

Status: Point in time view as at 01/04/2014.

Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 12. (See end of Document for details)

SCHEDULES

SCHEDULE 12 **U.K.**

Section 38

MARKETS: TIME-LIMITS

Market studies and decisions whether to make a reference under section 131

- 1 Before section 131 of the 2002 Act (power to make market investigation references) insert—

“Market studies

Duty to publish market study notice

130A) Where the CMA is proposing to carry out its functions under section 5 in relation to a matter for the purposes mentioned in subsection (2), the CMA must publish a notice under this section (referred to in this Part as a “market study notice”).

(2) The purposes are—

- (a) to consider the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the United Kingdom has or may have effects adverse to the interests of consumers; and
- (b) to assess the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects.

(3) A market study notice shall, in particular, specify—

- (a) the matter in relation to which the CMA is proposing to carry out its functions under section 5;
- (b) the period during which representations may be made to the CMA in relation to the matter; and
- (c) the dates by which the CMA is required to comply with the requirements imposed on it by sections 131A and 131B.”

Commencement Information

II Sch. 12 para. 1 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 2 After section 131 of that Act insert—

“131A Decisions about references under section 131: consultation

- (1) This section applies to a case where the CMA has published a market study notice and—

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- (a) the CMA is proposing to make a reference under section 131 in relation to the matter specified in the notice; or
 - (b) a representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that such a reference should be made but the CMA is proposing not to make such a reference.
- (2) The CMA shall—
- (a) publish notice of the proposal concerned; and
 - (b) consult the relevant persons about the proposal, in such manner as it considers practicable, before deciding whether to make a reference.
- (3) The CMA may, for the purposes of subsection (1), ignore any representation which it considers to be frivolous or vexatious.
- (4) For the purposes of subsection (2), a person is a “relevant person” if the CMA considers that its decision whether to make a reference is likely to have a substantial impact on the person's interests.
- (5) In consulting a person for the purposes of this section, the CMA shall, so far as practicable, give its reasons for the proposal.
- (6) In considering what is practicable for the purposes of this section, the CMA shall, in particular, have regard to—
- (a) the restrictions imposed by the time-table for making the decision (see section 131B); and
 - (b) any need to keep what is proposed, or the reasons for it, confidential.

131B Market studies and the making of decisions to refer: time-limits

- (1) Where the CMA has published a market study notice in a case to which section 131A applies, the CMA shall, within the period of 6 months beginning with the date on which it publishes the notice—
- (a) publish the notice under section 131A(2)(a); and
 - (b) begin the process of consultation under section 131A(2)(b) (but the CMA need not complete the process within that period).
- (2) Subsection (3) applies where—
- (a) the CMA has published a market study notice;
 - (b) no representation has been made to the CMA within the period specified in the notice under section 130A(3)(b) to the effect that a reference under section 131 should be made in relation to the matter specified in the notice; and
 - (c) the CMA has decided not to make such a reference.
- (3) The CMA shall, within the period of 6 months beginning with the date on which it publishes the market study notice, publish notice of the decision not to make a reference.
- (4) Where the CMA has published a market study notice it shall, within the period of 12 months beginning with the date on which it publishes the notice, prepare and publish a report (referred to in this Part as a “market study report”) which sets out—

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- (a) the findings of the CMA in relation to the matter specified in the notice; and
 - (b) the action (if any) which the CMA proposes to take in relation to the matter.
- (5) In a case to which section 131A applies, the market study report shall, in particular, contain—
- (a) the decision of the CMA to make a reference under section 131 in relation to the matter specified in the market study notice, the decision to accept an undertaking under section 154 instead of making such a reference or (as the case may be) the decision otherwise not to make such a reference;
 - (b) the CMA's reasons for the decision; and
 - (c) such information as the CMA considers appropriate for facilitating a proper understanding of its reasons for the decision.
- (6) Where a market study report contains a decision of the CMA to make a reference under section 131 in relation to a matter, the CMA shall, at the same time as it publishes the report, make the reference.
- (7) This section is subject to section 140A (duty of Secretary of State to refer in public interest intervention cases).

