



Fair Trading Act 1973

1973 CHAPTER 41

PART IV

FUNCTIONS OF DIRECTOR AND COMMISSION IN RELATION TO MONOPOLY SITUATIONS AND UNCOMPETITIVE PRACTICES

[^{F1} Undertakings as alternative to monopoly reference by Director]

Textual Amendments

F1 S. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)(a)

56A [^{F2} Proposals by Director.]

- (1) The Director may propose that the Secretary of State accept undertakings in lieu of the Director making a monopoly reference if—
 - (a) he considers that a monopoly situation exists and that there are facts relating to the monopoly situation which may now or in future operate against the public interest,
 - (b) he intends, apart from the question of undertakings being accepted in lieu, to make a monopoly reference with respect to the existence of the monopoly situation and that the reference should be a monopoly reference not limited to the facts, and
 - (c) he considers that undertakings offered to be given by particular persons would be sufficient to deal with such of the relevant adverse effects of the monopoly situation as he thinks need to be dealt with.
- (2) A proposal under this section shall include—
 - (a) a statement of the terms of the proposed undertakings and the persons by whom they are proposed to be given,
 - (b) a statement of the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest, and

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*Changes to legislation: There are currently no known outstanding effects for the Fair Trading Act 1973, Cross
 Heading: Undertakings as alternative to monopoly reference by Director. (See end of Document for details)*

- (c) a statement of the effects identified by the Director as the relevant adverse effects of the monopoly situation.
- (3) For the purposes of the law relating to defamation, absolute privilege shall attach to anything included in a proposal under this section pursuant to subsection (2)(b) or (c) of this section.
- (4) In this section, references to the relevant adverse effects of a monopoly situation are to the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have.

Textual Amendments

- F2** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**
 Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**
 (with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**
 Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted
 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

Modifications etc. (not altering text)

- C1** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 paras. 8, 9**
C2 Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 1(1)**
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 4(1)**
 Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 5(1)**
 Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2), 87, 89** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 11(1)**

[^{F3}56B Proposals under section 56A: preparatory steps.

- (1) The Director may only make a proposal under section 56A of this Act if—
- (a) the first or second condition is met, and
 - (b) the third condition is met.
- (2) The first condition is that the Director has published in an appropriate manner a notice containing—
- (a) each of the matters mentioned in subsection (5) of this section, and
 - (b) the invitation mentioned in subsection (6) of this section.
- (3) The second condition is that the Director has published in an appropriate manner—
- (a) a notice containing the matters mentioned in paragraphs (a) and (b) of subsection (5) of this section, and
 - (b) a notice containing—
 - (i) the matters mentioned in paragraphs (c), (d), (e) and (f) of that subsection, and
 - (ii) the invitation mentioned in subsection (6) of this section.
- (4) The third condition is that the Director has considered any representations made to him in accordance with the notice under this section which contains the invitation mentioned in subsection (6) of this section.
- (5) The matters referred to above are—

Status: Point in time view as at 03/01/1995.

Changes to legislation: There are currently no known outstanding effects for the Fair Trading Act 1973, Cross Heading: Undertakings as alternative to monopoly reference by Director. (See end of Document for details)

- (a) the identity of the person or persons in whose favour the Director considers the monopoly situation exists,
 - (b) the terms of the proposed monopoly reference,
 - (c) the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest,
 - (d) the effects identified by the Director as the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have,
 - (e) the terms of the undertakings which the Director is, at the time of the notice, considering proposing the Secretary of State accept in lieu of the Director making the proposed monopoly reference (“the potential undertakings”), and
 - (f) the identity of the persons by whom the potential undertakings would be given.
- (6) The invitation referred to above is an invitation to make representations to the Director, within such time as he may specify, about the potential undertakings being the subject of a proposal under section 56A of this Act.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to anything contained in a notice published under this section.
- (8) In this section, references to an appropriate manner, in relation to the publication of a notice by the Director, are to such manner as he considers most suitable for the purpose of bringing the notice to the attention of persons who, in his opinion, are likely to be interested in it.]

Textual Amendments

- F3** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1)**, 82(2)
Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**
(with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**
Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted
(1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

Modifications etc. (not altering text)

- C3** Ss. 56A-56G extended (E.W.) by 1994 c. 40, **ss. 7, 82(2)**, **Sch. 2 paras. 8(1), 9**
- C4** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, **ss. 7, 82(2)**, **Sch. 2 para. 1(1)**
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2)**, **Sch. 2 para. 4(1)**
Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)
Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2)**, **Sch. 2 para. 5(1)**
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2)**, **Sch. 2 para. 11(1)**

[^{F4}56C Proposals under section 56A: exclusion of sensitive information.

- (1) The Director shall—
- (a) in formulating the statement required by section 56A(2)(b) or (c) of this Act, and
 - (b) in publishing a notice under section 56B of this Act containing the matters mentioned in subsection (5)(c) and (d) of that section,

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have regard to the need for excluding, so far as practicable, any matter to which subsection (2) or (3) of this section applies.

- (2) This subsection applies to any matter which relates to the private affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual.
- (3) This subsection applies to any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body, unless in his opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the statement or notice, as the case may be.]

