



# Enterprise Act 2002 (repealed)

## 2002 CHAPTER 40

### PART 3

#### MERGERS

### CHAPTER 4

#### ENFORCEMENT

*Powers exercisable before references under section 22 or 33*

#### **71 Initial undertakings: completed mergers**

- (1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.
- (2) The OFT may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) No undertaking shall be accepted under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that a relevant merger situation has been created.
- (4) An undertaking under this section—
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the OFT.
- (5) An undertaking which—
  - (a) is in force under this section in relation to a possible reference or reference under section 22; and
  - (b) has not been adopted under section 80 or paragraph 1 of Schedule 7;

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shall cease to be in force if an order under section 72 or 81 comes into force in relation to that reference or an order under paragraph 2 of that Schedule comes into force in relation to the matter.

- (6) An undertaking under this section shall, if it has not previously ceased to be in force and if it has not been adopted under section 80 or paragraph 1 of Schedule 7, cease to be in force—
- (a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;
  - (b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;
  - (c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and
  - (d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (8) In this section and section 72 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission’s decisions on the reference.

## **72 Initial enforcement orders: completed mergers**

- (1) Subsection (2) applies where the OFT is considering whether to make a reference under section 22.
- (2) The OFT may by order, for the purpose of preventing pre-emptive action—
- (a) prohibit or restrict the doing of things which the OFT 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.
- (3) No order shall be made under subsection (2) unless the OFT has reasonable grounds for suspecting that it is or may be the case that—
- (a) a relevant merger situation has been created; and
  - (b) pre-emptive action is in progress or in contemplation.
- (4) An order under this section—
- (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.
- (5) An order which—
- (a) is in force under this section in relation to a possible reference or a reference under section 22; and
  - (b) has not been adopted under section 81 or paragraph 2 of Schedule 7;

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shall cease to be in force if an undertaking under section 71 or 80 comes into force in relation to that reference or an undertaking under paragraph 1 of that Schedule comes into force in relation to the matter.

- (6) An order under this section shall, if it has not previously ceased to be in force and if it is not adopted under section 81 or paragraph 2 of Schedule 7, cease to be in force—
- (a) where the OFT has decided to make the reference concerned under section 22, at the end of the period of 7 days beginning with the making of the reference;
  - (b) where the OFT has decided to accept an undertaking under section 73 instead of making that reference, on the acceptance of that undertaking;
  - (c) where an intervention notice is in force, at the end of the period of 7 days beginning with the giving of that notice; and
  - (d) where the OFT has otherwise decided not to make the reference concerned under section 22, on the making of that decision.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

### **73 Undertakings in lieu of references under section 22 or 33**

- (1) Subsection (2) applies if the OFT considers that it is under a duty to make a reference under section 22 or 33 (disregarding the operation of section 22(3)(b) or (as the case may be) 33(3)(b) but taking account of the power of the OFT under section 22(2) or (as the case may be) 33(2) to decide not to make such a reference).
- (2) The OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) In proceeding under subsection (2), the OFT shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it.
- (4) In proceeding under subsection (2), the OFT 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) An undertaking under this section—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the OFT.
- (6) An undertaking under this section which is in force in relation to a relevant merger situation shall cease to be in force if an order comes into force under section 75 or 76 in relation to that undertaking.
- (7) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

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### [<sup>F1</sup>73A Time-limits for consideration of undertakings

