



Enterprise Act 2002

2002 CHAPTER 40

PART 4

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATIONS

CHAPTER 4

SUPPLEMENTARY

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))
- 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))

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- 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))

Regulated markets

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- (1) Subsection (2) applies where the [^{F1}CMA] or the Secretary of State is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (2) The [^{F1}CMA] or (as the case may be) the Secretary of State shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.
- (3) In this section “relevant action” means—
 - (a) [^{F2}modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);]
 - ^{F3}(b)
 - (c) modifying the conditions of a licence granted under section 7 [^{F4}or 7A][^{F4}, 7A or 7AB] of the Gas Act 1986 (c. 44);
 - (d) modifying the conditions of a licence granted under section 6 of the Electricity Act 1989 (c. 29);
 - (e) modifying networking arrangements (within the meaning given by [^{F5}section 290 of the Communications Act 2003]);
 - (f) modifying the conditions of a company’s appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);
 - [^{F6}(ff) modifying the conditions of a licence granted under Chapter 1A of Part 2 of the Act of 1991 or modifying the terms and conditions of an agreement under section 66D [^{F7}or 117E] of that Act;]
 - (g) modifying the conditions of a licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
 - (h) modifying the conditions of a licence granted under section 8 of the Railways Act 1993 (c. 43);
 - [^{F8}(hh) modifying the conditions of a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005;]
 - (i) modifying an access agreement (within the meaning given by section 83(1) of the Act of 1993) or a franchise agreement (within the meaning given by section 23(3) of that Act);
 - (j) modifying conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order;
 - (k) modifying the conditions of a licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
 - ^{F9}(l)

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- (m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38);
 - [^{F10}(n) modifying the conditions of a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006;]
 - [^{F11}(o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;]
 - [^{F12}(p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012;]
 - [^{F13}(q) modifying the conditions of a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012][^{F14}; or
 - (r) modifying the conditions of a licence granted under section 7 of the Energy Act 2023.]
- (4) In this section “relevant statutory functions” means—
- (a) [^{F15}in relation to any licence granted under section 7 of the Telecommunications Act 1984, the duties and obligations of the Director General of Telecommunications imposed on him by or in pursuance of any enactment or other provision mentioned in section 7(5)(a) of that Act;]
 - [^{F16}(b)]
 - (c) in relation to any licence granted under section 7 [^{F17}or 7A][^{F17}, 7A or 7AB] of the Gas Act 1986 (c. 44), the objectives and duties of the Gas and Electricity Markets Authority under section 4AA and 4AB(2) of that Act;
 - (d) in relation to any licence granted under section 6 of the Electricity Act 1989 (c. 29), the objectives and duties of the Gas and Electricity Markets Authority under section 3A and 3B(2) of that Act;
 - [^{F18}(e) in relation to any networking arrangements (within the meaning given by section 290 of the Communications Act 2003), the duty of the Office of Communications under subsection (1) of section 3 of that Act to secure the matters mentioned in subsection (2)(c) of that section;]
 - (f) in relation to a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), the duties of [^{F19}the Water Services Regulation Authority] under section 2 of that Act;
 - [^{F20}(ff) in relation to a licence granted under Chapter 1A of Part 2 of the Act of 1991 or an agreement under section 66D [^{F21}or 117E] of that Act, the duties of the Authority under section 2 of that Act or under that section and section 66D [^{F21}or 117E] of that Act (as the case may be);]
 - (g) in relation to any licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order;
 - (h) in relation to any licence granted under section 8 of the Railways Act 1993 (c. 43) [^{F22}where none of the conditions of the licence relate to consumer protection], the duties of the [^{F23}Office of Rail and Road] under section 4 of that Act;
 - [^{F24}(hh) in relation to a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 where none of the conditions of the SNRP relate to consumer protection, the duties of the Department for Regional Development under regulation 36 of those Regulations;]
 - (i) [^{F25}in relation to any licence granted under section 8 of the Act of 1993 where one or more than one condition of the licence relates to consumer protection,

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the duties of the [^{F26}Office of Rail Regulation] under section 4 of that Act and the duties of the Strategic Rail Authority under section 207 of the Transport Act 2000 (c. 38);]

- (j) in relation to any access agreement (within the meaning given by section 83(1) of the Act of 1993), the duties of the [^{F23}Office of Rail and Road] under section 4 of the Act of 1993;
- (k) in relation to any franchise agreement (within the meaning given by section 23(3) of the Act of 1993), the duties of the [^{F27}Secretary of State, the Scottish Ministers and the National Assembly for Wales under section 4 of the Act of 1993];
- (l) in relation to conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order, the duties of the Civil Aviation Authority under article 30(2) and (3) of that Order;
- (m) in relation to any licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), the duties of the Director General of Gas for Northern Ireland under article 5 of that Order;
- ^{F28}(n)
- (o) in relation to any licence granted under section 5 of the Transport Act 2000, the duties of the Civil Aviation Authority under section 87 of that Act;
- [^{F29}(p) in relation to a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006, the duties of the Northern Ireland Authority for Utility Regulation under Article 6 of that Order];
- [^{F30}(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act];
- [^{F31}(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act];
- [^{F32}(s) in relation to a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012, the duties of the Civil Aviation Authority under section 1 of that Act][^{F33}, and
- (t) in relation to a licence granted under section 7 of the Energy Act 2023, the objectives and duties of the Gas and Electricity Markets Authority under section 1 of that Act].

