



# Fair Trading Act 1973

## 1973 CHAPTER 41

### PART I

#### INTRODUCTORY

#### **1 Director General of Fair Trading.**

- (1) The Secretary of State shall appoint an officer to be known as the Director General of Fair Trading (in this Act referred to as “the Director”) for the purpose of performing the functions assigned or transferred to the Director by or under this Act.
- (2) An appointment of a person to hold office as the Director shall not be for a term exceeding five years; but previous appointment to that office shall not affect eligibility for re-appointment.
- (3) The Director may at any time resign his office as the Director by notice in writing addressed to the Secretary of State; and the Secretary of State may remove any person from that office on the ground of incapacity or misbehaviour.
- (4) Subject to subsections (2) and (3) of this section, the Director shall hold and vacate office as such in accordance with the terms of his appointment.
- (5) The Director may appoint such staff as he may think fit, subject to the approval of the Minister for the Civil Service as to numbers and as to terms and conditions of service.
- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Director.

#### **2 General functions of Director.**

- (1) Without prejudice to any other functions assigned or transferred to him by or under this Act, it shall be the duty of the Director, so far as appears to him to be practicable from time to time,—
  - (a) to keep under review the carrying on of commercial activities in the United Kingdom which relate to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or which relate to services

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supplied for consumers in the United Kingdom, and to collect information with respect to such activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, practices which may adversely affect the economic interests of consumers in the United Kingdom, and

- (b) to receive and collate evidence becoming available to him with respect to such activities as are mentioned in the preceding paragraph and which appears to him to be evidence of practices which may adversely affect the interests (whether they are economic interests or interests with respect to health, safety or other matters) of consumers in the United Kingdom.
- (2) It shall also be the duty of the Director, so far as appears to him to be practicable from time to time, to keep under review the carrying on of commercial activities in the United Kingdom, and to collect information with respect to those activities, and the persons by whom they are carried on, with a view to his becoming aware of, and ascertaining the circumstances relating to, monopoly situations or uncompetitive practices.
- (3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State to do so,—
- (a) to give information and assistance to the Secretary of State with respect to any of the matters in respect of which the Director has any duties under subsections (1) and (2) of this section, or
  - (b) subject to the provisions of Part II of this Act in relation to recommendations under that Part of this Act, to make recommendations to the Secretary of State as to any action which in the opinion of the Director it would be expedient for the Secretary of State or any other Minister to take in relation to any of the matters in respect of which the Director has any such duties.
- (4) It shall also be the duty of the Director to have regard to evidence becoming available to him with respect to any course of conduct on the part of a person carrying on a business which appears to be conduct detrimental to the interests of consumers in the United Kingdom and (in accordance with the provisions of Part III of this Act) to be regarded as unfair to them, with a view to considering what action (if any) he should take under Part III of this Act.
- (5) It shall be the duty of the Director to have regard to the needs of regional development and to the desirability of dispersing administrative offices from London in making decisions on the location of offices for his staff.

### 3 Consumer Protection Advisory Committee.

- (1) There shall be established an advisory committee to be called the Consumer Protection Advisory Committee (in this Act referred to as “the Advisory Committee”) for the purpose of performing the functions assigned to that Committee by Part II of this Act.
- (2) Subject to subsection (6) of this section, the Advisory Committee shall consist of not less than ten and not more than fifteen members, who shall be appointed by the Secretary of State.
- (3) The Secretary of State may appoint persons to the Advisory Committee either as full-time members or as part-time members.

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- (4) Of the members of the Advisory Committee, the Secretary of State shall appoint one to be chairman and one to be deputy chairman of the Advisory Committee.
- (5) In appointing persons to be members of the Advisory Committee, the Secretary of State shall have regard to the need for securing that the Advisory Committee will include—
  - (a) one or more persons appearing to him to be qualified to advise on practices relating to goods supplied to consumers in the United Kingdom or produced with a view to their being so supplied, or relating to services supplied for consumers in the United Kingdom, by virtue of their knowledge of or experience in the supply (whether to consumers or not) of such goods or by virtue of their knowledge of or experience in the supply of such services;
  - (b) one or more persons appearing to him to be qualified to advise on such practices as are mentioned in the preceding paragraph by virtue of their knowledge of or experience in the enforcement of the [<sup>F1</sup>M<sup>1</sup>Weights and Measures Act 1963][<sup>F1</sup>Weights and Measures Act 1985] or the <sup>M2</sup>Trade Descriptions Act 1968 or other similar enactments; and
  - (c) one or more persons appearing to him to be qualified to advise on such practices by virtue of their knowledge of or experience in organisations established, or activities carried on, for the protection of consumers.
- (6) The Secretary of State may by order made by statutory instrument increase the maximum number of members of the Advisory Committee to such number as he may think fit.
- (7) The provisions of Schedule 2 to this Act shall have effect with respect to the Advisory Committee.

#### Textual Amendments

- F1** Words “Weights and Measures Act 1985” substituted (E.W.S.) for “Weights and Measures Act 1963” by [Weights and Measures Act 1985 \(c. 72, SIF 131\)](#), s. 97, [Sch. 12 para. 6](#)

#### Marginal Citations

- M1** 1963 c. 31.  
**M2** 1968 c. 29.

## 4 The Monopolies and Mergers Commission.

- (1) The Commission established under section 1 of the <sup>M3</sup>Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 by the name of the Monopolies and Restrictive Practices Commission, and subsequently renamed the Monopolies Commission, shall as from the commencement of this Act be known as the Monopolies and Mergers Commission, and shall continue to exist by that name for the purpose of performing the functions assigned to that Commission (in this Act referred to as “the Commission”) by or under this Act.
- (2) There shall be not less than ten and (subject to the next following subsection) not more than twenty-five regular members of the Commission, who shall be appointed by the Secretary of State.

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- (3) The Secretary of State may by order made by statutory instrument increase the maximum number of regular members of the Commission to such number as he may think fit.
- (4) The provisions of Schedule 3 to this Act shall have effect with respect to the Commission.

#### Marginal Citations

M3 1948 c. 66.

## 5 Principal functions of Commission.

- (1) Without prejudice to any other functions assigned to the Commission by or under this Act, it shall be the duty of the Commission, subject to and in accordance with the following provisions of this Act, to investigate and report on any question which may be referred to the Commission under this Act—
  - (a) with respect to the existence, or possible existence, of a monopoly situation, or
  - (b) with respect to a transfer of a newspaper or of newspaper assets (within the meaning of Part V of this Act), or
  - (c) with respect to the creation, or possible creation, of a merger situation qualifying for investigation (within the meaning of Part V of this Act).
- (2) It shall be the duty of the Director, for the purpose of assisting the Commission in carrying out an investigation on a reference made to them under this Act, to give to the Commission—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request, and
  - (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters,
 and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this subsection.
- (3) In this Act “monopoly reference” means any reference to the Commission under this Act which falls within paragraph (a) of subsection (1) of this section; “merger reference” (subject to section 63 of this Act) means any reference to the Commission under this Act which falls within paragraph (b) or paragraph (c) of that subsection; and “monopoly situation” (except in sections 6 to 8 of this Act) means circumstances in which, in accordance with the following provisions of this Part of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to any matters specified in section 6(1), section 7(1) or section 8 of this Act.

