
Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Paragraph 10. (See end of Document for details)

SCHEDULES

SCHEDULE 25

MINOR AND CONSEQUENTIAL AMENDMENTS

Competition Act 1980 (c. 21)

- 10 (1) The Competition Act 1980 is amended as follows.
- (2) In section 11 (references of public bodies and certain other persons to the Commission)—
- (a) in subsection (1)—
 - (i) at the end of paragraph (a) there is inserted “ or ”;
 - (ii) paragraph (c) and the word “or” before it shall cease to have effect;
 - (iii) for “paragraph (a), (b) or (c)” there is substituted “ paragraph (a) or (b) ”;
 - (b) subsections (2), (9) and (9A) shall cease to have effect.
- (3) After section 11 there is inserted—

“11A References under section 11: time-limits

- (1) Every reference under section 11 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 11 above shall not have effect (and no action shall be taken in relation to it under section 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Secretary of State under subsection (3) below.
- (3) The Secretary of State may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than three months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Secretary of State shall publish any extension made by him under subsection (3) above in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.

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11B References under section 11: powers of investigation and penalties

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 11 above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116(statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) subsection (2) were omitted;
 - (b) in subsection (4), for the word “publication” there were substituted “laying before both Houses of Parliament”; and
 - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
 - (c) the words “by this Part” were omitted.

11C References under section 11: further supplementary provisions

- (1) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions under this Act as it applies in relation to functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” were omitted.
- (2) Section 125 of the Enterprise Act 2002 (offences by bodies corporate) shall apply for the purposes of this Act as it applies for the purposes of Part 3 of that Act.
- (3) For the purposes of section 12 below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

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11D Interim orders

- (1) Subsection (2) below applies where, in the circumstances specified in subsection (1) of section 12 below, the Secretary of State has under consideration the making of an order under subsection (5) of that section.
 - (2) The Secretary of State may by order, for the purpose of preventing pre-emptive action—
 - (a) prohibit or restrict the doing of things which the Secretary of State 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 to the Enterprise Act 2002 (information powers).
 - (3) An order under this section shall come into force at such time as is determined by or under the order.
 - (4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on the making of the order under section 12(5) below or (as the case may be) on the making of the decision not to make such an order.
 - (5) The Secretary of State shall publish any decision made by him not to make an order under section 12(5) below in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.
 - (6) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or revoking an order under this section.
 - (7) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under this section as they apply in relation to orders under paragraph 2 of Schedule 7 to that Act—
 - (a) section 86(2) and (3) (enforcement orders: general provisions);
 - (b) section 87 (delegated power of directions); and
 - (c) section 94(1) to (5), (8) and (9) (rights to enforce orders).
 - (8) In this section “pre-emptive action” means action which might impede the making of an order under section 12(5) below.”
- (4) In section 12 (orders following report under section 11)—
- (a) in subsection (5) for the words from “by order” to the end there is substituted “make an order under this subsection”;
 - (b) after subsection (5) there is inserted—

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- “(5A) An order under subsection (5) above may contain anything permitted by Schedule 8 to the Enterprise Act 2002, except paragraphs 8, 13 and 14 of that Schedule.
- (5B) An order under subsection (5) above shall come into force at such time as is determined by or under the order.”;
- (c) for subsection (6) there is substituted—
- “(6) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under subsection (5) above as they apply in relation to orders under paragraph 11 of Schedule 7 to that Act—
- (a) section 86(2) and (3) (enforcement orders: general provisions);
 - (b) section 87 (delegated power of directions);
 - (c) section 88 (contents of certain enforcement orders);
 - (d) section 94(1) to (5), (8) and (9) (rights to enforce orders); and
 - (e) Schedule 10 (procedural requirements for orders).
- (7) The Secretary of State shall publish any decision made by him to dispense with the requirements of Schedule 10 to the Enterprise Act 2002 as applied by subsection (6) above; and shall do so in such manner as he considers most suitable for bringing the decision to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.”
- (5) In section 16 (general provision as to reports)—
- (a) subsection (1) shall cease to have effect;
 - (b) in subsection (2) the words “or of the Director” shall cease to have effect.
- (6) In section 17 (laying before Parliament and publication of reports)—
- (a) in subsections (1), (3) and (4), the words “or 13(5)” shall cease to have effect;
 - (b) in subsection (4), for the words “against the public interest” there is substituted “inappropriate”;
 - (c) for subsection (5) there is substituted—
- “(5) In deciding what is inappropriate for the purposes of subsection (4) the Secretary of State shall have regard to the considerations mentioned in section 244 of the Enterprise Act 2002.”
- (7) Sections 18 (information and advice about operation of Act), 21 (monopoly references by Secretary of State alone) and 24 (modification of provisions about performance of Commission’s functions) shall cease to have effect.
- (8) In section 31 (orders and regulations)—
- (a) in subsection (1) the words “or regulations” shall cease to have effect;
 - (b) in subsection (3)—
 - (i) the words “regulations under this Act or” shall cease to have effect;
 - (ii) after “11(4)” there is inserted “, 11D”;
 - (iii) after “above” there is inserted “, or section 111(4) or (6) or 114(3) (b) or (4)(b) of the Enterprise Act 2002 as applied by section 11B(1) (c) or (f) above,”;

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- (c) subsection (4) shall cease to have effect;
- (d) after subsection (4) there is inserted—

“(5) Any power of the Secretary of State to make an order under this Act—

- (a) may be exercised so as to make different provision for different cases or different purposes; and
- (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.”

- (9) In section 33 (interpretation), for subsection (2) there is substituted—

“(2) Unless the context otherwise requires, in this Act “Minister” includes a government department and the following expressions shall have the same meanings as they have in Part 3 of the Enterprise Act 2002—

“business”

“the Commission”

“enactment”

“goods”

“services”

“supply (in relation to the supply of goods)”

“the supply of services”.”

- (10) For the purposes of the Scotland Act 1998 (c. 46) the amendments made by this paragraph shall be taken to be pre-commencement enactments within the meaning of that Act.

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