(5) In this section “sectoral regulator” means—

- (a) the Civil Aviation Authority;
- [^{F34}(b) the Northern Ireland Authority for Utility Regulation.]
- (d) [^{F35}the Director General of Telecommunications;]
- (e) the Water Services Regulation Authority;
- (f) the Gas and Electricity Markets Authority;
- [^{F36}(g) the Office of Communications;]
- ^{F37}(h)
- (i) the [^{F23}Office of Rail and Road]; ^{F38}...
- [^{F39}(ia) Monitor;]
- [^{F40}(j) the Secretary of State;
- (k) the Scottish Ministers; or
- (l) the National Assembly for Wales][^{F41} or

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- (k) the Department for Regional Development.]
- (6) Subsection (7) applies where the [^{F42}CMA] or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 [^{F43}or 7A][^{F43}, 7A or 7AB] of the Gas Act 1986 (c. 44) [^{F44}, section 6] of the Electricity Act 1989 (c. 29) [^{F45}or section 7 of the Energy Act 2023] would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (7) The [^{F42}CMA] or (as the case may be) the Secretary of State may, in deciding whether modifying the conditions of such a licence would be reasonable and practicable, have regard to those matters to which the Gas and Electricity Markets Authority may have regard by virtue of section 4AA(4) of the Act of 1986 or (as the case may be) section 3A(4) of the Act of 1989.
- (8) The Secretary of State may by order modify subsection (3), (4), (5), (6) or (7).
- (9) Part 2 of Schedule 9 (which makes provision for functions under this Part to be exercisable by various sectoral regulators) shall have effect.

Textual Amendments

- F1** Word in s. 168(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 198](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F2** S. 168(3)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [Sch. 19 Note 1](#)); S.I. 2003/1900, arts. 1(2), [2\(1\)](#), 3(1), [Sch. 1](#) (with arts. 3–6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, [art. 3\(1\)](#) (subject to arts. 3(3), 11)
- F3** S. 168(3)(b) omitted (1.4.2014) by virtue of [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 14\(2\)\(a\)](#) (with [Sch. 10 paras. 12, 17](#)); S.I. 2013/589, art. 5(1)(b)
- F4** Words in s. 168(3)(c) substituted (E.W.S.) (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, [31](#)
- F5** Words in s. 168(3)(e) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2)(3), [Sch. 17 para. 174\(5\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#) (subject to arts. 3(3), 11)
- F6** S. 168(3)(ff) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), ss. 101(1), 105(3), [Sch. 8 para. 55\(2\)\(a\)](#); S.I. 2005/2714, [art. 3\(c\)](#)
- F7** Words in s. 168(3)(ff) inserted (1.4.2017) by [Water Act 2014 \(c. 21\)](#), s. 94(3), [Sch. 7 para. 129\(2\)](#); S.I. 2017/462, art. 3(k)(xxiv)
- F8** S. 168(3)(hh) inserted (N.I.) (3.1.2006) by [The Railways Infrastructure \(Access, Management and Licensing of Railway Undertakings\) Regulations \(Northern Ireland\) 2005 \(S.R. 2005/537\)](#), reg. 45, [Sch. 5 Pt. 1 para. 4\(a\)](#)
- F9** S. 168(3)(l) omitted (1.10.2011) by virtue of [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 164\(2\)\(a\)](#); S.I. 2011/2329, art. 3
- F10** S. 168(3)(n) added (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), 308, [Sch. 12 para. 46\(3\)](#) (with arts. 8(9), 121(3), 307); S.R. 2007/194, [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to art. 3, [Sch. 2](#))
- F11** S. 168(3)(o) inserted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 164\(2\)\(b\)](#); S.I. 2011/2329, art. 3
- F12** S. 168(3)(p) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. [74\(7\)\(a\)](#), 306(4); S.I. 2013/671, art. 2(3)
- F13** S. 168(3)(q) inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 14\(2\)\(b\)](#) (with [Sch. 10 paras. 12, 17](#)); S.I. 2013/589, art. 2(3)

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

- F14** S. 168(3)(r) and preceding word inserted (26.12.2023) by Energy Act 2023 (c. 52), s. 334(3)(a), **Sch. 5 para. 8(2)(b)**
- F15** S. 168(4)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F16** S. 168(4)(b) omitted (1.4.2014) by virtue of Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(a)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 5(1)(b)
- F17** Words in s. 168(4)(c) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**
- F18** S. 168(4)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F19** Words in s. 168(4)(f) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(3)(a)**; S.I. 2005/2714, **art. 4(f)**
- F20** S. 168(4)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(b)**; S.I. 2005/2714, **art. 3(c)**
- F21** Words in s. 168(4)(ff) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 129(3)**; S.I. 2017/462, art. 3(k)(xxiv)
- F22** Words in s. 168(4)(h) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F23** Words in s. 168(4)(h)(j)(5)(i) substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 4(q)(ii)**
- F24** S. 168(4)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(b)**
- F25** S. 168(4)(i) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F26** Words in s. 168 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**
- F27** Words in s. 168(4)(k) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(2)(c)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F28** S. 168(4)(n) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(a)**; S.I. 2011/2329, art. 3
- F29** S. 168(4)(p) added (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), 308, **Sch. 12 para. 46(4)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F30** S. 168(4)(q) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(b)**; S.I. 2011/2329, art. 3
- F31** S. 168(4)(r) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F32** S. 168(4)(s) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(b)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)
- F33** S. 168(4)(t) and preceding word inserted (26.12.2023) by Energy Act 2023 (c. 52), s. 334(3)(a), **Sch. 5 para. 8(3)(b)**
- F34** S. 168(5)(b) substituted (N.I.) (1.4.2007) for s. 168(5)(b)(c) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(5)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F35** S. 168(5)(d) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)

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- F36** S. 168(5)(g) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(c)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F37** S. 168(5)(h) omitted (1.10.2011) by virtue of [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), **Sch. 12 para. 164(4)**; S.I. 2011/2329, **art. 3**
- F38** Word in s. 168(5)(i) repealed (16.10.2005 for E.W.S) and omitted (3.1.2006 for N.I.) by virtue of [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, **Sch. 13 Pt. 1**; S.I. 2005/2812, **art. 2(1)**, **Sch. 1**; S.R. 2005/537, reg. 45, **Sch. 5 Pt. 1 para. 4(c)**
- F39** S. 168(5)(ia) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 74(7)(c), 306(4); S.I. 2013/671, **art. 2(3)**
- F40** S. 168(5)(j)-(l) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) for s. 168(5)(j) by [Railways Act 2005 \(c. 14\)](#), ss. 59, 60, **Sch. 12 para. 18(3)**; S.I. 2005/1909, **art. 2**, **Sch.**; S.I. 2005/2812, **art. 2(1)**, **Sch. 1**
- F41** S. 168(5)(k) inserted (N.I.) (3.1.2006) by [The Railways Infrastructure \(Access, Management and Licensing of Railway Undertakings\) Regulations \(Northern Ireland\) 2005 \(S.R. 2005/537\)](#), reg. 45, **Sch. 5 Pt. 1 para. 4(c)(ii)**
- F42** Word in s. 168(6)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 198** (with s. 28); S.I. 2014/416, **art. 2(1)(d)** (with **Sch.**)
- F43** Words in s. 168(6) substituted (E.W.S.) (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **31**
- F44** Words in s. 168(6) substituted (26.12.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(3)(a), **Sch. 5 para. 8(4)(a)**
- F45** Words in s. 168(6) inserted (26.12.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(3)(a), **Sch. 5 para. 8(4)(b)**

