

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, SCHEDULE 7. (See end of Document for details)

SCHEDULES

SCHEDULE 7

Section 85

ENFORCEMENT REGIME FOR PUBLIC INTEREST AND SPECIAL PUBLIC INTEREST CASES

Modifications etc. (not altering text)

- C1** Schs. 7, 8: functions made exercisable concurrently (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), **15(2)** (with arts. 16(5)(6), 17)

Pre-emptive undertakings and orders

^{F1}1

Textual Amendments

- F1** Sch. 7 para. 1 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 7 para. 4(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

2 (1) Sub-paragraph (2) applies where an intervention notice or special intervention notice is in force.

(2) The Secretary of State or the [^{F2}CMA] may by order, for the purpose of preventing pre-emptive action—

- (a) prohibit or restrict the doing of things which the Secretary of State or (as the case may be) the [^{F2}CMA] 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.

[^{F3}2A) Sub-paragraph (2B) applies where—

- (a) an intervention notice or special intervention notice is in force, and
- (b) the Secretary of State or the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(2B) The Secretary of State or (as the case may be) the CMA 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 sub-paragraph (2)(b) to (d);

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- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.]
- [^{F4}(2C) A person may, with the consent of the Secretary of State or (as the case may be) the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this paragraph by the Secretary of State or (as the case may be) the CMA.]
- (3) Sub-paragraph (4) applies where an intervention notice is in force.
- (4) The Secretary of State ^{F5}... may, for the purpose of preventing pre-emptive action, adopt an order made [^{F6}by the CMA] under section 72 if the order is still in force when the Secretary of State ^{F7}... adopts it.
- (5) An order adopted under sub-paragraph (4)—
- (a) shall continue in force, in accordance with its terms, when adopted; and
 - (b) may be varied or revoked by an order under this paragraph.
- (6) Any other order under this paragraph—
- (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.
- (7) References in this Part to orders under this paragraph shall, unless the context otherwise requires, include references to orders adopted under this paragraph; and references to the making of orders under this paragraph shall be construed accordingly.
- (8) An order which is in force under this paragraph in relation to a reference or possible reference under section 45 or (as the case may be) 62 shall cease to be in force if an undertaking under paragraph ^{F8}... 3 comes into force in relation to that reference.
- (9) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force when the intervention notice concerned or (as the case may be) special intervention notice concerned ceases to be in force.
- (10) No order shall be made by the Secretary of State or the [^{F9}CMA] under this paragraph before the making of a reference under section 45 or (as the case may be) 62 unless^{F10}—
- (a) the Secretary of State or (as the case may be) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct; or
 - (b) the order relates to a special merger situation which has been, or may have been, created.]
- (11) The Secretary of State or (as the case may be) the [^{F9}CMA] shall, as soon as reasonably practicable, consider any representations received by that person in relation to varying or revoking an order under this paragraph.
- [^{F11}(12) In this paragraph “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 45 or (as the case may be) 62 or impede the taking of any action under this Part which may be justified by the Secretary of State's decisions on the reference.]

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Textual Amendments

- F2** Word in Sch. 7 para. 2(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 160\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F3** Sch. 7 para. 2(2A)(2B) 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\(1\)\(3\), Sch. 7 para. 4\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Sch. 7 para. 2(2C) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in Sch. 7 para. 2(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(5\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Words in Sch. 7 para. 2(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(5\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in Sch. 7 para. 2(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(5\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Words in Sch. 7 para. 2(8) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Word in Sch. 7 para. 2(10)(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 160\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Words in Sch. 7 para. 2(10) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Sch. 7 para. 2(12) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 7 para. 4\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C2** Sch. 7 para. 2(2C) modified (5.12.2019 at 12.10 p.m.) by [The Public Interest Merger Reference \(Gardner Aerospace Holdings Ltd. and Impcross Ltd.\) \(Pre-emptive Action\) Order 2019 \(S.I. 2019/1490\), arts. 1, 13](#)
- C3** Sch. 7 para. 2(2C) modified (18.8.2021 at 4.30 p.m.) by [The Public Interest Merger Reference \(Cobham Ultra Acquisitions Ltd. and Ultra Electronics Holdings plc\) \(Pre-emptive Action\) Order 2021 \(S.I. 2021/944\), arts. 1\(1\), 7](#)
- C4** Sch. 7 para. 2(2C) modified (5.9.2021 at 7.30 p.m.) by [The Public Interest Merger Reference \(Perpetuus Advanced Materials plc\) \(Pre-emptive Action\) Order 2021 \(S.I. 2021/993\), arts. 1\(1\), 10](#)

