



Enterprise Act 2002

2002 CHAPTER 40

PART 3

MERGERS

CHAPTER 4

ENFORCEMENT

Enforcement functions of [F¹CMA]

92 Duty of [F¹CMA] to monitor undertakings and orders

- (1) The [F²CMA] shall keep under review—
 - (a) the carrying out of any enforcement undertaking or any enforcement order; and
 - (b) compliance with the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (2) The [F²CMA] shall, in particular, from time to time consider—
 - (a) whether an enforcement undertaking or enforcement order has been or is being complied with;
 - (b) whether, by reason of any change of circumstances, an enforcement undertaking is no longer appropriate and—
 - (i) one or more of the parties to it can be released from it; or
 - (ii) it needs to be varied or to be superseded by a new enforcement undertaking; and
 - (c) whether, by reason of any change of circumstances, an enforcement order is no longer appropriate and needs to be varied or revoked.
- (3) The [F³CMA] shall give F⁴... the Secretary of State such advice as it considers appropriate in relation to—

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- (a) any possible variation or release by ^{F5}... the Secretary of State of an enforcement undertaking accepted by ^{F6}... him;
 - (b) any possible new enforcement undertaking to be accepted by ^{F7}... the Secretary of State so as to supersede another enforcement undertaking given to ^{F7}... the Secretary of State;
 - (c) any possible variation or revocation by ^{F7}... the Secretary of State of an enforcement order made by ^{F7}... the Secretary of State;
 - (d) any possible enforcement undertaking to be accepted by ^{F7}... the Secretary of State instead of an enforcement order or any possible enforcement order to be made by ^{F7}... the Secretary of State instead of an enforcement undertaking;
 - (e) the enforcement by virtue of section 94(6) to (8) of any enforcement undertaking or enforcement order; or
 - (f) the enforcement by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (4) The [^{F8}CMA] shall take such action as it considers appropriate in relation to—
- (a) any possible variation or release by it of an enforcement undertaking accepted by it;
 - (b) any possible new enforcement undertaking to be accepted by it so as to supersede another enforcement undertaking given to it;
 - (c) any possible variation or revocation by it of an enforcement order made by it;
 - (d) any possible enforcement undertaking to be accepted by it instead of an enforcement order or any possible enforcement order to be made by it instead of an enforcement undertaking;
 - (e) the enforcement by it by virtue of section 94(6) of any enforcement undertaking or enforcement order; or
 - (f) the enforcement by it by virtue of section 95(4) and (5) of the prohibitions in sections 77(2) and (3) and 78(2) and in paragraphs 7(2) and (3) and 8(2) of Schedule 7.
- (5) The [^{F8}CMA] shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The [^{F8}CMA] shall, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (5).
- (7) The [^{F9}CMA] shall—
- ^{F10}(a)
 - (b) give a copy of [^{F11} any report prepared by it under subsection (6)] to the Secretary of State; and
 - (c) publish the report.

[^{F12}(8) In this section, “Secretary of State” includes the Chancellor of the Duchy of Lancaster.]

Textual Amendments

- F1** Word in s. 92 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 128\(6\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** Word in s. 92(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 128\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F3** Word in s. 92(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(a)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 92(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(a)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F5** Words in s. 92(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(b)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Words in s. 92(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(3)(b)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 92(3)(b)-(d) omitted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 128(3)(c) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F8** Word in s. 92(4)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(4)** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F9** Word in s. 92(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** S. 92(7)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Word in s. 92(7)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 128(5)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** S. 92(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(5)** (with art. 17)

Modifications etc. (not altering text)

- C1** S. 92 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)(g)(7)** (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))
- C2** S. 92 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- C3** Ss. 85-95: 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)
- C4** Ss. 91(3), 92(1)(a), 162(1) and 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

Changes to legislation:

There are currently no known outstanding effects for the Enterprise Act 2002, Section 92.