Draft Order laid before Parliament under section 124(6) of the Enterprise Act 2002, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

COMPETITION

The Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014

Made - - - -	***
Coming into force - -	*1st April 2014*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 68 and 124(2) and (4) of the Enterprise Act 2002(**1**).

In accordance with section 124(6) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Enterprise Act 2002 (Protection of Legitimate Interests) (Amendment) Order 2014 and comes into force on 1st April 2014.

Amendments to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003

2. The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(**2**) is amended as follows.

3. In article 1(2), in the definition of "a European intervention notice", for "OFT" substitute "CMA".

4. In article 3—

(a) in paragraph (2)(a), for "OFT" substitute "CMA"; and

(b) in paragraph (2)(d) and (e), for "Commission" (in each place where it occurs) substitute "CMA".

(**1**) 2002 c.40. Section 68 was amended by paragraph 17 of Schedule 16 and paragraph 1 of Schedule 19 to the Communications Act 2003 (c. 21), paragraph 111 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24), paragraph 2(21) of Schedule 1 to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079) and article 6(2)(a) of the Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043). Section 124(4) was amended by paragraph 13(2) of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

(**2**) S.I. 2003/1592; amended by S.I. 2003/3180, 2013/610.

5. In article 4—

(a) in paragraphs (2), (3), (4), (4A) and (6), for "OFT" (in each place where it occurs) substitute "CMA"; and

(b) in the heading, for "OFT" substitute "CMA".

6. In article 5—

(a) in paragraph (1)(b), for "OFT" substitute "CMA";

(b) in paragraphs (2) and (3), for "the Commission" (in each place where it occurs) substitute "the chair of the CMA for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013(**3**)"; and

(c) in paragraph (5), for "OFT" substitute "CMA".

7. After article 5 insert—

"**Functions to be exercised by CMA groups**

5A. Where a reference is made to the chair of the CMA under article 5 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, the functions of the CMA under or by virtue of the following provisions in relation to the matter concerned are to be carried out on behalf of the CMA by the group so constituted—

(a) articles 6 to 11;

(b) article 14, so far as relating to anything done on behalf of the CMA by the group;

(c) where a reference is treated by virtue of article 7(4) as having been made under article 5(2), paragraph (ab) of section 23(9) of the Act as applied by article 2;

(d) sections 104(**4**) and 104A(**5**) of the Act as applied by article 15;

(e) section 109(**6**) of the Act as applied by article 15, where the permitted purpose relates to a function that (by virtue of this article) is being or is to be carried out on behalf of the CMA by the group;

(f) sections 110 to 115(**7**) of the Act as applied by article 15, so far as relating to a notice given under section 109 (as so applied) on behalf of the CMA by the group;

(g) section 118(4)(**8**) of the Act as applied by article 15;

(h) section 120(5)(b)(**9**) of the Act as applied by article 15, so far as relating to a decision of the group."

8. In article 6, for "Commission" (in each place where it occurs) substitute "CMA".

9. In article 7—

(a) in paragraphs (1) to (4), for "Commission" (in each place where it occurs) substitute "CMA";

(b) in paragraph (5)—

(**3**) 2013 c.24.
(**4**) Section 104 was amended by paragraph 135 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
(**5**) Section 104A was inserted by section 381 of the Communications Act 2003 and amended by paragraph 136 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
(**6**) Section 109 was amended by section 29 of and paragraph 143 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
(**7**) Sections 110 and 111 were amended by section 29 of and (respectively) paragraphs 144 and 145 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013. Sections 110A and 110B were inserted by section 29 of that Act. Sections 112, 113, 114 and 115 were amended by (respectively) paragraphs 146, 147, 148 and 149 of Schedule 5 to that Act.
(**8**) Section 118 was amended by paragraph 152 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.
(**9**) Section 120 was amended by section 31(2) of and paragraph 155 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(i) for "Commission" substitute "CMA"; and

(ii) omit "1,";

(c) in paragraph (6)—

(i) for the words from "any undertaking" to "that Schedule," substitute "any order made under paragraph 2 of Schedule 2"; and

(ii) for "Commission" substitute "CMA";

(d) in paragraph (7)—

(i) omit "undertaking or" (in each place where it occurs);

(ii) omit "accepted or" (in each place where it occurs); and

(iii) omit ", superseded, released"; and

(e) in paragraphs (9) to (11), for "Commission" (in each place where it occurs) substitute "CMA".

10. In article 8, for "Commission" (in each place where it occurs) substitute "CMA".

11. In article 9—

(a) in paragraphs (1) to (3) and (7), for "Commission" (in each place where it occurs) substitute "CMA"; and

(b) in the heading, for "Commission" substitute "CMA".

12. In article 11, for "Commission" (in each place where it occurs) substitute "CMA".

13. In article 12(1) to (5) and (8), for "Commission" (in each place where it occurs) substitute "CMA".

14. In article 13(2), for "OFT" substitute "CMA".

15. In article 14—

(a) in paragraph (1), in the words before sub-paragraph (a), for "Commission" substitute "CMA";

(b) in paragraph (2)—

(i) in sub-paragraph (b), for "OFT" substitute "CMA";

(ii) in sub-paragraph (e), for "Commission" substitute "CMA"; and

(iii) omit sub-paragraphs (g) and (h);

(c) in paragraph (7)—

(i) in sub-paragraph (a), for "OFT" substitute "CMA"; and

(ii) in sub-paragraph (b), for "Commission" substitute "CMA"; and

(d) in paragraph (8), for "Commission's" substitute "CMA's".

