

Status: Point in time view as at 01/04/2013.

Changes to legislation: Health and Social Care Act 2012, SCHEDULE 10 is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Sections 101 and 142

REFERENCES BY MONITOR TO THE COMPETITION COMMISSION

Variation of reference

- 1 (1) Monitor may, at any time, by notice given to the Competition Commission vary a reference—
- (a) by adding to the matters specified in the reference, or
 - (b) by excluding from the reference some of the matters so specified.
- (2) On receipt of a notice under sub-paragraph (1), the Commission must give effect to the variation.

Commencement Information

I1 Sch. 10 para. 1 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

Monitor's opinion of public interest etc.

- 2 Monitor may specify in a reference, or a variation under paragraph 1, for the purpose of assisting the Competition Commission in carrying out the investigation on the reference—
- (a) any effects adverse to the public interest which Monitor considers the matters specified in the reference or variation have or may be expected to have, and
 - (b) any changes in relation to those matters by which Monitor considers those effects could be remedied or prevented.

Commencement Information

I2 Sch. 10 para. 2 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

Publication etc. of reference

- 3 As soon as practicable after making a reference, or a variation under paragraph 1, Monitor—
- (a) must send a copy of the reference or variation to the relevant persons, and
 - (b) must publish particulars of the reference or variation.

Commencement Information

I3 Sch. 10 para. 3 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

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Information

- 4 (1) Monitor must, for the purpose of assisting the Competition Commission in carrying out an investigation on a reference, or in carrying out the function under paragraph 8, give the Commission—
- (a) such information in Monitor's possession as relates to matters within the scope of the investigation or the carrying out of the function and—
 - (i) is requested by the Commission for that purpose, or
 - (ii) is information which Monitor considers it would be appropriate for that purpose to give to the Commission without request, and
 - (b) such other assistance as the Commission may require, and as is within Monitor's power to give, in relation to any such matters.
- (2) The Commission must, for the purpose of carrying out the investigation or the function, take account of such information as is given to it for that purpose under sub-paragraph (1).

Commencement Information

I4 [Sch. 10 para. 4](#) in force at 1.11.2012 by [S.I. 2012/2657](#), [art. 2\(2\)](#)

Time limits

- 5 (1) A reference must specify a period within which the Competition Commission must make a report on the reference.
- (2) A period specified for the purposes of sub-paragraph (1) must not be longer than six months beginning with the date of the reference.
- (3) A report of the Commission on a reference does not have effect (and no action may be taken in relation to it under paragraph 7) unless the report is made before the end of—
- (a) the period specified in the reference, or
 - (b) such further period as is allowed under sub-paragraph (4).
- (4) Monitor may, if it receives representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend the period by no more than six months.
- (5) But Monitor may not make more than one extension under sub-paragraph (4) in relation to the same reference.
- (6) Where Monitor makes an extension under sub-paragraph (4), it must send notice of the extension to the relevant persons.
- (7) Monitor must also publish the notice.

Commencement Information

I5 [Sch. 10 para. 5](#) in force at 1.11.2012 by [S.I. 2012/2657](#), [art. 2\(2\)](#)

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Reports on references

- 6 (1) In making a report on a reference, the Competition Commission—
- (a) must include in the report definite conclusions on the questions in the reference together with such an account of its reasons for those conclusions as it considers expedient for facilitating a proper understanding of those questions and of its conclusions,
 - (b) where it concludes that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, must specify in the report the effects adverse to the public interest which those matters have or may be expected to have, and
 - (c) where it concludes that any adverse effects so specified could be remedied or prevented by changes in relation to the matters specified in the reference, must specify in the report changes which could remedy or prevent those effects.
- (2) For the purposes of paragraphs 7 and 8, a conclusion in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (3) If a member of a group so constituted disagrees with a conclusion in a report made on a reference, the report must, if the member so wishes, include a statement of the member's disagreement and reasons for disagreeing.
- (4) A report of the Commission on a reference must be sent to Monitor.
- (5) On receiving a report on a reference, Monitor must send a copy of it to the Secretary of State.
- (6) Not less than 14 days after the Secretary of State receives that copy, Monitor must send a copy to the relevant persons.
- (7) Not less than 24 hours after complying with sub-paragraph (6), Monitor must publish the report.

