of State makes a reference under section 140A(5) in relation to the matter;]
  - (a) the period permitted by section 144 for the preparation of the report of the [<sup>F92</sup>CMA] under section 142 and for action to be taken in relation to it under section 143(1) or (3) [<sup>F93</sup>or (as the case may be) 143A(2) or (3)] has expired and no such report has been so prepared or no such action has been taken;
  - (b) the [<sup>F92</sup>CMA] decides under section 145(1) to terminate its investigation;
  - (c) the report of the [<sup>F92</sup>CMA] has been prepared under section 142 and published under section 143(1) [<sup>F94</sup>or (as the case may be) 143A(2) ] within the period permitted by section 144;
  - (d) the Secretary of State fails to make and publish a decision under subsection (2) of section 146 within the period required by subsection (3) of that section [<sup>F95</sup>or (as the case may be) fails to make and publish a decision under subsection (2) of section 146A within the period required by subsection (6) of that section];
  - (e) the Secretary of State decides under section 146(2) that no eligible public interest consideration is relevant [<sup>F96</sup>or (as the case may be) decides under section 146A(2) to make no finding at all in relation to the matter];
  - (f) the Secretary of State decides under section 147(2) [<sup>F97</sup>or (as the case may be) 147A(2)] neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (g) the Secretary of State accepts an undertaking under section 159 or makes an order under section 161; or
  - (h) the Secretary of State decides to revoke the intervention notice concerned.
- (6) For the purposes of subsections (4) and (5) the time when a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter is—
  - [<sup>F98</sup>(za) in a case falling within subsection (5)(za), the acceptance of the undertaking concerned;
  - (zb) in a case falling within subsection (5)(zb), the publication of the notice concerned;]
    - (a) in a case falling within subsection (5)[<sup>F99</sup>(zc),] (a) or (d), the expiry of the period concerned;
  - [<sup>F100</sup>(aa) in a case falling within subsection (5)(zd), the making of the reference concerned;]
    - (b) in a case falling within subsection (5)(b), (e), (f) or (h), the making of the decision concerned;
    - (c) in a case falling within subsection (5)(c), the publication of the report concerned; and
    - (d) in a case falling within subsection (5)(g), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

[<sup>F101</sup>(6A) In subsection (6)(za) the reference to the acceptance of the undertaking concerned 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 subsections (5)(za) and (6)(za).]

(7) In subsection (6)(d) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action under section 147(2) [<sup>F102</sup>or (as the case may be) 147A(2)] involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (5)(g) and (6)(d).

#### Textual Amendments

- F87** S. 140(1)(a)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F88** Word in s. 140(1)(c) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Word in s. 140(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F90** S. 140(4A)-(4D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F91** S. 140(5)(za)-(zd) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F92** Word in s. 140(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 173** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F93** Words in s. 140(5)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F94** Words in s. 140(5)(c) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F95** Words in s. 140(5)(d) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F96** Words in s. 140(5)(e) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(e)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F97** Words in s. 140(5)(f) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(f)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F98** S. 140(6)(za)-(zb) inserted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F99** Word in s. 140(6)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F100** S. 140(6)(aa) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F101** S. 140(6A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F102** Words in s. 140(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

**[<sup>F103</sup>140] Section 139(1) intervention notices: Secretary of State's duty to refer**

- (1) This section applies where—
  - (a) the CMA has prepared a market study report in relation to a matter within the period permitted by section 131B(4);
  - (b) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA would (but for this section) be required to publish the report; and
  - (c) the report contains the decision of the CMA that it should make an ordinary reference or a cross-market reference in relation to the matter under section 131.
- (2) This section also applies where—
  - (a) the CMA has conducted a consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section;
  - (b) the CMA has decided that it should make an ordinary reference or a cross-market reference in relation to the matter concerned under section 131; and
  - (c) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA makes that decision.
- (3) The CMA—
  - (a) shall not exercise the power under section 131 to refer the matter;
  - (b) in a case falling within subsection (1), shall not publish the market study report under section 131B(4) and shall instead, within the period mentioned in section 131B(4), give the report to the Secretary of State; and
  - (c) in a case falling within subsection (2), shall give to the Secretary of State a document containing—
    - (i) its decision and the reasons for its decision; and
    - (ii) such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision.
- (4) The Secretary of State shall decide whether any public interest consideration which was mentioned in the intervention notice is relevant to the matter in question.
- (5) Where the Secretary of State decides that there is no relevant public interest consideration—
  - (a) the Secretary of State shall (in accordance with the CMA's decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013; and
  - (b) the reference is to be treated for the purposes of this Part as an ordinary reference or (as the case may be) a cross-market reference made under section 131 in accordance with the requirements imposed by this Part.
- (6) Where the Secretary of State decides that there is one or more than one relevant public interest consideration, the Secretary of State shall (in accordance with the CMA's decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (7) The Secretary of State shall specify in a reference made under subsection (6)—
  - (a) the relevant public interest consideration or considerations; and

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- (b) whether the reference is a restricted PI reference or a full PI reference (as to which, see sections 141 and 141A respectively).
- (8) Where the Secretary of State makes a full PI reference under subsection (6), the reference shall also specify whether the Secretary of State proposes to appoint a public interest expert under section 141B.
- (9) For the purposes of this Part, a reference under subsection (6) is to be treated—
- (a) in a case where the decision of the CMA was that it should make an ordinary reference, as an ordinary reference;
  - (b) in a case where the decision of the CMA was that it should make a cross-market reference, as a cross-market reference.
- (10) In a case falling within subsection (1), the Secretary of State shall publish the market study report concerned at the same time as the Secretary of State makes a reference under this section.
- (11) In a case falling within subsection (2), the Secretary of State shall publish the document given to the Secretary of State by the CMA under subsection (3)(c), at the same time as the Secretary of State makes a reference under this section.
- (12) In this Part—
- “full PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a full PI reference;
- “restricted PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a restricted PI reference.]

#### Textual Amendments

**F103** S. 140A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 35(8)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

#### [<sup>F104</sup>140B] Variation of restricted PI references and full PI references

- (1) The Secretary of State may at any time vary a restricted PI reference or a full PI reference.
- (2) The Secretary of State shall consult the CMA before varying any such reference.
- (3) But subsection (2) does not apply if the CMA requested the variation concerned.
- (4) No variation under this section is capable of altering the public interest consideration or considerations specified in the reference.]

#### Textual Amendments

**F104** S. 140B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 10 para. 6**; [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### 141 [<sup>F105</sup>Restricted PI references: questions to be decided by CMA]

- [<sup>F106</sup>(1) This section applies where the Secretary of State makes a restricted PI reference.]



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*Status: Point in time view as at 01/04/2014.*

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(2) The [F107CMA] shall [F108, on an ordinary reference,] decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

[F109(2A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]

(3) The [F110CMA] shall, if it has decided that there is an adverse effect on competition, decide the following additional questions—

- (a) whether action should be taken by the Secretary of State under section 147 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the [F110CMA] should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(4) The [F110CMA] shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148(1))—

- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the [F110CMA] should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(5) In deciding the questions mentioned in subsections (3) and (4), the [F110CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.

(6) In deciding the questions mentioned in subsections (3) and (4), the [F110CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [F111or markets] concerned.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

- F105** S. 141 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 7\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F106** S. 141(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 7\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F107** Word in s. 141(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 174](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F108** Words in s. 141(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 5\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F109** S. 141(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 5\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F110** Words in s. 141(3)-(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 174](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F111** Words in s. 141(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 5\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

- C34** Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by [1977 c. 37, s. 50A\(6\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 8\(2\)](#)); S.I. 2003/1397 {art. 2(1)}, Sch. (with art. 8)

## [<sup>F112</sup>141A] Full PI references: questions to be decided by CMA

- (1) This section applies where the Secretary of State makes a full PI reference.
- (2) The CMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (3) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (4) The CMA shall, if it has decided that there is an adverse effect on competition, decide whether, taking account only of any adverse effect on competition and the admissible public interest consideration or considerations concerned, any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (5) The CMA shall, if it has decided that any such feature or combination of features operates or may be expected to operate against the public interest, also decide separately the following additional questions—
  - (a) whether action should be taken by the Secretary of State under section 147A for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned;
  - (b) whether the CMA should recommend the taking of other action by the Secretary of State, or action by persons other than itself and the Secretary of

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

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- State, for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (6) The CMA shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148A(2))—
- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the CMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (7) In a case where the Secretary of State has appointed a public interest expert under section 141B in relation to a full PI reference, the CMA shall, in deciding the questions mentioned in subsections (4) and (5), have regard, in particular, to the views of the expert.
- (8) In deciding the questions mentioned in subsection (5), the CMA shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
- (b) any detrimental effects on customers so far as resulting from those effects.
- (9) In deciding the questions mentioned in subsection (6), the CMA shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned; and
- (b) any detrimental effects on customers so far as resulting from it.
- (10) In deciding the questions mentioned in subsections (5) and (6), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.
- (11) In this section, “admissible public interest consideration” means any public interest consideration specified in the reference concerned and which the CMA is not under a duty to disregard.

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**Textual Amendments**

**F112** Ss. 141A, 141B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 35(9), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### **141B Full PI references: power of Secretary of State to appoint expert**

- (1) This section applies where the Secretary of State makes a full PI reference.
- (2) The Secretary of State may appoint one or more than one person to advise the CMA on the questions mentioned in subsections (4) and (5) of section 141A in relation to the reference.
- (3) A person so appointed shall be a person who appears to the Secretary of State to have particular knowledge of, or expertise in, matters relating to a public interest consideration specified in the reference.
- (4) Each person so appointed is referred to in this Part as a “public interest expert”.
- (5) The terms and conditions of appointment of a public interest expert (including, in particular, as to remuneration) are to be determined by the Secretary of State.
- (6) Any appointment of a public interest expert under this section shall be made within the period of 2 months beginning with the date of the reference concerned.
- (7) Before appointing a public interest expert the Secretary of State shall consult the chair of the CMA.]

#### **Textual Amendments**

**F112** Ss. 141A, 141B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(9\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)

### **142 Investigations and reports by <sup>F113</sup>CMA]**

- (1) <sup>F114</sup>Where the Secretary of State makes a restricted PI reference or a full PI reference, the CMA] shall prepare a report on the reference and take action in relation to it under section 143(1) or (3) <sup>F115</sup>or (as the case may be) 143A(2) or (3)] within the period permitted by section 144.
  - (2) The report shall, in particular, contain—
    - (a) the decisions of the <sup>F116</sup>CMA] on the questions which it is required to answer by virtue of section 141 <sup>F117</sup>or (as the case may be) 141A];
    - (b) its reasons for its decisions; <sup>F118</sup>...
    - (c) such information as the <sup>F116</sup>CMA] considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions<sup>F119</sup>; and
    - (d) in the case of a report in relation to a full PI reference in respect of which the Secretary of State appointed a public interest expert, a summary of the views of the expert.]
- <sup>F120</sup>(2A) A summary of the views of a public interest expert in a report under this section shall be approved by the expert before action is taken in relation to the report under section 143A(2) or (3).]
- (3) The <sup>F116</sup>CMA] shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

- F113** Word in s. 142 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 175\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F114** Words in s. 142(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F115** Words in s. 142(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F116** Word in s. 142(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 175\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F117** Words in s. 142(2)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F118** Word in s. 142(2) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F119** S. 142(2)(d) and word inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(3\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F120** S. 142(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 8\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 143 [F121 Restricted PI references: publication]

[F122(A1) This section applies in relation to a report prepared under section 142 in respect of a restricted PI reference.]

