



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 4

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

### CHAPTER 2

#### PUBLIC INTEREST CASES

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

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

- (1) An intervention notice under section 139(1) shall state—
  - [<sup>F1</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>F2</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>F3</sup>matter], 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(1) and which is in force.

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(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>F4</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>F5</sup>(za) the CMA accepts an undertaking under section 154 instead of making a reference under section 131 in relation to the matter;
- (zb) the CMA publishes notice that it has otherwise decided not to make a reference under section 131 in relation to the matter;

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- (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 [F6CMA] under section 142 and for action to be taken in relation to it under section 143(1) or (3) [F7or (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 [F6CMA] decides under section 145(1) to terminate its investigation;
  - (c) the report of the [F6CMA] has been prepared under section 142 and published under section 143(1) [F8or (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 [F9or (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 [F10or (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) [F11or (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—
  - [F12(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)[F13(zc),] (a) or (d), the expiry of the period concerned;
  - [F14(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.
- [F15(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

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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>F16</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

- F1** 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.)
- F2** 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.)
- F3** 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.)
- F4** 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.)
- F5** 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.)
- F6** 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.)
- F7** 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.)
- F8** 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.)
- F9** 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.)
- F10** 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.)
- F11** 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.)
- F12** 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.)
- F13** 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.)
- F14** 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.)
- F15** 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.)
- F16** 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.)

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

- C1** 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))

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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise Act 2002, Section 140. (See end of Document for details)

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- C2** 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))
- C3** 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.)
- C4** 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))
- C5** 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.
- C6** 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))
- C7** 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))
- C8** 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))
- C9** 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))

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002, Section 140.