

SCHEDULE

AMENDMENTS REPEALS AND REVOCATIONS Article 2

Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003

10.—(1) The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003⁽¹⁾ is amended as follows.

(2) In article 1 (citation, commencement and interpretation) after the definition of “a European Intervention notice” there shall be inserted—

““media public interest consideration” means any consideration which, at the time of the giving of the European intervention notice concerned, is specified in section 58(2A) to (2C) of the Act, or in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58 of the Act.”.

(3) In article 3 (European intervention notices under section 67 of the Act), in paragraph (2)(a)—

(a) after the word “OFT” there shall be inserted “or (if relevant) OFCOM”; and

(b) after the word “4” there shall be inserted “or (as the case may be) 4A”.

(4) In article 4 (initial investigation and report by OFT)—

(a) in paragraph (3)(b) after the word “concerned” there shall be inserted “(other than a media public interest consideration)”;

(b) after paragraph (4) there shall be inserted—

“(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the European intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under article 5.”.

(5) After article 4 there shall be inserted—

“Additional investigation and report by OFCOM: media mergers

4A.—(1) Paragraph (2) applies where—

(a) the Secretary of State has given a European intervention notice in relation to a relevant merger situation under section 67 of the Act; and

(b) the European intervention notice mentions any media public interest consideration.

(2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.

(3) The report shall contain—

(a) advice and recommendations on any media public interest consideration mentioned in the European intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under article 5; and

(b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.

(4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this article.”.

(6) In article 5 (power of Secretary of State to refer the matter)—

(1) [S.I.2003/1592](#).

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- (a) in paragraph (1)(b) after the words “article 4” there shall be inserted “, and any report of OFCOM which is required by virtue of article 4A,”;
 - (b) in paragraph (4) the words “section 69(1) of the Act or” are revoked.
- (7) In article 8 (investigations and reports on references under article 5) after paragraph (2) there shall be inserted—
- “(2A) Where the report relates to a reference under article 5 which has been made after a report of OFCOM under article 4A, the Commission shall give a copy of its report (whether or not published) to OFCOM.”.
- (8) In article 14 (publicity requirements)—
- (a) after paragraph (2)(b) there shall be inserted—
 - “(ba) any report of OFCOM under article 4A which has been received by her,”;
 - (b) in paragraph (7)(a) after the words “article 4” there shall be inserted “, and any report of OFCOM under article 4A,”.
- (9) In Schedule 3 after paragraph 1(1)(l) there shall be inserted—
- “(la) section 104A (public consultation in relation to media mergers);”.
- (10) In Schedule 3 after paragraph 1(1)(m) there shall be inserted—
- “(ma) section 106B (general advisory functions of OFCOM);”.
- (11) In Schedule 3 after paragraph 1(1)(y) there shall be inserted—
- “(ya) section 119A (other general functions of OFCOM);”.
- (12) In Schedule 3 after paragraph 1(12) there shall be inserted—
- “(12A) Section 104A shall apply as if—
- (a) for the words in subsection (1) there were substituted—
 - “(1) Subsection (2) applies where the Commission is preparing a report under article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 which specifies a media public interest consideration.”; and
 - (b) in subsection (2) the words “or special merger situation” were omitted.”.
- (13) In Schedule 3 after paragraph 1(13)(a) there shall be inserted—
- “(ab) in subsection (1A) for the words “section 44A or 61A” there were substituted “article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.”.
- (14) In Schedule 3 after paragraph 1(13) there shall be inserted—
- “(13A) Section 106B shall apply as if—
- (a) for the words in subsection (1) there were substituted—
 - “(1) OFCOM may, in connection with any case on which they are required to give a report by virtue of article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, give such advice as they consider appropriate to the Secretary of State in relation to—
 - (a) any report made by the Commission under article 8 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003; and
 - (b) the taking by the Secretary of State of enforcement action under Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”;
 - (b) in subsection (2) for the words “section 44A or 61A” there were substituted “article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”; and

- (c) in subsection (3) for the words “section 50 or 65” there were substituted “article 8 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.
- (15) In Schedule 3 after paragraph 1(20) there shall be inserted—
 - “(20A) Section 119A shall apply as if in subsections (1) and (4) for the words “this Part” there were substituted “the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.
 - (16) In Schedule 3 at the end of paragraph 2(2)(b)(ii) the word “and” shall be deleted and there shall be inserted—
 - “(ba) in paragraph 20A(1)(a) for the words “intervention notice” there were substituted “European intervention notice” and in paragraph 20A(1)(a)(ii) for the words “relevant merger situation” there were substituted “European relevant merger situation”; and”.
- (17) In Schedule 4 before paragraph 15(2)(a) there shall be inserted—
 - “(za) in paragraph 1 the reference in the definition of “newspaper merger reference” to section 45 of the Enterprise Act 2002 shall have effect as if it included a reference to article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003;”.