Undertakings in lieu of reference under section 45 or 62

- 3 (1) Sub-paragraph (2) applies if the Secretary of State has power to make a reference to the Commission under section 45 or 62 and otherwise intends to make such a reference.
- (2) The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned, accept from such of the parties concerned as he considers appropriate undertakings to take such action as he considers appropriate.
- (3) In proceeding under sub-paragraph (2), the Secretary of State shall, in particular—
- (a) accept the decisions of the [F12CMA] included in its report under section 44 so far as they relate to the matters mentioned in subsections (4) and (5) of that section; or

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- (b) (as the case may be) accept the decisions of the [F12CMA] included in its report under section 61 so far as they relate to the matters mentioned in subsections (3)(a) and (4) of that section.
- (4) In proceeding under sub-paragraph (2) in relation to an anti-competitive outcome, the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (5) No undertaking shall be accepted by the Secretary of State under this paragraph in connection with a possible reference under section 45 if a public interest consideration mentioned in the intervention notice concerned has not been finalised and the period of 24 weeks beginning with the giving of that notice has not expired.
- (6) The Secretary of State may delay making a decision as to whether to accept any such undertaking (and any related decision as to whether to make a reference under section 45) if he considers that there is a realistic prospect of the public interest consideration being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned.
- (7) A delay under sub-paragraph (6) shall not extend beyond—
- (a) the time when the public interest consideration is finalised; or
 - (b) if earlier, the expiry of the period of 24 weeks mentioned in that sub-paragraph.
- (8) An undertaking under this paragraph—
- (a) shall come into force when accepted;
 - (b) may be varied or superseded by another undertaking; or
 - (c) may be released by the Secretary of State.
- (9) An undertaking under this paragraph which is in force in relation to a relevant merger situation or (as the case may be) a special merger situation shall cease to be in force if an order comes into force under paragraph 5 or 6 in relation to that undertaking.
- (10) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.

[F13(11) In sub-paragraphs (8) and (10), “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

Textual Amendments

- F12** Word in Sch. 7 para. 3(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 160\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F13** Sch. 7 para. 3(11) inserted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), [Sch. para. 10\(8\)](#) (with art. 17)

- 4 (1) The relevant authority shall not make a reference under section 22, 33 [F14, 45, 68B or 68C] in relation to the creation of a relevant merger situation or (as the case may be) a reference under section 62 in relation to the creation of a special merger situation if—

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- (a) the Secretary of State has accepted an undertaking or group of undertakings under paragraph 3; and
 - (b) the relevant merger situation or (as the case may be) the special merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.
- (2) In sub-paragraph (1) “the relevant authority” means—
- (a) in relation to a possible reference under section 22 [^{F15}, 33, 68B or 68C], the [^{F16}CMA]; and
 - (b) in relation to a possible reference under section 45 or 62, the Secretary of State.
- (3) Sub-paragraph (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the Secretary of State or the [^{F16}CMA] or made public before any undertaking concerned was accepted.
- (4) For the purposes of sub-paragraph (3) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.
- (5) In sub-paragraph (3) “made public” means so publicised as to be generally known or readily ascertainable.

Textual Amendments

- F14** Words in Sch. 7 para. 4(1) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 34(2)
- F15** Words in Sch. 7 para. 4(2)(a) substituted (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2)(j), Sch. 16 para. 34(3)
- F16** Word in Sch. 7 para. 4(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 160(4) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 5 (1) Sub-paragraph (2) applies where the Secretary of State considers that—
- (a) an undertaking accepted ^{F17}... under paragraph 3 has not been, is not being or will not be fulfilled; or
 - (b) in relation to an undertaking accepted ^{F17}... under that paragraph, information which was false or misleading in a material respect was given [^{F18}to the Secretary of State] or the [^{F19}CMA] by the person giving the undertaking before he decided to accept the undertaking.
- (2) The Secretary of State may, for any of the purposes mentioned in paragraph 3(2), make an order under this paragraph.
- (3) Sub-paragraphs (3) and (4) of paragraph 3 shall apply for the purposes of sub-paragraph (2) above as they apply for the purposes of sub-paragraph (2) of that paragraph.
- (4) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and

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- (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.
- (5) An order under this paragraph
- (a) shall come into force at such time as is determined by or under the order; and
- (b) may contain provision which is different from the provision contained in the undertaking concerned.
- (6) No order shall be varied or revoked under this paragraph unless the [F20CMA] advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- [F21(7) In this paragraph, “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

Textual Amendments

- F17** Words in Sch. 7 para. 5(1) omitted (3.5.2023) by virtue of [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), **Sch. para. 10(9)(a)(i)** (with art. 17)
- F18** Words in Sch. 7 para. 5(1)(b) substituted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), **Sch. para. 10(9)(a)(ii)** (with art. 17)
- F19** Word in Sch. 7 para. 5(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 160(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** Word in Sch. 7 para. 5(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 160(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F21** Sch. 7 para. 5(7) inserted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), **Sch. para. 10(9)(b)** (with art. 17)

Modifications etc. (not altering text)

- C5** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(2)}); S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)
- C6** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)
- C7** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(5)(a)}); S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

- 6 (1) Sub-paragraph (2) applies where—
- (a) the Secretary of State has the power to make an order under paragraph 5 in relation to a particular undertaking and intends to make such an order; or
- (b) the Secretary of State has the power to make an order under paragraph 10 in relation to a particular undertaking and intends to make such an order.
- (2) The Secretary of State may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this paragraph.