- (1) The [F123 CMA] shall publish [F124 the report] if it contains—
  - (a) the decision of the [F123 CMA] that there is no adverse effect on competition; or
  - (b) the decisions of the [F123 CMA] that there is one or more than one adverse effect on competition but, on the question mentioned in section 141(4)(a) and in relation to each adverse effect on competition, that no action should be taken by it.

[F125(2) . . . . .]

- (3) Where [F126 the report] contains the decisions of the [F127 CMA] that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it, the [F127 CMA] shall give the report to the Secretary of State.

- (4) The Secretary of State shall publish, no later than publication of his decision under section 146(2) in relation to the case, a report of the [F127 CMA] given to him under subsection (3) and not required to be published by virtue of section 148(2).

[F128(5) . . . . .]

[F128(6) . . . . .]

[F128(7) . . . . .]

[F128(8) . . . . .]

### Textual Amendments

- F121** S. 143 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 9\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F122** S. 143(A1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F123** Word in s. 143(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 176** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F124** Words in s. 143(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F125** S. 143(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F126** Words in s. 143(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F127** Word in s. 143(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 176** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F128** S. 143(5)-(8) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F129</sup>143A] Full PI references: publication etc of reports of CMA

- (1) This section applies in relation to a report prepared under section 142 in respect of a full PI reference.
- (2) The CMA shall publish the report if it contains—
  - (a) the decision of the CMA that there is no adverse effect on competition;
  - (b) the decision of the CMA that there is an adverse effect on competition but that the feature or combination of features which gave rise to it does not operate and may not be expected to operate against the public interest; or
  - (c) the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest but, on the question mentioned in section 141A(5)(a), and in relation to each effect adverse to the public interest concerned, that no action should be taken by the Secretary of State.
- (3) The CMA shall give the report to the Secretary of State if it contains the decisions of the CMA—
  - (a) that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest; and
  - (b) in relation to at least one effect adverse to the public interest concerned, that action should be taken by the Secretary of State.
- (4) The Secretary of State shall publish, no later than publication of the Secretary of State's decision under section 146A(2) in relation to the case, a report of the CMA given to the Secretary of State under subsection (3) and not required to be published by virtue of section 148A(3).]

#### Textual Amendments

- F129** S. 143A inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 10**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

#### 144 Time-limits for investigations and reports: Part 4

- (1) The [<sup>F130</sup>CMA] shall, within the period of [<sup>F131</sup>18 months] beginning with [<sup>F132</sup>the relevant date], prepare its report under section 142 and [<sup>F133</sup>publish it under section 143(1) or 143A(2) or (as the case may be) give it to the Secretary of State in accordance with section 143(3) or 143A(3). ]

[<sup>F134</sup>(1A) For the purposes of subsection (1), the “relevant date” is—

- (a) in the case of a report in relation to a restricted PI reference or to a full PI reference which specifies that the Secretary of State does not propose to appoint a public interest expert, the date of the reference;
- (b) in the case of a report in relation to a full PI reference which specifies that the Secretary of State proposes to appoint a public interest expert, the earliest of the following—
  - (i) the date of the appointment of the expert;
  - (ii) the date on which the Secretary of State gives notice to the CMA that the Secretary of State no longer intends to appoint such an expert;
  - (iii) the end of the period of 2 months beginning with the date of the reference.]

[<sup>F135</sup>(1B) The CMA may extend, by no more than 6 months, the period within which its report under section 142 is to be prepared and action is to be taken in relation to it under section 143(1) or (3) or (as the case may be) 143A(2) or (3) if it considers that there are special reasons for doing so.

(1C) An extension under subsection (1B) shall come into force when published under section 172.

(1D) No more than one extension is possible under subsection (1B).]

(2) The Secretary of State may by order amend [<sup>F136</sup>—

- (a) subsection (1) so as to alter the period of [<sup>F137</sup>18 months] mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period[<sup>F138</sup>;
- (b) subsection (1B) so as to alter the period of 6 months mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.]

(3) No alteration shall be made by virtue of subsection (2) which results in [<sup>F139</sup>—

- (a) the period for the time being mentioned in subsection (1) exceeding [<sup>F140</sup>18 months][<sup>F141</sup>; or
- (b) the period for the time being mentioned in subsection (1B) exceeding 6 months.]

(4) An order under subsection (2) shall not affect any period of time within which, in relation to a market investigation reference, the [<sup>F142</sup>CMA] is under a duty to prepare its report under section 142 and take action in relation to it under section 143(1) or (3) [<sup>F143</sup>or (as the case may be) 143A(2) or (3)] if the [<sup>F142</sup>CMA] is already under that duty in relation to that reference when the order is made.

(5) Before making an order under subsection (2) the Secretary of State shall consult the [<sup>F144</sup>CMA] and such other persons as he considers appropriate.



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

- F130** Word in s. 144(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 177** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F131** Words in s. 144(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F132** Words in s. 144(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 11(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F133** Words in s. 144(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 11(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F134** S. 144(1A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 11(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F135** S. 144(1B)-(1D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F136** Word in s. 144(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F137** Words in s. 144(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F138** S. 144(2)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(4)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F139** Word in s. 144(3) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F140** Words in s. 144(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F141** S. 144(3)(b) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F142** Word in s. 144(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 177** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F143** Words in s. 144(4) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 11(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F144** Word in s. 144(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 177** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 145 Restrictions where public interest considerations not finalised: Part 4

- (1) The [<sup>F145</sup>CMA] shall terminate its investigation under section 142 if—
- the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
  - no other public interest consideration is mentioned in the notice;
  - at least 24 weeks has elapsed since the giving of the notice; and
  - the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.
- (2) Where the intervention notice concerned mentions a public interest consideration which is not finalised on the giving of the notice, the [<sup>F145</sup>CMA] shall not give its report under section 142 to the Secretary of State in accordance with section 143(3) [<sup>F146</sup> or (as the case may be) 143A(3)] unless the period of 24 weeks beginning with the giving

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of the intervention notice concerned has expired or the public interest consideration concerned has been finalised.

- (3) The [<sup>F145</sup>CMA] shall, in reporting on any of the questions mentioned in section 141(3) [<sup>F147</sup>or (as the case may be) 141A(4) and (5)], disregard any public interest consideration which has not been finalised before the giving of the report.
- (4) The [<sup>F145</sup>CMA] shall, in reporting on any of the questions mentioned in section 141(3) [<sup>F148</sup>or (as the case may be) 141A(4) and (5)], disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.
- (5) Subsections (1) to (4) are without prejudice to the power of the [<sup>F145</sup>CMA] to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

#### Textual Amendments

- F145** Word in s. 145(1)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 178](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F146** Words in s. 145(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 12\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F147** Words in s. 145(3) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 12\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F148** Words in s. 145(4) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 10 para. 12\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 146 [<sup>F149</sup>Restricted PI references:] decision of Secretary of State

- (1) Subsection (2) applies where the Secretary of State has received a [<sup>F150</sup>report of the CMA in relation to a restricted PI reference] which—
  - (a) has been prepared under section 142;
  - (b) contains the decisions that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it; and
  - (c) has been given to the Secretary of State as required by section 143(3).
- (2) The Secretary of State shall decide whether—
  - (a) any eligible public interest consideration is relevant; or
  - (b) any eligible public interest considerations are relevant;to any action which is mentioned in the report by virtue of section 141(4)(a) and (c) and which the [<sup>F151</sup>CMA] should take for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted or may be expected to result from any adverse effect on competition.
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the [<sup>F151</sup>CMA] under section 142.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (4) In this section “eligible public interest consideration” means a public interest consideration which—
- (a) was mentioned in the intervention notice concerned; and
  - (b) was not disregarded by the [<sup>F151</sup>CMA] for the purposes of its report under section 142.

#### Textual Amendments

- F149** Words in s. 146 heading inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 13\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F150** Words in s. 146(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 13\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F151** Word in s. 146(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 179](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F152</sup>146A] Full PI references: decision of Secretary of State

- (1) Subsection (2) applies where the Secretary of State has received a report of the CMA in relation to a full PI reference which—
  - (a) has been prepared under section 142;
  - (b) contains the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features that gave rise to an adverse effect on competition operates or may be expected to operate against the public interest and that, in relation to at least one effect adverse to the public interest concerned, action should be taken by the Secretary of State; and
  - (c) has been given to the Secretary of State as required by section 143A(3).
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the matter and whether to make no finding at all in the matter.
- (3) For the purposes of this Part, the Secretary of State makes an adverse public interest finding in relation to a matter if, in relation to that matter, the Secretary of State decides—
  - (a) that there is an adverse effect on competition;
  - (b) that there is one or more than one admissible public interest consideration which is relevant to the matter; and
  - (c) taking account only of any adverse effect on competition and any relevant admissible public interest consideration or considerations, that any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (4) The Secretary of State may make no finding at all in a matter only if the Secretary of State decides that there is no admissible public interest consideration which is relevant to a consideration of the matter concerned.
- (5) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept the decision of the CMA as to whether there is an adverse effect on competition in relation to the matter.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (6) The Secretary of State shall make and publish the decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the CMA under section 142.
- (7) In this section “admissible public interest consideration” means a public interest consideration which—
- (a) was mentioned in the intervention notice concerned; and
  - (b) was not disregarded by the CMA for the purposes of its report under section 142.]

#### Textual Amendments

**F152** S. 146A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 14](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### 147 [F153] **Restricted PI references:] remedial action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State—
- (a) has decided under subsection (2) of section 146 within the period required by subsection (3) of that section that an eligible public interest consideration is relevant as mentioned in subsection (2) of that section or eligible public interest considerations are so relevant; and
  - (b) has published his decision within the period required by subsection (3) of that section.
- (2) The Secretary of State may, in relation to any adverse effect on competition identified in the report concerned, take such action under section 159 or 161 as he considers to be—
- (a) reasonable and practicable—
    - (i) to remedy, mitigate or prevent the adverse effect on competition concerned; or
    - (ii) to remedy, mitigate or prevent any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (b) appropriate in the light of the eligible public interest consideration concerned or (as the case may be) the eligible public interest considerations concerned.
- (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition; and
  - (b) the report of the [F154]CMA ] under section 142.
- (4) In having regard by virtue of subsection (3) to the report of the [F154]CMA] under section 142, the Secretary of State shall not challenge the decision of the [F154]CMA] contained in the report that there is one or more than one adverse effect on competition.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (5) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [<sup>F155</sup>or markets] concerned.
- (6) The Secretary of State shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
- (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.
- (7) In this section “eligible public interest consideration” has the same meaning as in section 146.

#### Textual Amendments

**F153** Words in s. 147 heading inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 15](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F154** Word in s. 147(3)(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 180](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F155** Words in s. 147(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 6](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F156</sup>147A] Full PI references: remedial action by Secretary of State

- (1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 146A within the period required by subsection (6) of that section to make an adverse public interest finding in relation to a matter and has published the decision within the period so required.
- (2) The Secretary of State may take such action under section 159 or 161 as the Secretary of State considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the features or combinations of features in question.
- (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to the report of the CMA under section 142.
- (4) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
  - (b) any detrimental effects on customers so far as resulting from those effects.]

