



# Enterprise Act 2002

## 2002 CHAPTER 40

### PART 4

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

### CHAPTER 2

#### PUBLIC INTEREST CASES

##### 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))

### *Intervention notices*

## **139 Public interest intervention by Secretary of State**

[<sup>F1</sup>(A1) This section applies where—

- (a) the CMA has published a market study notice in relation to a matter; or
- (b) the CMA has begun the process of consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section.]

[<sup>F1</sup>(1) The Secretary of State may, within the permitted period, give a notice to the CMA if the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the matter.]

[<sup>F1</sup>(1A) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (a) of subsection (A1), is the period beginning with the publication of the market study notice and ending with—

- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter;
- (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter;
- (c) the making of such a reference in relation to the matter; or
- (d) in a case where the period permitted by section 131B for the preparation and publication by the CMA of the market study report in relation to the matter has expired and no such report has been prepared or published, the end of that period.

(1B) For the purposes of subsection (1), the permitted period, in a case to which this section applies by virtue of paragraph (b) of subsection (A1), is the period beginning with the date on which the CMA begins the process of consultation concerned and ending with—

- (a) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter concerned;
- (b) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter; or
- (c) the making of such a reference in relation to the matter.]

(2) The Secretary of State may [<sup>F2</sup>, within the permitted period,] give a notice to the [<sup>F3</sup>CMA] if—

- (a) the [<sup>F3</sup>CMA] is considering whether to accept—
  - (i) an undertaking under section 154 instead of making a reference under section 131 [<sup>F4</sup>in relation to the matter]; or
  - (ii) an undertaking varying or superseding any such undertaking;
- (b) the [<sup>F3</sup>CMA] has published a notice under section 155(1) or (4); and
- (c) the Secretary of State believes that it is or may be the case that one or more than one public interest consideration is relevant to the [<sup>F5</sup>proposal to accept the undertaking].

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- [<sup>F6</sup>(2A) For the purposes of subsection (2), the permitted period is—
- (a) where the CMA publishes a notice under section 155(1), the period within which representations may be made in relation to the proposed undertaking (as to which, see section 155(2)(f));
  - (b) where the CMA publishes a notice under section 155(4), the period within which representations may be made in relation to the proposed modifications to the proposed undertaking (as to which, see section 155(5)(c)).]
- (3) In this Part “intervention notice” means a notice under subsection (1) or (2).
- [<sup>F7</sup>(4) No more than one intervention notice shall be given under subsection (1) in relation to the same matter.
- (4A) An intervention notice shall not be given under subsection (2) in relation to a proposal to accept an undertaking if the proposal relates to a matter in respect of which an intervention notice under subsection (1) has already been given.
- (4B) No more than one intervention notice shall be given under subsection (2) in relation to the same proposed undertaking or in relation to proposed undertakings which do not differ from each other in any material respect.]
- [<sup>F8</sup>(4C) In this section, a reference to the acceptance of an undertaking 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 this section.]
- (5) For the purposes of this Part a public interest consideration is a consideration which, at the time of the giving of the intervention notice concerned, is specified in section 153 or is not so specified but, in the opinion of the Secretary of State, ought to be so specified.
- (6) Where the Secretary of State has given an intervention notice mentioning a public interest consideration which, at that time, is not finalised, he shall, as soon as practicable, take such action as is within his power to ensure that it is finalised.
- (7) For the purposes of this Part a public interest consideration is finalised if—
- (a) it is specified in section 153 otherwise than by virtue of an order under subsection (3) of that section; or
  - (b) it is specified in that section by virtue of an order under subsection (3) of that section and the order providing for it to be so specified has been laid before, and approved by, Parliament in accordance with subsection (6) of section 181 and within the period mentioned in that subsection.

#### Textual Amendments

- F1** Ss. 139(A1)-(1B) substituted for (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 35(3)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F2** Words in s. 139(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 35(4)(a)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)
- F3** Word in s. 139(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 172** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F4** Words in s. 139(2)(a)(i) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 35(4)(b)**, 103(3); S.I. 2014/416, art. 2(1)(b) (with Sch.)

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- F5** Words in s. 139(2)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(4\)\(c\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F6** S. 139(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(5\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)
- F7** S. 139(4)(4A)(4B) substituted (1.4.2014) for s. 139(4) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 35\(6\)](#)
- F8** S. 139(4C) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(7\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)

*Intervention notices under section 139(1)*

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

- (1) An intervention notice under section 139(1) shall state—
- <sup>F9</sup>(a) the matter to which the market study notice or (as the case may be) the consultation under section 169 concerned relates;
  - (b) the date of publication of that notice or (as the case may be) on which the process of consultation began;
  - (c) the public interest consideration or considerations which are, or may be, relevant to the <sup>F10</sup>matter]; and
  - (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the <sup>F11</sup>matter], he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.
- (3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(1) and which is in force.
- (4) An intervention notice under section 139(1) shall come into force when it is given and shall cease to be in force when the matter to which it relates is finally determined under this Chapter.
- <sup>F12</sup>(4A) An intervention notice under section 139(1) shall also cease to be in force if—
- (a) it mentions a public interest consideration which was not finalised on the giving of the notice or public interest considerations which, at that time, were not finalised;
  - (b) no other public interest consideration is mentioned in the notice;
  - (c) at least 24 weeks has elapsed since the giving of the notice;
  - (d) the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks; and
  - (e) the Secretary of State has not, by the end of that period of 24 weeks, made a reference under section 140A in relation to the matter.
- (4B) Subsection (4D) applies in a case where—
- (a) an intervention notice ceases to be in force in accordance with subsection (4A);