Textual Amendments

- F4** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**
 Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**
 (with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**
 Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted
 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

Modifications etc. (not altering text)

- C5** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 paras. 8, 9**
C6 Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 1(1)**
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 4(1)**
 Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 5(1)**
 Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2), 87, 89** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 11(1)**

[^{F5}56D Acceptance by Secretary of State of proposals under section 56A.

- (1) Where the Secretary of State accepts a proposal under section 56A of this Act, then, within the period of twelve months from the date of acceptance of the undertakings to which the proposal relates, no monopoly reference may be made in the same, or substantially the same, terms as those published by the Director under section 56B of this Act preparatory to making the proposal.
- (2) Subsection (1) of this section shall not prevent a reference being made if the Director—
 - (a) considers that any of the undertakings has been breached, or needs to be varied or superseded, and
 - (b) has given notice of that fact to the person responsible for giving the undertaking.
- (3) The Secretary of State shall send to the Director a copy of every undertaking accepted pursuant to a proposal under section 56A of this Act.
- (4) For the purposes of subsection (1) of this section, the Secretary of State shall be treated as accepting a proposal under section 56A of this Act if he accepts the undertakings to which the proposal relates, either in the form in which they were proposed or with such modifications as he thinks fit; and references in this Act to an undertaking accepted pursuant to a proposal under that section shall be construed accordingly.]

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Textual Amendments

- F5** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**
Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**
(with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**
Ss. 56A-56G: certain functions transferred (E.W.S) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted
(1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

Modifications etc. (not altering text)

- C7** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 paras. 8(1), 9**
C8 Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 1(1)**
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 4(1)**
Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art.
3(1), Sch. 2 Pt. I (subject to transitional provision and saving in **Sch. 2 Pt. II**)
Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 5(1)**
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 11(1)**

[^{F6}56E Review of undertakings.

- (1) The Director shall keep the carrying out of an undertaking to which this section applies under review, and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either—
 - (a) one or more of the parties to it can be released from it, or
 - (b) it needs to be varied or to be superseded by a new undertaking.
- (2) If it appears to the Director—
 - (a) that any one or more of the parties to an undertaking to which this section applies can be released from it,
 - (b) that such an undertaking needs to be varied or to be superseded by a new undertaking, or
 - (c) that there has been any failure to carry out such an undertaking,he shall give to the Secretary of State such advice as he may think proper in the circumstances.
- (3) Where the Director advises the Secretary of State under subsection (2) of this section that an undertaking needs to be varied or to be superseded by a new undertaking, he shall propose the terms of variation or, as the case may be, the new undertaking.
- (4) The Director shall, if the Secretary of State so requests, give him advice with respect to the release, variation or superseding of an undertaking to which this section applies.
- (5) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
 - (a) pursuant to a proposal under section 56A of this Act, or
 - (b) under section 56F of this Act.]

Textual Amendments

- F6** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**
Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**
(with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**

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S. 56A-56G : certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

Modifications etc. (not altering text)

- C9** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9
- C10** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)
- Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)
- Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

[^{F7}56F Release, variation and replacement of undertakings.

- (1) The Secretary of State may only—
- (a) accept a new undertaking in place of an undertaking to which this section applies,
 - (b) release a person from such an undertaking, or
 - (c) agree to the variation of such an undertaking,
- after considering the advice of the Director on the subject.
- (2) The Secretary of State shall send to the Director—
- (a) a copy of every undertaking accepted under this section,
 - (b) particulars of every variation of an undertaking agreed under this section, and
 - (c) particulars of every release of a person from an undertaking under this section.
- (3) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
- (a) pursuant to a proposal under section 56A of this Act, or
 - (b) under this section.]

Textual Amendments

- F7** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)
- Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(c)(4)(c) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2
- S. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

Modifications etc. (not altering text)

- C11** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9
- C12** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)
- Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

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[^{F8}56G Publication of undertakings etc.

- (1) The Secretary of State shall arrange for the publication in such manner as he considers appropriate of—
 - (a) every undertaking accepted—
 - (i) pursuant to a proposal under section 56A of this Act, or
 - (ii) under section 56F of this Act, and
 - (b) every variation or release under that section.
- (2) Where the Secretary of State accepts undertakings pursuant to a proposal under section 56A of this Act, he shall arrange for the statements included in the proposal under subsection (2)(b) and (c) of that section to be published in such manner as he considers appropriate.
- (3) If it appears to the Secretary of State that the publication of any matter contained in a statement which falls to be published under subsection (2) of this section would be against the public interest, he shall exclude that matter from the statement as published under that subsection.
- (4) Without prejudice to subsection (3) of this section, if the Secretary of State considers that it would not be in the public interest to disclose—
 - (a) any matter contained in a statement which falls to be published under subsection (2) of this section relating to the private affairs of an individual whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter, or
 - (b) any matter contained in such a statement relating specifically to the affairs of a particular person whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter,
 the Secretary of State shall exclude that matter from the statement as published under subsection (2) of this section.]

Textual Amendments

- F8** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)
 Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1996 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)
 Ss. 56A-56G: functions transferred (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 22(2)(c)(4)(c) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

Modifications etc. (not altering text)

- C13** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9
C14 Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)
 Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
 Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)
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Status:

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Changes to legislation:

There are currently no known outstanding effects for the Fair Trading Act 1973, Cross Heading: Undertakings as alternative to monopoly reference by Director.