#### Textual Amendments

**F156** S. 147A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 16](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

**148 [F157] Restricted PI references: reversion of the matter to CMA]**

- (1) If—
- (a) the Secretary of State fails to make and publish his decision under subsection (2) of section 146 within the period required by subsection (3) of that section; or
  - (b) the Secretary of State decides that no eligible public interest consideration is relevant as mentioned in subsection (2) of that section;
- the [F158]CMA] shall proceed under section 138 as if the report had been prepared and published under section 136 within the period permitted by section 137.
- (2) The [F158]CMA] shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (1).
- [F159](3) .....
- [F159](4) .....
- [F159](5) .....
- (6) In relation to proceedings by virtue of subsection (1), the reference in section 138(3) to decisions of the [F160]CMA] included in its report by virtue of section 134(4) shall be construed as a reference to decisions which were included in the report of the [F160]CMA] by virtue of section 141(4).
- (7) Where the [F160]CMA], in proceeding by virtue of subsection (1), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141(4), it shall not so proceed without the consent of the Secretary of State.
- (8) The Secretary of State shall not withhold his consent under subsection (7) unless he believes that the proposed alternative way of proceeding will operate against the public interest.
- (9) For the purposes of subsection (8) a proposed alternative way of proceeding will operate against the public interest only if any eligible public interest consideration or considerations outweigh the considerations which have led the [F161]CMA] to propose proceeding in that way.
- (10) In deciding whether to withhold his consent under subsection (7), the Secretary of State shall accept the [F162]CMA's] view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.
- (11) In this section “eligible public interest consideration” has the same meaning as in section 146.

**Textual Amendments**

**F157** S. 148 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 17\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F158** Word in s. 148(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 181\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F159** S. 148(3)-(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 17\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F160** Word in s. 148(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 181(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F161** Word in s. 148(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 181(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F162** Word in s. 148(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 181(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**[<sup>F163</sup>148A] Full PI references: reversion of the matter to CMA**

- (1) This section applies if—
  - (a) the Secretary of State decides under section 146A(2) to make no finding at all in the matter; or
  - (b) the Secretary of State fails to make and publish the decision under subsection (2) of section 146A within the period required by subsection (6) of that section.
- (2) The CMA shall proceed under section 138 as if—
  - (a) a reference under section 131 had been made (in accordance with the requirements imposed by this Part) instead of a full PI reference; and
  - (b) its report had been prepared and published under section 136 within the period permitted by section 137.
- (3) The CMA shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (2).
- (4) In relation to proceedings by virtue of subsection (2), the reference in section 138(3) to decisions of the CMA included in its report by virtue of section 134(4) is to be construed as a reference to decisions which were included in the report of the CMA by virtue of section 141A(6).
- (5) Where the CMA becomes under a duty to proceed as mentioned in subsection (2), references in this Part to a reference under section 131, so far as necessary, are to be construed accordingly.
- (6) Where the CMA, in proceeding by virtue of subsection (2), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141A(6), it shall not so proceed without the consent of the Secretary of State.
- (7) The Secretary of State shall not withhold consent under subsection (6) unless the Secretary of State believes that the proposed alternative way of proceeding will operate against the public interest.
- (8) For the purposes of subsection (7) a proposed alternative way of proceeding will operate against the public interest only if any admissible public interest consideration or considerations outweigh the considerations which have led the CMA to propose proceeding in that way.
- (9) In deciding whether to withhold consent under subsection (6), the Secretary of State shall accept the CMA's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

(10) In this section “admissible public interest consideration” has the same meaning as in section 146A.]

#### Textual Amendments

**F163** S. 148A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 18](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### *Intervention notices under section 139(2)*

### 149 Intervention notices under section 139(2)

- (1) An intervention notice under section 139(2) shall state—
- the proposed undertaking which may be accepted by the <sup>F164</sup>CMA];
  - the notice under section 155(1) or (4);
  - the public interest consideration or considerations which are, or may be, relevant to the <sup>F165</sup>proposal to accept the undertaking]; and
  - where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the <sup>F166</sup>proposal to accept the undertaking], he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(2) and which is in force.
- (4) An intervention notice under section 139(2) shall come into force when it is given and shall cease to be in force on the occurrence of any of the events mentioned in subsection (5).
- (5) The events are—
- the acceptance by the <sup>F167</sup>CMA] with the consent of the Secretary of State of an undertaking which is the same as the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) or which does not differ from it in any material respect;
  - the decision of the <sup>F167</sup>CMA] to proceed neither with the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) nor a proposed undertaking which does not differ from it in any material respect; or
  - the decision of the Secretary of State to revoke the intervention notice concerned.

#### Textual Amendments

**F164** Word in s. 149(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 182](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F165** Words in s. 149(1)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 19\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F166** Words in s. 149(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 19\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F167** Word in s. 149(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 182](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 150 Power of veto of Secretary of State

[<sup>F168</sup>(A1) Where an intervention notice under subsection 139(1) is in force, the CMA shall not, without the consent of the Secretary of State, accept any proposed undertaking under section 154 in relation to the matter concerned.]

- (1) Where an intervention notice under section 139(2) is in force, the [<sup>F169</sup>CMA] shall not, without the consent of the Secretary of State, accept the proposed undertaking concerned or a proposed undertaking which does not differ from it in any material respect.
- (2) The Secretary of State shall withhold his consent if he believes that it is or may be the case that the proposed undertaking will, if accepted, operate against the public interest.
- (3) For the purposes of subsection (2) a proposed undertaking will, if accepted, operate against the public interest only if any public interest consideration which is mentioned in the intervention notice concerned and has been finalised, or any public interest considerations which are so mentioned and have been finalised, outweigh the considerations which have led the [<sup>F170</sup>CMA] to propose accepting the undertaking.
- (4) In making his decision under subsection (2) the Secretary of State shall accept the [<sup>F171</sup>CMA's] view of what undertakings, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be most appropriate.
- (5) Where a public interest consideration which is mentioned in the intervention notice concerned is not finalised on the giving of the notice, the Secretary of State shall not make his decision as to whether to give his consent under this section before—
  - (a) the end of the period of 24 weeks beginning with the giving of the intervention notice; or
  - (b) if earlier, the date on which the public interest consideration concerned has been finalised.
- (6) Subject to subsections (2) to (5), the Secretary of State shall not withhold his consent under this section.

### Textual Amendments

- F168** S. 150(A1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 20](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F169** Word in s. 150(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 183\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F170** Word in s. 150(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 183\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F171** Word in s. 150(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 183\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### *Other*

#### **151 [F172 Public interest intervention cases: interaction with general procedure]**

- [F173(1) Sections 134(1), (1A), (4), (6) and (7), 136(1) to (6), 137(1) to (6), 138 and 138A do not apply in relation to a restricted PI reference or a full PI reference.]
- (2) Where the Secretary of State revokes an intervention notice which has been given under section 139(1), [F174 at a time after the Secretary of State has made a restricted PI reference or a full PI reference, the CMA shall proceed as if the reference concerned had instead been made under section 131 (in accordance with the requirements imposed by this Part).]
- (3) Where the [F175 CMA] is proceeding by virtue of subsection (2), the period within which the [F175 CMA] shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.
- (4) Where the [F176 CMA] terminates its investigation under section 145(1) [F177, the CMA shall proceed as if the restricted PI reference or (as the case may be) the full PI reference concerned had instead been made by the CMA under section 131 (in accordance with the requirements imposed by this Part).]
- (5) Where the [F178 CMA] is proceeding by virtue of subsection (4), the period within which the [F178 CMA] shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.
- (6) In determining the period of 20 days mentioned in subsection (3) or (5) no account shall be taken of—
- (a) Saturday, Sunday, Good Friday and Christmas Day; and
  - (b) any day which is a bank holiday in England and Wales.

#### **Textual Amendments**

- F172** S. 151 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 21\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F173** S. 151(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 21\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F174** Words in s. 151(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 21\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F175** Word in s. 151(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 184\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F176** Word in s. 151(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 184\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F177** Words in s. 151(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 21\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F178** Word in s. 151(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 184\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **152 Certain duties of [F179 CMA]**

- (1) The [F180 CMA] shall, in considering whether to make a reference under section 131, bring to the attention of the Secretary of State any case which it believes raises any

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consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

<sup>F181</sup>(2) .....

- (3) The [<sup>F182</sup>CMA] shall bring to the attention of the Secretary of State any representations about exercising his power under section 153(3) which have been made to the [<sup>F183</sup>CMA].

#### Textual Amendments

- F179** Word in s. 152 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F180** Word in s. 152(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F181** S. 152(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 22**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F182** Word in s. 152(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F183** Word in s. 152(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 153 Specified considerations: Part 4

- (1) The interests of national security are specified in this section.
- (2) In subsection (1) “national security” includes public security; and in this subsection “public security” has the same meaning as in article [<sup>F184</sup>21(4) of Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings.].
- (3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.
- (4) An order under this section may apply in relation to cases under consideration by the [<sup>F185</sup>CMA], [<sup>F186</sup>by the Secretary of State or] by the appropriate Minister (other than the Secretary of State acting alone) <sup>F187</sup>... before the making of the order as well as cases under consideration on or after the making of the order.

#### Textual Amendments

- F184** Words in s. 153(2) substituted (1.5.2004) by The EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079), reg. 2, **Sch. para. 2(27)**
- F185** Word in s. 153(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 186(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F186** Words in s. 153(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 186(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F187** Words in s. 153(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 186(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

## CHAPTER 3

### ENFORCEMENT

#### *Undertakings and orders*

#### **154 Undertakings in lieu of market investigation references**

- (1) Subsection (2) applies if the [<sup>F188</sup>CMA] considers that it has the power to make a reference under section 131 and otherwise intends to make such a reference.
- (2) The [<sup>F188</sup>CMA] may, instead of making such a reference and for the purpose of remedying, mitigating or preventing—
  - (a) any adverse effect on competition concerned; or
  - (b) any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;accept, from such persons as it considers appropriate, undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the [<sup>F188</sup>CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (4) In proceeding under subsection (2), the [<sup>F188</sup>CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [<sup>F189</sup>or markets] concerned.
- (5) The [<sup>F188</sup>CMA] shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
  - (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.
- (6) An undertaking under this section—
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the [<sup>F188</sup>CMA].
- (7) The [<sup>F188</sup>CMA] shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (8) This section is subject to sections 150 and 155.

#### **Textual Amendments**

**F188** Word in s. 154(1)-(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 187](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F189** Words in s. 154(4) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 7](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

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## 155 Undertakings in lieu: procedural requirements

- (1) Before accepting an undertaking under section 154 (other than an undertaking under that section which varies an undertaking under that section but not in any material respect), the [F190CMA] shall—
  - (a) publish notice of the proposed undertaking; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under subsection (1) shall state—
  - (a) that the [F190CMA] proposes to accept the undertaking;
  - (b) the purpose and effect of the undertaking;
  - (c) the situation that the undertaking is seeking to deal with;
  - (d) any other facts which the [F190CMA] considers justify the acceptance of the undertaking;
  - (e) a means of gaining access to an accurate version of the proposed undertaking at all reasonable times; and
  - (f) the period (not less than 15 days starting with the date of publication of the notice) within which representations may be made in relation to the proposed undertaking.
- (3) The matters to be included in a notice under subsection (1) by virtue of subsection (2) shall, in particular, include—
  - (a) the terms of the reference under section 131 which the [F190CMA] considers that it has power to make and which it otherwise intends to make [F191] or (but for the effect of section 140A(3)) it would have had power to make and which it would otherwise have intended to make]; and
  - (b) the adverse effect on competition, and any detrimental effect on customers so far as resulting from the adverse effect on competition, which the [F190CMA] has identified.
- (4) The [F190CMA] shall not accept the undertaking with modifications unless it—
  - (a) publishes notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under subsection (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 subsection (4)) within which representations may be made in relation to the proposed modifications.
- (6) If, after publishing notice under subsection (1) or (4), the [F192CMA] decides—
  - (a) not to accept the undertaking concerned; and
  - (b) not to proceed by virtue of subsection (8) or (9);it shall publish notice of that decision.
- (7) As soon as practicable after accepting an undertaking to which this section applies, the [F192CMA] shall—
  - (a) serve a copy of the undertaking on any person by whom it is given; and
  - (b) publish the undertaking.