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- (3) No order shall be made under sub-paragraph (2) unless the Secretary of State has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under paragraph 5 or (as the case may be) 10 is in progress or in contemplation.
- (4) An order under sub-paragraph (2) may—
- (a) prohibit or restrict the doing of things which the Secretary of State considers would prejudice the making of the order under paragraph 5 or 10;
 - (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.
- (5) An order under this paragraph shall come into force at such time as is determined by or under the order.
- (6) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force on—
- (a) the coming into force of an order under paragraph 5 or (as the case may be) 10 in relation to the undertaking concerned; or
 - (b) the making of the decision not to proceed with such an order.
- (7) 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 paragraph.

[^{F22}(8) In this paragraph, “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

Textual Amendments

F22 Sch. 7 para. 6(8) inserted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), [Sch. para. 10\(10\)](#) (with art. 17)

Statutory restrictions following reference under section 45 or 62

- 7 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a reference has been made under section 45(2) or (3) or 62(2) but not finally determined; and
 - [^{F23}(b) no orders under paragraph 2 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.]
- (2) No relevant person shall, without the consent of the Secretary of State—
- (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;

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- (b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or
 - (c) transfer the ownership or control of any enterprises to which the reference relates.
- (3) No relevant person shall, without the consent of the Secretary of State, assist in any of the activities mentioned in paragraphs (a) to (c) of sub-paragraph (2).
- (4) The prohibitions in sub-paragraphs (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.
- (5) The consent of the Secretary of State under sub-paragraph (2) or (3)—
- (a) may be general or specific;
 - (b) may be revoked by the Secretary of State; and
 - (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of sub-paragraph (5) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Sub-paragraphs (2) and (3) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
 - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
 - (c) a person carrying on business in the United Kingdom.
- (8) For the purpose of this paragraph a reference under section 45(2) or (3) is finally determined if—
- (a) the time within which the [^{F24}CMA] is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (b) the [^{F24}CMA] decides to cancel the reference under section 53(1);
 - (c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
 - (d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
 - (e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
 - (f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (9) For the purpose of this paragraph a reference under section 62(2) is finally determined if—

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- (a) the time within which the [^{F24}CMA] is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (b) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
 - (c) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
 - (d) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (10) For the purposes of this paragraph the time when a reference under section 45(2) or (3) or (as the case may be) 62(2) is finally determined is—
- (a) in a case falling within sub-paragraph (8)(a) or (c) or (as the case may be) (9)(a) or (b), the expiry of the time concerned;
 - (b) in a case falling within sub-paragraph (8)(b), (d) or (e) or (as the case may be) (9)(c), the making of the decision concerned;
 - (c) in a case falling within sub-paragraph (8)(f) or (as the case may be) (9)(d), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
 - (d) in a case falling within sub-paragraph (8)(g) or (as the case may be) (9)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (11) In this paragraph “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
 - (b) any subsidiary of any person falling within paragraph (a); or
 - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.

Textual Amendments

F23 Sch. 7 para. 7(1)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 15 para. 38(2); S.I. 2014/416, art. 2(1)(f) (with Sch.)

F24 Word in Sch. 7 para. 7(8)(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 160(6) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 8 (1) Sub-paragraph (2) applies where—
- (a) a reference has been made under section 45(4) or (5) or 62(3); and
 - [^{F25}(b) no orders under paragraph 2 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned.]

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- (2) No relevant person shall, without the consent of the Secretary of State, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (3) The consent of the Secretary of State under sub-paragraph (2)—
- (a) may be general or specific;
 - (b) may be revoked by the Secretary of State; and
 - (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of sub-paragraph (3) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Sub-paragraph (2) shall apply to a person’s conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
 - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
 - (c) a person carrying on business in the United Kingdom.
- (6) In this paragraph—
- “company” includes any body corporate;
- “relevant period” means the period beginning with the publication of the decision of the Secretary of State to make the reference concerned and ending when the reference is finally determined;
- “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
 - (b) any subsidiary of any person falling within paragraph (a); or
 - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and
- “share” means share in the capital of a company, and includes stock.
- (7) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 45(4) or (5) is finally determined if—
- (a) the [F26CMA] cancels the reference under section 48(1) or 53(1);
 - (b) the time within which the [F26CMA] is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
 - (d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
 - (e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
 - (f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph

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- 9 of this Schedule nor to make an order under paragraph 11 of this Schedule;
or
- (g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (8) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 62(3) is finally determined if—
- (a) the [^{F26}CMA] cancels the reference under section 64(1);
 - (b) the time within which the [^{F26}CMA] is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (c) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
 - (d) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
 - (e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (f) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (9) For the purposes of the definition of “relevant period” in sub-paragraph (6) above, the time when a reference under section 45(4) or (5) or (as the case may be) 62(3) is finally determined is—
- (a) in a case falling within sub-paragraph (7)(a), (d) or (e) or (as the case may be) (8)(a) or (d), the making of the decision concerned;
 - (b) in a case falling within sub-paragraph (7)(b) or (c) or (as the case may be) (8)(b) or (c), the expiry of the time concerned;
 - (c) in a case falling within sub-paragraph (7)(f) or (as the case may be) (8)(e), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
 - (d) in a case falling within sub-paragraph (7)(g) or (as the case may be) (8)(f), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (10) Section 79 shall apply for the purposes of paragraph 7 and this paragraph in relation to a reference under section 45 or 62 as it applies for the purposes of sections 77 and 78 in relation to a reference under section 22 or 33.
- (11) In its application by virtue of sub-paragraph (10) section 79 shall have effect as if—
- (a) subsections (1) and (2) were omitted; and
 - (b) for the reference in subsection (4) to the [^{F27}CMA] there were substituted a reference to the Secretary of State.

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Textual Amendments

- F25** Sch. 7 para. 8(1)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 38\(3\)](#); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F26** Word in Sch. 7 para. 8(7)(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 160\(7\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F27** Word in Sch. 7 para. 8(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 160\(7\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Final undertakings and orders

- 9 (1) The Secretary of State may, in accordance with section 55 or (as the case may be) 66(5) to (7), accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) An undertaking under this paragraph—
- (a) shall come into force when accepted;
 - (b) may be varied or superseded by another undertaking; and
 - (c) may be released by the Secretary of State.
- (3) An undertaking which is in force under this paragraph in relation to a reference under section 45 or 62 shall cease to be in force if an order under paragraph 6(1)(b) or 10 comes into force in relation to the subject-matter of the undertaking.
- (4) No undertaking shall be accepted under this paragraph in relation to a reference under section 45 or 62 if an order has been made under—
- (a) paragraph 6(1)(b) or 10 in relation to the subject-matter of the undertaking; or
 - (b) paragraph 11 in relation to that reference.
- (5) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.
- 10 (1) Sub-paragraph (2) applies where the Secretary of State considers that—
- (a) an undertaking accepted by him under paragraph 9 has not been, is not being or will not be fulfilled; or
 - (b) in relation to an undertaking accepted by him under that paragraph, information which was false or misleading in a material respect was given to him or the [^{F28}CMA] by the person giving the undertaking before he decided to accept the undertaking.
- (2) The Secretary of State may, for any purpose mentioned in section 55(2) or (as the case may be) 66(6), make an order under this paragraph.
- (3) Subsections (3) and (4) of section 55 or (as the case may be) subsection (7) of section 66 shall apply for the purposes of sub-paragraph (2) above as they or it applies for the purposes of section 55(2) or (as the case may be) 66(6).
- (4) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and
 - (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.

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- (5) An order under this paragraph—
- (a) shall come into force at such time as is determined by or under the order; and
 - (b) may contain provision which is different from the provision contained in the undertaking concerned.
- (6) No order shall be varied or revoked under this paragraph unless the [F²⁹CMA] advises that such a variation or revocation is appropriate by reason of a change of circumstances.

Textual Amendments

- F28** Word in Sch. 7 para. 10(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 160(8) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F29** Word in Sch. 7 para. 10(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 160(8) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Modifications etc. (not altering text)

- C8** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(2)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C9** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C10** 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 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(5)(a)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

- 11 (1) The Secretary of State may, in accordance with section 55 or (as the case may be) 66(5) to (7), make an order under this paragraph.
- (2) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and
 - (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.
- (3) An order under this paragraph shall come into force at such time as is determined by or under the order.
- (4) No order shall be made under this paragraph in relation to a reference under section 45 or (as the case may be) 62 if an undertaking has been accepted under paragraph 9 in relation to that reference.
- (5) No order shall be varied or revoked under this paragraph unless the [F³⁰CMA] advises that such a variation or revocation is appropriate by reason of a change of circumstances.

Textual Amendments

- F30** Word in Sch. 7 para. 11(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 160(9) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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Modifications etc. (not altering text)

- C11** 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 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(2)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C12** 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 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C13** 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 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

Changes to legislation:

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