



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 5

#### SUPPLEMENTARY

#### *Investigation powers*

#### [<sup>F1</sup>111 Penalties

- (1) A penalty imposed under section 110(1) or (3) shall be of such amount as the [<sup>F2</sup>CMA] considers appropriate.
- (2) The amount may, in the case of a penalty imposed under section 110(1), 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) The amount shall, in the case of a penalty imposed under section 110(3), be a fixed amount.
- (4) No penalty imposed under section 110(1) shall—
  - (a) in the case of a fixed amount, exceed such amount as the Secretary of State may by order specify;
  - (b) 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
  - (c) 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) In imposing a penalty by reference to a daily rate—

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- (a) no account shall be taken of any days before the service of the notice under section 112 on the person concerned; and
  - (b) unless the [<sup>F3</sup>CMA] determines an earlier date (whether before or after the penalty is imposed), the amount payable shall cease to accumulate at the beginning of—
    - (i) the day on which the requirement of the notice concerned under section 109 is satisfied <sup>F4</sup>...; or
    - (ii) if earlier, [<sup>F5</sup> the day which is the relevant day in the case in question for the purposes of section 110A].
- (6) No penalty imposed under section 110(3) shall exceed such amount as the Secretary of State may by order specify.
- (7) An order under subsection (4) or (6) shall not specify—
- (a) in the case of a fixed amount, an amount exceeding £30,000;
  - (b) in the case of an amount calculated by reference to a daily rate, an amount per day exceeding £15,000; and
  - (c) 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.
- (8) Before making an order under subsection (4) or (6) the Secretary of State shall consult the [<sup>F6</sup>CMA] and such other persons as he considers appropriate.]

#### Textual Amendments

- F1** Ss. 110A, 110B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 29\(11\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#) (with savings in [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) \(No. 2\) Order 2014 \(S.I. 2014/549\)](#), art. 1(1), [Sch. 1 para. 6](#) (with art. 3))
- F2** Word in s. 111(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 145](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F3** Word in s. 111(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 145](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)
- F4** Words in s. 111(5)(b)(i) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 29\(12\)\(a\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F5** Words in s. 111(5)(b)(ii) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 29\(12\)\(b\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\) \(with Sch.\)](#)
- F6** Word in s. 111(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 5 para. 145](#) (with s. 28); [S.I. 2014/416, art. 2\(1\)\(d\) \(with Sch.\)](#)

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

- C1** Pt. 3 modified (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 4 para. 56; S.I. 2014/416, art. 2\(1\)\(c\) \(with Sch.\)](#)
- C2** S. 111 applied (with modifications) (20.6.2003) by [S.I. 1992/231 \(N.I. 1\), art. 15B\(1\)\(3\)-\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 28\(3\); S.I. 2003/1397, art. 2\(1\), Sch. \(with art. 8\)](#) (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. 213\(5\)](#) (with art. 3, Sch. 2 para. 2))
- C3** S. 111 applied (with modifications) (20.6.2003) by [1991 c. 56, s. 14B\(1\)\(3\)-\(5\)](#) (as inserted by [Enterprise Act 2002 \(c. 40\), ss. 278, 279, Sch. 25 para. 25\(5\); S.I. 2003/1397, art. 2\(1\), Sch. \(with art. 8\)](#) (as amended (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\)](#)

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- (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 75(5)** (with art. 3, Sch. 2 para. 2))
- C4** S. 111 applied (with modifications) (20.6.2003) by 1990 c. 42, Sch. 4 para. 4A(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 24(9)(e)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C5** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 56CB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 68(5)** (with art. 3, Sch. 2 para. 2))
- C6** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 14A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C7** S. 111 applied (with modifications) (20.6.2003) by 1989 c. 29, s. 12B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 20(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C8** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 41EB(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(12)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 51(5)** (with art. 3, Sch. 2 para. 2))
- C9** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 26A(11F)(11H)-(11J) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(6)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C10** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 44, s. 24B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 15(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C11** S. 111 applied (with modifications) (20.6.2003) by 1986 c. 31, s. 44B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 14(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C12** S. 111 applied (with modifications) (20.6.2003) by 1984 c. 12, s. 13B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 13(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C13** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 18(6)(8)(10)(11) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(5)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C14** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 38, s. 12B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 44(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 150(5)** (with art. 3, Sch. 2 para. 2))
- C15** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 19A(6)(8)(10)(11) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C16** S. 111 applied (with modifications) (20.6.2003) by 2000 c. 26, s. 15B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 42(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C17** S. 111 applied (with modifications) (20.6.2003) by S.I. 1996/275 (N.I. 2), art. 15B(1)(3)-(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 36(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 218(5)** (with art. 3, Sch. 2 para. 2))