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- (8) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the [F192CMA]—
- (a) has already published notice under subsection (1) but not subsection (4) in relation to the proposed undertaking; and
  - (b) considers that the modifications which are now being proposed are not material in any respect.
- (9) The requirements of subsection (4) (and those of subsection (1)) shall not apply if the [F192CMA]—
- (a) has already published notice under subsections (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 subsection (4).
- (10) Paragraphs 6 to 8 (but not paragraph 9) of Schedule 10 (procedural requirements before terminating undertakings) shall apply in relation to the proposed release of undertakings under section 154 (other than in connection with accepting an undertaking under that section which varies or supersedes an undertaking under that section) as they apply in relation to the proposed release of undertakings under section 73.

#### Textual Amendments

- F190** Word in s. 155(1)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 188](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F191** Words in s. 155(3)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 23](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F192** Word in s. 155(6)-(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 188](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 156 Effect of undertakings under section 154

- [F193(A1) No market investigation reference shall be made by the CMA or the appropriate Minister in relation to any feature, or combination of features, of a market in the United Kingdom for goods or services if—
- (a) the CMA has accepted an undertaking or group of undertakings under section 154 within the previous 12 months;
  - (b) the feature or combination of features to which the undertaking or group of undertakings relates is the same as the feature or combination of features to which the reference would relate; and
  - (c) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which the reference would relate.]
- (1) No [F194ordinary] reference shall be made by the [F195CMA] or the appropriate Minister in relation to any feature, or combination of features, of a market in the United Kingdom for goods or services if—
- (a) the [F195CMA] has[F196, instead of making an ordinary reference,] accepted an undertaking or group of undertakings under section 154 within the previous 12 months; and



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- (b) the goods or services to which the undertaking or group of undertakings relates are of the same description as the goods or services to which [<sup>F197</sup>the reference would relate].
- (2) [<sup>F198</sup>Subsections (A1) and (1) do] not prevent the making of a market investigation reference if—
- (a) the [<sup>F195</sup>CMA] considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
- (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the [<sup>F195</sup>CMA] which was false or misleading in a material respect.
- [<sup>F199</sup>(3) The expiry of the period mentioned in section 131B(4) does not prevent the making of a market investigation reference if the CMA has accepted an undertaking or group of undertakings under section 154 and—
- (a) the CMA considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
- (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.]

#### Textual Amendments

- F193** S. 156(A1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 8\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F194** Word in s. 156(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 8\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F195** Word in s. 156(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 189](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F196** Words in s. 156(1)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 8\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F197** Words in s. 156(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 8\(3\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F198** Words in s. 156(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 8\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F199** S. 156(3) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 12](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 157 Interim undertakings: Part 4

- (1) Subsection (2) applies where—
- (a) a market investigation reference has been made;
- (b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) [<sup>F200</sup>or (as the case may be) 143A(3)] within the period permitted by section 144 has been published; and
- (c) the market investigation reference concerned is not finally determined.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (2) The relevant authority may, for the purpose of preventing pre-emptive action, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.
- [<sup>F201</sup>(2A) Subsection (2B) applies where—
- (a) subsection (1)(a) to (c) applies; and
  - (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
- (2B) The relevant authority may, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects, accept, from such persons as the relevant authority considers appropriate, undertakings to take such action as the relevant authority considers appropriate.]
- [<sup>F202</sup>(2C) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an undertaking accepted under this section.]
- (3) An undertaking under this section—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the relevant authority.
- (4) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.
- (5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or releasing an undertaking under this section.
- (6) In this section and section 158—
- “pre-emptive action” means action which might impede the taking of any action under section 138(2)[<sup>F203</sup>, 147(2) or (as the case may be) 147A(2)] in relation to the market investigation reference concerned; and
- [<sup>F204</sup>“the relevant authority” means—
- (a) in the case of a restricted PI reference or a full PI reference, the Secretary of State;
  - (b) in any other case, the CMA.]

#### Textual Amendments

- F200** Words in s. 157(1)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 24\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F201** S. 157(2A)(2B) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 37(2), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F202** S. 157(2C) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 37(3), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F203** Words in s. 157(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 24\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F204** Words in s. 157(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 24\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

## 158 Interim orders: Part 4

- (1) Subsection (2) applies where—
- (a) a market investigation reference has been made;
  - (b) a report has been published under section 136 within the period permitted by section 137 or (as the case may be) a report prepared under section 142 and given to the Secretary of State under section 143(3) [<sup>F205</sup>or (as the case may be) 143A(3)] within the period permitted by section 144 has been published; and
  - (c) the market investigation reference concerned is not finally determined.
- (2) The relevant authority may by order, for the purpose of preventing pre-emptive action—
- (a) prohibit or restrict the doing of things which the relevant authority considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.

[<sup>F206</sup>(2A) Subsection (2B) applies where—

- (a) subsection (1)(a) to (c) applies; and
- (b) the relevant authority has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(2B) The relevant authority may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—

- (a) do anything mentioned in subsection (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.]

[<sup>F207</sup>(2C) A person may, with the consent of the relevant authority, take action of a particular description where the action would otherwise constitute a contravention of an undertaking accepted under this section.]

- (3) An order under this section—
- (a) shall come into force at such time as is determined by or under the order; and
  - (b) may be varied or revoked by another order.
- (4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the market investigation reference is finally determined.
- (5) The relevant authority shall, as soon as reasonably practicable, consider any representations received by the relevant authority in relation to varying or revoking an order under this section.

### Textual Amendments

**F205** Words in s. 158(1)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 25](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

**F206** S. 158(2A)(2B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 37(4), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

**F207** S. 158(2C) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 37(5), 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

## 159 Final undertakings: Part 4

- (1) The [<sup>F208</sup>CMA] may, in accordance with section 138, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) The Secretary of State may, in accordance with section 147 [<sup>F209</sup> or (as the case may be) 147A], accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.
- (3) An undertaking under this section shall come into force when accepted.
- (4) An undertaking under subsection (1) or (2) may be varied or superseded by another undertaking under that subsection.
- (5) An undertaking under subsection (1) may be released by the [<sup>F210</sup>CMA] and an undertaking under subsection (2) may be released by the Secretary of State.
- (6) The [<sup>F211</sup>CMA] or (as the case may be) the Secretary of State shall, as soon as reasonably practicable, consider any representations received by it or (as the case may be) him in relation to varying or releasing an undertaking under this section.

### Textual Amendments

**F208** Word in s. 159(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 190 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F209** Words in s. 159(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 10 para. 26; S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F210** Word in s. 159(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 190 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F211** Word in s. 159(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 190 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 160 Order-making power where final undertakings not fulfilled: Part 4

- (1) Subsection (2) applies where the relevant authority considers that—
  - (a) an undertaking accepted by the relevant authority under section 159 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by the relevant authority under that section, information which was false or misleading in a material respect was given to [<sup>F212</sup>a relevant person] by the person giving the undertaking before the relevant authority decided to accept the undertaking.

[<sup>F213</sup>(1A) In subsection (1), a “relevant person” means—

- (a) in a case where the relevant authority is the CMA, the CMA;
- (b) in a case where the relevant authority is the Secretary of State, the Secretary of State or the CMA.]

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (2) The relevant authority may, for any of the purposes mentioned in section 138(2)<sup>[F214]</sup>, 147(2) or (as the case may be) 147A(2)], make an order under this section.
- (3) Subsections (3) to (6) of section 138 <sup>[F215]</sup>or 147 or (as the case may be) subsections (3) and (4) of section 147A] shall apply for the purposes of subsection (2) above as they apply for the purposes of that section.
- (4) An order under this section may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the relevant authority considers appropriate.
- (5) An order under this section—
- (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.
- (6) <sup>[F216]</sup>The Secretary of State shall not vary or revoke an order made by him under this section unless the CMA] advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- (7) In this section “the relevant authority” means—
- (a) in the case of an undertaking accepted under section 159 by the <sup>[F217]</sup>CMA], the <sup>[F217]</sup>CMA]; and
  - (b) in the case of an undertaking accepted under that section by the Secretary of State, the Secretary of State.

#### Textual Amendments

- F212** Words in s. 160(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 191\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F213** S. 160(1A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 191\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F214** Words in s. 160(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 27\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F215** Words in s. 160(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 27\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F216** Words in s. 160(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 191\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F217** Word in s. 160(7)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 191\(5\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C35** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by [1988 c. 48, s. 144\(2\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, [Sch. 25 para. 18\(2\)](#)); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with [art. 8](#))
- C36** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by [1988 c. 48, s. 238\(2\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, [art. 2\(1\)](#), Sch. (with [art. 8](#))

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- C37** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C38** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 29(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C39** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 31(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

## 161 Final orders: Part 4

- (1) The [<sup>F218</sup>CMA] may, in accordance with section 138, make an order under this section.
- (2) The Secretary of State may, in accordance with section 147 [<sup>F219</sup>or (as the case may be) 147A], make an order under this section.
- (3) An order under this section may contain—
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the person making it considers appropriate.
- (4) An order under this section—
  - (a) shall come into force at such time as is determined by or under the order; and
  - (b) may be varied or revoked by another order.
- (5) [<sup>F220</sup>The Secretary of State shall not vary or revoke an order made by him under this section unless the CMA] advises that such a variation or revocation is appropriate by reason of a change of circumstances.

### Textual Amendments

- F218** Word in s. 161(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 192(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F219** Words in s. 161(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 28**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F220** Words in s. 161(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 192(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

- C40** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C41** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C42** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(5)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C43** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 29(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)



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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- C44** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 31(3)**); S.I. 2003/1397, **art. 2(1)**, **Sch.** (with art. 8)
- C45** S. 161(5) excluded (25.6.2013) by Groceries Code Adjudicator Act 2013 (c. 19), **ss. 21(5)**, 25; S.I. 2013/1236, **art. 2**

*[<sup>F221</sup>Undertakings and orders: monitoring, consultation and advice]*

**Textual Amendments**

- F221** S. 162 cross-heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 193** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

**162 Duty of [<sup>F222</sup>CMA] to monitor undertakings and orders: Part 4**

- (1) The [<sup>F223</sup>CMA] shall keep under review the carrying out of any enforcement undertaking or any enforcement order.
- (2) The [<sup>F223</sup>CMA] shall, in particular, from time to time consider—
- (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
  - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—
    - (i) one or more of the parties to it can be released from it; or
    - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
  - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The [<sup>F224</sup>CMA] shall give <sup>F225</sup>... the Secretary of State such advice as it considers appropriate in relation to—
- (a) any possible variation or release by <sup>F226</sup>...the Secretary of State of an enforcement undertaking accepted by <sup>F227</sup>... him;
  - (b) any possible new enforcement undertaking to be accepted by <sup>F228</sup>... the Secretary of State so as to supersede another enforcement undertaking given to <sup>F228</sup>... the Secretary of State;
  - (c) any possible variation or revocation by <sup>F228</sup>... the Secretary of State of an enforcement order made by <sup>F228</sup>... the Secretary of State;
  - (d) any possible enforcement undertaking to be accepted by <sup>F228</sup>... the Secretary of State instead of an enforcement order or any possible enforcement order to be made by <sup>F228</sup>... the Secretary of State instead of an enforcement undertaking; or
  - (e) the enforcement by virtue of section [<sup>F229</sup>167(6) and (7)] of any enforcement undertaking or enforcement order.
- (4) The [<sup>F230</sup>CMA ] shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an undertaking accepted by it under section 154;
  - (b) any possible new undertaking to be accepted by it under section 154 so as to supersede another undertaking given to it under that section;



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- [<sup>F231</sup>(ba) any possible variation or release by it of an enforcement undertaking accepted by it;
- (bb) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
- (bc) any possible variation or revocation by it of an enforcement order made by it;
- (bd) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;] or
- (c) the enforcement by it by virtue of section 167(6) of any enforcement undertaking or enforcement order.
- (5) The [<sup>F232</sup>CMA] shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The [<sup>F232</sup>CMA] shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The [<sup>F233</sup>CMA] shall—
- <sup>F234</sup>(a) . . . . .
- (b) give a copy of the report to the Secretary of State; and
- (c) publish [<sup>F235</sup>any report prepared by it under subsection (6)].
- (8) In this Part—
- “enforcement order” means an order made under section 158, 160 or 161; and
- “enforcement undertaking” means an undertaking accepted under section 154, 157 or 159.