Modifications etc. (not altering text)

- C10** S. 168 applied (with modifications) (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 1(f)**
- C11** S. 168(3)(h) modified (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 8(a)**
- C12** S. 168(4)(h) modified (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 8(a)**
S. 168(4)(h) modified (28.11.2005) by [The Railway \(Licensing of Railway Undertakings\) Regulations 2005 \(S.I. 2005/3050\)](#), reg. 14, **Sch. 3 para. 8(b)**

Consultation, information and publicity

169 Certain duties of relevant authorities to consult: Part 4

- (1) Subsection (2) applies where the relevant authority is proposing to make a relevant decision in a way which the relevant authority considers is likely to have a substantial impact on the interests of any person.
- (2) The relevant authority shall, so far as practicable, consult that person about what is proposed before making that decision.
- (3) In consulting the person concerned, the relevant authority shall, so far as practicable, give the reasons of the relevant authority for the proposed decision.
- (4) In considering what is practicable for the purposes of this section the relevant authority shall, in particular, have regard to—
 - (a) any restrictions imposed by any timetable for making the decision; and
 - (b) any need to keep what is proposed, or the reasons for it, confidential.

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- (5) The duty under this section shall not apply in relation to the making of any decision so far as particular provision is made elsewhere by virtue of this Part for consultation before the making of that decision.
- (6) In this section—
- “the relevant authority” means the [^{F46}CMA, the appropriate Minister][^{F47}or the Secretary of State]; and
- “relevant decision” means—
- (a) in the case of the [^{F48}CMA], any decision by the [^{F48}CMA]—
- (i) [^{F49}to make a reference under section 131 in a case where the CMA has not published a market study notice under section 130A in relation to the matter concerned;
- (ia) as to whether to accept undertakings under section 154 instead of making any reference under section 131;]
- (ii) to vary under section 135 such a reference[^{F50}; or—
- (iii) on the questions mentioned in section 134, 141 or 141A; and]
- (b) in the case of the appropriate Minister [^{F51}(other than the Secretary of State acting alone)], any decision by the appropriate Minister—
- (i) ^{F52}... to make a reference under section 132; or
- (ii) to vary under section 135 such a reference; ^{F53}...
- [^{F54}in the case of the Secretary of State, any decision by the Secretary of State—
- (i) to make a reference under section 132;
- (ii) to vary under section 135 such a reference;
- (iii) in a case where the Secretary of State is required to make a reference under section 140A, whether to make a reference under subsection (5) or (6) of that section; or
- (iv) to vary under section 140B a reference made under section 140A(6).]
- (c) ^{F53}...

Textual Amendments

- F46** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F47** Words in s. 169(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 29\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F48** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F49** Words in s. 169(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 13\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F50** Words in s. 169(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(c\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F51** Words in s. 169(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 29\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F52** Words in s. 169(6) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 13\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F53** Words in s. 169(6) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 199\(d\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

F54 Words in s. 169(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 29\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

170 General information duties

^{F55}(1)

^{F55}(2)

(3) The [^{F56}CMA] shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone—

- (a) such information in [^{F57}its possession] as the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require to enable him to carry out his functions under this Part; and
- (b) any other assistance which the Secretary of State or (as the case may be) the appropriate Minister concerned may by direction reasonably require for the purpose of assisting him in carrying out his functions under this Part and which it is within the power of the [^{F58}CMA] or (as the case may be) the Commission to give.

(4) The [^{F59}CMA] shall give the Secretary of State or the appropriate Minister so far as he is not the Secretary of State acting alone any information in its possession which has not been requested by the Secretary of State or (as the case may be) the appropriate Minister concerned but which, in the opinion of the [^{F59}CMA], would be appropriate to give to the Secretary of State or (as the case may be) the appropriate Minister concerned for the purpose of assisting him in carrying out his functions under this Part.

(5) [^{F60}The Secretary of State] or (as the case may be) the appropriate Minister concerned shall have regard to any information given to him under subsection (3) or (4).

(6) Any direction given under subsection (3)—

- (a) shall be in writing; and
- (b) may be varied or revoked by a subsequent direction.

Textual Amendments

F55 S. 170(1)(2) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

F56 Words in s. 170(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(3\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

F57 Words in s. 170(3)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(3\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

F58 Words in s. 170(3)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(3\)\(c\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

F59 Word in s. 170(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

F60 Words in s. 170(5) substituted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 200\(5\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

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

171 Advice and information: Part 4

- (1) ^{F61}... [^{F62}The CMA] shall prepare and publish general advice and information about ^{F63}—
 - (a) the making and consideration by it of market investigation references, and
 - (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.]
- (2) The [^{F64}CMA] may at any time publish revised, or new, advice or information.
- ^{F65}(3)
- ^{F65}(4)
- (5) Advice and information published under this section shall be prepared with a view to—
 - (a) explaining relevant provisions of this Part to persons who are likely to be affected by them; and
 - (b) indicating how the [^{F66}CMA] expects such provisions to operate.
- ^{F67}(6)
- (7) Advice (or information) published by virtue of subsection (1) ^{F68}... may include advice (or information) about the factors which the [^{F69}CMA] may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (8) Any advice or information published by the [^{F70}CMA] under this section shall be published in such manner as the [^{F71}CMA] considers appropriate.
- (9) In preparing any advice or information under this section, the [^{F72}CMA shall consult such persons] and such other persons as it considers appropriate.
- ^{F73}(10)
- ^{F74}(11)