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- C18** S. 111 applied (with modifications) (20.6.2003) by S.I. 1994/426 (N.I. 1), s. 35B(1)(3)(4)(5) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 33(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8))
- C19** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para 15(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(c)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C20** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, Sch. 4A para. 10A(1)(3)(5)(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(15)(a)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 111(5)** (with art. 3, Sch. 2 para. 2))
- C21** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 15C(2D)(2F)(2H)(2I) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(6)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C22** S.111 applied (with modifications) (20.6.2003) by 2000 c. 8, Sch. 14 para. 2A(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 40(20)(b)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C23** S. 111 applied (with modifications) (20.6.2003) by 1980 c. 21, s. 11B(1)(3) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8) (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. 36(6)** (with art. 3, Sch. 2 para. 2))
- C24** S. 111 applied (with modifications) (20.6.2003) by 1993 c. 43, s. 13B(1)(3)(5)(6) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 30(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)) (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. 101(5)** (with art. 3, Sch. 2 para. 2))
- S. 111 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 1(1)(q)(17)** (as amended (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **18(1)-(17)** (with arts. 20-23))
- S. 111 applied (with modifications) (20.6.2003) by S.I. 1999/3088, reg. 8 (as substituted by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 2, **Sch. para. 36(3)**)
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), arts. 39(2), 40(2), {Sch. 2 para. 5(1)(c)(2)(3)(5)(6)}; S.R. 2004/71, **art. 2**, Sch. (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. 243(5)** (with art. 3, Sch. 2 para. 2))
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1996/275 (N.I. 2), art. 17A(17)(c)(18)(19)(20)(21) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 37(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 111 applied (with modifications) (N.I.) (2.3.2004) by S.I. 1992/231 (N.I. 1), art. 17A(14)(c)(15)(16)(17)(18) (as inserted by The Energy (Northern Ireland) Order (S.I. 2003/419 (N.I. 6)), {art. 36(2)}; S.R. 2004/71, **art. 2**, Sch.)
- S. 111 applied (with modifications) (1.10.2004) by 1991 c. 56, s. 16B(6)(c)-(10) (as inserted by Water Act 2003 (c. 37), ss. 55(4), 105(3); S.I. 2004/2528, **art. 2(h)** (with art. 4, Sch.))
- S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17M(1)(3) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 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. 78(5)** (with art. 3, Sch. 2 para. 2))

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- S. 111 applied (with modifications) (1.10.2005) by 1991 c. 56, s. 17Q(6)(8) (as inserted by Water Act 2003 (c. 37), ss. 56, 105(3), **Sch. 4 para. 2**; S.I. 2005/2714, **art. 2(h)** (with Sch. para. 5))
- S. 111 applied (with modifications) (S.) (11.11.2005) by The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (S.I. 2005/3172), **arts. 5, 10(3)-(7)**
- S. 111 applied (with modifications) (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), **23(1)(c)(3), 27(6)(c)(8)** (with arts. 8(9), 121, 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. 2 (with Sch. 2) (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. 250(5)** (with art. 3, Sch. 2 para. 2))
- C25** Ss. 109-115 applied (with modifications) (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 60(9), 211(2)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(c)(i) (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. 177 (with art. 3, Sch. 2 para. 2))
- C26** S. 111 applied (with modifications) (15.1.2012) by The Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011 (S.I. 2011/2749), arts. 1, **3(c), 4** (as amended (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), Sch. 1 para. 45(3)(4) (with art. 3))
- C27** S. 111 applied (with modifications) (1.11.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 10 para. 10(1)(c)(2)(5)-(7)(12)**; S.I. 2012/2657, art. 2(2) (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. 195(8)** (with art. 3, Sch. 2 para. 2))
- C28** Ss. 110-115 modified by S.I. 2003/1592, art. 5A(f) (as inserted (1.4.2014) by The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 (S.I. 2014/891), arts. 1, **7** (with arts. 20-23))
- C29** Ss. 111-115 applied (with modifications) by 2007 c. 29, s. 60(9) (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. 177** (with art. 3, Sch. 2 para. 2))
- C30** Ss. 109-111 savings for effect of 2013 c. 24, s. 29 (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. 1** (with art. 3)
- C31** S. 111(5)(6)(i) saving for the effect of 2013 c. 24, s. 29(12)(a) (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 6** (with art. 3)
- C32** S. 111(5)(6)(ii) saving for the effect of 2013 c. 24, s. 29(12)(b) (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) (No. 2) Order 2014 (S.I. 2014/549), art. 1(1), **Sch. 1 para. 6** (with art. 3)

**Changes to legislation:**

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