#### Textual Amendments

- F222** Word in s. 162 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(7)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F223** Word in s. 162(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F224** Word in s. 162(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(a)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F225** Words in s. 162(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(a)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F226** Words in s. 162(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(b)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F227** Words in s. 162(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(b)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F228** Words in s. 162(3)(b)-(d) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F229** Words in s. 162(3)(e) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(3)(d)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F230** Word in s. 162(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(4)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F231** S. 162(4)(ba)-(bd) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(4)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F232** Word in s. 162(5)(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F233** Word in s. 162(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F234** S. 162(7)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F235** Words in s. 162(7)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 194(6)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C46** Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C47** Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 23(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 12(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C48** Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 42(5A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para 12(3)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

### 163 <sup>F236</sup> **Role of CMA in relation to undertakings and orders in public interest cases: Part 4]**

- (1) Subsections (2) and (3) apply where <sup>F237</sup>... the Secretary of State <sup>F238</sup>... is considering whether to accept undertakings under section 157 or 159.
- (2) The [<sup>F239</sup>Secretary of State] may require the [<sup>F240</sup>CMA] to consult with such persons as the [<sup>F239</sup>Secretary of State] considers appropriate with a view to discovering whether they will offer undertakings which the [<sup>F239</sup>Secretary of State] would be prepared to accept under section 157 or (as the case may be) 159.
- (3) The [<sup>F241</sup>Secretary of State] may require the [<sup>F242</sup>CMA] to report to the [<sup>F241</sup>Secretary of State] on the outcome of the [<sup>F243</sup>CMA's] consultations within such period as the [<sup>F241</sup>Secretary of State] may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the [<sup>F244</sup>CMA] as to whether any undertakings offered should be accepted by the [<sup>F245</sup>Secretary of State] under section 157 or (as the case may be) 159.
- (5) The powers conferred on the [<sup>F246</sup>Secretary of State] by subsections (1) to (4) are without prejudice to the power of the [<sup>F246</sup>Secretary of State] to consult the persons concerned <sup>F247</sup>....
- (6) If asked by the [<sup>F248</sup>Secretary of State] for advice in relation to the taking of enforcement action (whether or not by way of undertakings) in a particular case, the [<sup>F249</sup>CMA] shall give such advice as it considers appropriate.

#### Textual Amendments

- F236** S. 163 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(8)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F237** Words in s. 163(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(2)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F238** Words in s. 163(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(2)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F239** Words in s. 163(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F240** Word in s. 163(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F241** Words in s. 163(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(4)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F242** Word in s. 163(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(4)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F243** Word in s. 163(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(4)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F244** Word in s. 163(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F245** Words in s. 163(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F246** Words in s. 163(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F247** Word in s. 163(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F248** Words in s. 163(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(7)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F249** Word in s. 163(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 195(7)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### *Supplementary*

#### **164 Enforcement undertakings and orders under this Part: general provisions**

- (1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.
- (2) The following enactments in Part 3 shall apply in relation to enforcement orders under this Part as they apply in relation to enforcement orders under that Part—
  - (a) section 86(1) to (5) (enforcement orders: general provisions); and
  - (b) section 87 (power of directions conferred by enforcement order).
- (3) An enforcement order under section 160 or 161 or any explanatory material accompanying the order shall state—
  - (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
  - (b) the date on which the order comes into force;
  - (c) the possible consequences of not complying with the order; and
  - (d) the section of this Part under which a review can be sought in relation to the order.

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

- C49** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 18(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- C50** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C51** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C52** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1993 c. 21, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 29(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C53** Ss. 160(4)(a), 161(3)(a), 164(1) modified (20.6.2003) by 1994 c. 17, s. 33(2A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 31(3)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

## 165 Procedural requirements for certain undertakings and orders: Part 4

Schedule 10 (procedural requirements for certain undertakings and orders), other than paragraph 9 of that Schedule, shall apply in relation to undertakings under section 159 and orders under section 160 or 161 as it applies in relation to undertakings under section 82 and orders under section 83 or 84.

## 166 Register of undertakings and orders: Part 4

- (1) The [<sup>F250</sup>CMA] shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept in such form as the [<sup>F250</sup>CMA] considers appropriate.
- (3) The [<sup>F251</sup>CMA] shall ensure that the following matters are entered in the register—
  - (a) the provisions of any enforcement undertaking accepted by virtue of this Part <sup>F252</sup>...;
  - (b) the provisions of any enforcement order made by virtue of this Part <sup>F253</sup>...; and
  - (c) the details of any variation, release or revocation of such an undertaking or order.
- (4) The duty in subsection (3) does not extend to anything of which the [<sup>F254</sup>CMA] is unaware.
- (5) The <sup>F255</sup>... Secretary of State and any relevant sectoral regulator shall inform the [<sup>F256</sup>CMA] of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them or enforcement orders made by them.
- (6) The [<sup>F257</sup>CMA] shall ensure that the contents of the register are available to the public—
  - (a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and
  - (b) subject to such reasonable fees (if any) as the [<sup>F257</sup>CMA] may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the [<sup>F257</sup>CMA] may determine, the [<sup>F257</sup>CMA] shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

- F250** Word in s. 166(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F251** Word in s. 166(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F252** Words in s. 166(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F253** Words in s. 166(3)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F254** Word in s. 166(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F255** Words in s. 166(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F256** Word in s. 166(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F257** Word in s. 166(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 196(6)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

- C54** Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C55** Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 23(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 12(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C56** Ss. 162(1), 166(3) modified (20.6.2003) by S.I. 1982/1080 (N.I. 12), art. 42(5A) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para 12(3)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

## 167 Rights to enforce undertakings and orders under this Part

- (1) This section applies to any enforcement undertaking or enforcement order.
- (2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.
- (3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.
- (4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.
- (6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the [<sup>F258</sup>CMA] for an injunction or for interdict or for any other appropriate relief or remedy.



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- (7) Compliance with an undertaking accepted [<sup>F259</sup>by the Secretary of State] under section 157 or 159, or an order [<sup>F260</sup>made by the Secretary of State] under section 158, 160 or 161, shall also be enforceable by civil proceedings brought by the [<sup>F261</sup>Secretary of State] for an injunction or for interdict or for any other appropriate relief or remedy.
- <sup>F262</sup>(8) .....
- (9) Subsections [<sup>F263</sup>(6) and (7)] shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

#### Textual Amendments

- F258** Word in s. 167(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F259** Words in s. 167(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F260** Words in s. 167(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F261** Words in s. 167(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F262** S. 167(8) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F263** Words in s. 167(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 197(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## CHAPTER 4

### SUPPLEMENTARY

#### *Regulated markets*

#### 168 Regulated markets

- (1) Subsection (2) applies where the [<sup>F264</sup>CMA] or the Secretary of State is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (2) The [<sup>F264</sup>CMA] or (as the case may be) the Secretary of State shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.
- (3) In this section “relevant action” means—
- [<sup>F265</sup>modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);]
  - <sup>F266</sup>(b) .....
  - modifying the conditions of a licence granted under section 7 [<sup>F267</sup>or 7A][<sup>F267</sup>, 7A or 7AB] of the Gas Act 1986 (c. 44);

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- (d) modifying the conditions of a licence granted under section 6 of the Electricity Act 1989 (c. 29);
  - (e) modifying networking arrangements (within the meaning given by [F268]section 290 of the Communications Act 2003);
  - (f) modifying the conditions of a company’s appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);
  - [F269](ff) modifying the conditions of a licence granted under Chapter 1A of Part 2 of the Act of 1991 or modifying the terms and conditions of an agreement under section 66D of that Act;]
  - (g) modifying the conditions of a licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
  - (h) modifying the conditions of a licence granted under section 8 of the Railways Act 1993 (c. 43);
  - [F270](hh) modifying the conditions of a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005;]
  - (i) modifying an access agreement (within the meaning given by section 83(1) of the Act of 1993) or a franchise agreement (within the meaning given by section 23(3) of that Act);
  - (j) modifying conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order;
  - (k) modifying the conditions of a licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
  - F271(l) .....
  - (m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38).
  - [F272](n) modifying the conditions of a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.]
  - [F273](o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;]
  - [F274](p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012.]
  - [F275](q) modifying the conditions of a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012]
- (4) In this section “relevant statutory functions” means—
- (a) [F276]in relation to any licence granted under section 7 of the Telecommunications Act 1984, the duties and obligations of the Director General of Telecommunications imposed on him by or in pursuance of any enactment or other provision mentioned in section 7(5)(a) of that Act;]
  - F277(b) .....
  - (c) in relation to any licence granted under section 7 [F278]or 7A[F278], 7A or 7AB] of the Gas Act 1986 (c. 44), the objectives and duties of the Gas and Electricity Markets Authority under section 4AA and 4AB(2) of that Act;
  - (d) in relation to any licence granted under section 6 of the Electricity Act 1989 (c. 29), the objectives and duties of the Gas and Electricity Markets Authority under section 3A and 3B(2) of that Act;
  - [F279](e) in relation to any networking arrangements (within the meaning given by section 290 of the Communications Act 2003), the duty of the Office of



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Communications under subsection (1) of section 3 of that Act to secure the matters mentioned in subsection (2)(c) of that section;]

- (f) in relation to a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), the duties of [<sup>F280</sup>the Water Services Regulation Authority] under section 2 of that Act;
- [<sup>F281</sup>(ff) in relation to a licence granted under Chapter 1A of Part 2 of the Act of 1991 or an agreement under section 66D of that Act, the duties of the Authority under section 2 of that Act or under that section and section 66D of that Act (as the case may be);]
- (g) in relation to any licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order;
- (h) in relation to any licence granted under section 8 of the Railways Act 1993 (c. 43) [<sup>F282</sup>where none of the conditions of the licence relate to consumer protection], the duties of the [<sup>F283</sup>Office of Rail Regulation] under section 4 of that Act;
- [<sup>F284</sup>(hh) in relation to a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 where none of the conditions of the SNRP relate to consumer protection, the duties of the Department for Regional Development under regulation 36 of those Regulations;]
- (i) [<sup>F285</sup>in relation to any licence granted under section 8 of the Act of 1993 where one or more than one condition of the licence relates to consumer protection, the duties of the [<sup>F283</sup>Office of Rail Regulation] under section 4 of that Act and the duties of the Strategic Rail Authority under section 207 of the Transport Act 2000 (c. 38);]
- (j) in relation to any access agreement (within the meaning given by section 83(1) of the Act of 1993), the duties of the [<sup>F283</sup>Office of Rail Regulation] under section 4 of the Act of 1993;
- (k) in relation to any franchise agreement (within the meaning given by section 23(3) of the Act of 1993), the duties of the [<sup>F286</sup>Secretary of State, the Scottish Ministers and the National Assembly for Wales under section 4 of the Act of 1993];
- (l) in relation to conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order, the duties of the Civil Aviation Authority under article 30(2) and (3) of that Order;
- (m) in relation to any licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), the duties of the Director General of Gas for Northern Ireland under article 5 of that Order;
- [<sup>F287</sup>(n) .....
- (o) in relation to any licence granted under section 5 of the Transport Act 2000, the duties of the Civil Aviation Authority under section 87 of that Act.
- [<sup>F288</sup>(p) in relation to a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006, the duties of the Northern Ireland Authority for Utility Regulation under Article 6 of that Order]
- [<sup>F289</sup>(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act;]