## 6 Monopoly situation in relation to supply of goods.

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of goods of any description in the following cases, that is to say, if—

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- (a) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by one and the same person, or are supplied to one and the same person, or
  - (b) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group of interconnected bodies corporate, or are supplied to members of one and the same group of interconnected bodies corporate, or
  - (c) at least one-quarter of all the goods of that description which are supplied in the United Kingdom are supplied by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or are supplied to members of one and the same group consisting of two or more such persons, or
  - (d) one or more agreements are in operation, the result or collective result of which is that goods of that description are not supplied in the United Kingdom at all.
- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to goods of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the production or supply of goods of that description, whether or not they themselves are affected by the competition and whether the competition is between persons interested as producers or suppliers or between persons interested as customers of producers or suppliers.

**Modifications etc. (not altering text)**

- C1 S. 6 modified (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), s. 11(2)
- C2 S. 6(1)(b): power to modify conferred (18.12.1996) by 1996 c. 61, ss. 24(2)(3)(4), 26
- C3 S. 6(1)(b) amended by S.I. 1987/2068, art. 2

## 7 Monopoly situation in relation to supply of services.

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to the supply of services of any description in the following cases, that is to say, if—
- (a) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by one and the same person, or supply for one and the same person, or
  - (b) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group of interconnected bodies corporate, or supply for members of one and the same group of interconnected bodies corporate, or
  - (c) the supply of services of that description in the United Kingdom is, to the extent of at least one-quarter, supply by members of one and the same group consisting of two or more such persons as are mentioned in subsection (2) of this section, or supply for members of one and the same group consisting of two or more such persons, or
  - (d) one or more agreements are in operation, the result or collective result of which is that services of that description are not supplied in the United Kingdom at all.

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- (2) The two or more persons referred to in subsection (1)(c) of this section, in relation to services of any description, are any two or more persons (not being a group of interconnected bodies corporate) who whether voluntarily or not, and whether by agreement or not, so conduct their respective affairs as in any way to prevent, restrict or distort competition in connection with the supply of services of that description, whether or not they themselves are affected by the competition, and whether the competition is between persons interested as persons by whom, or as persons for whom, services are supplied.
- (3) In the application of this section for the purposes of a monopoly reference, the Commission, or the person or persons making the reference, may, to such extent as the Commission, or that person or those persons, think appropriate in the circumstances, treat services as supplied in the United Kingdom if the person supplying the services—
- (a) has a place of business in the United Kingdom, or
  - (b) controls the relevant activities from the United Kingdom, or
  - (c) being a body corporate, is incorporated under the law of Great Britain or of Northern Ireland,
- and may do so whether or not those services would otherwise be regarded as supplied in the United Kingdom.

**Modifications etc. (not altering text)**

- C4 S. 7 modified (4.4.1980) by [Competition Act 1980 \(c. 21\), s. 11\(2\)](#)
- C5 S. 7(1)(b): power to modify conferred (18.12.1996) by 1996 c. 61, [ss. 24\(2\)\(3\)\(4\)](#), 26
- C6 S. 7(1)(b) amended by [S.I. 1987/2068, art. 2](#)
- C7 S. 7(1)(c) restricted (26.11.2001) by [S.I. 2001/3755, reg. 13, Sch. 2 para. 5\(1\)](#) (with [regs. 39, 45](#))
- C8 S. 7(1)(c) restricted by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), [ss. 124\(1\), 140, Sch. 11 paras. 12\(1\), 36\(2\)](#)
- C9 S. 7(1)(c) amended by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 47\(1\), Sch. 14 para. 8\(1\)](#)

**8 Monopoly situation in relation to exports.**

- (1) For the purposes of this Act a monopoly situation shall be taken to exist in relation to exports of goods of any description from the United Kingdom in the following cases, that is to say, if—
- (a) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by one and the same person, or
  - (b) at least one-quarter of all the goods of that description which are produced in the United Kingdom are produced by members of one and the same group of interconnected bodies corporate;
- and in those cases a monopoly situation shall for the purposes of this Act be taken to exist both in relation to exports of goods of that description from the United Kingdom generally and in relation to exports of goods of that description from the United Kingdom to each market taken separately.
- (2) In relation to exports of goods of any description from the United Kingdom generally, a monopoly situation shall for the purposes of this Act be taken to exist if—
- (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the export of goods of that description from the United Kingdom, and

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- (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.
- (3) In relation to exports of goods of any description from the United Kingdom to any particular market, a monopoly situation shall for the purposes of this Act be taken to exist if—
- (a) one or more agreements are in operation which in any way prevent or restrict, or prevent, restrict or distort competition in relation to, the supply of goods of that description (whether from the United Kingdom or not) to that market, and
  - (b) that agreement is or (as the case may be) those agreements collectively are operative with respect to at least one-quarter of all the goods of that description which are produced in the United Kingdom.

## **9 Monopoly situation limited to part of United Kingdom.**

- (1) For the purposes of a monopoly reference, other than a reference relating to exports of goods from the United Kingdom, the person or persons making the reference may, if it appears to him or them to be appropriate in the circumstances to do so, determine that consideration shall be limited to a part of the United Kingdom.
- (2) Where such a determination is made, then for the purposes of that monopoly reference the provisions of sections 6 and 7 of this Act, or such of those provisions as are applicable for those purposes, shall have effect as if, wherever those provisions refer to the United Kingdom, they referred to that part of the United Kingdom to which, in accordance with that determination, consideration is to be limited.
- (3) The preceding provisions of this section shall have effect subject to subsection (4) of section 50 of this Act in cases to which that subsection applies.

## **10 Supplementary provisions relating to ss. 6 to 9.**

- (1) In the application of any of the provisions of sections 6 to 9 of this Act for the purposes of a monopoly reference, those provisions shall have effect subject to the following provisions of this section.
- (2) No account shall for those purposes be taken of any provisions of an agreement in so far as they are provisions by virtue of which it is an agreement to which [<sup>F2</sup>the Act of 1976] applies.
- (3) In relation to goods or services of any description which are the subject of different forms of supply—
- (a) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 6 or in section 8(3) of this Act to the supply of goods, or
  - (b) references in paragraphs (a) to (d) of subsection (1), and in subsection (2), of section 7 of this Act to the supply of services,

shall for those purposes be construed in whichever of the following ways the Commission, or the person or persons making the monopoly reference, think appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.

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- (4) For the purposes of subsection (3) of this section the Commission, or the person or persons making the monopoly reference in question, may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their surrounding circumstances, and the difference is one which, in the opinion of the Commission, or the person or persons making the reference, ought for the purposes of that subsection to be treated as a material difference.
- (5) For the purposes of a monopoly reference made by the Director, subsections (3) and (4) of this section shall have effect subject to section 50(3) and (4) of this Act.
- (6) In determining, for the purposes of a monopoly reference, whether the proportion of one-quarter mentioned in any provision of section 6, section 7 or section 8 of this Act is fulfilled with respect to goods or services of any description, the Commission, or the person or persons making the reference, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to them or him to be most suitable in all the circumstances.
- (7) The criteria for determining when goods or services can be treated, for the purposes of a monopoly reference, as goods or services of a separate description shall be such as the person or persons making the reference may think most suitable in the circumstances.
- (8) In construing the provisions of section 7(3) and section 9 of this Act and the provisions of subsections (1) to (7) of this section, the purposes of a monopoly reference shall be taken to include the purpose of enabling the Director, or the Secretary of State or any other Minister, to determine in any particular circumstances—
- (a) whether a monopoly reference could be made under Part IV of this Act, and
  - (b) if so, whether in those circumstances such a reference could be made by the Director,
- and references in those provisions to the person or persons making a monopoly reference shall be construed accordingly.