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- (b) the CMA has, before the time at which the notice ceases to be in force, prepared a market study report in relation to the matter within the period permitted by section 131B(4) and given it to the Secretary of State in accordance with section 140A(3)(b); and
  - (c) the report contains the decision of the CMA that it should make a reference in relation to the matter concerned under section 131.
- (4C) Subsection (4D) also applies in a case where—
- (a) an intervention notice ceases to be in force in accordance with subsection (4A); and
  - (b) the CMA has, before the time at which the notice ceases to be in force—
    - (i) decided that it should make an ordinary reference or a cross-market reference under section 131 in relation to the matter concerned; and
    - (ii) given a document containing its decision, the reasons for it and such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision to the Secretary of State in accordance with section 140A(3)(c).
- (4D) In a case to which this subsection applies—
- (a) the CMA shall, as soon as reasonably practicable, make a reference in relation to the matter under section 131; and
  - (b) the reference is to be treated for the purposes of this Part as having been made in accordance with the requirements imposed by this Part.]
- (5) For the purposes of subsection (4) a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter if—
- [<sup>F13</sup>(za) the CMA accepts an undertaking under section 154 instead of making a reference under section 131 in relation to the matter;
  - (zb) the CMA publishes notice that it has otherwise decided not to make a reference under section 131 in relation to the matter;
  - (zc) the period permitted for the preparation by the CMA of the market study report in relation to the matter and for the report to be published under section 131B(4) or (as the case may be) given to the Secretary of State under section 140A(3) has expired and no such report has been so prepared or no such action has been taken;
  - (zd) the Secretary of State makes a reference under section 140A(5) in relation to the matter;]
  - (a) the period permitted by section 144 for the preparation of the report of the [<sup>F14</sup>CMA] under section 142 and for action to be taken in relation to it under section 143(1) or (3) [<sup>F15</sup>or (as the case may be) 143A(2) or (3)] has expired and no such report has been so prepared or no such action has been taken;
  - (b) the [<sup>F14</sup>CMA] decides under section 145(1) to terminate its investigation;
  - (c) the report of the [<sup>F14</sup>CMA] has been prepared under section 142 and published under section 143(1) [<sup>F16</sup>or (as the case may be) 143A(2) ] within the period permitted by section 144;
  - (d) the Secretary of State fails to make and publish a decision under subsection (2) of section 146 within the period required by subsection (3) of that section [<sup>F17</sup>or (as the case may be) fails to make and publish a decision under subsection (2) of section 146A within the period required by subsection (6) of that section];

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- (e) the Secretary of State decides under section 146(2) that no eligible public interest consideration is relevant [<sup>F18</sup>or (as the case may be) decides under section 146A(2) to make no finding at all in relation to the matter];
  - (f) the Secretary of State decides under section 147(2) [<sup>F19</sup>or (as the case may be) 147A(2)] neither to accept an undertaking under section 159 nor to make an order under section 161;
  - (g) the Secretary of State accepts an undertaking under section 159 or makes an order under section 161; or
  - (h) the Secretary of State decides to revoke the intervention notice concerned.
- (6) For the purposes of subsections (4) and (5) the time when a matter to which an intervention notice under section 139(1) relates is finally determined under this Chapter is—
- [<sup>F20</sup>(za) in a case falling within subsection (5)(za), the acceptance of the undertaking concerned;
  - (zb) in a case falling within subsection (5)(zb), the publication of the notice concerned;]
  - (a) in a case falling within subsection (5)[<sup>F21</sup>(zc),] (a) or (d), the expiry of the period concerned;
  - [<sup>F22</sup>(aa) in a case falling within subsection (5)(zd), the making of the reference concerned;]
  - (b) in a case falling within subsection (5)(b), (e), (f) or (h), the making of the decision concerned;
  - (c) in a case falling within subsection (5)(c), the publication of the report concerned; and
  - (d) in a case falling within subsection (5)(g), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- [<sup>F23</sup>(6A) In subsection (6)(za) the reference to the acceptance of the undertaking concerned shall, in a case where the CMA has accepted a group of undertakings under section 154, be treated as a reference to the acceptance of the last undertaking in the group; but undertakings which vary, supersede or revoke earlier undertakings shall be disregarded for the purposes of subsections (5)(za) and (6)(za).]
- (7) In subsection (6)(d) the reference to the acceptance of the undertaking concerned or the making of the order concerned shall, in a case where the enforcement action under section 147(2) [<sup>F24</sup>or (as the case may be) 147A(2)] involves the acceptance of a group of undertakings, the making of a group of orders or the acceptance and making of a group of undertakings and orders, be treated as a reference to the acceptance or making of the last undertaking or order in the group; but undertakings or orders which vary, supersede or revoke earlier undertakings or orders shall be disregarded for the purposes of subsections (5)(g) and (6)(d).

#### Textual Amendments

- F9** S. 140(1)(a)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 5\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F10** Word in s. 140(1)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 5\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Word in s. 140(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 5\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F12** S. 140(4A)-(4D) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F13** S. 140(5)(za)-(zd) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14** Word in s. 140(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 173** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** Words in s. 140(5)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16** Words in s. 140(5)(c) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17** Words in s. 140(5)(d) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18** Words in s. 140(5)(e) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(e)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F19** Words in s. 140(5)(f) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(5)(f)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F20** S. 140(6)(za)-(zb) inserted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F21** Word in s. 140(6)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F22** S. 140(6)(aa) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(6)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F23** S. 140(6A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Words in s. 140(7) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 5(8)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