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- [<sup>F290</sup>(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act.]
- [<sup>F291</sup>(s) in relation to a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012, the duties of the Civil Aviation Authority under section 1 of that Act]
- (5) In this section “sectoral regulator” means—
- (a) the Civil Aviation Authority;
  - [<sup>F292</sup>(b) the Northern Ireland Authority for Utility Regulation.]
  - (d) [<sup>F293</sup>the Director General of Telecommunications;]
  - (e) the Water Services Regulation Authority;
  - (f) the Gas and Electricity Markets Authority;
  - [<sup>F294</sup>(g) the Office of Communications;]
  - [<sup>F295</sup>(h) . . . . .]
  - (i) the [<sup>F283</sup>Office of Rail Regulation]; <sup>F296</sup> . . .
  - [<sup>F297</sup>(ia) Monitor;]
  - [<sup>F298</sup>(j) the Secretary of State;
  - (k) the Scottish Ministers; or
  - (l) the National Assembly for Wales][<sup>F299</sup> or
  - (k) the Department for Regional Development.]
- (6) Subsection (7) applies where the [<sup>F300</sup>CMA] or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 [<sup>F301</sup>or 7A][<sup>F301</sup>, 7A or 7AB] of the Gas Act 1986 (c. 44) or section 6 of the Electricity Act 1989 (c. 29) would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (7) The [<sup>F300</sup>CMA] or (as the case may be) the Secretary of State may, in deciding whether modifying the conditions of such a licence would be reasonable and practicable, have regard to those matters to which the Gas and Electricity Markets Authority may have regard by virtue of section 4AA(4) of the Act of 1986 or (as the case may be) section 3A(4) of the Act of 1989.
- (8) The Secretary of State may by order modify subsection (3), (4), (5), (6) or (7).
- (9) Part 2 of Schedule 9 (which makes provision for functions under this Part to be exercisable by various sectoral regulators) shall have effect.

#### Textual Amendments

- F264** Word in s. 168(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 198](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F265** S. 168(3)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, [art. 3\(1\)](#) (subject to arts. 3(3), 11)
- F266** S. 168(3)(b) omitted (1.4.2014) by virtue of [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 14\(2\)\(a\)](#) (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 5(1)(b)
- F267** Words in s. 168(3)(c) substituted (E.W.S.) (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, [31](#)

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- F268** Words in s. 168(3)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F269** S. 168(3)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(a)**; S.I. 2005/2714, **art. 3(c)**
- F270** S. 168(3)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(a)**
- F271** S. 168(3)(l) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(a)**; S.I. 2011/2329, art. 3
- F272** S. 168(3)(n) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(3)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F273** S. 168(3)(o) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(b)**; S.I. 2011/2329, art. 3
- F274** S. 168(3)(p) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F275** S. 168(3)(q) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(2)(b)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)
- F276** S. 168(4)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F277** S. 168(4)(b) omitted (1.4.2014) by virtue of Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(a)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 5(1)(b)
- F278** Words in s. 168(4)(c) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**
- F279** S. 168(4)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F280** Words in s. 168(4)(f) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(3)(a)**; S.I. 2005/2714, **art. 4(f)**
- F281** S. 168(4)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(b)**; S.I. 2005/2714, **art. 3(c)**
- F282** Words in s. 168(4)(h) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F283** Words in s. 168 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**
- F284** S. 168(4)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(b)**
- F285** S. 168(4)(i) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F286** Words in s. 168(4)(k) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(2)(c)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F287** S. 168(4)(n) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(a)**; S.I. 2011/2329, art. 3
- F288** S. 168(4)(p) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(4)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F289** S. 168(4)(q) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(b)**; S.I. 2011/2329, art. 3

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- F290** S. 168(4)(r) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F291** S. 168(4)(s) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(b)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)
- F292** S. 168(5)(b) substituted (N.I.) (1.4.2007) for s. 168(5)(b)(c) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(5)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F293** S. 168(5)(d) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F294** S. 168(5)(g) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F295** S. 168(5)(h) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(4)**; S.I. 2011/2329, art. 3
- F296** Word in s. 168(5)(i) repealed (16.10.2005 for E.W.S) and omitted (3.1.2006 for N.I.) by virtue of Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1**; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.R. 2005/537, reg. 45, **Sch. 5 Pt. 1 para. 4(c)**
- F297** S. 168(5)(ia) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(c)**, 306(4); S.I. 2013/671, art. 2(3)
- F298** S. 168(5)(j)-(l) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) for s. 168(5)(j) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F299** S. 168(5)(k) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(c)(ii)**
- F300** Word in s. 168(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 198** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F301** Words in s. 168(6) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**

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

- C57** S. 168 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(f)**
- C58** S. 168(3)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**
- C59** S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**  
S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(b)**

#### *Consultation, information and publicity*

### **169 Certain duties of relevant authorities to consult: Part 4**

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.
- (2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.

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- (3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—
- (a) any restrictions imposed by any timetable for making the decision; and
  - (b) any need to keep what is proposed, or the reasons for it, confidential.
- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section—
- “the relevant authority” means the [<sup>F302</sup>CMA, the appropriate Minister]<sup>F303</sup> or the Secretary of State]; and
- “relevant decision” means—
- (a) in the case of the [<sup>F304</sup>CMA], any decision by the [<sup>F304</sup>CMA]—
    - (i) [<sup>F305</sup>to make a reference under section 131 in a case where the CMA has not published a market study notice under section 130A in relation to the matter concerned;
    - (ia) as to whether to accept undertakings under section 154 instead of making any reference under section 131;]
    - (ii) to vary under section 135 such a reference<sup>F306</sup>; or—
    - (iii) on the questions mentioned in section 134, 141 or 141A; and]
  - (b) in the case of the appropriate Minister [<sup>F307</sup>(other than the Secretary of State acting alone)], any decision by the appropriate Minister—
    - (i) <sup>F308</sup> ... to make a reference under section 132; or
    - (ii) to vary under section 135 such a reference; <sup>F309</sup> ...
- [<sup>F310</sup>in the case of the Secretary of State, any decision by the Secretary of State—
- (i) to make a reference under section 132;
  - (ii) to vary under section 135 such a reference;
  - (iii) in a case where the Secretary of State is required to make a reference under section 140A, whether to make a reference under subsection (5) or (6) of that section; or
  - (iv) to vary under section 140B a reference made under section 140A(6).]

(c) <sup>F309</sup> ...

#### Textual Amendments

**F302** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F303** Words in s. 169(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 29\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F304** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F305** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 13\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F306** Words in s. 169(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 199(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F307** Words in s. 169(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 29(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F308** Words in s. 169(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 13(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F309** Words in s. 169(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 199(d)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F310** Words in s. 169(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 29(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 170 General information duties

- <sup>F311</sup>(1) .....
- <sup>F311</sup>(2) .....
- (3) The [<sup>F312</sup>CMA] shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone—
- (a) such information in [<sup>F313</sup>its possession] as the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require to enable him to carry out his functions under this Part; and
  - (b) any other assistance which the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the [<sup>F314</sup>CMA] or (as the case may be) the Commission to give.
- (4) The [<sup>F315</sup>CMA] shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the [<sup>F315</sup>CMA], would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.
- (5) [<sup>F316</sup>The Secretary of State] or (as the case may be) the appropriate Minister concerned shall have regard to any information given to him under subsection (3) or (4).
- (6) Any direction given under subsection (3)—
- (a) shall be in writing; and
  - (b) may be varied or revoked by a subsequent direction.

### Textual Amendments

- F311** S. 170(1)(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F312** Words in s. 170(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F313** Words in s. 170(3)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F314** Words in s. 170(3)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(3)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)



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**F315** Word in s. 170(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F316** Words in s. 170(5) substituted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 200(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 171 Advice and information: Part 4

- (1) <sup>F317</sup>... [<sup>F318</sup>The CMA] shall prepare and publish general advice and information about <sup>F319</sup>—
- (a) the making and consideration by it of market investigation references, and
  - (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.]
- (2) The [<sup>F320</sup>CMA] may at any time publish revised, or new, advice or information.
- <sup>F321</sup>(3) .....
- <sup>F321</sup>(4) .....
- (5) Advice and information published under this section shall be prepared with a view to—
- (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the [<sup>F322</sup>CMA] expects such provisions to operate.
- (6) Advice and information published by virtue of subsection (1) <sup>F323</sup>... shall include such advice and information about the effect of [<sup>F324</sup>EU] law, and anything done under or in accordance with it, on the provisions of this Part as the [<sup>F325</sup>CMA] considers appropriate.
- (7) Advice (or information) published by virtue of subsection (1) <sup>F326</sup>... may include advice (or information) about the factors which the [<sup>F327</sup>CMA] may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (8) Any advice or information published by the [<sup>F328</sup>CMA] under this section shall be published in such manner as the [<sup>F329</sup>CMA] considers appropriate.
- (9) In preparing any advice or information under this section, the [<sup>F330</sup> CMA shall consult such persons] and such other persons as it considers appropriate.
- <sup>F331</sup>(10) .....
- (11) In this section “[<sup>F324</sup>EU] law” means—
- (a) all the rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Community Treaties; and
  - (b) all the remedies and procedures from time to time provided for by or under the Community Treaties.

### Textual Amendments

**F317** Words in s. 171(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(2)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F318** Words in s. 171(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(2)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F319** Words in s. 171(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(2)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F320** Word in s. 171(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F321** S. 171(3)(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F322** Word in s. 171(5)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F323** Words in s. 171(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F324** Word in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F325** Word in s. 171(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F326** Words in s. 171(7) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(7)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F327** Word in s. 171(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(7)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F328** Word in s. 171(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(8)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F329** Word in s. 171(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(8)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F330** Words in s. 171(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(9)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F331** S. 171(10) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(10)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 172 Further publicity requirements: Part 4

- (1) The [<sup>F332</sup>CMA] shall publish—
- (a) any reference made by it under section 131 [<sup>F333</sup>, other than a reference treated as so made by virtue of section 140A(5)(b)];
  - [<sup>F334</sup>(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;]
  - (b) any variation made by it under section 135 of a reference under section 131;
  - (c) any decision of a kind mentioned in section 149(5)(b); and
  - (d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.
- (2) The [<sup>F335</sup>CMA shall also] publish—
- [<sup>F336</sup>(za) any extension by it under section 137 of the period within which a report under section 136 is to be prepared and published;
  - (zb) any extension by it under section 138A of the period within which its duty under section 138(2) is to be discharged;]
  - (a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;
  - [<sup>F337</sup>(ba) any extension by it under section 144 of the period within which a report under section 142 is to be prepared and action is to be taken in relation to it;]

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- (c) any termination under section 145(1) of an investigation by it;
- <sup>F338</sup>(d) .....
- (e) any enforcement undertaking accepted by it under section 157;
- (f) any enforcement order made by it under section 158; and
- (g) any variation, release or revocation of such an undertaking or order.
- (3) The Secretary of State shall publish—
- (a) any reference made by him under section 132;
- (b) any variation made by him under section 135 of a reference under section 132;
- (c) any intervention notice given by him;
- (d) any decision made by him to revoke such a notice;
- <sup>F339</sup>(da) any reference made by him under section 140A(5) or (6);
- (db) any variation made by him under section 140B of a reference under section 140A(6);]
- (e) any decision made by him under section 147(2) [<sup>F340</sup>or (as the case may be) 147A(2)] neither to accept an undertaking under section 159 nor to make an order under section 161;
- (f) any enforcement undertaking accepted by him under section 157;
- (g) any variation or release of such an undertaking; and
- (h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—
- (a) any reference made by him under section 132;
- (b) any variation made by him under section 135 of a reference under section 132; and
- (c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (6) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.
- (7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) <sup>F341</sup>....
- <sup>F342</sup>(7A) Subsection (6) shall not apply in relation to any case falling within subsection (1) (a)] <sup>F343</sup>or (3)(da)].
- (8) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 146(2) [<sup>F344</sup>or 146A(2)]; or
- (b) any decision to make an order under section 153(3) or vary or revoke such an order.
- (9) Such reasons may be published after—

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- (a) in the case of subsection (8)(a), the publication of the decision concerned; and
- (b) in the case of subsection (8)(b), the making of the order or of the variation or revocation;

if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.

