

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002 (repealed), SCHEDULE 9. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Sections 86(5), 164(2) and 168(9)

CERTAIN AMENDMENTS OF SECTORAL ENACTMENTS

Textual Amendments applied to the whole legislation

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

PART 1

POWER OF ENFORCEMENT ORDERS TO AMEND LICENCE CONDITIONS ETC.

Telecommunications Act 1984 (c. 12)

- ¹ [F1(1) Section 95 of the Telecommunications Act 1984 (modification of licence conditions by order) shall be amended as follows.

- (2) For subsections (1) and (2) there shall be substituted—

“(1) Where the Office of Fair Trading, the Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of licences granted under section 7 above to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (2) In subsection (1) above, “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of a commercial activity connected with telecommunications; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of a commercial activity connected with telecommunications; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or

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distorts competition relates to commercial activities connected with telecommunications.”

(3) For subsection (3) there shall be substituted—

“(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”]

Textual Amendments

F1 Sch. 9 para. 1 repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(1), Sch. 1 (with arts. 3(3), 11)

Airports Act 1986 (c. 31)

2 (1) Section 54 of the Airports Act 1986 (modification of certain conditions in force under Part 4 of that Act) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In subsection (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by an airport operator; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by an airport operator; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the carrying on of any operational activities relating to one or more than one airport.”

(3) Subsection (3) shall cease to have effect.

(4) For subsection (4) there shall be substituted—

“(4) Expressions used in subsection (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

3 In paragraph 13 of Schedule 1 to that Act—

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- (a) for “section 54(3)(b)” there shall be substituted “ section 54(1A) ”;
- (b) for “the reference” there shall be substituted “ references ”; and
- (c) for “a reference” there shall be substituted “ references ”.

Gas Act 1986 (c. 44)

4 (1) Section 27 of the Gas Act 1986 (modification of licence conditions by order) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular licence; or
- (b) the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1ZA) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—
 - (i) activities authorised or regulated by a licence; or
 - (ii) the storage of gas on terms which have been determined by the holder of a licence under section 7 above, or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence.”

(3) In subsection (2)—

- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”;
- (b) for the words “section, he” there shall be substituted “ section, the relevant authority ”; and
- (c) for the words “as he considers” there shall be substituted “ as the relevant authority considers ”.

(4) Subsections (3) and (4) shall cease to have effect.

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(5) In subsection (5)—

- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
- (b) for the words “he”, in both places where they appear, there shall be substituted “ the relevant authority ”.

(6) For subsection (6) there shall be substituted—

“(6) Expressions used in subsection (1ZA) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

Electricity Act 1989 (c. 29)

5 (1) Section 15 of the Electricity Act 1989 (modification of licence conditions by order) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity.”

(3) For subsection (2B) there shall be substituted—

“(2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—

- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers

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necessary or expedient of any conditions of any licence of that type granted before that time.”

(4) In subsection (2C)—

- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
- (b) for the words “he”, in both places where they appear, there shall be substituted “the relevant authority”.

(5) For subsection (3) there shall be substituted—

“(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

Broadcasting Act 1990 (c. 42)

6 For section 193 of the Broadcasting Act 1990 (modification of networking arrangements in consequence of reports under competition legislation) there shall be substituted—

“193 Modification of networking arrangements in consequence of competition legislation

(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of any networking arrangements to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of programmes for broadcasting in regional Channel 3 services; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of such programmes; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of programmes for broadcasting in regional Channel 3 services.

(3) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.

(4) In this section —

“networking arrangements” means any such arrangements as are mentioned in section 39(1) above; and

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“regional Channel 3 service” has the meaning given by section 14(6) above.”

Water Industry Act 1991 (c. 56)

7 (1) Section 17 of the Water Industry Act 1991 (modification of conditions of appointment by order) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above “relevant order” means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or

(b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition is—

(i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or

(ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.”