## [<sup>F25</sup>140A] **Section 139(1) intervention notices: Secretary of State's duty to refer**

- (1) This section applies where—
- (a) the CMA has prepared a market study report in relation to a matter within the period permitted by section 131B(4);
  - (b) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA would (but for this section) be required to publish the report; and
  - (c) the report contains the decision of the CMA that it should make an ordinary reference or a cross-market reference in relation to the matter under section 131.
- (2) This section also applies where—
- (a) the CMA has conducted a consultation under section 169 in respect of a decision of the kind mentioned in subsection (6)(a)(i) of that section;
  - (b) the CMA has decided that it should make an ordinary reference or a cross-market reference in relation to the matter concerned under section 131; and
  - (c) an intervention notice under section 139(1) is in force in relation to the matter at the time when the CMA makes that decision.
- (3) The CMA—
- (a) shall not exercise the power under section 131 to refer the matter;



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- (b) in a case falling within subsection (1), shall not publish the market study report under section 131B(4) and shall instead, within the period mentioned in section 131B(4), give the report to the Secretary of State; and
  - (c) in a case falling within subsection (2), shall give to the Secretary of State a document containing—
    - (i) its decision and the reasons for its decision; and
    - (ii) such information as the CMA considers appropriate for facilitating a proper understanding of the reasons for its decision.
- (4) The Secretary of State shall decide whether any public interest consideration which was mentioned in the intervention notice is relevant to the matter in question.
- (5) Where the Secretary of State decides that there is no relevant public interest consideration—
- (a) the Secretary of State shall (in accordance with the CMA's decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013; and
  - (b) the reference is to be treated for the purposes of this Part as an ordinary reference or (as the case may be) a cross-market reference made under section 131 in accordance with the requirements imposed by this Part.
- (6) Where the Secretary of State decides that there is one or more than one relevant public interest consideration, the Secretary of State shall (in accordance with the CMA's decision) make a reference in relation to the matter to the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
- (7) The Secretary of State shall specify in a reference made under subsection (6)—
- (a) the relevant public interest consideration or considerations; and
  - (b) whether the reference is a restricted PI reference or a full PI reference (as to which, see sections 141 and 141A respectively).
- (8) Where the Secretary of State makes a full PI reference under subsection (6), the reference shall also specify whether the Secretary of State proposes to appoint a public interest expert under section 141B.
- (9) For the purposes of this Part, a reference under subsection (6) is to be treated—
- (a) in a case where the decision of the CMA was that it should make an ordinary reference, as an ordinary reference;
  - (b) in a case where the decision of the CMA was that it should make a cross-market reference, as a cross-market reference.
- (10) In a case falling within subsection (1), the Secretary of State shall publish the market study report concerned at the same time as the Secretary of State makes a reference under this section.
- (11) In a case falling within subsection (2), the Secretary of State shall publish the document given to the Secretary of State by the CMA under subsection (3)(c), at the same time as the Secretary of State makes a reference under this section.
- (12) In this Part—
- “full PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a full PI reference;



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“restricted PI reference” means a reference made by the Secretary of State under subsection (6) which specifies that it is a restricted PI reference.]

**Textual Amendments**

**F25** S. 140A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), **ss. 35(8)**, 103(3); [S.I. 2014/416](#), art. 2(1)(b) (with Sch.)

**[<sup>F26</sup>140B Variation of restricted PI references and full PI references**

- (1) The Secretary of State may at any time vary a restricted PI reference or a full PI reference.
- (2) The Secretary of State shall consult the CMA before varying any such reference.
- (3) But subsection (2) does not apply if the CMA requested the variation concerned.
- (4) No variation under this section is capable of altering the public interest consideration or considerations specified in the reference.]

**Textual Amendments**

**F26** S. 140B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 10 para. 6**; [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

**141 [<sup>F27</sup>Restricted PI references: questions to be decided by CMA]**

[<sup>F28</sup>(1) This section applies where the Secretary of State makes a restricted PI reference.]

(2) The [<sup>F29</sup>CMA] shall [<sup>F30</sup>, on an ordinary reference,] decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

[<sup>F31</sup>(2A) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.]

(3) The [<sup>F32</sup>CMA] shall, if it has decided that there is an adverse effect on competition, decide the following additional questions—

- (a) whether action should be taken by the Secretary of State under section 147 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the [<sup>F32</sup>CMA] should recommend the taking of other action by the Secretary of State or action by persons other than itself and the Secretary of State for the purpose of remedying, mitigating or preventing the adverse effect

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- on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (4) The [F32CMA] shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148(1))—
- (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
- (b) whether the [F32CMA] should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (5) In deciding the questions mentioned in subsections (3) and (4), the [F32CMA] shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition.
- (6) In deciding the questions mentioned in subsections (3) and (4), the [F32CMA] may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [F33or markets] concerned.

#### Textual Amendments

- F27** S. 141 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 7(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F28** S. 141(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 7(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F29** Word in s. 141(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 174** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F30** Words in s. 141(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 5(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F31** S. 141(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 5(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F32** Words in s. 141(3)-(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 174** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F33** Words in s. 141(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 9 para. 5(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

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

- C10** Ss. 35, 36, 47, 63, 134 and 141 extended (20.6.2003) by 1977 c. 37, s. 50A(6) (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)

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Chapter 2. (See end of Document for details)*

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### [<sup>F34</sup>141A Full PI references: questions to be decided by CMA

- (1) This section applies where the Secretary of State makes a full PI reference.
- (2) The CMA shall, on an ordinary reference, decide whether any feature, or combination of features, of each relevant market (within the meaning given by section 134(3)) prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (3) The CMA shall, on a cross-market reference, decide in relation to each feature and each combination of the features specified in the reference, whether the feature or combination of features, as it relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (4) The CMA shall, if it has decided that there is an adverse effect on competition, decide whether, taking account only of any adverse effect on competition and the admissible public interest consideration or considerations concerned, any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (5) The CMA shall, if it has decided that any such feature or combination of features operates or may be expected to operate against the public interest, also decide separately the following additional questions—
  - (a) whether action should be taken by the Secretary of State under section 147A for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned;
  - (b) whether the CMA should recommend the taking of other action by the Secretary of State, or action by persons other than itself and the Secretary of State, for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest concerned; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (6) The CMA shall, if it has decided that there is an adverse effect on competition, also decide separately the following questions (on the assumption that it is proceeding as mentioned in section 148A(2))—
  - (a) whether action should be taken by it under section 138 for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition;
  - (b) whether the CMA should recommend the taking of action by other persons for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- (7) In a case where the Secretary of State has appointed a public interest expert under section 141B in relation to a full PI reference, the CMA shall, in deciding the questions mentioned in subsections (4) and (5), have regard, in particular, to the views of the expert.