- (10) Where the Secretary of State has decided under section 147(2) [<sup>F345</sup>or 147A(2)] to accept an undertaking under section 159 or to make an order under section 161, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the [<sup>F346</sup>CMA's] report under section 142, before each House of Parliament.

#### Textual Amendments

- F332** Word in s. 172(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 202(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F333** Words in s. 172(1)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F334** S. 172(1)(aa) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 14(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F335** Words in s. 172(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 202(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F336** S. 172(2)(za)(zb) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 14(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F337** S. 172(2)(ba) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 14(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F338** S. 172(2)(d) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F339** S. 172(3)(da)(db) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F340** Words in s. 172(3)(e) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F341** Words in s. 172(7) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F342** S. 172(7A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 14(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F343** Words in s. 172(7A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F344** Words in s. 172(8)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F345** Words in s. 172(10) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 30(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F346** Words in s. 172(10) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 202(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 173 Defamation: Part 4

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the [<sup>F347</sup>CMA], [<sup>F348</sup>by the Secretary of State or], by the appropriate Minister (other than the Secretary of State acting alone) <sup>F349</sup>... in the exercise of any of their functions under this Part.

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

- F347** Word in s. 173 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 203\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F348** Words in s. 173 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 203\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F349** Words in s. 173 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 203\(c\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Investigation powers

#### 174 [F350 Attendance of witnesses and production of documents etc.]

- [F351(1) For the purposes of this section, the permitted purposes are the following—
- (a) assisting the CMA in carrying out its functions under section 5 in relation to a matter in a case where it has published a market study notice;
  - (b) assisting the CMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 131 or 132 or possible reference under section 131;
  - (c) assisting the CMA or the Secretary of State in carrying out any functions, including enforcement functions, of the CMA or (as the case may be) the Secretary of State under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 140A(6) or possible reference under section 140A(5) or (6).
- (2) The CMA may exercise any of the powers in subsections (3) to (5) for a permitted purpose.]
- (3) The [F352CMA] may give notice to any person requiring him—
- (a) to attend at a time and place specified in the notice; and
  - (b) to give evidence to the [F352CMA] or a person nominated by the [F352CMA] for the purpose.
- (4) The [F352CMA] may give notice to any person requiring him—
- (a) to produce any documents which—
    - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
    - (ii) are in that person’s custody or under his control; and
  - (b) to produce them at a time and place so specified and to a person so specified.
- (5) The [F352CMA] may give notice to any person who carries on any business requiring him—
- (a) to supply to the [F352CMA] such estimates, forecasts, returns or other information as may be specified or described in the notice; and
  - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (6) A notice under this section shall[F353]—
- (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and

*Status: Point in time view as at 01/04/2014.*

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- (b)] include information about the possible consequences of not complying with the notice
- [<sup>F354</sup>(6A) The CMA or any person nominated by it for the purpose may, for a permitted purpose, take evidence on oath and for that purpose may administer oaths.]
- (7) The person to whom any document is produced in accordance with a notice under this section may, for [<sup>F355</sup>a permitted purpose], copy the document so produced.
- (8) No person shall be required under this section—
- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
  - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (9) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.
- [<sup>F356</sup>(9A) In subsection (1), “enforcement functions” means—
- (a) in relation to the CMA—
    - (i) functions conferred by virtue of section 164(2)(b) on the CMA by enforcement orders;
    - (ii) functions of the CMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
    - (iii) functions of the CMA under or by virtue of section 160 or 162 in relation to enforcement undertakings or enforcement orders;
  - (b) in relation to the Secretary of State—
    - (i) functions conferred by virtue of section 164(2)(b) on the Secretary of State by enforcement orders;
    - (ii) functions of the Secretary of State in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
    - (iii) functions of the Secretary of State under or by virtue of section 160 in relation to enforcement undertakings or enforcement orders.]
- (10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (11) In this section “the court” means—
- (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

#### Textual Amendments

- F350** S. 174 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 36\(7\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F351** S. 174(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 36\(2\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F352** Word in s. 174(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 204 \(with s. 28\); S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- F353** Words in s. 174(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. **36(3)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F354** S. 174(6A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. **36(4)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F355** Words in s. 174(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. **36(5)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F356** S. 174(9A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. **36(6)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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

- C60** S. 174 modified by 2007 c. 29, s. 57(5) (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 176(2)(b)** (with art. 3, Sch. 2 para. 4))
- C61** S. 174 savings for effect of 2013 c. 24, s. 36, Sch. 11 (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 2 para. 3** (with art. 3)

**[<sup>F357</sup> 174A Enforcement of powers under section 174: general**

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 174, it may impose a penalty in accordance with section 174D.
- (2) The CMA may proceed (whether at the same time or at different times) under subsection (1) and section 138A(3) in relation to the same failure.
- (3) Where the CMA considers that a person has intentionally obstructed or delayed another person in the exercise of its powers under section 174(7), it may impose a penalty in accordance with section 174D.
- (4) A person commits an offence if the person intentionally alters, suppresses or destroys any document which the person has been required to produce by a notice under section 174.
- (5) But a person does not commit an offence under subsection (4) in relation to any act which constitutes a failure to comply with a notice under section 174 if the CMA has proceeded against the person under subsection (1) in relation to that failure.
- (6) A person who commits an offence under subsection (4) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (7) The CMA shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (4) if that person has been found guilty of that offence.
- (8) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 138A(3), the CMA shall have regard to the statement of policy which was most recently published under section 174E at the time the failure or (as the case may be) the obstruction or delay concerned occurred.
- (9) In this section—

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- (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and
- (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

#### **Textual Amendments**

**F357** Ss. 174A-174E 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### **174B Restriction on powers to impose penalties under section 174A**

- (1) No penalty shall be imposed by virtue of section 174A(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (2) In the following provisions of this section, “the section 174 power” means the power under section 174 to which the failure or (as the case may be) the obstruction or delay in question relates.
- (3) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (a), the relevant day is the day when the CMA finally concludes the carrying out of its section 5 functions.
- (4) Where the section 174 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.
- (5) Except where subsection (3) or (4) applies, the relevant day is the day determined in accordance with the following provisions of this section.
- (6) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (b) in connection with a matter that is the subject of a possible reference under section 131, the relevant day is the day when the CMA finally decides whether to make the reference.
- (7) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (b) in connection with a matter that is the subject of a reference under section 131 or 132, the relevant day is the day when the reference is finally determined (see section 183).
- (8) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (c) in connection with a matter that is the subject of a possible reference under section 140A(5) or (6), the relevant day is the day when the Secretary of State makes the reference.
- (9) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (c) in connection with a matter that is the subject of a reference under section 140A(6), the relevant day is the day when the reference is finally determined (see section 183).

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

### Textual Amendments

**F357** Ss. 174A-174E 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 \(c. 24\)](#), s. 103(1)(i)(3), **Sch. 11 para. 1**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Modifications etc. (not altering text)

**C62** S. 174B modified by 2007 c. 29, s. 57(5A) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 176(3)** (with art. 3, Sch. 2 para. 4))

**C63** S. 174B modified by 2000 c. 8, s. 140D(2) (as inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 124(4)** (with art. 3, Sch. 2 para. 4))

## 174C Section 174B: supplementary provision

- (1) For the purpose of section 174B(3), the CMA finally concludes the carrying out of its section 5 functions if—
  - (a) the CMA publishes the market study report under section 131B(4) or (as the case may be) gives it to the Secretary of State under section 140A(3)(b); or
  - (b) the period permitted for the preparation by the CMA of the market study report and for the report to be published under section 131B(4) or (as the case may be) given to the Secretary of State under section 140A(3)(b) expires and no such report has been so prepared or no such action has been taken.
- (2) For the purpose of section 174B(3), the time when the CMA finally concludes the carrying out of its section 5 functions is—
  - (a) in a case falling within subsection (1)(a), the publication of the report or (as the case may be) the giving of it to the Secretary of State;
  - (b) in a case falling within subsection (1)(b), the expiry of the period concerned.
- (3) For the purpose of section 174B(6), the CMA finally decides whether to make a reference under section 131 if—
  - (a) the CMA makes such a reference;
  - (b) the CMA accepts an undertaking under section 154 instead of making such a reference;
  - (c) the CMA publishes notice that it has otherwise decided not to make such a reference; or
  - (d) the period permitted for the preparation by the CMA of a market study report in relation to the matter and for the report to be published under section 131B(4) has expired and no such report has been so prepared or published.
- (4) For the purpose of section 174B(6), the time when the CMA finally decides whether to make a reference under section 131 is—
  - (a) in a case falling within subsection (3)(a), the making of the reference;
  - (b) in a case falling within subsection (3)(b), the acceptance of the undertaking concerned;
  - (c) in a case falling within subsection (3)(c), the publication of the notice concerned;

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- (d) in a case falling within subsection (3)(d), the expiry of the period concerned.
- (5) In subsection (4)(b) the reference to the acceptance of the undertaking concerned 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 subsections (3)(b) and (4)(b).

#### Textual Amendments

**F357** Ss. 174A-174E 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), s. 103(1)(i)(3), Sch. 11 para. 1; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 174D Penalties

- (1) A penalty imposed under section 174A(1) or (3) shall be of such amount as the CMA considers appropriate.
- (2) In the case of a penalty imposed under section 174A(1), the amount may be—
- a fixed amount;
  - an amount calculated by reference to a daily rate; or
  - a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) In the case of a penalty imposed under section 174A(3), the amount shall be a fixed amount.
- (4) A penalty imposed under section 174A(1) shall not—
- in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - in the case of an amount calculated by reference to a daily rate, exceed such amount per day as the Secretary of State may so specify; and
  - in the case of a fixed amount and an amount calculated by reference to a daily rate, exceed such fixed amount and such amount per day as the Secretary of State may so specify.
- (5) A penalty imposed under section 174A(3) shall not exceed such amount as the Secretary of State may by order specify.
- (6) An order under subsection (4) or (5) shall not specify—
- in the case of a fixed amount, an amount exceeding £30,000;
  - in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
  - in the case of a fixed amount and an amount calculated by reference to a daily rate, a fixed amount exceeding £30,000 and an amount per day exceeding £15,000.
- (7) Before making an order under subsection (4) or (5), the Secretary of State shall consult—
- the CMA; and
  - such other persons as the Secretary of State considers appropriate.

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- (8) In imposing a penalty by reference to a daily rate—
- (a) no account is to be taken of any days before the service on the person concerned of notice of the penalty under section 112 (as applied by subsection (10)); and
  - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (9).
- (9) Those days are—
- (a) the day on which the requirement of the notice concerned under section 174 is satisfied;
  - (b) the day which is the relevant day in the case in question for the purposes of section 174B.
- (10) Sections 112 to 115 apply in relation to a penalty imposed under section 174A(1) or (3) as they apply in relation to a penalty imposed under section 110(1) or (3).