Textual Amendments

- F61** Words in s. 171(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(2\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F62** Words in s. 171(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(2\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F63** Words in s. 171(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(2\)\(c\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F64** Word in s. 171(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F65** S. 171(3)(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F66** Word in s. 171(5)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(5\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F67** S. 171(6) omitted (31.12.2020) by virtue of [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/93\)](#), regs. 1(1), 57; 2020 c. 1, Sch. 5 para. 1(1)
- F68** Words in s. 171(7) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(7\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** Word in s. 171(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 201\(7\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F70** Word in s. 171(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(8)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F71** Word in s. 171(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(8)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** Words in s. 171(9) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(9)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F73** S. 171(10) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 201(10)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F74** S. 171(11) omitted (31.12.2020) by virtue of The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **57**; 2020 c. 1, Sch. 5 para. 1(1)

172 Further publicity requirements: Part 4

- (1) The [^{F75}CMA] shall publish—
- (a) any reference made by it under section 131 [^{F76}, other than a reference treated as so made by virtue of section 140A(5)(b)];
 - [^{F77}(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;]
 - (b) any variation made by it under section 135 of a reference under section 131;
 - (c) any decision of a kind mentioned in section 149(5)(b); and
 - (d) such information as it considers appropriate about any decision made by it under section 152(1) to bring a case to the attention of the Secretary of State.
- (2) The [^{F78}CMA shall also] publish—
- [^{F79}(za) any extension by it under section 137 of the period within which a report under section 136 is to be prepared and published;
 - (zb) any extension by it under section 138A of the period within which its duty under section 138(2) is to be discharged;]
 - (a) any decision made by it under section 138(2) neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (b) any decision made by it that there has been a material change of circumstances as mentioned in section 138(3) or there is another special reason as mentioned in that section;
 - [^{F80}(ba) any extension by it under section 144 of the period within which a report under section 142 is to be prepared and action is to be taken in relation to it;]
 - (c) any termination under section 145(1) of an investigation by it;
 - [^{F81}(d)]
 - (e) any enforcement undertaking accepted by it under section 157;
 - (f) any enforcement order made by it under section 158; and
 - (g) any variation, release or revocation of such an undertaking or order.
- (3) The Secretary of State shall publish—
- (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132;
 - (c) any intervention notice given by him;
 - (d) any decision made by him to revoke such a notice;
 - [^{F82}(da) any reference made by him under section 140A(5) or (6);]
 - (db) any variation made by him under section 140B of a reference under section 140A(6);]

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

- (e) any decision made by him under section 147(2) [^{F83}or (as the case may be) 147A(2)] neither to accept an undertaking under section 159 nor to make an order under section 161;
 - (f) any enforcement undertaking accepted by him under section 157;
 - (g) any variation or release of such an undertaking; and
 - (h) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (4) The appropriate Minister (other than the Secretary of State acting alone) shall publish—
 - (a) any reference made by him under section 132;
 - (b) any variation made by him under section 135 of a reference under section 132; and
 - (c) any direction given by him under section 170(3) in connection with the exercise by him of his functions under section 132(3).
- (5) Where any person is under an obligation by virtue of subsection (1), (2), (3) or (4) to publish the result of any action taken by that person or any decision made by that person, the person concerned shall, subject to subsections (6) and (7), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (6) Such reasons need not, if it is not reasonably practicable to do so, be published at the same time as the result of the action concerned or (as the case may be) as the decision concerned.
- (7) Subsections (5) and (6) shall not apply in relation to any case falling within subsection (1)(d) [^{F84}....
- [^{F85}(7A) Subsection (6) shall not apply in relation to any case falling within subsection (1)(a)] [^{F86}or (3)(da)].
- (8) The Secretary of State shall publish his reasons for—
 - (a) any decision made by him under section 146(2) [^{F87}or 146A(2)]; or
 - (b) any decision to make an order under section 153(3) or vary or revoke such an order.
- (9) Such reasons may be published after—
 - (a) in the case of subsection (8)(a), the publication of the decision concerned; and
 - (b) in the case of subsection (8)(b), the making of the order or of the variation or revocation;

if it is not reasonably practicable to publish them at the same time as the publication of the decision or (as the case may be) the making of the order or variation or revocation.
- (10) Where the Secretary of State has decided under section 147(2) [^{F88}or 147A(2)] to accept an undertaking under section 159 or to make an order under section 161, he shall (after the acceptance of the undertaking or (as the case may be) the making of the order) lay details of his decision and his reasons for it, and the [^{F89}CMA's] report under section 142, before each House of Parliament.

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

Textual Amendments

- F75** Word in s. 172(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 202\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F76** Words in s. 172(1)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F77** S. 172(1)(aa) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 14\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F78** Words in s. 172(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 202\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F79** S. 172(2)(za)(zb) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 14\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F80** S. 172(2)(ba) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 14\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** S. 172(2)(d) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F82** S. 172(3)(da)(db) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(4\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F83** Words in s. 172(3)(e) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(4\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F84** Words in s. 172(7) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F85** S. 172(7A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 14\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F86** Words in s. 172(7A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F87** Words in s. 172(8)(a) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(7\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F88** Words in s. 172(10) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 30\(8\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Words in s. 172(10) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 202\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

173 Defamation: Part 4

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the [^{F90}CMA], [^{F91}by the Secretary of State or], by the appropriate Minister (other than the Secretary of State acting alone) ^{F92}... in the exercise of any of their functions under this Part.

Textual Amendments

- F90** Word in s. 173 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 203\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F91** Words in s. 173 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 203\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F92** Words in s. 173 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 203\(c\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

Investigation powers

174 [F93 Attendance of witnesses and production of documents etc.]