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- (8) In deciding the questions mentioned in subsection (5), the CMA shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
  - (b) any detrimental effects on customers so far as resulting from those effects.
- (9) In deciding the questions mentioned in subsection (6), the CMA shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned; and
  - (b) any detrimental effects on customers so far as resulting from it.
- (10) In deciding the questions mentioned in subsections (5) and (6), the CMA may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market or markets concerned.
- (11) In this section, “admissible public interest consideration” means any public interest consideration specified in the reference concerned and which the CMA is not under a duty to disregard.

**Textual Amendments**

**F34** Ss. 141A, 141B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(9\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)

**141B Full PI references: power of Secretary of State to appoint expert**

- (1) This section applies where the Secretary of State makes a full PI reference.
- (2) The Secretary of State may appoint one or more than one person to advise the CMA on the questions mentioned in subsections (4) and (5) of section 141A in relation to the reference.
- (3) A person so appointed shall be a person who appears to the Secretary of State to have particular knowledge of, or expertise in, matters relating to a public interest consideration specified in the reference.
- (4) Each person so appointed is referred to in this Part as a “public interest expert”.
- (5) The terms and conditions of appointment of a public interest expert (including, in particular, as to remuneration) are to be determined by the Secretary of State.
- (6) Any appointment of a public interest expert under this section shall be made within the period of 2 months beginning with the date of the reference concerned.
- (7) Before appointing a public interest expert the Secretary of State shall consult the chair of the CMA.]

**Textual Amendments**

**F34** Ss. 141A, 141B inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), ss. 35\(9\), 103\(3\); S.I. 2014/416, art. 2\(1\)\(b\)](#) (with Sch.)

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## 142 Investigations and reports by [F35CMA]

- (1) [F36] Where the Secretary of State makes a restricted PI reference or a full PI reference, the CMA] shall prepare a report on the reference and take action in relation to it under section 143(1) or (3) [F37] or (as the case may be) 143A(2) or (3)] within the period permitted by section 144.
- (2) The report shall, in particular, contain—
  - (a) the decisions of the [F38CMA] on the questions which it is required to answer by virtue of section 141 [F39] or (as the case may be) 141A];
  - (b) its reasons for its decisions; [F40] ...
  - (c) such information as the [F38CMA] considers appropriate for facilitating a proper understanding of those questions and of its reasons for its decisions [F41]; and
  - (d) in the case of a report in relation to a full PI reference in respect of which the Secretary of State appointed a public interest expert, a summary of the views of the expert.]

[F42(2A)] A summary of the views of a public interest expert in a report under this section shall be approved by the expert before action is taken in relation to the report under section 143A(2) or (3).]

- (3) The [F38CMA] shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

### Textual Amendments

- F35** Word in s. 142 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 175(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** Words in s. 142(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(2)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Words in s. 142(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(2)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Word in s. 142(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 175(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F39** Words in s. 142(2)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(3)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F40** Word in s. 142(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(3)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** S. 142(2)(d) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(3)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F42** S. 142(2A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 8(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 143 [F43] Restricted PI references: publication]

[F44(A1)] This section applies in relation to a report prepared under section 142 in respect of a restricted PI reference.]

- (1) The [F45CMA] shall publish [F46] the report] if it contains—
  - (a) the decision of the [F45CMA] that there is no adverse effect on competition; or

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- (b) the decisions of the [<sup>F45</sup>CMA] that there is one or more than one adverse effect on competition but, on the question mentioned in section 141(4)(a) and in relation to each adverse effect on competition, that no action should be taken by it.

<sup>F47</sup>(2) .....

- (3) Where [<sup>F48</sup>the report] contains the decisions of the [<sup>F49</sup>CMA] that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it, the [<sup>F49</sup>CMA] shall give the report to the Secretary of State.

- (4) The Secretary of State shall publish, no later than publication of his decision under section 146(2) in relation to the case, a report of the [<sup>F49</sup>CMA] given to him under subsection (3) and not required to be published by virtue of section 148(2).

<sup>F50</sup>(5) .....

<sup>F50</sup>(6) .....

<sup>F50</sup>(7) .....

<sup>F50</sup>(8) .....

#### Textual Amendments

- F43** S. 143 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(7)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F44** S. 143(A1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F45** Word in s. 143(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 176** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F46** Words in s. 143(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F47** S. 143(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F48** Words in s. 143(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F49** Word in s. 143(3)(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 176** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F50** S. 143(5)-(8) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 9(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F51</sup>143A] Full PI references: publication etc of reports of CMA

- (1) This section applies in relation to a report prepared under section 142 in respect of a full PI reference.
- (2) The CMA shall publish the report if it contains—
- the decision of the CMA that there is no adverse effect on competition;
  - the decision of the CMA that there is an adverse effect on competition but that the feature or combination of features which gave rise to it does not operate and may not be expected to operate against the public interest; or

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- (c) the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest but, on the question mentioned in section 141A(5)(a), and in relation to each effect adverse to the public interest concerned, that no action should be taken by the Secretary of State.
- (3) The CMA shall give the report to the Secretary of State if it contains the decisions of the CMA—
- (a) that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest; and
  - (b) in relation to at least one effect adverse to the public interest concerned, that action should be taken by the Secretary of State.
- (4) The Secretary of State shall publish, no later than publication of the Secretary of State's decision under section 146A(2) in relation to the case, a report of the CMA given to the Secretary of State under subsection (3) and not required to be published by virtue of section 148A(3).]