#### Textual Amendments

**F357** Ss. 174A-174E 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 174E Statement of policy on penalties

- (1) The CMA shall prepare and publish a statement of policy in relation to the enforcement of notices given under section 174.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 174A(1) or (3).
- (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
- (4) The CMA shall consult such persons as it considers appropriate when preparing or revising its statement of policy.]

#### Textual Amendments

**F357** Ss. 174A-174E 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 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### <sup>F358</sup> 175 Enforcement of powers under section 174: offences

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*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

#### Textual Amendments

**F358** S. 175 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 3](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

**C64** S. 175 savings for effects of 2013 c. 24, s. 36, Sch. 11 (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 2 para. 3](#) (with art. 3)

### <sup>F359</sup>176 Investigation powers of the Commission

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#### Textual Amendments

**F359** S. 176 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 4](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Reports

### 177 Excisions from reports: Part 4

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish a report of the [<sup>F360</sup>CMA] under section 142.
- (2) The Secretary of State may exclude a matter from the report if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.
- (4) The [<sup>F361</sup>CMA] shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 136(4) to (6)<sup>F362</sup> ... and 172(10) to the giving or laying of a report of the [<sup>F363</sup>CMA] shall be construed as references to the giving or laying of the report as published.

#### Textual Amendments

**F360** Word in s. 177(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 205](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F361** Word in s. 177(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 205](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F362** Words in s. 177(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 31](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F363** Word in s. 177(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 205](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)



*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

## 178 Minority reports of [<sup>F364</sup>CMA]: Part 4

- (1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference <sup>F365</sup>..., disagrees with any decisions contained in the report of the [<sup>F366</sup>CMA] under this Part as the decisions of the [<sup>F366</sup>CMA].
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

### Textual Amendments

**F364** Word in s. 178 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 206(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F365** Words in s. 178(1) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 206(2)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F366** Word in s. 178(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 206(2)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### Other

## 179 Review of decisions under Part 4

- (1) Any person aggrieved by a decision of the [<sup>F367</sup>CMA], the appropriate Minister, [<sup>F368</sup>or the Secretary of State] in connection with a reference or possible reference under this Part may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision”—
  - [<sup>F369</sup>(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));]
  - (a) does not include a decision to impose a penalty under [<sup>F370</sup>section 174A(1) or (3)]; but
  - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may—
  - (a) dismiss the application or quash the whole or part of the decision to which it relates; and
  - (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Part 4. (See end of Document for details)*

- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section—  
“the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and  
“Tribunal rules” has the meaning given by section 15(1).

#### Textual Amendments

- F367** Word in s. 179(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 207\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F368** Words in s. 179(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 207\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F369** S. 179(2)(za) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 15](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F370** Words in s. 179(2)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 5](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 180 Offences

- (1) Sections 117 (false or misleading information) and 125 (offences by bodies corporate) shall apply, with the modifications mentioned in subsection (2) below, for the purposes of this Part as they apply for the purposes of Part 3.
- (2) Section 117 shall, in its application by virtue of subsection (1) above, have effect as if references to the Secretary of State included references to the appropriate Minister so far as he is not the Secretary of State acting alone [<sup>F371</sup>and as if the references to OFCOM were omitted] .

#### Textual Amendments

- F371** Words in s. 180(2) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 26](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)

## 181 Orders under Part 4

- (1) Any power of the Secretary of State to make an order under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order under this Part—  
(a) may be exercised so as to make different provision for different cases or different purposes;  
(b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) The power of the Secretary of State under section [<sup>F372</sup>131C(1), 136(9), 137(3), 138B(6)], 144(2), 153(3) or 168(8) as extended by subsection (2) above may be

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exercised by modifying any enactment comprised in or made under this Act, or any other enactment.

- (4) An order made by the Secretary of State under section [<sup>F373</sup>131C(1), 137(3), 138B(6)], 144(2), 158, 160 [<sup>F374</sup>, 161, 174D(4) or (5), or under section 114(3)(b) or (4)(b) as applied by section 174D], shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) No order shall be made by the Secretary of State under section 136(9) or 168(8), or section 128(6) as applied by section 183(2), unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) An order made by the Secretary of State under section 153(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.
- (7) In calculating the period of 28 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If an order made by the Secretary of State ceases to have effect by virtue of subsection (6), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.
- (9) If, apart from this subsection, an order made by the Secretary of State under section 153(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (10) References in this section to an order made under this Part include references to an order made under section <sup>F375</sup>... 114(3)(b) or (4)(b) as applied by section [<sup>F376</sup>174D] and an order made under section 128(6) as applied by section 183(2).

#### Textual Amendments

- F372** Words in s. 181(3) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 16\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F373** Words in s. 181(4) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 16\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F374** Words in s. 181(4) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 6\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F375** Words in s. 181(10) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 6\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F376** Word in s. 181(10) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 6\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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## **182 Service of documents: Part 4**

Section 126 shall apply for the purposes of this Part as it applies for the purposes of Part 3.

## **183 Interpretation: Part 4**

(1) In this Part, unless the context otherwise requires—

“action” includes omission; and references to the taking of action include references to refraining from action;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;

“consumer” means any person who is—

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“customer” includes a customer who is not a consumer;

“enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;

“modify” includes amend or repeal;

“notice” means notice in writing;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation; and

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person.

(2) Sections 127(1)(b) and (4) to (6) and 128 shall apply for the purposes of this Part as they apply for the purposes of Part 3.

(3) For the purposes of this Part a market investigation reference is finally determined if—

(a) [<sup>F377</sup>where the reference is made under section 131 or 132—]

- (i) the period permitted by section 137 for preparing and publishing a report under section 136 has expired and no such report has been prepared and published;

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- (ii) such a report has been prepared and published within the period permitted by section 137 and contains the decision that there is no adverse effect on competition;
  - (iii) the [<sup>F378</sup>CMA] has decided under section 138(2) neither to accept undertakings under section 159 nor to make an order under section 161; or
  - (iv) the [<sup>F378</sup>CMA] has accepted an undertaking under section 159 or made an order under section 161;
- (b) [<sup>F379</sup>where the reference is a restricted PI reference or a full PI reference— ]
- (i) the period permitted by section 144 for the preparation of the report of the [<sup>F378</sup>CMA] under section 142 and for action to be taken in relation to it under section 143(1) or (3) [<sup>F380</sup>or (as the case may be) 143A(2) or (3)] has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;
  - (ii) the [<sup>F378</sup>CMA] has terminated under section 145(1) its investigation and the reference is finally determined under paragraph (a) above <sup>F381</sup> ...;
  - (iii) the report of the [<sup>F378</sup>CMA] has been prepared under section 142 and published under section 143(1) [<sup>F382</sup>or (as the case may be) 143A(2)] within the period permitted by section 144;
  - (iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above <sup>F383</sup> ...;
  - [<sup>F384</sup>(v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section or (as the case may be) under subsection (2) of section 146A within the period permitted by subsection (6) of that section and the reference is finally determined under paragraph (a) above;]
  - (vi) the Secretary of State has decided under section 146(2) that no eligible public interest consideration is relevant and the reference is finally determined under paragraph (a) above <sup>F385</sup> ...;
  - [<sup>F386</sup>(via) the Secretary of State has made no finding at all under section 146A(2) and the reference is finally determined under paragraph (a) above;]
  - (vii) the Secretary of State has decided under 146(2) that a public interest consideration is relevant but has decided under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161; <sup>F387</sup> ...
  - [<sup>F388</sup>(viii) the Secretary of State has made an adverse public interest finding under section 146A(2) but has decided under section 147A(2) neither to accept an undertaking under section 159 nor to make an order under section 161;]
  - (viii) the Secretary of State has decided under section 146(2) that a public interest consideration is relevant and has accepted an undertaking under section 159 or made an order under section 161 [<sup>F389</sup>; or
  - (ix) the Secretary of State has made an adverse public interest finding under section 146A(2) and has accepted an undertaking under section 159 or made an order under section 161.]
- (4) For the purposes of this Part the time when a market investigation reference is finally determined is—

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- (a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;
  - (b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;
  - (c) in a case falling within subsection (3)(a)(iv) or (b)(viii) [<sup>F390</sup>or (ix)], the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and
  - (d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.
- (5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v) [<sup>F391</sup>, (vi) or (via)].
- (6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (3)(a)(iv) and (b)(viii) [<sup>F392</sup>and (ix)] and (4)(c).
- (7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

#### Textual Amendments

- F377** Words in s. 183(3)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F378** Word in s. 183(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 208](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F379** Words in s. 183(3)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F380** Words in s. 183(3)(b)(i) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F381** Words in s. 183(3)(b)(ii) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F382** Words in s. 183(3)(b)(iii) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(d\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F383** Words in s. 183(3)(b)(iv) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(e\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F384** S. 183(3)(b)(v) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(f\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F385** Words in s. 183(3)(b)(vi) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(g\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F386** S. 183(3)(b)(via) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(h\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F387** Word in s. 183(3)(b) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F388** S. 183(3)(b)(viia) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(j\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)



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- F389** S. 183(3)(b)(ix) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 32(3)(k)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F390** Words in s. 183(4)(c) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 32(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F391** Words in s. 183(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 32(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F392** Words in s. 183(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 32(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 184 Index of defined expressions: Part 4

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 183(1)
Adverse effect on competition	Section 134(2) [ <sup>F393</sup> and (2A)]
[ <sup>F394</sup> Adverse public interest finding	Section 146A(3)]
Appropriate Minister	Section 132(5)
Business	Section 183(1)
Change of circumstances	Section 183(1)
[ <sup>F395</sup> The CMA	Section 273]
<sup>F396</sup>	<sup>F396</sup>
...	...
Consumer	Section 183(1)
[ <sup>F397</sup> Cross-market reference	Section 131(6)]
Customer	Section 183(1)
Date of market investigation reference	Section 137(7)
Detrimental effect on customers	Section 134(5)
Enactment	Section 183(1)
Enforcement order	Section 162(8)
Enforcement undertaking	Section 162(8)
Feature of a market	Section 131(2)
Final determination of market investigation reference	Section 183(3) to (6)
[ <sup>F398</sup> Full PI reference	Section 140A(12)]
Goods	Section 183(1)
Intervention notice	Section 139(3)
Market for goods or services	Section 131(6)

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Market in the United Kingdom	Section 131(6)
Market investigation reference	Section 131(6)
[ <sup>F399</sup> Market study notice	Section 130A(1)
Market study report	Section 131B(4)]
Minister of the Crown	Section 183(1)
Modify	Section 183(1)
Notice	Section 183(1)
<b>F396</b>	<b>F396</b>
. . .	. . .
[ <sup>F400</sup> Ordinary reference	Section 131(6)]
Public interest consideration	Section 139(5)
Public interest consideration being finalised	Section 139(7)
[ <sup>F401</sup> Public interest expert	Section 141B(4)]
Publish	Section 183(7)
Relevant customer benefit	Section 134(8)
Relevant sectoral enactment	Section 136(7)
Relevant sectoral regulator	Section 136(8)
Reports of the [ <sup>F402</sup> CMA]	Section 177(5)
[ <sup>F403</sup> Restricted PI reference	Section 140A(12)]
Subordinate legislation	Section 183(1)
Supply (in relation to the supply of goods)	Section 183(1)
The supply of services (and a market for services etc.)	Section 183(2)

### Textual Amendments

- F393** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 9\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F394** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F395** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 209\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F396** Words in s. 184 table omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 209\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F397** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 9\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F398** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F399** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 17](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F400** Words in s. 184 table inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 9(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F401** Words in s. 184 table inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 33(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F402** Word in s. 184 table substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 209(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F403** Words in s. 184 table inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 33(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002, Part 4.