(3) For subsection (4) there shall be substituted—

“(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.”

Commencement Information

II Sch. 9 para. 7 not in force at Royal Assent see s. 279; Sch. 9 para. 7 in force at 20.6.2003 subject to art. 3(1) of the commencing S.I. by S.I. 2003/1397, art. 2(1), Sch.; Sch. 9 para. 7 in force for water purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

8 In section 36(1) of that Act (interpretation of Part 2 of that Act)—

(a) the definition of “the 1973 Act”, and the word “and” at the end of the definition, shall cease to have effect; and

(b) at the end of the subsection there shall be inserted—

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““the 2002 Act” means the Enterprise Act 2002;”.

Commencement Information

- I2** Sch. 9 para. 8 wholly in force at 29.12.2004; Sch. 9 para. 8 not in force at Royal Assent see s. 279; Sch. 9 para. 8(b) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch., Sch. 9 para. 8(a) in force at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))

- 9 For article 18 of the Electricity (Northern Ireland) Order 1992 (modification of licence conditions by order) there shall be substituted—

Modification by order under other statutory provisions

“18 (1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission or supply of electricity.

(3) In paragraph (2) expressions which are also used in Part 3 or, as the case may be, Part 4 of the Enterprise Act 2002 have the same meanings as in that Part of that Act.”

Railways Act 1993 (c. 43)

- 10 (1) Section 16 of the Railways Act 1993 (modification of licence conditions by order) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite

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or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the supply of services relating to railways; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the supply of services relating to railways; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the supply of services relating to railways.”

(3) In subsection (3) for the words “Secretary of State” there shall be substituted “relevant authority”.

(4) For subsection (5) there shall be substituted—

“(5) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part; and in subsection (2) above “services relating to railways” has the same meaning as in section 67(2A) of this Act.”

Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))

11 (1) Article 45 of the Airports (Northern Ireland) Order 1994 (modification of certain conditions in force under Part 4 of that Order) shall be amended as follows.

(2) For paragraph (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by an airport operator; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by an airport operator; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition

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relates to the carrying on of any operational activities relating to one or more than one airport.”

(3) Paragraph (3) shall cease to have effect.

(4) For paragraph (4) there shall be substituted—

“(4) Expressions used in paragraph (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.”

12 In paragraph 13 of Schedule 6 to that Order—

- (a) for “Article 45(3)(b)” there shall be substituted “ Article 45(1A) ”;
- (b) for “the reference” there shall be substituted “ references ”; and
- (c) for “a reference” there shall be substituted “ references ”.

Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))

13 (1) Article 18 of the Gas (Northern Ireland) Order 1996 (modification of licence conditions by order) shall be amended as follows.

(2) For paragraph (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular licence; or
- (b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1),

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a licence.”

(3) In paragraph (2)—

- (a) for the words “Secretary of State modifies under paragraph (1)(ii)” there shall be substituted “ relevant authority modifies under paragraph (1)(b) ”; and
- (b) for the word “he”, in both places where it appears, there shall be substituted “ the relevant authority ”.

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- (4) Paragraph (3) shall cease to have effect.
- (5) In paragraph (4)—
- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
 - (b) for the word “he”, in both places where it appears, there shall be substituted “ the relevant authority ”.
- (6) For paragraph (5) there shall be substituted—
- “(5) Expressions used in paragraph (1A) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.”

Postal Services Act 2000 (c. 26)

- 14 (1) Section 21 of the Postal Services Act 2000 (modification of licence conditions by order) shall be amended as follows.
- (2) For subsections (1) to (4) there shall be substituted—
- “(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of postal services; or
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of postal services; or
 - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of postal services.”
- (3) In subsection (5) for the words “Secretary of State” there shall be substituted “ relevant authority ”.
- (4) For subsection (6) there shall be substituted—
- “(6) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

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Transport Act 2000 (c. 38)

- 15 (1) Section 19 of the Transport Act 2000 (modification of licence conditions by order) shall be amended as follows.
- (2) For subsections (1) to (4) there shall be substituted—
- “(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of air traffic services; or
- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of air traffic services; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of air traffic services.”
- (3) In subsection (5) for the words “Secretary of State” there shall be substituted “relevant authority”.
- (4) For subsection (6) there shall be substituted—
- “(6) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.”
- (5) In subsection (7) for the words “1973 Act is the Fair Trading Act 1973” there shall be substituted “2002 Act is the Enterprise Act 2002”.