#### Textual Amendments

**F2** Words substituted by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 5](#)

## 11 Meaning of “complex monopoly situation”.

- (1) In this Act “complex monopoly situation” means circumstances in which, in accordance with the preceding provisions of this Act, a monopoly situation is for the purposes of this Act to be taken to exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, by reason that the condition specified in paragraph (c) or in paragraph (d) of section 6(1) or of section 7(1) of this Act is fulfilled, or that the conditions specified in subsection (2) or in subsection (3) of section 8 of this Act are fulfilled.
- (2) Any reference in the preceding subsection to paragraph (c) or paragraph (d) of section 6(1) or of section 7(1) of this Act shall be construed as including a reference to that paragraph as modified by section 9(2) of this Act.



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## 12 Powers of Secretary of State in relation to functions of Director.

- (1) The Secretary of State may give general directions indicating considerations to which the Director should have particular regard in determining the order of priority in which—
  - (a) matters are to be brought under review in the performance of his duty under section 2(1) of this Act, or
  - (b) classes of goods or services are to be brought under review by him for the purpose of considering whether a monopoly situation exists or may exist in relation to them.
- (2) The Secretary of State may also give general directions indicating—
  - (a) considerations to which, in cases where it appears to the Director that a practice may adversely affect the interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a recommendation to the Secretary of State under section 2(3)(b) of this Act, or
  - (b) considerations to which, in cases where it appears to the Director that a consumer trade practice may adversely affect the economic interests of consumers in the United Kingdom, he should have particular regard in determining whether to make a reference to the Advisory Committee under Part II of this Act, or
  - (c) considerations to which, in cases where it appears to the Director that a monopoly situation exists or may exist, he should have particular regard in determining whether to make a monopoly reference to the Commission under Part IV of this Act.
- (3) The Secretary of State, on giving any directions under this section, shall arrange for those directions to be published in such manner as the Secretary of State thinks most suitable in the circumstances.

## PART II

### REFERENCES TO CONSUMER PROTECTION ADVISORY COMMITTEE

#### Modifications etc. (not altering text)

C10 Part II power to repeal conferred (*prosp.*) by 2002 c. 40, ss. 10(3)(a), 279

#### *General provisions*

## 13 Meaning of “consumer trade practice”.

In this Act “consumer trade practice” means any practice which is for the time being carried on in connection with the supply of goods (whether by way of sale or otherwise) to consumers or in connection with the supply of services for consumers and which relates—

- (a) to the terms or conditions (whether as to price or otherwise) on or subject to which goods or services are or are sought to be supplied, or

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- (b) to the manner in which those terms or conditions are communicated to persons to whom goods are or are sought to be supplied or for whom services are or are sought to be supplied, or
- (c) to promotion (by advertising, labelling or marking of goods, canvassing or otherwise) of the supply of goods or of the supply of services, or
- (d) to methods of salesmanship employed in dealing with consumers, or
- (e) to the way in which goods are packed or otherwise got up for the purpose of being supplied, or
- (f) to methods of demanding or securing payment for goods or services supplied.

#### **14 General provisions as to references to Advisory Committee.**

- (1) Subject to sections 15 and 16 of this Act, the Secretary of State or any other Minister or the Director may refer to the Advisory Committee the question whether a consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom.
- (2) The Secretary of State or any other Minister by whom a reference is made under this section shall transmit a copy of the reference to the Director.
- (3) On any reference made to the Advisory Committee under this section the Advisory Committee shall consider the question so referred to them and shall prepare a report on that question and (except as otherwise provided by section 21(3) of this Act) submit that report to the person by whom the reference was made.
- (4) Subject to the provisions of section 133 of this Act, it shall be the duty of the Director, where he is requested by the Advisory Committee to do so for the purpose of assisting the Committee in carrying out an investigation on a reference made to them under this section, to give to the Committee—
  - (a) any information which is in his possession and which relates to matters falling within the scope of the investigation, and
  - (b) any other assistance which the Committee may require, and which it is within his power to give, in relation to any such matters.
- (5) The Advisory Committee shall transmit to the Secretary of State a copy of every report which is made by them under this section to a person other than the Secretary of State, and shall transmit to the Director a copy of every report which is made by them under this section to a person other than the Director.

#### **15 Exclusion from s. 14 in respect of certain services.**

No reference under section 14 of this Act shall be made to the Advisory Committee by the Secretary of State or by any other Minister or by the Director if it appears to him—

- (a) that the consumer trade practice in question is carried on in connection only with the supply of services of a description specified in Schedule 4 to this Act, and
- (b) that a monopoly situation exists or may exist in relation to the supply of services of that description.

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## 16 Restriction on references under s. 14 in respect of certain goods and services.

(1) No reference under section 14 of this Act shall be made to the Advisory Committee by the Director except with the consent of the appropriate Minister, if it appears to the Director that the consumer trade practice in question—

(a) is carried on in connection only with the supply, by a body corporate to which this section applies, of goods or services of a description specified in Part I of Schedule 5 to this Act, . . . <sup>F3</sup>

(b) . . . . . <sup>F3</sup><sup>F4</sup>or

(c) is carried on in connection only with the supply of electricity by a licence holder within the meaning of Part I of the Electricity Act 1989 [<sup>F5</sup>or Part II of the Electricity (Northern Ireland) Order 1992].]

(2) This section applies to any body corporate which fulfils the following conditions, that is to say—

(a) that the affairs of the body corporate are managed by its members, and

(b) that by virtue of an enactment those members are appointed by a Minister;

and in this section “Minister” includes a [<sup>F6</sup>Northern Ireland department], and “the appropriate Minister”, in relation to a body corporate, means the Minister by whom members of that body corporate are appointed.

[<sup>F7</sup>(2A) In this section “the appropriate Minister”, in relation to a licence holder within the meaning of Part I of the Electricity Act 1989, means the Secretary of State responsible for matters relating to energy.]

[<sup>F8</sup>(2B) In this section “the appropriate Minister” in relation to a licence holder within the meaning of Part II of the Electricity (Northern Ireland) Order 1992, means the Department of Economic Development.]

(3) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 5 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.

### Textual Amendments

**F3** Word “or” and s. 16(1)(b) repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109(6), [Sch. 7 Pt. 1](#)

**F4** Word “or” and s. 16(1)(c) added (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), [Sch. 16 para. 16\(2\)](#)

**F5** Words in s. 16(1)(c) inserted (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), art. 95(1), [Sch. 12 para. 9\(a\)](#); [S.R. 1992/117](#), [art.3\(1\)](#)

**F6** Words substituted by virtue of [Northern Ireland Act 1974 \(c. 28\)](#), [Sch. 1 para. 2\(1\)\(b\)\(4\)](#)

**F7** [S. 16\(2A\)](#) inserted (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1), [Sch. 16 para. 16\(3\)](#)

**F8** [S. 16\(2B\)](#) inserted (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), art. 95(1), [Sch. 12 para. 9\(b\)](#); [S.R. 1992/117](#), [para.3](#)

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**17 Reference to Advisory Committee proposing recommendation to Secretary of State to make an order.**

- (1) This section applies to any reference made to the Advisory Committee by the Director under section 14 of this Act which includes proposals in accordance with the following provisions of this section.
- (2) Where it appears to the Director that a consumer trade practice has the effect, or is likely to have the effect,—
  - (a) of misleading consumers as to, or withholding from them adequate information as to, or an adequate record of, their rights and obligations under relevant consumer transactions, or
  - (b) of otherwise misleading or confusing consumers with respect to any matter in connection with relevant consumer transactions, or
  - (c) of subjecting consumers to undue pressure to enter into relevant consumer transactions, or
  - (d) of causing the terms of conditions, on or subject to which consumers enter into relevant consumer transactions, to be so adverse to them as to be inequitable,
 any reference made by the Director under section 14 of this Act with respect to that consumer trade practice may, if the Director thinks fit, include proposals for recommending to the Secretary of State that he should exercise his powers under the following provisions of this Part of this Act with respect to that consumer trade practice.
- (3) A reference to which this section applies shall state which of the effects specified in subsection (2) of this section it appears to the Director that the consumer trade practice in question has or is likely to have.
- (4) Where the Director makes a reference to which this section applies, he shall arrange for it to be published in full in the London, Edinburgh and Belfast Gazettes.
- (5) In this Part of this Act “relevant consumer transaction”, in relation to a consumer trade practice, means any transaction to which a person is, or may be invited to become, a party in his capacity as a consumer in relation to that practice.