#### Textual Amendments

**F51** S. 143A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 10](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### 144 Time-limits for investigations and reports: Part 4

- (1) The [<sup>F52</sup>CMA] shall, within the period of [<sup>F53</sup>18 months] beginning with [<sup>F54</sup>the relevant date], prepare its report under section 142 and [<sup>F55</sup>publish it under section 143(1) or 143A(2) or (as the case may be) give it to the Secretary of State in accordance with section 143(3) or 143A(3). ]
- [<sup>F56</sup>(1A) For the purposes of subsection (1), the “relevant date” is—
- (a) in the case of a report in relation to a restricted PI reference or to a full PI reference which specifies that the Secretary of State does not propose to appoint a public interest expert, the date of the reference;
  - (b) in the case of a report in relation to a full PI reference which specifies that the Secretary of State proposes to appoint a public interest expert, the earliest of the following—
    - (i) the date of the appointment of the expert;
    - (ii) the date on which the Secretary of State gives notice to the CMA that the Secretary of State no longer intends to appoint such an expert;
    - (iii) the end of the period of 2 months beginning with the date of the reference.]
- [<sup>F57</sup>(1B) The CMA may extend, by no more than 6 months, the period within which its report under section 142 is to be prepared and action is to be taken in relation to it under section 143(1) or (3) or (as the case may be) 143A(2) or (3) if it considers that there are special reasons for doing so.



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- (1C) An extension under subsection (1B) shall come into force when published under section 172.
- (1D) No more than one extension is possible under subsection (1B).]
- (2) The Secretary of State may by order amend <sup>F58</sup>—
- (a) subsection (1) so as to alter the period of <sup>F59</sup>18 months] mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period<sup>F60</sup>;
  - (b) subsection (1B) so as to alter the period of 6 months mentioned in that subsection or any period for the time being mentioned in that subsection in substitution for that period.]
- (3) No alteration shall be made by virtue of subsection (2) which results in <sup>F61</sup>—
- (a) the period for the time being mentioned in subsection (1) exceeding <sup>F62</sup>18 months]<sup>F63</sup>; or
  - (b) the period for the time being mentioned in subsection (1B) exceeding 6 months.]
- (4) An order under subsection (2) shall not affect any period of time within which, in relation to a market investigation reference, the <sup>F64</sup>CMA] is under a duty to prepare its report under section 142 and take action in relation to it under section 143(1) or (3) <sup>F65</sup>or (as the case may be) 143A(2) or (3)] if the <sup>F64</sup>CMA] is already under that duty in relation to that reference when the order is made.
- (5) Before making an order under subsection (2) the Secretary of State shall consult the <sup>F66</sup>CMA] and such other persons as he considers appropriate.

#### Textual Amendments

- F52** Word in s. 144(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 177](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F53** Words in s. 144(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F54** Words in s. 144(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 11\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F55** Words in s. 144(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 11\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F56** S. 144(1A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 11\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F57** S. 144(1B)-(1D) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F58** Word in s. 144(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(4\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F59** Words in s. 144(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(4\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F60** S. 144(2)(b) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(4\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F61** Word in s. 144(3) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(5\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F62** Words in s. 144(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 12 para. 6\(5\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F63** S. 144(3)(b) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 12 para. 6(5)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F64** Word in s. 144(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 177** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F65** Words in s. 144(4) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 11(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F66** Word in s. 144(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 177** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 145 Restrictions where public interest considerations not finalised: Part 4

- (1) The [<sup>F67</sup>CMA] shall terminate its investigation under section 142 if—
- the intervention notice concerned mentions a public interest consideration which was not finalised on the giving of that notice or public interest considerations which, at that time, were not finalised;
  - no other public interest consideration is mentioned in the notice;
  - at least 24 weeks has elapsed since the giving of the notice; and
  - the public interest consideration mentioned in the notice has not been finalised within that period of 24 weeks or (as the case may be) none of the public interest considerations mentioned in the notice has been finalised within that period of 24 weeks.
- (2) Where the intervention notice concerned mentions a public interest consideration which is not finalised on the giving of the notice, the [<sup>F67</sup>CMA] shall not give its report under section 142 to the Secretary of State in accordance with section 143(3) [<sup>F68</sup>or (as the case may be) 143A(3)] unless the period of 24 weeks beginning with the giving of the intervention notice concerned has expired or the public interest consideration concerned has been finalised.
- (3) The [<sup>F67</sup>CMA] shall, in reporting on any of the questions mentioned in section 141(3) [<sup>F69</sup>or (as the case may be) 141A(4) and (5)], disregard any public interest consideration which has not been finalised before the giving of the report.
- (4) The [<sup>F67</sup>CMA] shall, in reporting on any of the questions mentioned in section 141(3) [<sup>F70</sup>or (as the case may be) 141A(4) and (5)], disregard any public interest consideration which was not finalised on the giving of the intervention notice concerned and has not been finalised within the period of 24 weeks beginning with the giving of the notice concerned.
- (5) Subsections (1) to (4) are without prejudice to the power of the [<sup>F67</sup>CMA] to carry out investigations in relation to any public interest consideration to which it might be able to have regard in its report.