- [F94] (1) For the purposes of this section, the permitted purposes are the following—
- (a) assisting the CMA in carrying out its functions under section 5 in relation to a matter in a case where it has published a market study notice;
 - (b) assisting the CMA in carrying out any functions, including enforcement functions, exercisable by it under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 131 or 132 or possible reference under section 131;
 - (c) assisting the CMA or the Secretary of State in carrying out any functions, including enforcement functions, of the CMA or (as the case may be) the Secretary of State under or by virtue of this Part in connection with a matter that is or has been the subject of a reference under section 140A(6) or possible reference under section 140A(5) or (6).
- (2) The CMA may exercise any of the powers in subsections (3) to (5) for a permitted purpose.]
- (3) The [F95CMA] may give notice to any person requiring him—
- (a) to attend at a time and place specified in the notice; and
 - (b) to give evidence to the [F95CMA] or a person nominated by the [F95CMA] for the purpose.
- (4) The [F95CMA] may give notice to any person requiring him—
- (a) to produce any documents which—
 - (i) are specified or described in the notice, or fall within a category of document which is specified or described in the notice; and
 - (ii) are in that person's custody or under his control; and
 - (b) to produce them at a time and place so specified and to a person so specified.
- (5) The [F95CMA] may give notice to any person who carries on any business requiring him—
- (a) to supply to the [F95CMA] such estimates, forecasts, returns or other information as may be specified or described in the notice; and
 - (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.
- (6) A notice under this section shall[F96—
- (a) specify the permitted purpose for which the notice is given, including the function or functions in question; and
 - (b)] include information about the possible consequences of not complying with the notice
- [F97](6A) The CMA or any person nominated by it for the purpose may, for a permitted purpose, take evidence on oath and for that purpose may administer oaths.]
- (7) The person to whom any document is produced in accordance with a notice under this section may, for [F98a permitted purpose], copy the document so produced.
- (8) No person shall be required under this section—

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

- (a) to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the court; or
 - (b) to supply any information which he could not be compelled to supply in evidence in such proceedings.
- (9) No person shall be required, in compliance with a notice under this section, to go more than 10 miles from his place of residence unless his necessary travelling expenses are paid or offered to him.

[^{F99}(9A) In subsection (1), “enforcement functions” means—

- (a) in relation to the CMA—
 - (i) functions conferred by virtue of section 164(2)(b) on the CMA by enforcement orders;
 - (ii) functions of the CMA in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
 - (iii) functions of the CMA under or by virtue of section 160 or 162 in relation to enforcement undertakings or enforcement orders;
 - (b) in relation to the Secretary of State—
 - (i) functions conferred by virtue of section 164(2)(b) on the Secretary of State by enforcement orders;
 - (ii) functions of the Secretary of State in relation to the variation, supersession or release of enforcement undertakings or the variation or revocation of enforcement orders;
 - (iii) functions of the Secretary of State under or by virtue of section 160 in relation to enforcement undertakings or enforcement orders.]
- (10) Any reference in this section to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form.
- (11) 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.

Textual Amendments

- F93** S. 174 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(7)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F94** S. 174(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(2)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F95** Word in s. 174(3)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 204** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)
- F96** Words in s. 174(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(3)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F97** S. 174(6A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(4)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F98** Words in s. 174(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(5)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)
- F99** S. 174(9A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 36(6)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

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

Modifications etc. (not altering text)

- C13** S. 174 modified by 2007 c. 29, s. 57(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. 176(2)(b)** (with art. 3, Sch. 2 para. 4))
- C14** S. 174 savings for effect of 2013 c. 24, s. 36, Sch. 11 (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. 3** (with art. 3)

[^{F100}174A] Enforcement of powers under section 174: general

- (1) Where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 174, it may impose a penalty in accordance with section 174D.
- (2) The CMA may proceed (whether at the same time or at different times) under subsection (1) and section 138A(3) in relation to the same failure.
- (3) Where the CMA considers that a person has intentionally obstructed or delayed another person in the exercise of its powers under section 174(7), it may impose a penalty in accordance with section 174D.
- (4) A person commits an offence if the person intentionally alters, suppresses or destroys any document which the person has been required to produce by a notice under section 174.
- (5) But a person does not commit an offence under subsection (4) in relation to any act which constitutes a failure to comply with a notice under section 174 if the CMA has proceeded against the person under subsection (1) in relation to that failure.
- (6) A person who commits an offence under subsection (4) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (7) The CMA shall not proceed against a person under subsection (1) in relation to an act which constitutes an offence under subsection (4) if that person has been found guilty of that offence.
- (8) In deciding whether and, if so, how to proceed under subsection (1) or (3) or section 138A(3), the CMA shall have regard to the statement of policy which was most recently published under section 174E at the time the failure or (as the case may be) the obstruction or delay concerned occurred.
- (9) In this section—
 - (a) the reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form; and
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.

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

Textual Amendments

F100 Ss. 174A-174E inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

174B Restriction on powers to impose penalties under section 174A

- (1) No penalty shall be imposed by virtue of section 174A(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.
- (2) In the following provisions of this section, “the section 174 power” means the power under section 174 to which the failure or (as the case may be) the obstruction or delay in question relates.
- (3) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (a), the relevant day is the day when the CMA finally concludes the carrying out of its section 5 functions.
- (4) Where the section 174 power is exercised in connection with an enforcement function (within the meaning of that section), the relevant day is the day when the enforcement undertaking concerned is superseded or released or (as the case may be) the enforcement order concerned is revoked.
- (5) Except where subsection (3) or (4) applies, the relevant day is the day determined in accordance with the following provisions of this section.
- (6) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (b) in connection with a matter that is the subject of a possible reference under section 131, the relevant day is the day when the CMA finally decides whether to make the reference.
- (7) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (b) in connection with a matter that is the subject of a reference under section 131 or 132, the relevant day is the day when the reference is finally determined (see section 183).
- (8) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (c) in connection with a matter that is the subject of a possible reference under section 140A(5) or (6), the relevant day is the day when the Secretary of State makes the reference.
- (9) Where the section 174 power is exercised for the purpose mentioned in section 174(1) (c) in connection with a matter that is the subject of a reference under section 140A(6), the relevant day is the day when the reference is finally determined (see section 183).