PART 2

APPLICATION OF PART 4 OF THIS ACT TO SECTORAL REGULATORS

Telecommunications Act 1984 (c. 12)

- 16 ^{F2}(1) Section 50 of the Telecommunications Act 1984 (application of monopoly provisions etc. to the Director General of Telecommunications) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Director General of Telecommunications) there shall be substituted—
- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the Office of Fair Trading.

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- (2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with telecommunications.
- (2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”
- (3) For subsection (4) there shall be substituted—
- “(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.
- (4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”
- (4) In subsection (6)—
- (a) for the words “subsection (2)” there shall be substituted “ subsection (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.
- (5) For subsection (6A) there shall be substituted—
- “(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”
- (6) Subsection (7) shall cease to have effect.]

Textual Amendments

F2 Sch. 9 para. 16 repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(1), Sch. 1 (with arts. 3(3), 11)

Gas Act 1986 (c. 44)

- 17 (1) Section 36A of the Gas Act 1986 (application of monopoly provisions etc. to the Gas and Electricity Markets Authority) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Gas and Electricity Markets Authority) there shall be substituted—

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- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the Office of Fair Trading.
- (2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the carrying on of activities to which this subsection applies.
- (2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”
- (3) In subsection (4) for the word “(2)” there shall be substituted “ (2A) ”.
- (4) For subsection (5) there shall be substituted—
- “(5) Before the Office of Fair Trading or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.
- (5A) Neither the Office of Fair Trading nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”
- (5) In subsection (7) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.
- (6) For subsection (8) there shall be substituted—
- “(8) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Authority.”
- (7) Subsection (9) shall cease to have effect.
- (8) In subsection (10) for the words “mentioned in subsection (2) or (3) above” there shall be substituted “ exercisable by the Authority by virtue of subsection (2) or (3) above ”.

Electricity Act 1989 (c. 29)

- 18 (1) Section 43 of the Electricity Act 1989 (application of monopoly provisions etc. to the Gas and Electricity Markets Authority) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Gas and Electricity Markets Authority) there shall be substituted—
- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the Office of Fair Trading.

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- (2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.
- (2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”
- (3) For subsection (4) there shall be substituted—
- “(4) Before the Office of Fair Trading or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.
- (4A) Neither the Office of Fair Trading nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”
- (4) In subsection (6)—
- (a) for the word “(2)” there shall be substituted “ (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.
- (5) For subsection (6A) there shall be substituted—
- “(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Authority.”
- (6) Subsection (7) shall cease to have effect.

Water Industry Act 1991 (c. 56)

- 19 (1) Section 31 of the Water Industry Act 1991 (application of monopoly provisions etc. to the Director General of Water Services) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Director General of Water Services) there shall be substituted—
- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the OFT.
- (2A) This subsection applies to the functions of the OFT under Part 4 of the 2002 Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.”
- (3) For subsection (4) there shall be substituted—

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“(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the 2002 Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(4) For subsections (5) and (6) there shall be substituted—

“(5) Before the OFT or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the OFT nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(5) In subsection (8)—

- (a) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (b) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the 2002 Act ”.

(6) For subsection (8A) there shall be substituted—

“(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Director.”

(7) Subsection (9) shall cease to have effect.

Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))

20 (1) Article 46 of the Electricity (Northern Ireland) Order 1992 (application of monopoly provisions etc. to the Director General of Electricity Supply for Northern Ireland) shall be amended as follows.