**18 No such recommendation to be made except in pursuance of reference to which s. 17 applies.**

The Director shall not make any recommendation to the Secretary of State to exercise his powers under the following provisions of this Part of this Act except by way of making a reference to the Advisory Committee to which section 17 of this Act applies.

**19 Scope of recommendation proposed in reference to which s. 17 applies.**

- (1) In formulating any proposals which, in accordance with the provisions of section 17 of this Act, are included in a reference to which that section applies, the Director shall have regard—
  - (a) to the particular respects in which it appears to him that the consumer trade practice specified in the reference may adversely affect the economic interests of consumers in the United Kingdom, and
  - (b) to the class of relevant consumer transactions, or the classes (whether being some or all classes) of such transactions, in relation to which it appears to him that the practice may so affect those consumers;

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and the proposed recommendation shall be for an order making, in relation to relevant consumer transactions of that class or of those classes, as the case may be, such provision specified in the proposals as the Director may consider requisite for the purpose of preventing the continuance of that practice, or causing it to be modified, in so far as it may so affect those consumers in those respects.

- (2) Without prejudice to the generality of the preceding subsection, for the purpose mentioned in that subsection any such proposals may in particular recommend the imposition by such an order of prohibitions or requirements of any description specified in Schedule 6 to this Act.
- (3) In that Schedule, in its application to any such proposals, “the specified consumer trade practice” means the consumer trade practice specified in the reference in which the proposals are made, “specified consumer transactions” means transactions which are relevant consumer transactions in relation to that consumer trade practice and are of a description specified in the proposals, and “specified” (elsewhere than in those expressions) means specified in the proposals.

## **20 Time-limit and quorum for report on reference to which s. 17 applies.**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall not have effect, and no action shall be taken in relation to it under the following provisions of this Part of this Act, unless the report is made before the end of the period of three months beginning with the date of the reference or of such further period or periods (if any) as may be allowed by the Secretary of State.
- (2) The Secretary of State shall not allow any further period for such a report except after consulting the Advisory Committee and considering any representations made by them with respect to the proposal to allow a further period.
- (3) No such further period shall be longer than three months; but (subject to subsection (2) of this section) two or more further periods may be allowed in respect of the same reference.
- (4) The quorum necessary for a meeting of the Advisory Committee held for the final settling of a report of the Committee on a reference to which section 17 of this Act applies shall be not less than two-thirds of the members of the Committee.

## **21 Report of Advisory Committee on reference to which s. 17 applies.**

- (1) A report of the Advisory Committee on a reference to which section 17 of this Act applies shall state the conclusions of the Committee on the questions—
  - (a) whether the consumer trade practice specified in the reference adversely affects the economic interests of consumers in the United Kingdom, and
  - (b) if so, whether it does so be reason, or partly by reason, that it has or is likely to have such one or more of the effects specified in section 17(2) of this Act as are specified in the report.
- (2) If, in their conclusions set out in such a report, the Advisory Committee find that the consumer trade practice specified in the reference does adversely affect the economic interests of consumers in the United Kingdom, and does so wholly or partly for the reason mentioned in subsection (1)(b) of this section, the report shall state whether the Committee—
  - (a) agree with the proposals set out in the reference, or

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- (b) would agree with those proposals if they were modified in a manner specified in the report, or
  - (c) disagree with the proposals and do not desire to suggest any such modifications.
- (3) Every report of the Advisory Committee on a reference to which section 17 of this Act applies shall be made to the Secretary of State, and shall set out in full the reference on which it is made.

**Modifications etc. (not altering text)**

C11 S. 21 explained by [Competition Act 1980 \(c. 21\)](#), **ss. 21, 33(5)**

*Order in pursuance of report of Advisory Committee*

**22 Order of Secretary of State in pursuance of report on reference to which s. 17 applies.**

- (1) The provisions of this section shall have effect where a report of the Advisory Committee on a reference to which section 17 of this Act applies has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the report states that the Committee—
- (a) agree with the proposals set out in the reference, or
  - (b) would agree with those proposals if they were modified in a manner specified in the report.
- (2) In the circumstances mentioned in the preceding subsection, the Secretary of State may, if he thinks fit, by an order made by statutory instrument make such provision as—
- (a) in a case falling within paragraph (a) of the preceding subsection, is in his opinion appropriate for giving effect to the proposals set out in the reference, or
  - (b) in a case falling within paragraph (b) of that subsection, is in his opinion appropriate for giving effect either to the proposals as set out in the reference or to those proposals as modified in the manner specified in the report, as the Secretary of State may in his discretion determine.
- (3) Any such order may contain such supplementary or incidental provisions as the Secretary of State may consider appropriate in the circumstances; and (without prejudice to the generality of this subsection) any such order may restrict the prosecution of offences under the next following section in respect of contraventions of the order where those contraventions also constitute offences under another enactment.
- (4) No such order, and no order varying or revoking any such order, shall be made under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

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## **23 Penalties for contravention of order under s. 22.**

Subject to the following provisions of this Part of this Act, any person who contravenes a prohibition imposed by an order under section 22 of this Act, or who does not comply with a requirement imposed by such an order which applies to him, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £400;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

## **24 Offences due to default of other person.**

Where the commission by any person of an offence under section 23 of this Act is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

## **25 Defences in proceedings under s. 23.**

- (1) In any proceedings for an offence under section 23 of this Act it shall, subject to subsection (2) of this section, be a defence for the person charged to prove—
  - (a) that the commission of the offence was due to a mistake, or to reliance on information supplied to him, or to the act or default of another person, an accident or some other cause beyond his control, and
  - (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.
- (2) If in any case the defence provided by the preceding subsection involves the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing, giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (3) In proceedings for an offence under section 23 of this Act committed by the publication of an advertisement, it shall be a defence for the person charged to prove that he is a person whose business it is to publish or arrange for the publication of advertisements, and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under section 23 of this Act.

## **26 Limitation of effect of orders under s. 22.**

A contract for the supply of goods or services shall not be void or unenforceable by reason only of a contravention of an order made under section 22 of this Act; and, subject to the provisions of [F<sup>9</sup>section 18 of the M<sup>4</sup>Interpretation Act 1978] (which relates to offences under two or more laws), the provisions of this Part of this Act shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of such an order, or

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- (b) affecting any restriction imposed by or under any other enactment, whether public, local or private, or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part of this Act.

**Textual Amendments**

**F9** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

**Marginal Citations**

**M4** [1978 c. 30.](#)

*Enforcement of orders*

**27 Enforcing authorities.**

- (1) It shall be the duty of every local weights and measures authority to enforce within their area the provisions of any order made under section 22 of this Act; . . . <sup>F10</sup>
- (2) Nothing in subsection (1) shall be taken as authorising a local weights and measures authority in Scotland to institute proceedings for an offence.