Commencement Information

I6 Sch. 10 para. 6 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

Changes following report

- 7 (1) This paragraph applies where a report of the Competition Commission on a reference—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest,
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have,
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by changes to the matters specified in the reference, and
 - (d) specifies changes by which those effects could be remedied or prevented.

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- (2) Monitor must make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the adverse effects specified in the report.
- (3) Before making changes under this paragraph, Monitor must have regard to the changes specified in the report.
- (4) Before making changes under this paragraph, Monitor must send a notice—
 - (a) stating that it proposes to make the changes and setting out their effect,
 - (b) stating the reasons why it proposes to make the changes, and
 - (c) specifying the period within which representations with respect to the changes may be made.
- (5) A period specified for the purposes of sub-paragraph (4)(c) must not be less than 28 days beginning with the day after that on which the notice is published.
- (6) Monitor must send the notice to the relevant persons.
- (7) Monitor must also publish the notice.
- (8) After considering such representations as it receives before the end of the period specified under sub-paragraph (4)(c), Monitor must send a notice to the Competition Commission—
 - (a) specifying the changes it proposes to make to remedy or prevent the adverse effects specified in the report, and
 - (b) stating the reasons for proposing to make the changes.
- (9) Monitor must include with the notice under sub-paragraph (8) a copy of the representations referred to in that sub-paragraph.
- (10) If a direction under paragraph 8 is not given to Monitor before the end of the period of four weeks beginning with the date on which it sends the notice under sub-paragraph (8), Monitor must make the changes specified in the notice.
- (11) If a direction under that paragraph is given to Monitor before the end of that period, Monitor must make such of the changes as are not specified in the direction.

Commencement Information

I7 Sch. 10 para. 7 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

Competition Commission's power to veto changes

- 8 (1) The Competition Commission may, within the period of four weeks beginning with the day on which it is sent a notice under paragraph 7(8), direct Monitor—
 - (a) not to make the changes set out in the notice, or
 - (b) not make such of the changes as may be specified in the direction.
- (2) Monitor must comply with a direction under sub-paragraph (1).
- (3) The Secretary of State may, within that period and on the application of the Commission, direct that the period for giving a direction under sub-paragraph (1) (and, accordingly, the period referred to in paragraph 7(10)) is to be extended by 14 days.

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- (4) The Commission may give a direction under sub-paragraph (1) only in respect of such of the changes specified in the notice under paragraph 7(8)(a) as it considers are not necessary for the purpose of remedying or preventing one or more of the adverse effects specified in the report as effects which could be remedied or prevented by changes.
- (5) If the Commission gives a direction under sub-paragraph (1), it—
 - (a) must give notice specifying the changes proposed by Monitor, the terms of the direction and the reasons for giving it, and
 - (b) must itself make such changes to the matters specified in the reference as it considers necessary for the purpose of remedying or preventing the effects referred to in sub-paragraph (6).
- (6) The effects mentioned in sub-paragraph (5)(b) are—
 - (a) in the case of a direction under sub-paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by changes, or
 - (b) in the case of a direction under sub-paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the changes made by Monitor under paragraph 7(11).
- (7) In exercising its function under sub-paragraph (5)(b), the Commission must have regard to the matters to which Monitor must have regard when determining the matters specified in the reference.
- (8) Before making changes under sub-paragraph (5)(b), the Commission must send a notice—
 - (a) stating that it proposes to make the changes and specifying them,
 - (b) stating the reason why it proposes to make them, and
 - (c) specifying the period within which representations on the proposed changes may be made.
- (9) The period specified for the purposes of sub-paragraph (8)(c) must not be less than 28 days beginning with the date on which the notice is published.
- (10) The Commission must send a notice under sub-paragraph (8) to the relevant persons.
- (11) The Commission must also publish the notice.
- (12) After making changes under this paragraph, the Commission must publish a notice—
 - (a) stating that it has made the changes and specifying them, and
 - (b) stating the reason why it has made them.

Commencement Information

- 18** Sch. 10 para. 8 partly in force; Sch. 10 para. 8 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- 19** Sch. 10 para. 8 in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, art. 2(2)

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Disclosure etc.