### Textual Amendments

- F67** Word in s. 145(1)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 178** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** Words in s. 145(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 12(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F69** Words in s. 145(3) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 12(3)**; 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 2. (See end of Document for details)*

**F70** Words in s. 145(4) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 12\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 146 <sup>F71</sup>**Restricted PI references:] decision of Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has received a <sup>F72</sup>report of the CMA in relation to a restricted PI reference] which—
- (a) has been prepared under section 142;
  - (b) contains the decisions that there is one or more than one adverse effect on competition and, on the question mentioned in section 141(4)(a) and in relation to at least one such adverse effect, that action should be taken by it; and
  - (c) has been given to the Secretary of State as required by section 143(3).
- (2) The Secretary of State shall decide whether—
- (a) any eligible public interest consideration is relevant; or
  - (b) any eligible public interest considerations are relevant;
- to any action which is mentioned in the report by virtue of section 141(4)(a) and (c) and which the <sup>F73</sup>CMA] should take for the purpose of remedying, mitigating or preventing any adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted or may be expected to result from any adverse effect on competition.
- (3) The Secretary of State shall make and publish his decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the <sup>F73</sup>CMA] under section 142.
- (4) In this section “eligible public interest consideration” means a public interest consideration which—
- (a) was mentioned in the intervention notice concerned; and
  - (b) was not disregarded by the <sup>F73</sup>CMA] for the purposes of its report under section 142.

#### **Textual Amendments**

- F71** Words in s. 146 heading inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 13\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F72** Words in s. 146(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 13\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F73** Word in s. 146(2)-(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 179](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### <sup>F74</sup>**146A Full PI references: decision of Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has received a report of the CMA in relation to a full PI reference which—
- (a) has been prepared under section 142;
  - (b) contains the decisions of the CMA that there is one or more than one adverse effect on competition and that one or more than one of the features or combinations of features that gave rise to an adverse effect on competition

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- operates or may be expected to operate against the public interest and that, in relation to at least one effect adverse to the public interest concerned, action should be taken by the Secretary of State; and
- (c) has been given to the Secretary of State as required by section 143A(3).
- (2) The Secretary of State shall decide whether to make an adverse public interest finding in relation to the matter and whether to make no finding at all in the matter.
- (3) For the purposes of this Part, the Secretary of State makes an adverse public interest finding in relation to a matter if, in relation to that matter, the Secretary of State decides—
- (a) that there is an adverse effect on competition;
- (b) that there is one or more than one admissible public interest consideration which is relevant to the matter; and
- (c) taking account only of any adverse effect on competition and any relevant admissible public interest consideration or considerations, that any feature or combination of features which gave rise to an adverse effect on competition operates or may be expected to operate against the public interest.
- (4) The Secretary of State may make no finding at all in a matter only if the Secretary of State decides that there is no admissible public interest consideration which is relevant to a consideration of the matter concerned.
- (5) In deciding whether to make an adverse public interest finding under subsection (2), the Secretary of State shall accept the decision of the CMA as to whether there is an adverse effect on competition in relation to the matter.
- (6) The Secretary of State shall make and publish the decision under subsection (2) within the period of 90 days beginning with the receipt of the report of the CMA under section 142.
- (7) In this section “admissible public interest consideration” means a public interest consideration which—
- (a) was mentioned in the intervention notice concerned; and
- (b) was not disregarded by the CMA for the purposes of its report under section 142.]

#### Textual Amendments

**F74** S. 146A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 14](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### 147 [F75 Restricted PI references:] remedial action by Secretary of State

- (1) Subsection (2) applies where the Secretary of State—
- (a) has decided under subsection (2) of section 146 within the period required by subsection (3) of that section that an eligible public interest consideration is relevant as mentioned in subsection (2) of that section or eligible public interest considerations are so relevant; and
- (b) has published his decision within the period required by subsection (3) of that section.

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- (2) The Secretary of State may, in relation to any adverse effect on competition identified in the report concerned, take such action under section 159 or 161 as he considers to be—
- (a) reasonable and practicable—
    - (i) to remedy, mitigate or prevent the adverse effect on competition concerned; or
    - (ii) to remedy, mitigate or prevent any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition; and
  - (b) appropriate in the light of the eligible public interest consideration concerned or (as the case may be) the eligible public interest considerations concerned.
- (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to—
- (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the adverse effect on competition concerned and any detrimental effects on customers so far as resulting from the adverse effect on competition; and
  - (b) the report of the [<sup>F76</sup>CMA ] under section 142.
- (4) In having regard by virtue of subsection (3) to the report of the [<sup>F76</sup>CMA] under section 142, the Secretary of State shall not challenge the decision of the [<sup>F76</sup>CMA] contained in the report that there is one or more than one adverse effect on competition.
- (5) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits of the feature or features of the market [<sup>F77</sup>or markets] concerned.
- (6) The Secretary of State shall take no action under subsection (2) to remedy, mitigate or prevent any detrimental effect on customers so far as it may be expected to result from the adverse effect on competition concerned if—
- (a) no detrimental effect on customers has resulted from the adverse effect on competition; and
  - (b) the adverse effect on competition is not being remedied, mitigated or prevented.
- (7) In this section “eligible public interest consideration” has the same meaning as in section 146.

#### Textual Amendments

- F75** Words in s. 147 heading inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 15](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F76** Word in s. 147(3)(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 180](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F77** Words in s. 147(5) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 9 para. 6](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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**[<sup>F78</sup>147A Full PI references: remedial action by Secretary of State**

- (1) Subsection (2) applies where the Secretary of State has decided under subsection (2) of section 146A within the period required by subsection (6) of that section to make an adverse public interest finding in relation to a matter and has published the decision within the period so required.
- (2) The Secretary of State may take such action under section 159 or 161 as the Secretary of State considers to be reasonable and practicable to remedy, mitigate or prevent any of the effects adverse to the public interest which have resulted from, or may be expected to result from, the features or combinations of features in question.
- (3) In making a decision under subsection (2), the Secretary of State shall, in particular, have regard to the report of the CMA under section 142.
- (4) In making a decision under subsection (2), the Secretary of State may, in particular, have regard to—
  - (a) the need to achieve as comprehensive a solution as is reasonable and practicable to the effects adverse to the public interest concerned; and
  - (b) any detrimental effects on customers so far as resulting from those effects.]