(2) For paragraph (2) (monopoly functions to be exercisable concurrently by the Director) there shall be substituted—

“(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections

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166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(3) For paragraph (4) there shall be substituted—

“(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.”

(4) In paragraph (6)—

- (a) for the words “paragraph (2)” there shall be substituted “ paragraph (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(5) For paragraph (6A) there shall be substituted—

“(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”

(6) Paragraph (7) shall cease to have effect.

Railways Act 1993 (c. 43)

21 (1) Section 67 of the Railways Act 1993 (application of monopoly provisions etc. to the Rail Regulator) shall be amended as follows.

(2) For subsection (2) (monopoly functions to be exercisable concurrently by the Rail Regulator) there shall be substituted—

“(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Regulator and the OFT.

(2A) This subsection applies to the functions of the OFT under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to the supply of services relating to railways.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Regulator (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(3) In subsection (3ZA) for the words “subsection (3)” there shall be substituted “ subsections (2A) and (3) ”.

(4) For subsection (4) there shall be substituted—

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“(4) Before the OFT or the Regulator first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(4A) Neither the OFT nor the Regulator shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(5) In subsection (7)—

- (a) for the words “on a monopoly reference” there shall be substituted “ under section 136 or 142 of the Enterprise Act 2002 ”;
- (b) the words from “was made” to “that it” shall cease to have effect; and
- (c) for the word “him” there shall be substituted “ the Regulator ”.

(6) In subsection (8)—

- (a) for the word “(2)” there shall be substituted “ (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(7) For subsection (9) there shall be substituted—

“(9) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Regulator by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Regulator.”

(8) Subsection (10) shall cease to have effect.

Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))

22 (1) Article 23 of the Gas (Northern Ireland) Order 1996 (application of monopoly provisions etc. to the Director General of Gas for Northern Ireland) shall be amended as follows.

(2) For paragraph (2) (monopoly functions to be exercisable concurrently by the Director) there shall be substituted—

“(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the conveyance, storage or supply of gas.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

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- (3) For paragraph (4) there shall be substituted—
- “(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.
- (4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.”
- (4) In paragraph (6) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.
- (5) For paragraph (7) there shall be substituted—
- “(7) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”
- (6) Paragraph (8) shall cease to have effect.
- (7) In paragraph (9) for the words “mentioned in paragraph (2) or (3)” there shall be substituted “ exercisable by the Director by virtue of paragraph (2) or (3) ”.

Transport Act 2000 (c. 38)

- 23 (1) Section 85 of the Transport Act 2000 (interpretation of Chapter V) shall be amended as follows.
- (2) In subsection (1) for paragraph (a) there shall be substituted—
- “(a) the 2002 Act is the Enterprise Act 2002;”.
- (3) In subsection (3)—
- (a) the words “the 1973 Act or” shall cease to have effect; and
- (b) for the words “Act concerned” there shall be substituted “ 1998 Act ”.
- 24 (1) Section 86 of that Act (functions exercisable by the CAA and the Director) shall be amended as follows.
- (2) For subsection (2) there shall be substituted—
- “(2) This subsection applies to the OFT’s functions under Part 4 of the 2002 Act (other than sections 166 and 171) so far as they relate to the supply of air traffic services.”
- (3) In subsection (4)(a) for the words from the beginning to “Act” there shall be substituted “ Part 4 of the 2002 Act (except for sections 166 and 171 but including provisions of that Act applied by that Part) ”.
- (4) In subsection (7)(a) for the words from the beginning to “Act” there shall be substituted “ Part 4 of the 2002 Act ”.
- 25 In section 87 of that Act (CAA’s 1973 Act functions) for the word “1973”, wherever it appears, there shall be substituted “ 2002 ”.

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- 26 In section 89 of that Act (carrying out functions) for the word “1973”, wherever it appears, there shall be substituted “ 2002 ”.

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