- (1) A party concerned who wishes to offer an undertaking to the CMA for the purposes of section 73(2) must do so before the end of the period of 5 working days beginning with—
  - (a) the day after the CMA gives the person the notice required by section 34ZA(1)(b); or
  - (b) in a case where subsection (2) of section 34A applies, the day after the CMA gives the person the notice required by paragraph (b) of that subsection.
- (2) If an undertaking is offered for those purposes, the CMA shall, before the end of the period of 10 working days beginning with the day mentioned in subsection (1)—
  - (a) decide whether there are reasonable grounds for believing that the undertaking or a modified version of it might be accepted by the CMA under section 73(2), and
  - (b) if it considers that it might be, give notice to the person who offered the undertaking that it is considering it.
- (3) If such a notice is given, the CMA shall decide whether to accept the undertaking before the end of the period of 50 working days beginning with the day mentioned in subsection (1).
- (4) The CMA may extend the period mentioned in subsection (3), by no more than 40 working days, if it considers that there are special reasons for doing so.
- (5) The CMA shall prepare and publish guidance in relation to the exercise of its power under subsection (4).
- (6) The CMA may revise any such guidance and, where it does so, shall publish the revised statement.
- (7) The CMA may extend the period mentioned in subsection (3) if it considers that a relevant person has failed (with or without reasonable excuse) to comply with any requirement of a notice given under section 109 in relation to the case in question.
- (8) In subsection (7), “relevant person” means—
  - (a) any person carrying on any of the enterprises concerned;
  - (b) any person who (whether alone or as a member of a group) owns or has control of any such person; or
  - (c) any officer, employee or agent of any person mentioned in paragraph (a) or (b).
- (9) For the purposes of subsection (8), a person or group of persons able, directly or indirectly, to control or materially influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, may be treated as having control of it.
- (10) An extension under subsection (4) or (7) comes into force when published under section 107.
- (11) An extension under subsection (7) continues in force until—
  - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
  - (b) the CMA publishes its decision to cancel the extension.

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- (12) In this section and section 73B, “working day” means any day which is not—
- (a) a Saturday, a Sunday, Good Friday or Christmas Day, or
  - (b) a day which is a bank holiday in England and Wales.

#### Textual Amendments

- F1** Ss. 73A, 73B inserted (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 8 para. 7](#)

### **73B Section 73A: supplementary**

- (1) A period extended under section 73A(4) may also be extended under section 73A(7), and a period extended under section 73A(7) may also be extended under section 73A(4).
- (2) No more than one extension is possible under section 73A(4).
- (3) Where a period is extended or further extended under section 73A(4) or (7), the period as extended or (as the case may be) further extended is, subject to subsections (4) and (5), to be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
  - (a) the period within which the CMA must discharge its duty under section 73A(3) is further extended,
  - (b) the further extension and at least one previous extension is made under section 73A(7), and
  - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) are to be disregarded.
- (6) The Secretary of State may by order amend section 73A so as to alter one or more of the periods for the time being mentioned in the section.
- (7) But no alteration may be made by virtue of subsection (6) which results in—
  - (a) the period mentioned in section 73A(1) exceeding 5 working days;
  - (b) the period mentioned in section 73A(2) exceeding 10 working days;
  - (c) the period mentioned in section 73A(3) exceeding 50 working days;
  - (d) the period mentioned in section 73A(4) exceeding 40 working days.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.]

#### Textual Amendments

- F1** Ss. 73A, 73B inserted (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 8 para. 7](#)

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#### **74 Effect of undertakings under section 73**

- (1) The relevant authority shall not make a reference under section 22, 33 or 45 in relation to the creation of a relevant merger situation if—
  - (a) the OFT has accepted an undertaking or group of undertakings under section 73; and
  - (b) the relevant merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.
- (2) Subsection (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 OFT or made public before any undertaking concerned was accepted.
- (3) For the purposes of subsection (2) 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.
- (4) In subsection (2) “made public” means so publicised as to be generally known or readily ascertainable.
- (5) In this section “relevant authority” means—
  - (a) in relation to a possible reference under section 22 or 33, the OFT; and
  - (b) in relation to a possible reference under section 45, the Secretary of State.

#### **75 Order-making power where undertakings under section 73 not fulfilled etc.**

- (1) Subsection (2) applies where the OFT considers that—
  - (a) an undertaking accepted by it under section 73 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the OFT by the person giving the undertaking before the OFT decided to accept the undertaking.
- (2) The OFT may, for any of the purposes mentioned in section 73(2), make an order under this section.
- (3) Subsections (3) and (4) of section 73 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain—
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the OFT considers appropriate.
- (5) An order under this section—
  - (a) shall come into force at such time as is determined by or under the order;
  - (b) may contain provision which is different from the provision contained in the undertaking concerned; and
  - (c) may be varied or revoked by another order.

