



# Enterprise Act 2002

## 2002 CHAPTER 40

### <sup>F1</sup>PART 3

#### MERGERS

### CHAPTER 5

#### SUPPLEMENTARY

#### *Information and publicity requirements*

### 105 General information duties of [<sup>F1</sup>CMA]

(1) Where the [<sup>F2</sup>CMA] decides to investigate a matter so as to enable it to decide whether to make a reference under section 22 or 33, or so as to make a report under section 44 or 61, it shall, so far as practicable, take such action as it considers appropriate to bring information about the investigation to the attention of those whom it considers might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.

[<sup>F3</sup>(1A) Where OFCOM decide to investigate a matter so as to make a report under section 44A or 61A, they shall, so far as practicable, take such action as they consider appropriate to bring information about the investigation to the attention of those who they consider might be affected by the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned.]

(2) [<sup>F4</sup>Subsections (1) and (1A) do] not apply in relation to arrangements which might result in the creation of a relevant merger situation if a merger notice has been given in relation to those arrangements under section 96.

(3) The [<sup>F5</sup>CMA] shall give the <sup>F6</sup>... [<sup>F7</sup>OFCOM]—

- (a) such information in its possession as <sup>F8</sup>... [<sup>F9</sup>OFCOM] may reasonably require to enable the <sup>F8</sup>... [<sup>F9</sup>OFCOM] to carry out its functions under this Part; and

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- (b) any other assistance which the <sup>F10</sup>... [F<sup>9</sup>OFCOM] may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of the [F<sup>11</sup>CMA] to give.

[F<sup>12</sup>(3A) OFCOM shall give the [F<sup>13</sup> CMA ] —

- (a) such information in their possession as the [F<sup>14</sup>CMA] may reasonably require to enable the [F<sup>14</sup>CMA] to carry out its functions under this Part; and  
(b) any other assistance which the [F<sup>14</sup>CMA] may reasonably require for the purpose of assisting it in carrying out its functions under this Part and which it is within the power of OFCOM to give.]

- (4) The [F<sup>15</sup>CMA] shall give the [F<sup>16</sup>OFCOM] any information in its possession which has not been requested by the <sup>F17</sup>... [F<sup>18</sup>OFCOM] but which, in the opinion of the [F<sup>15</sup>CMA], would be appropriate to give to the <sup>F17</sup>... [F<sup>18</sup>OFCOM] for the purpose of assisting it in carrying out its functions under this Part.

[F<sup>19</sup>(4A) OFCOM shall give the [F<sup>20</sup>CMA] any information in their possession which has not been requested by the [F<sup>21</sup>CMA] but which, in the opinion of OFCOM, would be appropriate to give to the [F<sup>21</sup>CMA] for the purpose of assisting it in carrying out its functions under this Part.]

(5) The [F<sup>22</sup>CMA and OFCOM] shall give the Secretary of State—

- (a) such information in their possession as the Secretary of State 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 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 [F<sup>23</sup>CMA or (as the case may be) OFCOM] to give.

(6) The [F<sup>24</sup>CMA][F<sup>25</sup>and OFCOM] shall give the Secretary of State any information in [F<sup>26</sup>their] possession which has not been requested by the Secretary of State but which, in the opinion of the [F<sup>24</sup>CMA][F<sup>27</sup>or (as the case may be) OFCOM], would be appropriate to give to the Secretary of State for the purpose of assisting him in carrying out his functions under this Part.

(7) The [F<sup>28</sup>CMA] shall have regard to any information given to it under subsection [F<sup>29</sup>(3A) or (4A)]; and the Secretary of State shall have regard to any information given to him under subsection (5) or (6).

[F<sup>30</sup>(7A) OFCOM shall have regard to any information given to them under subsection (3) or (4);] <sup>F31</sup>...