16.—(1) Schedule 1 is amended as follows.

(2) In paragraph (a), for "OFT, the Commission" substitute "CMA".

(3) In paragraph (d), in the provisions treated as substituted for section 23(9)(a) of the Enterprise Act 2002—

(a) in sub-paragraph (aa), for "OFT" substitute "CMA"; and

(b) in sub-paragraph (ab), for "Commission" substitute "CMA".

(4) In paragraph (e), for "OFT" substitute "CMA".

(5) In paragraph (f) –

(a) for "OFT" substitute "CMA"; and

(b) for "sections 25(1) to (3), (6) and (8) and 31" substitute "section 25(1) to (3), (6) and (8)"(**10**).

(6) In paragraph (g), for "OFT" substitute "CMA".

(7) In paragraph (i), in the subsection (5A) treated as inserted after section 25(5) of the Enterprise Act 2002, for "may be ceased" substitute "may have ceased".

(8) In paragraph (k), for "OFT" substitute "CMA".

(9) In paragraph (l)—

(a) omit "and the power to request information under section 31(1)"; and

(b) for "OFT" substitute "CMA".

(10) Omit paragraphs (o) and (q).

17.—(1) Schedule 2 is amended as follows.

(2) Omit paragraph 1.

(3) In the italic heading before paragraph 1, omit "undertakings and".

(4) In paragraph 2—

(a) after sub-paragraph (2) insert—

"(2A) Sub-paragraph (2B) applies where—

(a) a European intervention notice is in force; and

(b) the Secretary of State has reasonable grounds for suspecting that pre-emptive action has or may have been taken.

(2B) The Secretary of State may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—

(a) do anything mentioned in sub-paragraph (2)(b) to (d);

(b) impose such other obligations, prohibitions or restrictions as the Secretary of State considers appropriate for that purpose.

(2C) A person may, with the consent of the Secretary of State, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this paragraph.";

(b) in sub-paragraph (4), omit "1 or";

(c) in sub-paragraph (6), after "unless" insert—

"—

(a) the Secretary of State has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises ceasing to be distinct; or

(b)";
and

(d) after sub-paragraph (7) insert—

(**10**) Section 25 of the Enterprise Act 2002 (c. 40) was amended by paragraph 70 of Schedule 5 and paragraph 16 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013. Section 25(6) was amended by paragraph 2(5) of Schedule 1 to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079).

"(8) In this paragraph "pre-emptive action" means action which might prejudice the reference or possible reference concerned under article 5 or impede the taking of any action under this Order which may be justified by the Secretary of State's decisions on the reference."

(5) In paragraph 3—

(a) in sub-paragraph (1), for "Commission" substitute "CMA"; and

(b) in sub-paragraph (3), for "OFT" substitute "CMA".

(6) In paragraph 4(2), for "OFT" substitute "CMA".

(7) In paragraph 5(1)(b) and (6), for "OFT" (in each place where it occurs) substitute "CMA".

(8) In paragraph 7—

(a) for sub-paragraph (1)(b) substitute—

"(b) no orders under paragraph 2 are in force in relation to the European relevant merger situation concerned."; and

(b) in sub-paragraph (8)(a) and (b), for "Commission" (in each place where it occurs) substitute "CMA".

(9) In paragraph 8—

(a) for sub-paragraph (1)(b) substitute—

"(b) no orders under paragraph 2 are in force in relation to the European relevant merger situation concerned.";

(b) in sub-paragraph (7)(a) and (b), for "Commission" (in each place where it occurs) substitute "CMA"; and

(c) in sub-paragraph (10)(b), for "OFT" substitute "CMA".

(10) In paragraph 10(1)(b) and (6), for "OFT" (in each place where it occurs) substitute "CMA".

(11) In paragraph 11(5), for "OFT" substitute "CMA".

18.—(1) Schedule 3 is amended as follows.

(2) In paragraph 1(1)—

(a) omit paragraph (a);

(b) in paragraphs (g) and (h), for "OFT" (in each place where it occurs) substitute "CMA";

(c) after paragraph (i) insert—

"(ia) section 94A (interim undertakings and orders: penalties)(**11**);";

(d) in paragraph (m), for "OFT and Commission" substitute "CMA";

(e) after paragraph (p) insert—

"(pa) section 110A (restriction on powers to impose penalties under section 110)(**12**);

(pb) section 110B (section 110A: supplemental provision)(**13**);" and

(f) in paragraph (y), for "Commission" substitute "CMA".

(3) Omit paragraph 1(2).

(4) In paragraph 1(5)(a), for "section 71" substitute "section 73".

(**11**) Section 94A was inserted by section 31 of the Enterprise and Regulatory Reform Act 2013.
(**12**) Section 110A was inserted by section 29 of the Enterprise and Regulatory Reform Act 2013.
(**13**) Section 110B was inserted by section 29 of the Enterprise and Regulatory Reform Act 2013.