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- (6) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

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

- C1** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(2)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C2** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 2002 (c. 40) ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C3** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

## 76 Supplementary interim order-making power

- (1) Subsection (2) applies where—
- the OFT has the power to make an order under section 75 in relation to a particular undertaking and intends to make such an order; or
  - the Commission has the power to make an order under section 83 in relation to a particular undertaking and intends to make such an order.
- (2) The OFT or (as the case may be) the Commission may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this section.
- (3) No order shall be made under subsection (2) unless the OFT or (as the case may be) the Commission has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under section 75 or (as the case may be) 83 is in progress or in contemplation.
- (4) An order under subsection (2) may—
- prohibit or restrict the doing of things which the OFT or (as the case may be) the Commission considers would prejudice the making of the order under section 75 or (as the case may be) 83;
  - impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - 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;
  - do anything which may be done by virtue of paragraph 19 of Schedule 8.
- (5) An order under this section—
- shall come into force at such time as is determined by or under the order; and
  - may be varied or revoked by another order.
- (6) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on—

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- (a) the coming into force of an order under section 75 or (as the case may be) 83 in relation to the undertaking concerned; or
  - (b) the making of the decision not to proceed with such an order.
- (7) The OFT or (as the case may be) the Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

#### *Interim restrictions and powers*

### 77 **Restrictions on certain dealings: completed mergers**

- (1) Subsections (2) and (3) apply where—
- (a) a reference has been made under section 22 but not finally determined; and
  - (b) no undertakings under section 71 or 80 are in force in relation to the relevant merger situation concerned and no orders under section 72 or 81 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Commission—
- (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;
  - (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 Commission, assist in any of the activities mentioned in paragraphs (a) to (c) of subsection (2).
- (4) The prohibitions in subsections (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 Commission under subsection (2) or (3)—
- (a) may be general or special;
  - (b) may be revoked by the Commission; and
  - (c) shall be published in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of subsection (5) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Subsections (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) In this section “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;



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- (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.

## **78 Restrictions on certain share dealings: anticipated mergers**

- (1) Subsection (2) applies where—
  - (a) a reference has been made under section 33; and
  - (b) no undertakings under section 80 are in force in relation to the relevant merger situation concerned and no orders under section 81 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Commission, 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 Commission under subsection (2)—
  - (a) may be general or special;
  - (b) may be revoked by the Commission; and
  - (c) shall be published in such manner as the Commission considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of subsection (3) shall not apply if the Commission considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Subsection (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 section and section 79—
  - “company” includes any body corporate;
  - “relevant period” means the period beginning with the making of 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.

## **79 Sections 77 and 78: further interpretation provisions**

- (1) For the purposes of this Part a reference under section 22 or 33 is finally determined if—
  - (a) the reference is cancelled under section 37(1);

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- (b) the time within which the Commission is to prepare and publish a report under section 38 in relation to the reference has expired and no such report has been prepared and published;
  - (c) the report of the Commission under section 38 contains the decision that there is not an anti-competitive outcome;
  - (d) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84; or
  - (e) the report of the Commission under section 38 contains the decision that there is an anti-competitive outcome and the Commission has decided under section 41(2) to accept an undertaking under section 82 or to make an order under section 84.
- (2) For the purposes of this Part the time when a reference under section 22 or 33 is finally determined is—
- (a) in a case falling within subsection (1)(a), the making of the decision concerned;
  - (b) in a case falling within subsection (1)(b), the expiry of the time concerned;
  - (c) in a case falling within subsection (1)(c), the publication of the report;
  - (d) in a case falling within subsection (1)(d), the making of the decision under section 41(2); and
  - (e) in a case falling within subsection (1)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (3) For the purposes of section 78 and subject to subsection (4) below, the circumstances in which a person acquires an interest in shares include those where—
- (a) he enters into a contract to acquire the shares (whether or not for cash);
  - (b) he is not the registered holder but acquires the right to exercise, or to control the exercise of, any right conferred by the holding of the shares; or
  - (c) he—
    - (i) acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares; or
    - (ii) assumes an obligation to acquire such an interest.
- (4) The circumstances in which a person acquires an interest in shares for the purposes of section 78 do not include those where he acquires an interest in pursuance of an obligation assumed before the publication by the OFT of the reference concerned.
- (5) The circumstances in which a person acquires a right mentioned in subsection (3)—
- (a) include those where he acquires a right, or assumes an obligation, whose exercise or fulfilment would give him that right; but
  - (b) do not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members.
- (6) References to rights and obligations in subsections (3) to (5) include conditional rights and conditional obligations.