(8) Any direction given under subsection (5)—

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

#### Textual Amendments

- F1** Word in s. 105 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(11)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)  
**F2** Word in s. 105(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(2)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)  
**F3** S. 105(1A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(2), 411(2)(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

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- F4** Words in s. 105(2) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(3)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F5** Word in s. 105(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(3)(a)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F6** Words in s. 105(3) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(3)(a)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F7** Words in s. 105(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(4)(a)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F8** Words in s. 105(3)(a) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(3)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F9** Words in s. 105(3) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(4)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F10** Words in s. 105(3)(b) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(3)(c)(i)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F11** Word in s. 105(3)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(3)(c)(ii)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F12** S. 105(3A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(5)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F13** Word in s. 105(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(4)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F14** Word in s. 105(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(4)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F15** Word in s. 105(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(5)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F16** Word in s. 105(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(5)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F17** Words in s. 105(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(5)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F18** Words in s. 105(4) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(6)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F19** S. 105(4A) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(7)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F20** Word in s. 105(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F21** Word in s. 105(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F22** Words in s. 105(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(7)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F23** Words in s. 105(5)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(7)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F24** Word in s. 105(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(8)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F25** Words in s. 105(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(a)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F26** Word in s. 105(6) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(b)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F27** Words in s. 105(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 382(9)(c)**, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1
- F28** Word in s. 105(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(9)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F29** Words in s. 105(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 137(9)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F30** S. 105(7A) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 382(11)**, 411(2)(3) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), **art. 3(1)**, [Sch. 1](#) (subject to arts. 3(3), 11)
- F31** Words in s. 105(7A) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 137(10)** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

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

- C1** S. 105 applied (with modifications) (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 15, **Sch. 3 para. 1(1)(m)(13)** (as amended by [S.I. 2003/3180](#), art. 2, **Sch. para. 10(13)** (with transitional provisions and savings in [art. 3](#)) and (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, **18(1)-(17)** (with arts. 20-23))

## 106 Advice and information about references under sections 22 and 33

- (1) <sup>F32</sup>... [<sup>F33</sup>The CMA] shall prepare and publish general advice and information about<sup>F34</sup>—
- (a) the making and consideration by it of references under section 22 or 33, and
  - (b) the way in which relevant customer benefits may affect the taking of enforcement action in relation to such references.]
- (2) The [<sup>F35</sup>CMA] may at any time publish revised, or new, advice or information.
- <sup>F36</sup>(3) .....
- <sup>F36</sup>(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 [<sup>F37</sup>CMA] or (as the case may be) the Commission expects such provisions to operate.
- (6) Advice (or information) published by virtue of subsection (1) <sup>F38</sup>... may include advice (or information) about the factors which the [<sup>F39</sup>CMA] may take into account in considering whether, and if so how, to exercise a function conferred by this Part.
- (7) Any advice or information published by the [<sup>F40</sup>CMA] under this section shall be published in such manner as the [<sup>F41</sup>CMA] considers appropriate.
- (8) In preparing any advice or information under this section, the [<sup>F42</sup>CMA shall consult such persons] as it considers appropriate.
- <sup>F43</sup>(9) .....

#### Textual Amendments

- F32** Words in s. 106(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 138(2)(a)** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))
- F33** Words in s. 106(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 138(2)(b)** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))
- F34** Words in s. 106(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 138(2)(c)** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

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- F35** Word in s. 106(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F36** S. 106(3)(4) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(4)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F37** Word in s. 106(5)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(5)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F38** Word in s. 106(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(6)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F39** Word in s. 106(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(6)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F40** Word in s. 106(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(7)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Word in s. 106(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(7)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F42** Words in s. 106(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(8)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F43** S. 106(9) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 138(9)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F44</sup>106A] **Advice and information in relation to media mergers**

- (1) The Secretary of State may prepare and publish general advice and information about the considerations specified in section 58(2A) to (2C).
- (2) The Secretary of State may at any time publish revised, or new, advice or information.
- (3) Advice or information published under this section shall be prepared with a view to—
  - (a) explaining the considerations specified in section 58(2A) to (2C) to persons who are likely to be affected by them; and
  - (b) indicating how the Secretary of State expects this Part to operate in relation to such considerations.
- (4) Any advice or information published by the Secretary of State under this section shall be published in such manner as the Secretary of State considers appropriate.
- (5) In preparing any advice or information under this section, the Secretary of State shall consult the [<sup>F45</sup>CMA, OFCOM] and such other persons as he considers appropriate.]