Textual Amendments

F100 Ss. 174A-174E inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

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

Modifications etc. (not altering text)

- C15** S. 174B modified by 2007 c. 29, s. 57(5A) (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. 176(3)** (with art. 3, Sch. 2 para. 4))
- C16** S. 174B modified by 2000 c. 8, s. 140D(2) (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. 124(4)** (with art. 3, Sch. 2 para. 4))

174C Section 174B: supplementary provision

- (1) For the purpose of section 174B(3), the CMA finally concludes the carrying out of its section 5 functions if—
 - (a) the CMA publishes the market study report under section 131B(4) or (as the case may be) gives it to the Secretary of State under section 140A(3)(b); or
 - (b) the period permitted for the preparation by the CMA of the market study report 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)(b) expires and no such report has been so prepared or no such action has been taken.
- (2) For the purpose of section 174B(3), the time when the CMA finally concludes the carrying out of its section 5 functions is—
 - (a) in a case falling within subsection (1)(a), the publication of the report or (as the case may be) the giving of it to the Secretary of State;
 - (b) in a case falling within subsection (1)(b), the expiry of the period concerned.
- (3) For the purpose of section 174B(6), the CMA finally decides whether to make a reference under section 131 if—
 - (a) the CMA makes such a reference;
 - (b) the CMA accepts an undertaking under section 154 instead of making such a reference;
 - (c) the CMA publishes notice that it has otherwise decided not to make such a reference; or
 - (d) the period permitted for the preparation by the CMA of a market study report in relation to the matter and for the report to be published under section 131B(4) has expired and no such report has been so prepared or published.
- (4) For the purpose of section 174B(6), the time when the CMA finally decides whether to make a reference under section 131 is—
 - (a) in a case falling within subsection (3)(a), the making of the reference;
 - (b) in a case falling within subsection (3)(b), the acceptance of the undertaking concerned;
 - (c) in a case falling within subsection (3)(c), the publication of the notice concerned;
 - (d) in a case falling within subsection (3)(d), the expiry of the period concerned.
- (5) In subsection (4)(b) 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 group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (3)(b) and (4)(b).

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

Textual Amendments

F100 Ss. 174A-174E inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

174D Penalties

- (1) A penalty imposed under section 174A(1) or (3) shall be of such amount as the CMA considers appropriate.
- (2) In the case of a penalty imposed under section 174A(1), the amount may be—
 - (a) a fixed amount;
 - (b) an amount calculated by reference to a daily rate; or
 - (c) a combination of a fixed amount and an amount calculated by reference to a daily rate.
- (3) In the case of a penalty imposed under section 174A(3), the amount shall be a fixed amount.
- (4) A penalty imposed under section 174A(1) shall not—
 - (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) A penalty imposed under section 174A(3) shall not exceed such amount as the Secretary of State may by order specify.
- (6) An order under subsection (4) or (5) 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.
- (7) Before making an order under subsection (4) or (5), the Secretary of State shall consult—
 - (a) the CMA; and
 - (b) such other persons as the Secretary of State considers appropriate.
- (8) In imposing a penalty by reference to a daily rate—
 - (a) no account is to be taken of any days before the service on the person concerned of notice of the penalty under section 112 (as applied by subsection (10)); and
 - (b) unless the CMA determines an earlier date (whether before or after the penalty is imposed), the amount payable ceases to accumulate at the beginning of the earliest of the days mentioned in subsection (9).

*Changes to legislation: There are currently no known outstanding effects
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- (9) Those days are—
- (a) the day on which the requirement of the notice concerned under section 174 is satisfied;
 - (b) the day which is the relevant day in the case in question for the purposes of section 174B.
- (10) Sections 112 to 115 apply in relation to a penalty imposed under section 174A(1) or (3) as they apply in relation to a penalty imposed under section 110(1) or (3).

Textual Amendments

F100 Ss. 174A-174E inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

174E Statement of policy on penalties

- (1) The CMA shall prepare and publish a statement of policy in relation to the enforcement of notices given under section 174.
- (2) The statement shall, in particular, include a statement about the considerations relevant to the determination of the nature and amount of any penalty imposed under section 174A(1) or (3).
- (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 such persons as it considers appropriate when preparing or revising its statement of policy.]

Textual Amendments

F100 Ss. 174A-174E inserted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 1](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

^{F101}175 Enforcement of powers under section 174: offences

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Textual Amendments

F101 S. 175 omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 3](#); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))

Modifications etc. (not altering text)

C17 S. 175 savings for effects of 2013 c. 24, s. 36, Sch. 11 (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. 3](#) (with art. 3)

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

^{F102}176 Investigation powers of the Commission

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Textual Amendments

F102 S. 176 omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 11 para. 4; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Reports

177 Excisions from reports: Part 4

- (1) Subsection (2) applies where the Secretary of State is under a duty to publish a report of the [^{F103}CMA] under section 142.
- (2) The Secretary of State may exclude a matter from the report if he considers that publication of the matter would be inappropriate.
- (3) In deciding what is inappropriate for the purposes of subsection (2) the Secretary of State shall have regard to the considerations mentioned in section 244.
- (4) The [^{F104}CMA] shall advise the Secretary of State as to the matters (if any) which it considers should be excluded by him under subsection (2).
- (5) References in sections 136(4) to (6)^{F105}... and 172(10) to the giving or laying of a report of the [^{F106}CMA] shall be construed as references to the giving or laying of the report as published.