- 9 (1) Before making a report on a reference, giving or sending a notice under paragraph 8(5)(a) or (8) or publishing a notice under paragraph 8(12), the Competition Commission must have regard to the following considerations.
- (2) The first consideration is the need to exclude from disclosure (so far as practicable) any information the disclosure of which the Commission considers is contrary to the public interest.
- (3) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information the disclosure of which the Commission considers would or might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission considers would or might significantly harm the individual's interests.
- (4) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (3)(a) or (b) is necessary for the purposes of the report.
- (5) For the purposes of the law relating to defamation, absolute privilege attaches to the report or notice.

Commencement Information

110 Sch. 10 para. 9 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

Powers of investigation

- 10 (1) The following sections of Part 3 of the Enterprise Act 2002 (mergers) apply, with the modifications in sub-paragraphs (3), (5), (6) and (8) to (11) for the purposes of a reference as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents),
 - (b) section 110 (enforcement of powers under section 109: general),
 - (c) section 111 (penalties),
 - (d) section 112 (penalties: main procedural requirements),
 - (e) section 113 (payments and interest by instalments),
 - (f) section 114 (appeals in relation to penalties),
 - (g) section 115 (recovery of penalties),
 - (h) section 116 (statement of policy),
 - (i) section 117 (offence of supplying false or misleading information), and
 - (j) section 125 (offences by bodies corporate) so far as relating to section 117.
- (2) Those sections of that Part of that Act apply, with the modifications in sub-paragraphs (4), (5) and (7) to (11), for the purposes of an investigation by the Competition Commission in the exercise of its functions under paragraph 8, as they apply for the purposes of an investigation on references under that Part.
- (3) Section 110, in its application by virtue of sub-paragraph (1), has effect as if—
- (a) subsection (2) were omitted,

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- (b) for subsections (5) to (8) there were substituted—
 - “(5) Where the Commission considers that a person has intentionally altered, suppressed or destroyed a document which he has been required to produce under section 109, it may impose a penalty in accordance with section 111.”, and
 - (c) in subsection (9), for the words from “or (3)” to “section 65(3)” there were substituted “, (3) or (5)”.
- (4) Section 110, in its application by virtue of sub-paragraph (2), has effect as if—
- (a) the modifications in sub-paragraph (3) were made,
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the relevant day”, and
 - (c) after that subsection there were inserted—
 - “(4A) The relevant day for the purposes of subsection (4) is—
 - (a) the day on which the Commission published a notice under paragraph 8(12) of Schedule 10 to the Health and Social Care Act 2012 in connection with the reference concerned, or
 - (b) if it has not given a direction under paragraph 8(1) of that Schedule in connection with the reference and within the permitted period, the latest day on which it was possible to give such a notice within that period.”
- (5) Section 111, in its application by virtue of sub-paragraph (1) or (2), has effect as if—
- (a) in subsection (1), for “or (3)” there were substituted “, (3) or (5)”, and
 - (b) in subsections (3) and (6), after “110(3)” there were inserted “or (5)”.
- (6) Section 111(5)(b)(ii), in its application by virtue of sub-paragraph (1), has effect as if—
- (a) for the words from “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”,
 - (b) for the words “published (or given)”, in each place they appear, there were substituted “made”, and
 - (c) the words “by this Part” were omitted.
- (7) Section 111(5)(b)(ii), in its application by virtue of sub-paragraph (2), has effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the relevant day (which for the purposes of this subsection is to be construed in accordance with section 110(4A)).”
- (8) Section 112, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for “or (3)” there were substituted “, (3) or (5)”.
- (9) Section 114, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (1), for “or (3)” there were substituted “, (3) or (5)”.
- (10) Section 115, in its application by virtue of sub-paragraph (1) or (2), has effect as if for “or (3)” there were substituted “, (3) or (5)”.

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- (11) Section 116, in its application by virtue of sub-paragraph (1) or (2), has effect as if, in subsection (2), for “or (3)” there were substituted “, (3) or (5)”.
- (12) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to the making of orders) have effect for the purposes of the application of those sections by virtue of sub-paragraph (1) or (2) in relation to those sections as applied by virtue of the sub-paragraph concerned.
- (13) Accordingly, corresponding provisions of this Act do not have effect in relation to those sections as applied by virtue of the sub-paragraph concerned.

Commencement Information

III Sch. 10 para. 10 in force at 1.11.2012 by S.I. 2012/2657, art. 2(2)

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