



Energy Act 2023

2023 CHAPTER 52

PART 1

LICENSING OF CARBON DIOXIDE TRANSPORT AND STORAGE

CHAPTER 2

FUNCTIONS WITH RESPECT TO COMPETITION

36 Functions under the Enterprise Act 2002

- (1) The functions to which [subsection \(2\)](#) applies are to be concurrent functions of the economic regulator and the CMA.
- (2) This subsection applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (other than sections 166, 171 and 174E) so far as those functions are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013) and relate to commercial activities connected with relevant storage and transport activities.
- (3) So far as necessary for the purposes of, or in connection with, subsections [\(1\)](#) and [\(2\)](#)—
 - (a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be construed as including references to the economic regulator (except in sections 166, 171 and 174E of that Act and in any other provision of that Act where the context otherwise requires);
 - (b) references in that Part to section 5 of that Act are to be construed as including references to [section 28\(1\)](#) and [\(2\)](#) of this Act.
- (4) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the economic regulator by virtue of subsections [\(1\)](#) and [\(2\)](#)—
 - (a) as if for subsection (1) of that section there were substituted—

“(1) Where the Gas and Electricity Markets Authority—

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- (a) is proposing to carry out its functions under [section 28\(1\)](#) or (2) of the Energy Act 2023 in relation to a matter for the purposes mentioned in subsection (2), and
 - (b) considers that the matter is one in respect of which it would be appropriate for the Gas and Electricity Markets Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,
 the Gas and Electricity Markets Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and
 - (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with activities to which [section 36\(2\)](#) of the Energy Act 2023 applies”.
- (5) It is to be the duty of the economic regulator, for the purpose of assisting a CMA group in carrying out an investigation on a market investigation reference made by the economic regulator (under section 131 of the Enterprise Act 2002) by virtue of [subsection \(1\)](#), to give to the group—
- (a) any information which is in the economic regulator’s possession and which relates to matters falling within the scope of the investigation and—
 - (i) is requested by the group for that purpose, or
 - (ii) is information which, in the economic regulator’s opinion, it would be appropriate for that purpose to give to the group without any such request, and
 - (b) any other assistance which the group may require and which it is within the economic regulator’s power to give, in relation to any such matters,
 and the group must, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- (6) In [subsection \(5\)](#) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Commencement Information

II [S. 36](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

37 Functions under the Competition Act 1998

- (1) The economic regulator is to be entitled to exercise, concurrently with the CMA, the functions of the CMA under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
 - (b) conduct of the kind mentioned in section 18(1) of that Act, or
- which relate to the carrying on of relevant transport and storage activities.
- (2) So far as necessary for the purposes of, or in connection with, the provisions of [subsection \(1\)](#), references in Part 1 of the Competition Act 1998 to the CMA are to be read as including a reference to the economic regulator (except in sections 31D(1)

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to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).

Commencement Information

I2 S. 37 in force at 26.12.2023, see s. 334(3)(a)

38 Sections 36 and 37: supplementary

- (1) Before the CMA or the economic regulator first exercises in relation to any matter functions which are exercisable concurrently by virtue of [section 36\(1\)](#) or [37\(1\)](#), it must consult the other.
- (2) Neither the CMA nor the economic regulator is to exercise in relation to any matter functions which are exercisable concurrently by virtue of [section 36\(1\)](#) or [37\(1\)](#) if functions which are so exercisable have been exercised in relation to that matter by the other.
- (3) If any question arises as to whether [section 36\(1\)](#) or [37\(1\)](#) applies to any particular case, that question is to be referred to and determined by the Secretary of State, and no objection may be taken to anything done under—
 - (a) Part 4 of the Enterprise Act 2002, or
 - (b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51),by or in relation to the economic regulator on the ground that it should have been done by or in relation to the CMA.
- (4) In sections [36](#) and [37](#) “relevant storage and transport activities” means—
 - (a) activities such as are mentioned in [section 2\(2\)](#), and
 - (b) activities ancillary to such activities.

Commencement Information

I3 S. 38 in force at 26.12.2023, see s. 334(3)(a)

Status:

Point in time view as at 26/12/2023.

Changes to legislation:

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