Textual Amendments

F103 Word in s. 177(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 205 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F104 Word in s. 177(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 205 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F105 Words in s. 177(5) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 10 para. 31; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F106 Word in s. 177(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 205 (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

178 Minority reports of [^{F107}CMA]: Part 4

- (1) Subsection (2) applies where, on a market investigation reference, a member of a group constituted in connection with the reference^{F108}..., disagrees with any decisions contained in the report of the [^{F109}CMA] under this Part as the decisions of the [^{F109}CMA].
- (2) The report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

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

Textual Amendments

- F107** Word in s. 178 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 206\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F108** Words in s. 178(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 206\(2\)\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F109** Word in s. 178(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 206\(2\)\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Other

179 Review of decisions under Part 4

- (1) Any person aggrieved by a decision of the [^{F110}CMA], the appropriate Minister, [^{F111}or the Secretary of State] in connection with a reference or possible reference under this Part may apply to the Competition Appeal Tribunal for a review of that decision.
- (2) For this purpose “decision”—
 - [^{F112}(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));]
 - (a) does not include a decision to impose a penalty under [^{F113}section 174A(1) or (3)]; but
 - (b) includes a failure to take a decision permitted or required by this Part in connection with a reference or possible reference.
- (3) Except in so far as a direction to the contrary is given by the Competition Appeal Tribunal, the effect of the decision is not suspended by reason of the making of the application.
- (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
- (5) The Competition Appeal Tribunal may—
 - (a) dismiss the application or quash the whole or part of the decision to which it relates; and
 - (b) where it quashes the whole or part of that decision, refer the matter back to the original decision maker with a direction to reconsider and make a new decision in accordance with the ruling of the Competition Appeal Tribunal.
- (6) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this section to the appropriate court.
- (7) An appeal under subsection (6) requires the permission of the Tribunal or the appropriate court.
- (8) In this section—

“the appropriate court” means the Court of Appeal or, in the case of Tribunal proceedings in Scotland, the Court of Session; and

“Tribunal rules” has the meaning given by section 15(1).

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

Textual Amendments

- F110** Word in s. 179(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 207\(a\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F111** Words in s. 179(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 207\(b\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F112** S. 179(2)(za) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 15](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F113** Words in s. 179(2)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 5](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

180 Offences

- (1) Sections 117 (false or misleading information) and 125 (offences by bodies corporate) shall apply, with the modifications mentioned in subsection (2) below, for the purposes of this Part as they apply for the purposes of Part 3.
- (2) Section 117 shall, in its application by virtue of subsection (1) above, have effect as if references to the Secretary of State included references to the appropriate Minister so far as he is not the Secretary of State acting alone [^{F114}and as if the references to OFCOM were omitted] .

Textual Amendments

- F114** Words in s. 180(2) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 26](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to [arts. 3\(3\)](#), 11)

181 Orders under Part 4

- (1) Any power of the Secretary of State to make an order under this Part shall be exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order under this Part—
 - (a) may be exercised so as to make different provision for different cases or different purposes;
 - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.
- (3) The power of the Secretary of State under section [^{F115}131C(1), 136(9), 137(3), 138B(6)], 144(2), 153(3) or 168(8) as extended by subsection (2) above may be exercised by modifying any enactment comprised in or made under this Act, or any other enactment.
- (4) An order made by the Secretary of State under section [^{F116}131C(1), 137(3), 138B(6)], 144(2), 158, 160 [^{F117}, 161, 174D(4) or (5), or under section 114(3)(b) or (4)(b) as applied by section 174D] , shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (5) No order shall be made by the Secretary of State under section 136(9) or 168(8), or section 128(6) as applied by section 183(2), unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) An order made by the Secretary of State under section 153(3) shall be laid before Parliament after being made and shall cease to have effect unless approved, within the period of 28 days beginning with the day on which it is made, by a resolution of each House of Parliament.
- (7) In calculating the period of 28 days mentioned in subsection (6), no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (8) If an order made by the Secretary of State ceases to have effect by virtue of subsection (6), any modification made by it of an enactment is repealed (and the previous enactment revived) but without prejudice to the validity of anything done in connection with that modification before the order ceased to have effect and without prejudice to the making of a new order.
- (9) If, apart from this subsection, an order made by the Secretary of State under section 153(3) would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.
- (10) References in this section to an order made under this Part include references to an order made under section ^{F118}... 114(3)(b) or (4)(b) as applied by section [^{F119}174D] and an order made under section 128(6) as applied by section 183(2).

Textual Amendments

- F115** Words in s. 181(3) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 16\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F116** Words in s. 181(4) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 12 para. 16\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F117** Words in s. 181(4) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 6\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F118** Words in s. 181(10) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 11 para. 6\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F119** Word in s. 181(10) substituted (25.4.2013 for specified purposes, 1.4.2014 in so far as not already in force) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(1)(i)(3), [Sch. 11 para. 6\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

182 Service of documents: Part 4

Section 126 shall apply for the purposes of this Part as it applies for the purposes of Part 3.

183 Interpretation: Part 4

- (1) In this Part, unless the context otherwise requires—

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“action” includes omission; and references to the taking of action include references to refraining from action;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“change of circumstances” includes any discovery that information has been supplied which is false or misleading in a material respect;

“consumer” means any person who is—

- (a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them; or
- (b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them;

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“customer” includes a customer who is not a consumer;

“enactment” includes an Act of the Scottish Parliament, Northern Ireland legislation and an enactment comprised in subordinate legislation, and includes an enactment whenever passed or made;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft;

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;

“modify” includes amend or repeal;

“notice” means notice in writing;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) and also includes an instrument made under an Act of the Scottish Parliament and an instrument made under Northern Ireland legislation; and

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person.

(2) Sections 127(1)(b) and (4) to (6) and 128 shall apply for the purposes of this Part as they apply for the purposes of Part 3.