131C Time-limits under section 131B: supplementary

- (1) The Secretary of State may by order amend section 131B so as to alter one or more of the following periods—
- (a) the period of 6 months mentioned in subsection (1) or (3) or any period for the time being mentioned in either of those subsections in substitution for that period;
 - (b) the period of 12 months mentioned in subsection (4) or any period for the time being there mentioned in substitution for that period.
- (2) But no alteration may be made by virtue of subsection (1) which results in—
- (a) the period for the time being mentioned in subsection (1) or (3) exceeding 6 months; or
 - (b) the period for the time being mentioned in subsection (4) exceeding 12 months.
- (3) Before making an order under this section the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

Commencement Information

- I2** Sch. 12 para. 2 partly in force; sch. 12 para. 2 in force for specified purposes at Royal Assent, see s.103(1)(i)
- I3** Sch. 12 para. 2 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

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Market investigations and reports

- 3 (1) Section 137 of the 2002 Act (time-limits for market investigations and reports) is amended as follows.
- (2) In subsection (1), for “two years” substitute “ 18 months ”.
- (3) After subsection (2) insert—
- “(2A) The CMA may extend, by no more than 6 months, the period within which its report under section 136 is to be prepared and published if it considers that there are special reasons for doing so.
- (2B) An extension under subsection (2A) shall come into force when published under section 172.
- (2C) No more than one extension is possible under subsection (2A).”
- (4) For subsection (3) substitute—
- “(3) The Secretary of State may by order amend this section so as to alter one or more of the following periods—
- (a) the period of 18 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
- (b) the period of 6 months mentioned in subsection (2A) or any period for the time being there mentioned in substitution for that period.”
- (5) For subsection (4) substitute—
- “(4) But no alteration shall be made by virtue of subsection (3) which results in—
- (a) the period for the time being mentioned in subsection (1) exceeding 18 months; or
- (b) the period for the time being mentioned in subsection (2A) exceeding 6 months.”

Commencement Information

I4 Sch. 12 para. 3 partly in force; sch. 12 para. 3 in force for specified purposes at Royal Assent, see s.103(1)(i)

I5 Sch. 12 para. 3 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

Remedies implementation

- 4 In section 138 of the 2002 Act (duty to remedy adverse effects), in subsection (2), after “shall,” insert “ within the period permitted by section 138A, ”.

Commencement Information

I6 Sch. 12 para. 4 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

- 5 After section 138 of that Act insert—

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“138A Time-limits for discharging duty under section 138

- (1) The CMA shall discharge its duty under section 138(2) within the period of 6 months beginning with the date on which it publishes the report concerned under section 136.
- (2) The CMA may extend, by no more than 4 months, the period within which its duty under section 138(2) is required to be discharged if it considers that there are special reasons for doing so.
- (3) The CMA may extend the period within which its duty under section 138(2) is required to be discharged if it considers that—
 - (a) a person has failed (whether with or without reasonable excuse) to comply with any requirement of a notice under section 174 which was given in relation to the reference; and
 - (b) the failure is preventing the CMA from properly discharging its duty under section 138(2).
- (4) An extension under subsection (2) or (3) shall come into force when published under section 172.
- (5) An extension under subsection (3) continues in force until—
 - (a) the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
 - (b) the CMA publishes its decision to cancel the extension.

138B Section 138A: supplementary

- (1) A period extended under section 138A(2) may also be extended under section 138A(3), and a period extended under section 138A(3) may also be extended under section 138A(2).
- (2) No more than one extension is possible under section 138A(2).
- (3) Where a period is extended or further extended under section 138A(2) or (3), the period as extended or (as the case may be) further extended shall, subject to subsections (4) and (5), be calculated by taking the period being extended and adding to it the period of the extension (whether or not those periods overlap in time).
- (4) Subsection (5) applies where—
 - (a) the period within which the CMA shall discharge its duty under section 138(2) is further extended;
 - (b) the further extension and at least one previous extension is made under section 138A(3); and
 - (c) the same days or fractions of days are included in or comprise the further extension and are included in or comprise at least one such previous extension.
- (5) In calculating the period of the further extension, any days or fractions of days of the kind mentioned in subsection (4)(c) shall be disregarded.

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- (6) The Secretary of State may by order amend section 138A so as to alter one or more of the following periods—
- (a) the period of 6 months mentioned in subsection (1) or any period for the time being there mentioned in substitution for that period;
 - (b) the period of 4 months mentioned in subsection (2) or any period for the time being there mentioned in substitution for that period.
- (7) But no alteration shall be made by virtue of subsection (6) which results in—
- (a) the period for the time being mentioned in section 138A(1) exceeding 6 months; or
 - (b) the period for the time being mentioned in section 138A(2) exceeding 4 months.
- (8) Before making an order under subsection (6) the Secretary of State shall consult the CMA and such other persons as the Secretary of State considers appropriate.”

Commencement Information

- I7** Sch. 12 para. 5 in force at 1.4.2014 in so far as not already in force by S.I. 2014/416, art. 2(1)(d) (with Sch.)