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- (7) References in sections 77 and 78 to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
- (8) Sections 26(2) to (4) and 127(1), (2) and (4) to (6) shall apply for the purposes of sections 77 and 78 to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 26 to determine whether enterprises are brought under common control.
- (9) [<sup>F2</sup>Section 1159 of, and Schedule 6 to, the Companies Act 2006] (c. 6) shall apply for the purposes of sections 77 and 78 to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company; and references to a subsidiary in [<sup>F3</sup>paragraph 8 of Schedule 6] as so applied shall be construed accordingly.

#### Textual Amendments

- F2** Words in s. 79(9) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 199\(2\)\(a\)](#) (with art. 10)
- F3** Words in s. 79(9) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 199\(2\)\(b\)](#) (with art. 10)

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

- C4** S. 79 applied (with modifications) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 13, [Sch. 2 para. 8\(9\)\(10\)](#)

## 80 Interim undertakings

- (1) Subsections (2) and (3) apply where a reference under section 22 or 33 has been made but is not finally determined.
- (2) The Commission may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
- (3) The Commission may, for the purpose of preventing pre-emptive action, adopt an undertaking accepted by the OFT under section 71 if the undertaking is still in force when the Commission adopts it.
- (4) An undertaking adopted under subsection (3)—
  - (a) shall continue in force, in accordance with its terms, when adopted;
  - (b) may be varied or superseded by an undertaking under this section; and
  - (c) may be released by the Commission.
- (5) Any other undertaking under this section—
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Commission.

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- (6) References in this Part to undertakings under this section shall, unless the context otherwise requires, include references to undertakings adopted under this section; and references to the acceptance or giving of undertakings under this section shall be construed accordingly.
- (7) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 81 comes into force in relation to that reference.
- (8) An undertaking under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.
- (9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.
- (10) In this section and section 81 “pre-emptive action” means action which might prejudice the reference concerned or impede the taking of any action under this Part which may be justified by the Commission’s decisions on the reference.

## **81 Interim orders**

- (1) Subsections (2) and (3) apply where a reference has been made under section 22 or 33 but is not finally determined.
- (2) The Commission may by order, for the purpose of preventing pre-emptive action—
  - (a) prohibit or restrict the doing of things which the Commission 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.
- (3) The Commission may, for the purpose of preventing pre-emptive action, adopt an order made by the OFT under section 72 if the order is still in force when the Commission adopts it.
- (4) An order adopted under subsection (3)—
  - (a) shall continue in force, in accordance with its terms, when adopted; and
  - (b) may be varied or revoked by an order under this section.
- (5) Any other order under this section—
  - (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.
- (6) References in this Part to orders under this section shall, unless the context otherwise requires, include references to orders adopted under this section; and references to the making of orders under this section shall be construed accordingly.
- (7) An order which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an undertaking under section 80 comes into force in relation to that reference.