(3) For the purposes of this Part a market investigation reference is finally determined if—

- (a) ^[F120]where the reference is made under section 131 or 132—
 - (i) the period permitted by section 137 for preparing and publishing a report under section 136 has expired and no such report has been prepared and published;
 - (ii) such a report has been prepared and published within the period permitted by section 137 and contains the decision that there is no adverse effect on competition;
 - (iii) the ^[F121]CMA has decided under section 138(2) neither to accept undertakings under section 159 nor to make an order under section 161; or
 - (iv) the ^[F121]CMA has accepted an undertaking under section 159 or made an order under section 161;

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- (b) [^{F122}where the reference is a restricted PI reference or a full PI reference—]
- (i) the period permitted by section 144 for the preparation of the report of the [^{F121}CMA] under section 142 and for action to be taken in relation to it under section 143(1) or (3) [^{F123}or (as the case may be) 143A(2) or (3)] has expired while the intervention notice is still in force and no such report has been so prepared or no such action has been taken;
 - (ii) the [^{F121}CMA] has terminated under section 145(1) its investigation and the reference is finally determined under paragraph (a) above ^{F124}...;
 - (iii) the report of the [^{F121}CMA] has been prepared under section 142 and published under section 143(1) [^{F125}or (as the case may be) 143A(2)] within the period permitted by section 144;
 - (iv) the intervention notice was revoked and the reference is finally determined under paragraph (a) above ^{F126}...;
 - [^{F127}(v) the Secretary of State has failed to make and publish a decision under subsection (2) of section 146 within the period permitted by subsection (3) of that section or (as the case may be) under subsection (2) of section 146A within the period permitted by subsection (6) of that section and the reference is finally determined under paragraph (a) above;]
 - (vi) the Secretary of State has decided under section 146(2) that no eligible public interest consideration is relevant and the reference is finally determined under paragraph (a) above ^{F128}...;
 - [^{F129}(via) the Secretary of State has made no finding at all under section 146A(2) and the reference is finally determined under paragraph (a) above;]
 - (vii) the Secretary of State has decided under 146(2) that a public interest consideration is relevant but has decided under section 147(2) neither to accept an undertaking under section 159 nor to make an order under section 161; ^{F130}...
 - [^{F131}(viia) the Secretary of State has made an adverse public interest finding under section 146A(2) but has decided under section 147A(2) neither to accept an undertaking under section 159 nor to make an order under section 161;]
 - (viii) the Secretary of State has decided under section 146(2) that a public interest consideration is relevant and has accepted an undertaking under section 159 or made an order under section 161 [^{F132}; or
 - (ix) the Secretary of State has made an adverse public interest finding under section 146A(2) and has accepted an undertaking under section 159 or made an order under section 161.]
- (4) For the purposes of this Part the time when a market investigation reference is finally determined is—
- (a) in a case falling within subsection (3)(a)(i) or (b)(i), the expiry of the time concerned;
 - (b) in a case falling within subsection (3)(a)(ii) or (b)(iii), the publication of the report;
 - (c) in a case falling within subsection (3)(a)(iv) or (b)(viii) [^{F133}or (ix)], the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned; and

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- (d) in any other case, the making of the decision or last decision concerned or the taking of the action concerned.
- (5) The references in subsection (4) to subsections (3)(a)(i), (ii) and (iv) include those enactments as applied by subsection (3)(b)(ii), (iv), (v)^{F134}, (vi) or (via)].
- (6) In subsection (4)(c) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action concerned 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 (3)(a)(iv) and (b)(viii) [^{F135} and (ix)] and (4)(c).
- (7) Any duty to publish which is imposed on a person by this Part shall, unless the context otherwise requires, be construed as a duty on that person to publish in such manner as that person considers appropriate for the purpose of bringing the matter concerned to the attention of those likely to be affected by it.

Textual Amendments

- F120** Words in s. 183(3)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F121** Word in s. 183(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 208](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F122** Words in s. 183(3)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F123** Words in s. 183(3)(b)(i) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F124** Words in s. 183(3)(b)(ii) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F125** Words in s. 183(3)(b)(iii) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(d\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F126** Words in s. 183(3)(b)(iv) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(e\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F127** S. 183(3)(b)(v) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(f\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F128** Words in s. 183(3)(b)(vi) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(g\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F129** S. 183(3)(b)(via) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(h\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F130** Word in s. 183(3)(b) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F131** S. 183(3)(b)(viii) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(j\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F132** S. 183(3)(b)(ix) and word inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(3\)\(k\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F133** Words in s. 183(4)(c) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F134** Words in s. 183(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

F135 Words in s. 183(6) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 32\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

184 Index of defined expressions: Part 4

In this Part, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
Action (and the taking of action)	Section 183(1)
Adverse effect on competition	Section 134(2) [^{F136} and (2A)]
[^{F137} Adverse public interest finding	Section 146A(3)]
Appropriate Minister	Section 132(5)
Business	Section 183(1)
Change of circumstances	Section 183(1)
[^{F138} The CMA	Section 273]
^{F139}	^{F139}
.
Consumer	Section 183(1)
[^{F140} Cross-market reference	Section 131(6)]
Customer	Section 183(1)
Date of market investigation reference	Section 137(7)
Detrimental effect on customers	Section 134(5)
Enactment	Section 183(1)
Enforcement order	Section 162(8)
Enforcement undertaking	Section 162(8)
Feature of a market	Section 131(2)
Final determination of market investigation reference	Section 183(3) to (6)
[^{F141} Full PI reference	Section 140A(12)]
Goods	Section 183(1)
Intervention notice	Section 139(3)
Market for goods or services	Section 131(6)
Market in the United Kingdom	Section 131(6)
Market investigation reference	Section 131(6)
[^{F142} Market study notice	Section 130A(1)
Market study report	Section 131B(4)]

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Minister of the Crown	Section 183(1)
Modify	Section 183(1)
Notice	Section 183(1)
F139	F139
.
[^{F143} Ordinary reference	Section 131(6)]
Public interest consideration	Section 139(5)
Public interest consideration being finalised	Section 139(7)
[^{F144} Public interest expert	Section 141B(4)]
Publish	Section 183(7)
Relevant customer benefit	Section 134(8)
Relevant sectoral enactment	Section 136(7)
Relevant sectoral regulator	Section 136(8)
Reports of the [^{F145} CMA]	Section 177(5)
[^{F146} Restricted PI reference	Section 140A(12)]
Subordinate legislation	Section 183(1)
Supply (in relation to the supply of goods)	Section 183(1)
The supply of services (and a market for services etc.)	Section 183(2)

Textual Amendments

- F136** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 9\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F137** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F138** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 209\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F139** Words in s. 184 table omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 209\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F140** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 9\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F141** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F142** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 17](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F143** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 9\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F144** Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F145** Word in s. 184 table substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 209\(4\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F146 Words in s. 184 table inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 33\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation:

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