**Textual Amendments**

**F10** Words repealed by [Weights and Measures Act 1985 \(c. 72, SIF 131\), s. 98, Sch. 13 Pt. I](#)

**28 Power to make test purchases.**

A local weights and measures authority may make, or may authorise any of their officers to make on their behalf, such purchases of goods, and may authorise any of their officers to obtain such services, as may be expedient for the purpose of determining whether or not the provisions of any order made under section 22 of this Act are being complied with.

**29 Power to enter premises and inspect and seize goods and documents.**

- (1) A duly authorised officer of a local weights and measures authority, or a person duly authorised in writing by the Secretary of State, may at all reasonable hours, and on production, if required, of his credentials, exercise the following powers, that is to say—
  - (a) he may, for the purpose of ascertaining whether any offence under section 23 of this Act has been committed, inspect any goods and enter any premises other than premises used only as a dwelling;
  - (b) if he has reasonable cause to suspect that an offence under that section has been committed, he may, for the purpose of ascertaining whether it has been committed, require any person carrying on a business or employed in connection with a business to produce any books or documents relating to the business and may take copies of, or of any entry in, any such book or document;



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- (c) if he has reasonable cause to believe that such an offence has been committed, he may seize and detain any goods for the purpose of ascertaining, by testing or otherwise, whether the offence has been committed;
  - (d) he may seize and detain any goods or documents which he has reason to believe may be required as evidence in proceedings for such an offence;
  - (e) he may, for the purpose of exercising his powers under this subsection to seize goods, but only if and to the extent that it is reasonably necessary in order to secure that the provisions of an order made under section 22 of this Act are duly observed, require any person having authority to do so to break open any container or open any vending machine and, if that person does not comply with the requirement, he may do so himself.
- (2) A person seizing any goods or documents in the exercise of his powers under this section shall inform the person from whom they are seized and, in the case of goods seized from a vending machine, the person whose name and address are stated on the machine as being the proprietor's or, if no name and address are so stated, the occupier of the premises on which the machine stands or to which it is affixed.
- (3) If a justice of the peace, on sworn information in writing,—
- (a) is satisfied that there is reasonable ground to believe either—
    - (i) that any goods, books or documents which a person has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under section 23 of this Act, or
    - (ii) that any offence under section 23 has been, is being or is about to be committed on any premises, and
  - (b) is also satisfied either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier, or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent, and it might defeat the object of the entry to await his return,
- the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any such officer or other person as is mentioned in subsection (1) of this section to enter the premises, if need be by force.
- In the application of this subsection to Scotland, “justice of the peace” shall be construed as including a sheriff and a magistrate.
- (4) A person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (3) of this section he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.
- (5) Nothing in this section shall be taken to compel the production by a barrister, advocate or solicitor of a document containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such document which is in his possession.

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**Modifications etc. (not altering text)**

**C12** S. 29(1)(c)(d): powers of seizure extended (*prosp.*) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), **Sch. 1 Pt. I para. 16**

**30 Offences in connection with exercise of powers under s. 29.**

- (1) Subject to subsection (6) of this section, any person who—
  - (a) wilfully obstructs any such officer or person as is mentioned in subsection (1) of section 29 of this Act acting in the exercise of any powers conferred on him by or under that section, or
  - (b) wilfully fails to comply with any requirement properly made to him by such an officer or person under that section, or
  - (c) without reasonable cause fails to give to such an officer or person so acting any other assistance or information which he may reasonably require of him for the purpose of the performance of his functions under this Part of this Act,
 shall be guilty of an offence.
- (2) If any person, in giving any such information as is mentioned in subsection (1)(c) of this section, makes any statement which he knows to be false, he shall be guilty of an offence.
- (3) If any person discloses to any other person—
  - (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of section 29 of this Act, or
  - (b) any information obtained by him under that section or by virtue of subsection (1) of this section,
 he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (4) If any person who is neither a duly authorised officer of a weights and measures authority nor a person duly authorised in that behalf by the Secretary of State purports to act as such under section 29 of this Act or under this section, he shall be guilty of an offence.
- (5) Any person guilty of an offence under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding [<sup>F11</sup>level 3 on the standard scale]; and any person guilty of an offence under subsection (2), subsection (3) or subsection (4) of this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (6) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate that person or (where that person is married) the husband or wife of that person.

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### Textual Amendments

- F11** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

## 31 Notice of test.

Where any goods seized or purchased by a person in pursuance of this Part of this Act are submitted to a test, then—

- (a) if the goods were seized, he shall inform any such person as is mentioned in section 29(2) of this Act of the result of the test;
- (b) if the goods were purchased and the test leads to the institution of proceedings for an offence under section 23 of this Act, he shall inform the person from whom the goods were purchased, or, in the case of goods sold through a vending machine, the person mentioned in relation to such goods in section 29(2) of this Act, of the result of the test;

and where, as a result of the test, proceedings for an offence under section 23 of this Act are instituted against any person, he shall allow that person to have the goods tested on his behalf if it is reasonably practicable to do so.

### Modifications etc. (not altering text)

- C13** [S. 31](#) applied (*prosp.*) by [2001 c. 16, ss. 70, 138\(2\)](#), [Sch. 2 Pt. I para. 2](#)

## 32 Compensation for loss in respect of goods seized under s. 29.

- (1) Where in the exercise of his powers under section 29 of this Act a person seizes and detains any goods, and their owner suffers loss by reason of their being seized or by reason that the goods, during the detention, are lost or damaged or deteriorate, unless the owner is convicted of an offence under section 23 of this Act committed in relation to the goods, the appropriate authority shall be liable to compensate him for the loss so suffered.
- (2) Any disputed question as to the right to or the amount of any compensation payable under this section shall be determined by arbitration and, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.
- (3) In this section “the appropriate authority”—
  - (a) in relation to goods seized by an officer of a local weights and measures authority, means that authority, and
  - (b) in any other case, means the Secretary of State.

### Modifications etc. (not altering text)

- C14** [S. 32](#) applied (*prosp.*) by [2001 c. 16, ss. 70, 138\(2\)](#), [Sch. 2 Pt. I para. 6](#)

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### 33 Application of Part II to Northern Ireland.

- (1) It shall be the duty of [<sup>F12</sup>the Department of Commerce for Northern Ireland] to enforce in Northern Ireland the provisions of any order under section 22 of this Act.
- (2) In the application of this Part of this Act to Northern Ireland—
  - (a) section 27 shall not apply;
  - (b) in sections 28 and 29, any reference to a local weights and measures authority shall be construed as a reference to [<sup>F12</sup>the Department of Commerce for Northern Ireland], and the provisions of sections 30 to 32 shall be construed accordingly;
  - (c) in section 29(3), any reference to a justice of the peace shall be construed as a reference to a resident magistrate; and
  - (d) the provisions of the <sup>M5</sup>Arbitration Act (Northern Ireland) 1937, except the provisions set out in Schedule 3 thereto, shall apply to an arbitration under section 32 of this Act as if the arbitration were pursuant to an arbitration agreement (as defined in section 30(1) of that Act).