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- (8) An order under this section shall, if it has not previously ceased to be in force, cease to be in force when the reference under section 22 or 33 is finally determined.
- (9) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

### *Final powers*

## **82 Final undertakings**

- (1) The Commission may, in accordance with section 41, accept, from such persons as it considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) An undertaking under this section—
  - (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Commission.
- (3) An undertaking which is in force under this section in relation to a reference under section 22 or 33 shall cease to be in force if an order under section 76(1)(b) or 83 comes into force in relation to the subject-matter of the undertaking.
- (4) No undertaking shall be accepted under this section in relation to a reference under section 22 or 33 if an order has been made under—
  - (a) section 76(1)(b) or 83 in relation to the subject-matter of the undertaking; or
  - (b) section 84 in relation to that reference.
- (5) The Commission shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

## **83 Order-making power where final undertakings not fulfilled**

- (1) Subsection (2) applies where the Commission considers that—
  - (a) an undertaking accepted by it under section 82 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by it under that section, information which was false or misleading in a material respect was given to the Commission or the OFT by the person giving the undertaking before the Commission decided to accept the undertaking.
- (2) The Commission may, for any of the purposes mentioned in section 41(2), make an order under this section.
- (3) Subsections (3) to (5) of section 41 shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.
- (4) An order under this section may contain—
  - (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Commission considers appropriate.
- (5) An order under this section—

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

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

- C5** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 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 Enterprise Act 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 Enterprise Act 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) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**84 Final orders**

- (1) The Commission may, in accordance with section 41, make an order under this section.
- (2) An order under this section may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Commission considers appropriate.
- (3) An order under this section—
- (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.
- (4) No order shall be varied or revoked under this section unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.
- (5) No order shall be made under this section in relation to a reference under section 22 or 33 if an undertaking has been accepted under section 82 in relation to that reference.

**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) and Sch. 7 para. 5 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by Enterprise Act 2002 (c. 40), s. 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) and Sch. 7 para. 5 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by Enterprise Act 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) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A(2) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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### *Public interest and special public interest cases*

#### **85 Enforcement regime for public interest and special public interest cases**

- (1) Schedule 7 (which provides for the enforcement regime in public interest and special public interest cases) shall have effect.
- (2) The OFT may advise the Secretary of State in relation to the taking by him of enforcement action under Schedule 7.

### *Undertakings and orders: general provisions*

#### **86 Enforcement orders: general provisions**

- (1) An enforcement order may extend 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.
- (2) Nothing in an enforcement order shall have effect so as to—
  - (a) cancel or modify conditions in licences granted—
    - (i) under a patent granted under the Patents Act 1977 (c. 37) or a European patent (UK) (within the meaning of the Act of 1977); or
    - (ii) in respect of a design registered under the Registered Designs Act 1949 (c. 88);by the proprietor of the patent or design; or
  - (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.
- (3) An enforcement order may prohibit the performance of an agreement already in existence when the order is made.
- (4) Schedule 8 (which provides for the contents of certain enforcement orders) shall have effect.
- (5) Part 1 of Schedule 9 (which enables certain enforcement orders to modify licence conditions etc. in regulated markets) shall have effect.
- (6) In this Part “enforcement order” means an order made under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

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

- C11** S. 86 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)(b)(3)** (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))
- C12** S. 86(2) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (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)

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- S. 86(2) applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)
- C13** S. 86(3) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (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)
- S. 86(3) applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

## 87 Delegated power of directions

- (1) An enforcement order may authorise the person making the order to give directions falling within subsection (2) to—
  - (a) a person specified in the directions; or
  - (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this subsection if they are directions—
  - (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the enforcement order concerned; or
  - (b) to do, or refrain from doing, anything so specified or described which the person might be required by that order to do or refrain from doing.
- (3) An enforcement order may authorise the person making the order to vary or revoke any directions so given.
- (4) The court may by order require any person who has failed to comply with directions given by virtue of this section to comply with them, or otherwise remedy his failure, within such time as may be specified in the order.
- (5) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.
- (6) An order under subsection (4) or (5) shall be made on the application of the person authorised by virtue of this section to give the directions concerned.
- (7) An order under subsection (4) or (5) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.
- (8) In this section “the court” means—
  - (a) in relation to England and Wales or Northern Ireland, the High Court; and
  - (b) in relation to Scotland, the Court of Session.