**Textual Amendments**

**F78** S. 147A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 16](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

**148 [<sup>F79</sup>Restricted PI references: reversion of the matter to CMA]**

- (1) If—
  - (a) the Secretary of State fails to make and publish his decision under subsection (2) of section 146 within the period required by subsection (3) of that section; or
  - (b) the Secretary of State decides that no eligible public interest consideration is relevant as mentioned in subsection (2) of that section;the [<sup>F80</sup>CMA] shall proceed under section 138 as if the report had been prepared and published under section 136 within the period permitted by section 137.
- (2) The [<sup>F80</sup>CMA] shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (1).
- <sup>F81</sup>(3) .....
- <sup>F81</sup>(4) .....
- <sup>F81</sup>(5) .....
- (6) In relation to proceedings by virtue of subsection (1), the reference in section 138(3) to decisions of the [<sup>F82</sup>CMA] included in its report by virtue of section 134(4) shall be construed as a reference to decisions which were included in the report of the [<sup>F82</sup>CMA] by virtue of section 141(4).
- (7) Where the [<sup>F82</sup>CMA], in proceeding by virtue of subsection (1), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141(4), it shall not so proceed without the consent of the Secretary of State.



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- (8) The Secretary of State shall not withhold his consent under subsection (7) unless he believes that the proposed alternative way of proceeding will operate against the public interest.
- (9) For the purposes of subsection (8) a proposed alternative way of proceeding will operate against the public interest only if any eligible public interest consideration or considerations outweigh the considerations which have led the [<sup>F83</sup>CMA] to propose proceeding in that way.
- (10) In deciding whether to withhold his consent under subsection (7), the Secretary of State shall accept the [<sup>F84</sup>CMA's] view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.
- (11) In this section “eligible public interest consideration” has the same meaning as in section 146.

#### Textual Amendments

- F79** S. 148 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 17\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F80** Word in s. 148(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 181\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F81** S. 148(3)-(5) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 17\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F82** Word in s. 148(6)(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 181\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F83** Word in s. 148(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 181\(2\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F84** Word in s. 148(10) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 181\(3\)](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F85</sup>148A] Full PI references: reversion of the matter to CMA

- (1) This section applies if—
- (a) the Secretary of State decides under section 146A(2) to make no finding at all in the matter; or
  - (b) the Secretary of State fails to make and publish the decision under subsection (2) of section 146A within the period required by subsection (6) of that section.
- (2) The CMA shall proceed under section 138 as if—
- (a) a reference under section 131 had been made (in accordance with the requirements imposed by this Part) instead of a full PI reference; and
  - (b) its report had been prepared and published under section 136 within the period permitted by section 137.
- (3) The CMA shall publish the report which has been prepared by it under section 142 (if still unpublished) as soon as it becomes able to proceed by virtue of subsection (2).



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- (4) In relation to proceedings by virtue of subsection (2), the reference in section 138(3) to decisions of the CMA included in its report by virtue of section 134(4) is to be construed as a reference to decisions which were included in the report of the CMA by virtue of section 141A(6).
- (5) Where the CMA becomes under a duty to proceed as mentioned in subsection (2), references in this Part to a reference under section 131, so far as necessary, are to be construed accordingly.
- (6) Where the CMA, in proceeding by virtue of subsection (2), intends to proceed in a way which is not consistent with its decisions as included in its report by virtue of section 141A(6), it shall not so proceed without the consent of the Secretary of State.
- (7) The Secretary of State shall not withhold consent under subsection (6) unless the Secretary of State believes that the proposed alternative way of proceeding will operate against the public interest.
- (8) For the purposes of subsection (7) a proposed alternative way of proceeding will operate against the public interest only if any admissible public interest consideration or considerations outweigh the considerations which have led the CMA to propose proceeding in that way.
- (9) In deciding whether to withhold consent under subsection (6), the Secretary of State shall accept the CMA's view of what, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or any detrimental effect on customers so far as resulting from the adverse effect on competition, would be the most appropriate way to proceed.
- (10) In this section “admissible public interest consideration” has the same meaning as in section 146A.]

#### Textual Amendments

**F85** S. 148A inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 18](#); [S.I. 2014/416](#), art. 2(1)(d) (with Sch.)

#### *Intervention notices under section 139(2)*

### **149 Intervention notices under section 139(2)**

- (1) An intervention notice under section 139(2) shall state—
  - (a) the proposed undertaking which may be accepted by the <sup>F86</sup>CMA];
  - (b) the notice under section 155(1) or (4);
  - (c) the public interest consideration or considerations which are, or may be, relevant to the <sup>F87</sup>proposal to accept the undertaking]; and
  - (d) where any public interest consideration concerned is not finalised, the proposed timetable for finalising it.
- (2) Where the Secretary of State believes that it is or may be the case that two or more public interest considerations are relevant to the <sup>F88</sup>proposal to accept the undertaking], he may decide not to mention in the intervention notice such of those considerations as he considers appropriate.

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- (3) The Secretary of State may at any time revoke an intervention notice which has been given under section 139(2) and which is in force.
- (4) An intervention notice under section 139(2) shall come into force when it is given and shall cease to be in force on the occurrence of any of the events mentioned in subsection (5).
- (5) The events are—
  - (a) the acceptance by the [F89CMA] with the consent of the Secretary of State of an undertaking which is the same as the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) or which does not differ from it in any material respect;
  - (b) the decision of the [F89CMA] to proceed neither with the proposed undertaking mentioned in the intervention notice by virtue of subsection (1)(a) nor a proposed undertaking which does not differ from it in any material respect; or
  - (c) the decision of the Secretary of State to revoke the intervention notice concerned.