#### Textual Amendments

**F12** Words substituted by virtue of [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para. 8\(1\)](#)

#### Marginal Citations

**M5** [1937 c. 8](#). (N.I.)

## PART III

### ADDITIONAL FUNCTIONS OF DIRECTOR FOR PROTECTION OF CONSUMERS

#### Modifications etc. (not altering text)

- C15** Pts. III, IV (ss. 34-56) amended (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 31\(4\)\(a\)](#), [35\(4\)](#), [223\(2\)](#) (with [ss. 82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14 para. 6](#)).
- Pt. III modified (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 46\(1\)](#); [S.R. 1992/117](#), [art.3\(1\)](#)
- Pt. III (ss. 34-43) modified (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), [s. 43\(1\)](#)
- Pt. III (ss. 34-43) modified (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), [s. 28\(1\)](#)
- Pt. III (ss. 34-43) modified by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), [s. 50\(1\)](#)
- Pt. III (ss. 34-43): certain functions transferred (E.W.S.) (1.4.1994) by [1993 c. 43](#), [s. 67\(1\)](#); [S.I. 1994/571](#), [art. 5](#)
- Pt. III (ss. 34-43) amended (E.W.S.) (1.4.1994) by [1993 c. 43](#), [s. 67\(1\)](#); [S.I. 1994/571](#), [art. 5](#)
- Pt. III (ss. 34-43) modified (E.W.S.) (1.3.1996) by [1986 c. 44](#), [s. 36A\(1\)](#) (as inserted (1.3.1996) by [1995 c. 45](#), [s. 10\(1\)](#)), [Sch. 3 para. 43](#); [S.I. 1996/218](#), [art. 2](#))
- Pt. III (ss. 34-43) modified (N.I.) (10.6.1996) by [S.I. 1996/275 \(N.I. 2\)](#), [art. 23\(1\)](#) (with [Sch. 7 paras. 2, 3\(2\)](#)); [S.R. 1996/216](#), [art. 2](#)
- Pt. III (ss. 34-43) modified (1.6.2001) by [S.I. 2001/1422](#), [reg. 3](#), [Sch. 2](#)

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### **34 Action by Director with respect to course of conduct detrimental to interests of consumers.**

(1) Where it appears to the Director that the person carrying on a business has in the course of that business persisted in a course of conduct which—

- (a) is detrimental to the interests of consumers in the United Kingdom, whether those interests are economic interests or interests in respect of health, safety or other matters, and
- (b) in accordance with the following provisions of this section is to be regarded as unfair to consumers,

the Director shall use his best endeavours, by communication with that person or otherwise, to obtain from him a satisfactory written assurance that he will refrain from continuing that course of conduct and from carrying on any similar course of conduct in the course of that business.

(2) For the purposes of subsection (1)(b) of this section a course of conduct shall be regarded as unfair to consumers if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers as such or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.

(3) A course of conduct on the part of the person carrying on a business shall also be regarded for those purposes as unfair to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.

(4) For the purpose of determining whether it appears to him that a person has persisted in such a course of conduct as is mentioned in subsection (1) of this section, the Director shall have regard to either or both of the following, that is to say—

- (a) complaints received by him, whether from consumers or from other persons;
- (b) any other information collected by or furnished to him, whether by virtue of this Act or otherwise.

### **35 Proceedings before Restrictive Practices Court.**

If, in the circumstances specified in subsection (1) of section 34 of this Act,—

- (a) the Director is unable to obtain from the person in question such an assurance as is mentioned in that subsection, or
- (b) that person has given such an assurance and it appears to the Director that he has failed to observe it,

the Director may bring proceedings against him before the Restrictive Practices Court.

### **36 Evidence in proceedings under s. 35.**

(1) For the purposes of section 11 of the <sup>M6</sup>Civil Evidence Act 1968, section 10 of the <sup>M7</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 7 of the <sup>M8</sup>Civil Evidence Act (Northern Ireland) 1971 (each of which relates to convictions as evidence in civil proceedings), proceedings under section 35 of this Act shall (without

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prejudice to the generality of the relevant definition) be taken to be civil proceedings within the meaning of the Act in question.

- (2) Where in any proceedings under section 35 of this Act the Director alleges such a breach of contract or breach of duty as is mentioned in section 34(3) of this Act, a judgment of any court given in civil proceedings, which includes a finding that the breach of contract or breach of duty in question was committed,—
  - (a) shall be admissible in evidence for the purpose of proving the breach of contract or breach of duty, and
  - (b) shall, unless the contrary is proved, be taken to be sufficient evidence that the breach of contract or breach of duty was committed.
- (3) For the purposes of subsection (2) of this section no account shall be taken of a judgment given in any civil proceedings if it has subsequently been reversed on appeal, or has been varied on appeal so as to negative the finding referred to in that subsection.
- (4) In subsection (1) of this section “the relevant definition” means section 18(1) of the <sup>M9</sup>Civil Evidence Act 1968, section 17(1) of the <sup>M10</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 or section 14(1) of the <sup>M11</sup>Civil Evidence Act (Northern Ireland) 1971, as the case may be.

#### Marginal Citations

- M6** 1968 c. 64.  
**M7** 1968 c. 70.  
**M8** 1971 c. 36 (N.I.)  
**M9** 1968 c. 64.  
**M10** 1968 c. 70.  
**M11** 1971 c. 36 (N.I.)

### 37 Order of, or undertaking given to, Court in proceedings under s. 35.

- (1) Where in any proceedings before the Restrictive Practices Court under section 35 of this Act—
  - (a) the Court finds that the person against whom the proceedings are brought (in this section referred to as “the respondent”) has in the course of a business carried on by him persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
  - (b) the respondent does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
  - (c) it appears to the Court that, unless an order is made against the respondent under this section, he is likely to continue that course of conduct or to carry on a similar course of conduct,
 the Court may make an order against the respondent under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the respondent—
  - (a) to refrain from continuing that course of conduct, and
  - (b) to refrain from carrying on any similar course of conduct in the course of his business.

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- (3) Where in any proceedings under section 35 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the respondent offers to give to the Court an undertaking either—
- (a) to refrain as mentioned in paragraphs (a) and (b) of subsection (2) of this section, or
  - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent a continuance of the course of conduct to which the complaint relates and to prevent the carrying on by the respondent of any similar course of conduct in the course of his business,
- the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

### **38 Provisions as to persons consenting to or conniving at courses of conduct detrimental to interests of consumers.**

- (1) The provisions of this section shall have effect where it appears to the Director—
- (a) that a body corporate has in the course of a business carried on by that body persisted in such a course of conduct as is mentioned in section 34(1) of this Act, and
  - (b) that the course of conduct in question has been so persisted in with the consent or connivance of a person (in this and the next following section referred to as “the accessory”) who at a material time fulfilled the relevant conditions in relation to that body.
- (2) For the purposes of this section a person shall be taken to fulfil the relevant conditions in relation to a body corporate at any time if that person either—
- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity, or
  - (b) whether being an individual or a body of persons, corporate or unincorporate, has at that time a controlling interest in that body corporate.
- (3) If, in the circumstances specified in subsection (1) of this section,—
- (a) the Director has used his best endeavours to obtain from the accessory such an assurance as is mentioned in the next following subsection and has been unable to obtain such an assurance from him, or
  - (b) the accessory has given such an assurance to the Director and it appears to the Director that he has failed to observe it,
- the Director may bring proceedings against the accessory before the Restrictive Practices Court.
- (4) The assurance referred to in subsection (3) of this section is a satisfactory written assurance given by the accessory that he will refrain—
- (a) from continuing to consent to or connive at the course of conduct in question;
  - (b) from carrying on any similar course of conduct in the course of any business which may at any time be carried on by him; and
  - (c) from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which, at any time when that course of conduct is carried on, he fulfils the relevant conditions.