### Modifications etc. (not altering text)

- C14** S. 87 applied (20.6.2003) by 1980 c. 21, s. 11D(7) (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)
- C15** S. 87 applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)



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**C16** S. 87 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)(c)** (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))

## 88 Contents of certain enforcement orders

- (1) This section applies in relation to any order under section 75, 83 or 84 or under paragraph 5, 10 or 11 of Schedule 7.
- (2) The order or any explanatory material accompanying the order shall state—
  - (a) the actions that the persons or description of persons to whom the order is addressed must do or (as the case may be) refrain from doing;
  - (b) the date on which the order comes into force;
  - (c) the possible consequences of not complying with the order; and
  - (d) the section of this Part under which a review can be sought in relation to the order.

### Modifications etc. (not altering text)

- C17** S. 88 applied (20.6.2003) by [1980 c. 21, s. 12\(6\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); [S.I. 2003/1397](#), **art. 2(1)**, Sch. (with art. 8)
- C18** S. 88 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)(d)(4)** (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))

## 89 Subject-matter of undertakings

- (1) The provision which may be contained in an enforcement undertaking is not limited to the provision which is permitted by Schedule 8.
- (2) In this Part “enforcement undertaking” means an undertaking under section 71, 73, 80 or 82 or under paragraph 1, 3 or 9 of Schedule 7.

### Modifications etc. (not altering text)

- C19** S. 89 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)(e)(5)** (as amended by (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))
- C20** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by [1988 c. 48, s. 144\(2\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 18(2)**); [S.I. 2003/1397](#), **art. 2(1)**, Sch. (with art. 8)
- C21** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by [1988 c. 48, s. 238\(2\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#) ss. 278, 279, {Sch. 25 para. 18(4)}); [S.I. 2003/1397](#), **art. 2(1)**, Sch. (with art. 8)
- C22** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1) and Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by [1988 c. 48, Sch. 2A para. 17\(2\)](#) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), s. 278, **Sch. 25 para. 18(5)(a)**); [S.I. 2003/1397](#), **art. 2(1)**, Sch. (with art. 8)

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## 90 Procedural requirements for certain undertakings and orders

Schedule 10 (which provides for the procedure for accepting certain enforcement undertakings and making certain enforcement orders and for their termination) shall have effect.

### Modifications etc. (not altering text)

**C23** S. 90 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), [Sch. 18 para. 62\(7\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)

## 91 Register of undertakings and orders

- (1) The OFT shall compile and maintain a register for the purposes of this Part.
- (2) The register shall be kept in such form as the OFT considers appropriate.
- (3) The OFT shall ensure that the following matters are entered in the register—
  - (a) the provisions of any enforcement undertaking accepted under this Part;
  - (b) the provisions of any enforcement order made under this Part;
  - (c) the details of any variation, release or revocation of such an undertaking or order; and
  - (d) the details of any consent given by the Commission under section 77(2) or (3) or 78(2) or by the Secretary of State under paragraph 7(2) or (3) or 8(2) of Schedule 7.
- (4) The duty in subsection (3) does not extend to anything of which the OFT is unaware.
- (5) The Commission and the Secretary of State shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3) and which relate to enforcement undertakings accepted by them, enforcement orders made by them or consents given by them.
- (6) The OFT shall ensure that the contents of the register are available to the public—
  - (a) during (as a minimum) such hours as may be specified in an order made by the Secretary of State; and
  - (b) subject to such reasonable fees (if any) as the OFT may determine.
- (7) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

### Modifications etc. (not altering text)

**C24** S. 91 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\(1\)\(f\)\(6\)](#)

**C25** S. 91 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), [Sch. 18 para. 62\(7\)\(b\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11) (as amended by (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))

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**C26** Ss. 91(3), 92(1)(a), 162(1), 166(3) modified (20.6.2003) by 1977 c. 37, s. 50A(7) (as inserted by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 8(2)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)