#### Textual Amendments

- F86** Word in s. 149(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 182](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F87** Words in s. 149(1)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 19\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F88** Words in s. 149(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 10 para. 19\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F89** Word in s. 149(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 182](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

## 150 Power of veto of Secretary of State

[F90(A1) Where an intervention notice under subsection 139(1) is in force, the CMA shall not, without the consent of the Secretary of State, accept any proposed undertaking under section 154 in relation to the matter concerned.]

- (1) Where an intervention notice under section 139(2) is in force, the [F91CMA] shall not, without the consent of the Secretary of State, accept the proposed undertaking concerned or a proposed undertaking which does not differ from it in any material respect.
- (2) The Secretary of State shall withhold his consent if he believes that it is or may be the case that the proposed undertaking will, if accepted, operate against the public interest.
- (3) For the purposes of subsection (2) a proposed undertaking will, if accepted, operate against the public interest only if any public interest consideration which is mentioned in the intervention notice concerned and has been finalised, or any public interest considerations which are so mentioned and have been finalised, outweigh the considerations which have led the [F92CMA] to propose accepting the undertaking.
- (4) In making his decision under subsection (2) the Secretary of State shall accept the [F93CMA's] view of what undertakings, if the only relevant consideration were how to remedy, mitigate or prevent the adverse effect on competition concerned or

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any detrimental effect on customers so far as resulting from the adverse effect on competition, would be most appropriate.

- (5) Where a public interest consideration which is mentioned in the intervention notice concerned is not finalised on the giving of the notice, the Secretary of State shall not make his decision as to whether to give his consent under this section before—
- (a) the end of the period of 24 weeks beginning with the giving of the intervention notice; or
  - (b) if earlier, the date on which the public interest consideration concerned has been finalised.
- (6) Subject to subsections (2) to (5), the Secretary of State shall not withhold his consent under this section.

#### Textual Amendments

- F90** S. 150(A1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 20**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F91** Word in s. 150(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 183(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F92** Word in s. 150(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 183(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F93** Word in s. 150(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 183(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### Other

### 151 [F94Public interest intervention cases: interaction with general procedure]

- [F95(1) Sections 134(1), (1A), (4), (6) and (7), 136(1) to (6), 137(1) to (6), 138 and 138A do not apply in relation to a restricted PI reference or a full PI reference.]
- (2) Where the Secretary of State revokes an intervention notice which has been given under section 139(1), [F96at a time after the Secretary of State has made a restricted PI reference or a full PI reference, the CMA shall proceed as if the reference concerned had instead been made under section 131 (in accordance with the requirements imposed by this Part).]
- (3) Where the [F97CMA] is proceeding by virtue of subsection (2), the period within which the [F97CMA] shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.
- (4) Where the [F98CMA] terminates its investigation under section 145(1)[F99, the CMA shall proceed as if the restricted PI reference or (as the case may be) the full PI reference concerned had instead been made by the CMA under section 131 (in accordance with the requirements imposed by this Part).]
- (5) Where the [F100CMA] is proceeding by virtue of subsection (4), the period within which the [F100CMA] shall prepare and publish its report under section 136 shall be extended by an additional period of 20 days.
- (6) In determining the period of 20 days mentioned in subsection (3) or (5) no account shall be taken of—

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- (a) Saturday, Sunday, Good Friday and Christmas Day; and
- (b) any day which is a bank holiday in England and Wales.

#### Textual Amendments

- F94** S. 151 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 21(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F95** S. 151(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 21(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F96** Words in s. 151(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 21(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F97** Word in s. 151(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 184(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F98** Word in s. 151(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 184(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F99** Words in s. 151(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 21(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F100** Word in s. 151(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 184(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 152 Certain duties of [<sup>F101</sup>CMA]

- (1) The [<sup>F102</sup>CMA] shall, in considering whether to make a reference under section 131, bring to the attention of the Secretary of State any case which it believes raises any consideration specified in section 153 unless it believes that the Secretary of State would consider any such consideration immaterial in the context of the particular case.

<sup>F103</sup>(2) .....

- (3) The [<sup>F104</sup>CMA] shall bring to the attention of the Secretary of State any representations about exercising his power under section 153(3) which have been made to the [<sup>F105</sup>CMA].

#### Textual Amendments

- F101** Word in s. 152 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F102** Word in s. 152(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F103** S. 152(2) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 10 para. 22**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F104** Word in s. 152(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(3)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F105** Word in s. 152(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 185(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

### 153 Specified considerations: Part 4

- (1) The interests of national security are specified in this section.

<sup>F106</sup>(2) .....

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- (3) The Secretary of State may by order modify this section for the purpose of specifying in this section a new consideration or removing or amending any consideration which is for the time being specified in this section.
- (4) An order under this section may apply in relation to cases under consideration by the [<sup>F107</sup>CMA], [<sup>F108</sup>by the Secretary of State or] by the appropriate Minister (other than the Secretary of State acting alone) <sup>F109</sup>... before the making of the order as well as cases under consideration on or after the making of the order.

#### Textual Amendments

- F106** S. 153(2) omitted (4.1.2022) by virtue of National Security and Investment Act 2021 (c. 25), s. 66(3), Sch. 2 para. 9 (with s. 62); S.I. 2021/1465, regs. 2, 3 (with regs. 4, 5)
- F107** Word in s. 153(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 186(a) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F108** Words in s. 153(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 186(b) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F109** Words in s. 153(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 5 para. 186(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 2.