#### **Textual Amendments**

- F44** S. 106A inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 383, 411(2)(3)** (with transitional provisions in **Sch. 18**); S.I. 2003/3142, art. 3(1), **Sch. 1** (subject to arts. 3(3), 11)
- F45** Words in s. 106A(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 139** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### [<sup>F46</sup>106B] **General advisory functions of OFCOM**

- (1) OFCOM may, in connection with any case on which they are required to give a report by virtue of section 44A or 61A, give such advice as they consider appropriate to the Secretary of State in relation to—
  - (a) any report made in such a case by the [<sup>F47</sup>CMA] under section 50 or 65; and
  - (b) the taking by the Secretary of State of enforcement action under Schedule 7.

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- (2) OFCOM may, if requested to do so by the Secretary of State, give such other advice as they consider appropriate to the Secretary of State in connection with any case on which they are required to give a report by virtue of section 44A or 61A.
- (3) OFCOM shall publish any advice given by them under this section but advice given by them in relation to a report of the [F48CMA] under section 50 or 65 or related enforcement action shall not be published before the report itself is published.]

#### Textual Amendments

- F46** S. 106B inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 384, 411(2)(3)** (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (subject to arts. 3(3), 11)
- F47** Word in s. 106B(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. [103\(3\)](#), **Sch. 5 para. 140** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))
- F48** Word in s. 106B(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. [103\(3\)](#), **Sch. 5 para. 140** (with s. 28); [S.I. 2014/416](#), art. 2(1)(d) (with [Sch.](#))

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

- C2** S. 106B applied (with modifications) (29.12.2003) by [S.I. 2003/1592](#), art. 15, [Sch. 3 para. 1\(1\)\(ma\)](#) (as inserted by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, **Sch. para. 10(10)** (with transitional provisions and savings in art. 3) (as amended (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, **18(1)-(17)** (with arts. 20-23))
- S. 106B applied (with modifications) (29.12.2003) by [S.I. 2003/1592](#), art. 15, [Sch. 3 para. 1\(13A\)](#) (as inserted by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, **Sch. para. 10(14)** (with transitional provisions and savings in art. 3))

## 107 Further publicity requirements

- (1) The [F49CMA] shall publish—
- [F50(a) any decision made by it that the duty to make a reference under section 22 or 33 applies and any such reference made by it;
- (aa) any decision made by it that the duty to make such a reference does not apply (other than a decision made by virtue of subsection (2)(b) of section 33);]
- [F51(ab) any notice given by it as mentioned in paragraph (b) of the definition of “initial period” in section 34ZA(3);
- (ac) any extension by it under section 34ZB of the initial period;
- (ad) any decision made by it to cancel an extension as mentioned in section 34ZB(7)(b);
- (ae) any extension by it under section 34A of the preliminary assessment period;
- (af) any decision made by it to cancel an extension as mentioned in section 34A(6A)(b);
- (ag) any extension by it under section 46B of the preliminary assessment period;
- (ah) any decision made by it to cancel an extension as mentioned in section 46B(3A)(b);]
- (b) any variation made by it under section 37 of a reference under section 22 or 33;
- (c) such information as it considers appropriate about any decision made by it under section 57(1) to bring a case to the attention of the Secretary of State;
- [F52(d) .....