### *Enforcement functions of OFT*

## **92 Duty of OFT to monitor undertakings and orders**

- (1) The OFT 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 OFT 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 OFT shall give the Commission or (as the case may be) the Secretary of State such advice as it considers appropriate in relation to—
  - (a) any possible variation or release by the Commission or (as the case may be) the Secretary of State of an enforcement undertaking accepted by it or (as the case may be) him;
  - (b) any possible new enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State so as to supersede another enforcement undertaking given to the Commission or (as the case may be) the Secretary of State;
  - (c) any possible variation or revocation by the Commission or (as the case may be) the Secretary of State of an enforcement order made by the Commission or (as the case may be) the Secretary of State;
  - (d) any possible enforcement undertaking to be accepted by the Commission or (as the case may be) the Secretary of State instead of an enforcement order or any possible enforcement order to be made by the Commission or (as the case may be) 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 OFT 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;

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- (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 OFT shall keep under review the effectiveness of enforcement undertakings accepted under this Part and enforcement orders made under this Part.
- (6) The OFT 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 OFT shall—
- (a) give any report prepared by it under subsection (6) to the Commission;
  - (b) give a copy of the report to the Secretary of State; and
  - (c) publish the report.

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

- C27** 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))
- C28** 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)
- C29** 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)

### **93 Further role of OFT in relation to undertakings and orders**

- (1) Subsections (2) and (3) apply where—
- (a) the Commission is considering whether to accept undertakings under section 80 or 82; or
  - (b) the Secretary of State is considering whether to accept undertakings under paragraph 1, 3 or 9 of Schedule 7.
- (2) The Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) may require the OFT to consult with such persons as the relevant authority considers appropriate with a view to discovering whether they will offer undertakings which the relevant authority would be prepared to accept under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.

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- (3) The relevant authority may require the OFT to report to the relevant authority on the outcome of the OFT's consultations within such period as the relevant authority may require.
- (4) A report under subsection (3) shall, in particular, contain advice from the OFT as to whether any undertakings offered should be accepted by the relevant authority under section 80 or 82 or (as the case may be) paragraph 1, 3 or 9 of Schedule 7.
- (5) The powers conferred on the relevant authority by subsections (1) to (4) are without prejudice to the power of the relevant authority to consult the persons concerned itself.
- (6) If asked by the relevant authority for advice in relation to the taking of enforcement action (whether or not by way of undertaking) in a particular case, the OFT shall give such advice as it considers appropriate.

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

- C30** S. 93 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)(h)(8)** (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))
- C31** S. 93 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(d)** (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

*Other*

**94 Rights to enforce undertakings and orders**

- (1) This section applies to any enforcement undertaking or enforcement order.
- (2) Any person to whom such an undertaking or order relates shall have a duty to comply with it.
- (3) The duty shall be owed to any person who may be affected by a contravention of the undertaking or (as the case may be) order.
- (4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (5) In any proceedings brought under subsection (4) against a person to whom an enforcement undertaking or an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the undertaking or (as the case may be) order.
- (6) Compliance with an enforcement undertaking or an enforcement order shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other appropriate relief or remedy.
- (7) Compliance with an undertaking under section 80 or 82, an order made by the Commission under section 76 or an order under section 81, 83 or 84, shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.

*Status: Point in time view as at 25/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 4. (See end of Document for details)*

- (8) Compliance with an undertaking under paragraph 1, 3 or 9 of Schedule 7, an order made by the Secretary of State under paragraph 2 of that Schedule or an order under paragraph 5, 6, 10 or 11 of that Schedule, shall also be enforceable by civil proceedings brought by the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.
- (9) Subsections (6) to (8) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement undertaking or an enforcement order.

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

- C32** S. 94 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)(i)(9)** (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))
- C33** S. 94 applied (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(e)** (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, **art. 3(1)**, [Sch. 1](#) (subject to arts. 3(3), 11)
- C34** S. 94(1) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(1) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C35** S. 94(2) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(2) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C36** S. 94(3) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(3) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C37** S. 94(4) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(4) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C38** S. 94(5) applied (20.6.2003) by 1980 c.21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(5) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C39** S. 94(8) applied (20.6.2003) by 1980 c.21 s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(8) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)
- C40** S. 94(9) applied (20.6.2003) by 1980 c. 21, s. 11D(7) (as inserted by the [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(3)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)  
S. 94(9) applied (20.6.2003) by 1980 c. 21 s. 12(6) (as substituted by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, [Sch. \(with art. 8\)](#)