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- (5) Proceedings may be brought against the accessory under this section whether or not any proceedings are brought under section 35 of this Act against the body corporate referred to in subsection (1) of this section.
- (6) Section 36 of this Act shall have effect in relation to proceedings under this section as it has effect in relation to proceedings under section 35 of this Act.
- (7) For the purposes of this section a person (whether being an individual or a body of persons, corporate or unincorporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

### **39 Order of, or undertaking given to, Court in proceedings under s. 38.**

- (1) Where in any proceedings brought against the accessory before the Restrictive Practices Court under section 38 of this Act—
  - (a) the Court finds that the conditions specified in paragraphs (a) and (b) of subsection (1) of that section are fulfilled in the case of the accessory, and
  - (b) the accessory does not give an undertaking to the Court under subsection (3) of this section which is accepted by the Court, and
  - (c) it appears to the Court that, unless an order is made against the accessory under this section, it is likely that he will not refrain from acting in one or more of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section,the Court may make an order against the accessory under this section.
- (2) An order of the Court under this section shall (with such degree of particularity as appears to the Court to be sufficient for the purposes of the order) indicate the nature of the course of conduct to which the finding of the Court under subsection (1)(a) of this section relates, and shall direct the accessory, in relation to the course of conduct so indicated, to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of section 38 of this Act.
- (3) Where in any proceedings under section 38 of this Act the Court makes such a finding as is mentioned in subsection (1)(a) of this section, and the accessory offers to give to the Court an undertaking either—
  - (a) to refrain from acting in any of the ways mentioned in paragraphs (a) to (c) of subsection (4) of that section, or
  - (b) to take particular steps which, in the opinion of the Court, would suffice to prevent him from acting in any of those ways,the Court may, if it thinks fit, accept that undertaking instead of making an order under this section.

### **40 Provisions as to interconnected bodies corporate.**

- (1) This section applies to any order made under section 37 or section 39 of this Act.
- (2) Where an order to which this section applies is made against a body corporate which is a member of a group of interconnected bodies corporate, the Restrictive Practices Court, on making the order, may direct that it shall be binding upon all members of the group as if each of them were the body corporate against which the order is made.



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- (3) Where an order to which this section applies has been made against a body corporate, and at a time when that order is in force—
- (a) the body corporate becomes a member of a group of interconnected bodies corporate, or
  - (b) a group of interconnected bodies corporate of which it is a member is increased by the addition of one or more further members,
- the Restrictive Practices Court, on the application of the Director, may direct that the order shall thereafter be binding upon each member of the group as if it were the body corporate against which the order was made.
- (4) The power conferred by subsection (3) of this section shall be exercisable—
- (a) whether, at the time when the original order was made, the body corporate against which it was made was a member of a group of interconnected bodies corporate or not, and
  - (b) if it was such a member, whether a direction under subsection (2) of this section was given or not.

#### **41 Concurrent Jurisdiction of other courts in certain cases.**

- (1) In any case where—
- (a) the Director could bring proceedings against a person before the Restrictive Practices Court under section 35 or section 38 of this Act, and
  - (b) it appears to the Director that the conditions specified in the next following subsection are fulfilled,
- the Director may, if he thinks fit, bring those proceedings in an appropriate alternative court instead of bringing them before the Restrictive Practices Court; and, in relation to any proceedings brought by virtue of this section, the appropriate alternative court in which they are brought shall have the like jurisdiction as the Restrictive Practices Court would have had if they had been brought in that Court.
- (2) The conditions referred to in the preceding subsection are—
- (a) that neither the person against whom the proceedings are to be brought nor the person against whom any associated proceedings have been or are intended to be brought is a body corporate having a share capital, paid up or credited as paid up, of an amount exceeding £10,000, and
  - (b) that neither those proceedings nor any associated proceedings involve or are likely to involve the determination of a question (whether of law or of fact) of such general application as to justify its being reserved for determination by the Restrictive Practices Court.
- (3) For the purposes of this section, the following shall be appropriate alternative courts in relation to proceedings in respect of a course of conduct maintained in the course of a business, that is to say, the county court for any district (or, in Northern Ireland, any division) in which, or, in Scotland, any sheriff court within whose jurisdiction, that business is carried on.
- (4) In relation to any proceedings brought in an appropriate alternative court by virtue of this section, or to any order made in any such proceedings, any reference in section 37, in section 39 or section 40 of this Act to the Restrictive Practices Court shall be construed as a reference to the appropriate alternative court in which the proceedings are brought.

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- (5) In this section “associated proceedings”—
- (a) in relation to proceedings under section 35 of this Act, means proceedings under section 38 of this Act against a person as being a person consenting to or conniving at the course of conduct in question, and
  - (b) in relation to proceedings under section 38 of this Act, means proceedings under section 35 of this Act against a person as being the person by whom the course of conduct in question has been maintained.

VALID FROM 01/03/2000

**[41A] <sup>F13</sup> Meaning of “relevant Court”.**

In this Part of this Act, “relevant Court”, in relation to proceedings in respect of a course of conduct maintained in the course of a business, means any of the following courts in whose jurisdiction that business is carried on—

- (a) in England and Wales or Northern Ireland, the High Court;
- (b) in Scotland, the Court of Session.]

**Textual Amendments**

**F13** S. 41A inserted (1.3.2000) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(6)** (with s. 73); S.I. 2000/344, art. 2, **Sch.**

**42 Appeals from decisions or orders of courts under Part III.**

- (1) Notwithstanding anything in any other enactment, an appeal, whether on a question of fact or on a question of law, shall lie from any decision or order of any court in proceedings under Part III of this Act.
- (2) Any such appeal shall lie—
- (a) in the case of proceedings in England and Wales, to the Court of Appeal;
  - (b) in the case of proceedings in Scotland, to the Court of Session;
  - (c) in the case of proceedings in Northern Ireland, to the Court of Appeal in Northern Ireland.

**43 Legal aid in proceedings under Part III in Restrictive Practices Court.**

- (1) The paragraph set out in the next following subsection shall be inserted—
- (a) ..... **F14**
  - (b) ..... **F15**
  - (c) ..... **F16**
- (2) ..... **F17**

**Textual Amendments**

**F14** S. 43(1)(a) repealed by **Legal Aid Act 1974 (c. 4), Sch. 5 Pt. I**

**F15** S. 43(1)(b) repealed by **Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45(3), Sch. 5**

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- F16** S. 43(1)(c) repealed by S.I. 1981/228 (N.I. 8), art. 42(2), **Sch. 4**
- F17** S. 43(2) repealed by S.I. 1981/228 (N.I. 8), art. 42(2), **Sch. 4** and by Legal Aid (Scotland) Act 1986 (c. 47, SIF 77:2), s. 45(3), **Sch. 5**

**Modifications etc. (not altering text)**

- C16** The text of S. 43 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

## PART IV

### FUNCTIONS OF DIRECTOR AND COMMISSION IN RELATION TO MONOPOLY SITUATIONS AND UNCOMPETITIVE PRACTICES

**Modifications etc. (not altering text)**

- C17** Pts. III, IV (ss. 34-56) amended (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 31(4)(a), 35(4), 223(2)** (with **ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6**).
- Pt. IV (ss. 44-56) modified by Telecommunications Act 1984 (c. 12, SIF 96), **s. 50(2)**
- Pt. IV (ss. 44-56) modified (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 28(2)**
- Pt. IV (ss. 44-56) modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), **s. 43(2)**
- Pt. IV (ss. 44-56) modified (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)**; S.R. 1992/117, **art.3(1)**
- Pt. IV amended (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(4)**; S.I. 1994/571, **art. 5**
- Pt. IV (ss. 44-56) amended (1.2.2001) by 2000 c. 38, **s. 86(4)(a)(5)(7)(a)** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- Pt IV modified (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(6)(7)** (with Sch. 7 paras. 2, 3(2); S.R. 1996/216, **art. 2**
- Pt. IV amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- Pt. IV amended (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

#### *Powers for Director to require information*

#### **44 General power for Director to require information.**

- (1) Where it appears to the Director that there are grounds for believing—
- (a) that a monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and
  - (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director, for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation, may exercise the powers conferred by the next following subsection.