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- (e) any enforcement order made by it under section 72 <sup>F53</sup>... or paragraph 2 of Schedule 7;
  - <sup>F54</sup>(ea) any notice given by it under section 73A(2)(b);
  - (eb) any extension by it under section 73A of the period for considering whether to accept an undertaking under section 73;
  - (ec) any decision made by it to cancel an extension as mentioned in section 73A(11)(b);]
  - (f) any variation, release or revocation of <sup>F55</sup>an order mentioned in paragraph (e)]
  - <sup>F56</sup>(g) .....
  - <sup>F56</sup>(h) .....<sup>F57</sup>; and
  - (i) any notice given by it under section 96(2A).]
- (2) The <sup>F58</sup>CMA shall also] publish—
- (a) any cancellation by it under section 37(1) of a reference under section 33;
  - (b) any decision made by it under section 37(2) to treat a reference made under section 22 or 33 as if it had been made under section 33 or (as the case may be) 22;
  - (c) any extension by it under section 39 of the period within which a report under section 38 is to be prepared and published;
  - (d) any decision made by it to cancel an extension as mentioned in section 39(8)(b);
  - (e) any decision made by it under section 41(2) neither to accept an undertaking under section 82 nor to make an order under section 84;
  - <sup>F59</sup>(ea) any extension by it under section 41A of the period within which its duty under section 41(2) is to be discharged;
  - (eb) any decision made by it to cancel an extension as mentioned in section 41A(7)(b);]
  - (f) any decision made by it that there has been a material change of circumstances as mentioned in subsection (3) of section 41 or there is another special reason as mentioned in that subsection of that section;
  - (g) any cancellation by it under section 48(1) or 53(1) of a reference under section 45 or any cancellation by it under section 64(1) of a reference under section 62;
  - (h) any decision made by it under section 49(1) to treat—
    - (i) a reference made under subsection (2) or (3) of section 45 as if it had been made under subsection (4) or (as the case may be) (5) of that section; or
    - (ii) a reference made under subsection (4) or (5) of section 45 as if it had been made under subsection (2) or (as the case may be) (3) of that section;
  - (i) any extension by it under section 51 of the period within which a report under section 50 is to be prepared and published;
  - (j) any decision made by it under section 51(8)(b) to cancel such an extension;
  - (k) any extension by it under section 51 as applied by section 65(3) of the period within which a report under section 65 is to be prepared and published;
  - (l) any decision made by it under section 51(8)(b) as applied by section 65(3) to cancel such an extension;

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- (m) any decision made by it under section 64(2) to treat a reference made under subsection (2) or (3) of section 62 as if it had been made under subsection (3) or (as the case may be) (2) of that section;
  - (n) any decision made by it as mentioned in section 76(6)(b);
  - (o) any enforcement order made by it under section 76 or 81;
  - (p) any enforcement undertaking accepted by it under section 80;
  - (q) any variation, release or revocation of such an order or undertaking; and
  - (r) any decision made by it to dispense with the requirements of Schedule 10.
- (3) The Secretary of State shall publish—
- (a) any intervention notice or special intervention notice given by him;
  - (b) any report of the [<sup>F60</sup>CMA] under section 44 or 61 which has been received by him;
  - [<sup>F61</sup>(ba) any report of OFCOM under section 44A or 61A which has been received by him;]
  - (c) any reference made by him under section 45 or 62 or any decision made by him not to make such a reference;
  - (d) any variation made by him under section 49 of a reference under section 45 or under section 64 of a reference under section 62;
  - (e) any report of the [<sup>F62</sup>CMA] under section 50 or 65 which has been received by him;
  - (f) any decision made by him neither to accept an undertaking under paragraph 9 of Schedule 7 nor to make an order under paragraph 11 of that Schedule;
  - (g) any notice given by him under section 56(1);
  - <sup>F63</sup>(h) .....
  - <sup>F63</sup>(i) .....
  - (j) any decision made by him as mentioned in paragraph 6(6)(b) of Schedule 7; and
  - (k) any decision made by him to dispense with the requirements of Schedule 10.
- (4) Where any person is under a duty by virtue of subsection (1), (2) or (3) 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 (5) and (6), also publish that person's reasons for the action concerned or (as the case may be) the decision concerned.
- (5) 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.
- (6) Subsections (4) and (5) shall not apply in relation to any information published under subsection (1)(c).
- (7) The Secretary of State shall publish his reasons for—
- (a) any decision made by him under section 54(2) or 66(2); or
  - (b) any decision to make an order under section 58(3) or vary or revoke such an order.
- (8) Such reasons may be published after—
- (a) in the case of subsection (7)(a), the publication of the decision concerned; and
  - (b) in the case of subsection (7)(b), the making of the order or of the variation or revocation;



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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.