*Status: Point in time view as at 25/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 4. (See end of Document for details)*

#### **[<sup>F4</sup>94A Interim undertakings and orders under this Part: penalties**

- (1) Where the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate.
- (2) A penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed.
- (3) For the purposes of subsection (2), the Secretary of State may by order make provision for determining—
  - (a) when an enterprise is to be treated as controlled by a person; and
  - (b) the turnover (both in and outside the United Kingdom) of an enterprise.
- (4) An order under subsection (3)(b) may, in particular, make provision as to—
  - (a) the amounts which are, or which are not, to be treated as comprising an enterprise's turnover;
  - (b) the date or dates by reference to which an enterprise's turnover is to be determined.
- (5) An order under subsection (3) may, in particular, make provision enabling the appropriate authority to determine matters of a description specified in the order (including any of the matters mentioned in paragraphs (a) and (b) of subsection (4)).
- (6) The Secretary of State may by order amend subsection (2) so as to alter the percentage for the time being mentioned there to any percentage not exceeding 5%.
- (7) Sections 112 to 115 apply in relation to a penalty imposed under subsection (1) as they apply in relation to a penalty of a fixed amount imposed under section 110(1), with the modification that any reference in those provisions to the CMA is to be read as a reference to the person who imposed the penalty under this section.
- (8) In this section—

“interim measure” means—

  - (a) an undertaking under section 80; or
  - (b) an order under section 72 or 81 or paragraph 2 of Schedule 7;

“appropriate authority” means—

  - (a) in relation to an interim measure which is an order made by the Secretary of State under paragraph 2 of Schedule 7, the Secretary of State;
  - (b) in relation to any other interim measure, the CMA.

#### **Textual Amendments**

**F4** Ss. 94A, 94B inserted (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 31\(1\)](#), [103\(1\)\(i\)\(3\)](#)

#### **94B Statement of policy in relation to powers under sections 94 and 94A**

- (1) The CMA shall prepare and publish a statement of policy in relation to the use of its powers under—
  - (a) section 94, insofar as they relate to interim measures; and

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 4. (See end of Document for details)*

- (b) section 94A.
- (2) The CMA shall, in particular, include a statement about the considerations relevant to the determination of the amount of any penalty imposed under section 94A.
  - (3) The CMA may revise its statement of policy and, where it does so, it shall publish the revised statement.
  - (4) The CMA shall consult the Secretary of State and such other persons as it considers appropriate when preparing or revising its statement of policy.
  - (5) A statement or revised statement of policy may not be published under this section unless the Secretary of State approves the statement.
  - (6) In this section, “interim measure” has the same meaning as in section 94A.]

#### Textual Amendments

- F4** Ss. 94A, 94B inserted (25.4.2013 for specified purposes) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), [ss. 31\(1\)](#), [103\(1\)\(i\)\(3\)](#)

## 95 Rights to enforce statutory restrictions

- (1) The obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 shall be a duty owed to any person who may be affected by a contravention of the enactment concerned.
- (2) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.
- (3) In any proceedings brought under subsection (2) against a person who has an obligation to comply with section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7 it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the enactment concerned.
- (4) Compliance with section 77(2) or (3) or 78(2) shall also be enforceable by civil proceedings brought by the OFT or the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
- (5) Compliance with paragraph 7(2) or (3) or 8(2) of Schedule 7 shall also be enforceable by civil proceedings brought by the OFT or the Secretary of State for an injunction or for interdict or for any other appropriate relief or remedy.
- (6) Subsections (4) and (5) shall not prejudice any right that a person may have by virtue of subsection (2) to bring civil proceedings for contravention or apprehended contravention of section 77(2) or (3) or 78(2) or paragraph 7(2) or (3) or 8(2) of Schedule 7.

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

- C41** S. 95 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\(1\)\(j\)\(10\)](#) (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))



**Status:**

Point in time view as at 25/04/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), Chapter 4.