Time-limits: public interest intervention cases

- 6 (1) Section 144 of the 2002 Act (time-limits for investigations and reports in public interest intervention cases) is amended as follows.
- (2) In subsection (1), for “two years” substitute “ 18 months ”.
- (3) After subsection (1A) (inserted by Schedule 10) insert—
- “(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.
- (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).”
- (4) In subsection (2)—
- (a) after “amend” insert “—
 - (a)”,
 - (b) for “two years” substitute “ 18 months ”, and
 - (c) at the end insert “;
 - (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.”
- (5) In subsection (3)—
- (a) after “results in” insert “—

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- (a)”,
- (b) for “two years” substitute “ 18 months ”, and
- (c) at the end insert “;or
 - (b) the period for the time being mentioned in subsection (1B) exceeding 6 months.”

Commencement Information

I18 Sch. 12 para. 6 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

Time-limits: consequential and other minor amendments

7 Part 4 of the 2002 Act (market investigations) is amended as follows.

Commencement Information

I19 Sch. 12 para. 7 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

8 In the heading of that Part, at the beginning insert “ Market Studies and ”.

Commencement Information

I10 Sch. 12 para. 8 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

9 In the heading of Chapter 1, at the beginning insert “ Market Studies and ”.

Commencement Information

I11 Sch. 12 para. 9 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

10 (1) Section 132 (ministerial power to make references) is amended as follows.

(2) In subsection (1)—

(a) after “services” insert “—

(a)”,
and

(b) at the end insert “; and

(b) in a case in which the CMA has published a market study notice under section 130A, the period permitted by section 131B for the preparation and publication by the CMA of the market study report has expired.”

(3) In subsection (2)(b), for “to make such a reference” substitute “ to publish a market study notice in relation to the matter concerned ”.

Commencement Information

I12 Sch. 12 para. 10 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

11 In section 135 (variation of references), omit subsection (4).

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I13 Sch. 12 para. 11 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

12 In section 156 (effect of undertakings under section 154), after subsection (2) insert—

“(3) The expiry of the period mentioned in section 131B(4) does not prevent the making of a market investigation reference if the CMA has accepted an undertaking or group of undertakings under section 154 and—

- (a) the CMA considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
- (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.”

Commencement Information

I14 Sch. 12 para. 12 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

13 In section 169 (certain duties of relevant authorities to consult: Part 4), in subsection (6), in the definition of “relevant decision”—

- (a) in paragraph (a), for sub-paragraph (i) substitute—
 - “(i) to make a reference under section 131 in a case where the CMA has not published a market study notice under section 130A in relation to the matter concerned;
 - (ia) as to whether to accept undertakings under section 154 instead of making any reference under section 131;”, and
- (b) in paragraph (b)(i), omit “as to whether”.

Commencement Information

I15 Sch. 12 para. 13 in force at 1.4.2014 by S.I. 2014/416, art. 2(1)(d) (with Sch.)

14 (1) Section 172 (further publicity requirements: Part 4) is amended as follows.

(2) In subsection (1), after paragraph (a) insert—

“(aa) any decision not to make a reference under section 131 following a consultation in relation to the matter concerned under section 169;”.

(3) In subsection (2)—

- (a) before paragraph (a) insert—
 - “(za) any extension by it under section 137 of the period within which a report under section 136 is to be prepared and published;
 - (zb) any extension by it under section 138A of the period within which its duty under section 138(2) is to be discharged;”, and

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- (b) after paragraph (b) insert—
 “(ba) any extension by it under section 144 of the period within which a report under section 142 is to be prepared and action is to be taken in relation to it;”.

- (4) After subsection (7) insert—

 “(7A) Subsection (6) shall not apply in relation to any case falling within subsection (1)(a).”

Commencement Information

I16 Sch. 12 para. 14 in force at 1.4.2014 by [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

- 15 In section 179 (review of decisions under Part 4), in subsection (2), before paragraph (a) insert—
 “(za) does not include a decision whether to carry out functions under section 5 in a case where the CMA is, or would have been, required to publish a market study notice (see section 130A(1));”.

Commencement Information

I17 Sch. 12 para. 17 in force at 1.4.2014 by [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

- 16 (1) Section 181 (orders under Part 4) is amended as follows.
(2) In subsection (3), for “136(9), 137(3)” substitute “ 131C(1), 136(9), 137(3), 138B(6) ”.
(3) In subsection (4), for “137(3)” substitute “ 131C(1), 137(3), 138B(6) ”.

Commencement Information

I18 Sch. 12 para. 16 in force for specified purposes at Royal Assent, see s.103(1)(i)

I19 Sch. 12 para. 16 in force at 1.4.2014 in so far as not already in force by [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

- 17 In section 184 (index of defined expressions in Part 4), after the entry in the table for “market investigation reference” insert—

“Market study notice	Section 130A(1)
“Market study report	Section 131B(4)”

Commencement Information

I17 Sch. 12 para. 17 in force at 1.4.2014 by [S.I. 2014/416](#), [art. 2\(1\)\(d\)](#) (with [Sch.](#))

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