- (9) The Secretary of State shall publish—
- (a) the report of the [<sup>F64</sup>CMA] under section 44 [<sup>F65</sup>and any report of OFCOM under section 44A,] in relation to a matter no later than publication of his decision as to whether to make a reference under section 45 in relation to that matter; and
  - (b) the report of the [<sup>F66</sup>CMA] under section 50 in relation to a matter no later than publication of his decision under section 54(2) in relation to that matter.
- (10) The Secretary of State shall publish—
- (a) the report of the [<sup>F67</sup>CMA] under section 61 [<sup>F68</sup>, and any report of OFCOM under section 61A,] in relation to a matter no later than publication of his decision as to whether to make a reference under section 62 in relation to that matter; and
  - (b) the report of the [<sup>F69</sup>CMA] under section 65 in relation to a matter no later than publication of his decision under section 66(2) in relation to that matter.
- (11) Where the Secretary of State has decided under section 55(2) or 66(6) to accept an undertaking under paragraph 9 of Schedule 7 or to make an order under paragraph 11 of that Schedule, 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 [<sup>F70</sup>CMA's] report under section 50 or (as the case may be) 65, before each House of Parliament

#### Textual Amendments

- F49** Word in s. 107(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 141(2)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F50** S. 107(1)(a)(aa) substituted for s. 107(1)(a) (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 36(2)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F51** S. 107(1)(ab)-(ah) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 26(3), s. 57, Sch. 15 para. 36(3); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F52** S. 107(1)(d) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 36(4)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F53** Words in s. 107(1)(e) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 141(2)(b)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F54** S. 107(1)(ea)-(ec) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 26(3), s. 57, **Sch. 15 para. 36(5)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F55** Words in s. 107(1)(f) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 36(6)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F56** S. 107(1)(g)(h) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 141(2)(c)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F57** S. 107(1)(i) and word inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 36(7)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F58** Words in s. 107(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 141(3)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F59** S. 107(2)(ea)(eb) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 36(8)**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F60** Word in s. 107(3)(b) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 141(4)(a)** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F61** S. 107(3)(ba) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(2\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F62** Word in s. 107(3)(e) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(4\)\(b\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F63** S. 107(3)(h)(i) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 15 para. 36\(9\)](#); S.I. 2014/416, [art. 2\(1\)\(f\)](#) (with [Sch.](#))
- F64** Word in s. 107(9)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(5\)\(a\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F65** Words in s. 107(9)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(3\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F66** Word in s. 107(9)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(5\)\(b\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F67** Word in s. 107(10)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(6\)\(a\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F68** Words in s. 107(10)(a) inserted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 16 para. 18\(4\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#), [Sch. 1](#) (subject to arts. 3(3), 11)
- F69** Word in s. 107(10)(b) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(6\)\(b\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F70** Word in s. 107(11) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 141\(7\)](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))

## 108 Defamation

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 [<sup>F71</sup>CMA, OFCOM] or the Secretary of State in the exercise of any of their functions under this Part.

### Textual Amendments

- F71** Words in s. 108 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 142](#) (with s. 28); S.I. 2014/416, [art. 2\(1\)\(d\)](#) (with [Sch.](#))

### Modifications etc. (not altering text)

- C3** S. 108 applied (with modifications) (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), [art. 15](#), [Sch. 3 para. 1\(1\)\(n\)\(14\)](#) (as amended (1.4.2014) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) \(Amendment\) Order 2014 \(S.I. 2014/891\)](#), arts. 1, [18\(1\)-\(17\)](#) (with arts. 20-23))

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