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- (2) In the circumstances and for the purpose mentioned in the preceding subsection the Director may require any person who supplies or produces goods of the description in question in the United Kingdom, or to whom any such goods are supplied in the United Kingdom, or (as the case may be) any person who supplies services of that description in the United Kingdom, or for whom any such services are so supplied, to furnish to the Director such information as the Director may consider necessary with regard to—
- (a) the value, cost, price or quantity of goods of that description supplied or produced by that person, or of goods of that description supplied to him, or (as the case may be) the value, cost, price or extent of the services of that description supplied by that person or of the services of that description supplied for him, or
  - (b) the capacity of any undertaking carried on by that person to supply, produce or make use of goods of that description, or (as the case may be) to supply or make use of services of that description, or
  - (c) the number of persons employed by that person wholly or partly on work related to the supply, production or use of goods of that description, or (as the case may be) the supply or use of services of that description.

**Modifications etc. (not altering text)**

- C18** Power to apply s. 44 with modifications conferred by [Competition Act 1980 \(c. 21\)](#), **ss. 2(5)**, 33(5)  
 Ss. 44, 45 modified by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), **s. 50(2)(a)**  
 Ss. 44, 45 modified (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), **s. 28(2)(a)**  
 Ss. 44, 45 modified (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), **s. 43(2)(a)**  
 S. 44: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)(a)(4)**; S.R. 1992/117, **art.3(1)**  
 S. 44: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(a)(4)**; S.I. 1994/571, **art. 5**  
 S. 44: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)  
 S. 44: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(a)** (with [Sch. 7 paras. 2, 3\(2\)](#)); S.R. 1996/216, **art. 2**

**45 Special power to require information with respect to complex monopoly situations.**

- (1) Where it appears to the Director that there are grounds for believing—
- (a) that a complex monopoly situation may exist in relation to the supply of goods or services of any description, or in relation to exports of goods of any description from the United Kingdom, and
  - (b) that in accordance with the following provisions of this Part of this Act he would not be precluded from making a monopoly reference to the Commission with respect to the existence or possible existence of that situation,

the Director may formulate proposals for requiring specified persons to furnish information to him in accordance with the proposals for the purpose of assisting him in determining whether to make a monopoly reference with respect to the existence or possible existence of that situation.

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- (2) The persons specified in any such proposals shall be persons appearing to the Director to be, or to be included among, those who, in relation to the production or supply of goods or to the supply of services of the description in question, or in relation to exports from the United Kingdom of goods of the description in question,—
- (a) may be parties to any such agreement as is mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or mentioned in either of those paragraphs as modified by section 9(2) of this Act) or may be parties to any such agreement as is mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
  - (b) may be conducting their respective affairs as mentioned in section 6(2) or in section 7(2) of this Act.
- (3) Any such proposals shall also specify the description of goods or services in question, and—
- (a) in a case falling within paragraph (a) of subsection (2) of this section, shall indicate the particular respects in which it appears to the Director that any agreement in question may be such an agreement as is referred to in that paragraph, or
  - (b) in a case falling within paragraph (b) of that subsection, shall indicate the particular respects in which it appears to the Director that the persons specified in the proposals may be conducting their respective affairs in a manner referred to in that paragraph,
- and shall state what information the Director proposes that the persons specified in the proposals should be required to furnish for the purpose of indicating whether, in those respects, they are parties to such an agreement, or are so conducting their respective affairs, and, if so, of indicating in what circumstances they are parties to such an agreement or are so conducting their affairs.
- (4) Where the Director has formulated proposals under this section, he may submit those proposals to the Secretary of State for approval; and if the Secretary of State approves the proposals, with or without modifications, the Director may require any person specified in the proposals to furnish to the Director such information as the Director may specify in accordance with the proposals, or, if the proposals have been approved with modifications, in accordance with the proposals as so modified.

#### Modifications etc. (not altering text)

- C19** Ss. 44, 45 modified by Telecommunications Act 1984 (c. 12, SIF 96), s. 50(2)(a)  
 Ss. 44, 45 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 28(2)(a)  
 Ss. 44, 45 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 43(2)(a)  
 S. 45: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 46(2)(a)(4); S.R. 1992/117, art.3(1)  
 S. 45: certain functions transferred (E.W.S.) (24.12.1993) by 1993 c. 43, ss. 67(2)(a)(4), 154(2); S.I. 1993/3237, art. 2.  
 S. 45: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)  
 S. 45: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(a) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

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#### 46 Supplementary provisions as to requirements to furnish information.

- (1) Any power conferred on the Director by the preceding provisions of this Part of this Act to require a person to furnish information shall be exercisable by notice in writing served on that person.
- (2) Any person who refuses or wilfully neglects to furnish to the Director information required by such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [<sup>F18</sup>level 5 on the standard scale]
- (3) ..... <sup>F19</sup>

##### Textual Amendments

**F18** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [ss. 289F, 289G](#) and (N.I.) by [S.I. 1984/703 \(N.I. 3\)](#), [arts. 5, 6](#)

**F19** [S. 46\(3\)](#) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), [ss. 153, 212](#), [Sch. 20 para. 1](#), [Sch. 24](#)

##### Modifications etc. (not altering text)

**C20** Power to apply [S. 46](#) with modification conferred by [Competition Act 1980 \(c. 21\)](#), [ss. 2\(5\), 33\(5\)](#)

#### *Monopoly references*

#### 47 General provisions as to monopoly references

- (1) A monopoly reference—
  - (a) shall specify the description of goods or services to which it relates;
  - (b) in the case of a reference relating to goods, shall state whether it relates to the supply of goods or to exports of goods from the United Kingdom or to both; and
  - (c) if, for the purposes of the reference, consideration is to be limited to a part of the United Kingdom, shall specify the part of the United Kingdom to which consideration is to be limited,
 and (subject to the next following subsection) shall be framed in one or other of the ways specified in section 48 or section 49 of this Act.
- (2) A monopoly reference (whether it falls within section 48 or within section 49 of this Act) may be so framed as to require the Commission to exclude from consideration, or to limit consideration to,—
  - (a) such agreements as are mentioned in paragraph (d) of section 6(1) or paragraph (d) of section 7(1) of this Act (or in either of those paragraphs as modified by section 9(2) of this Act) or as are mentioned in subsection (2) or subsection (3) of section 8 of this Act, or
  - (b) agreements or practices whereby persons conduct their affairs as mentioned in section 6(2) or section 7(2) of this Act,
 or to exclude from consideration, or to limit consideration to, such one or more agreements or practices falling within paragraph (a) or paragraph (b) of this subsection as are specified in the reference.

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#### 48 Monopoly reference limited to the facts.

A monopoly reference may be so framed as to require the Commission only to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—

- (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
- (b) in favour of what person or persons that monopoly situation exists;
- (c) whether any steps (by way of uncompetitive practices or otherwise) are being taken by that person or those persons for the purpose of exploiting or maintaining the monopoly situation and, if so, by what uncompetitive practices or in what other way; and
- (d) whether any action or omission on the part of that person or those persons is attributable to the existence of the monopoly situation and, if so, what action or omission and in what way it is so attributable;

and a monopoly reference so framed is in this Act referred to as a “monopoly reference limited to the facts”.

#### 49 Monopoly reference not limited to the facts.

- (1) A monopoly reference may be so framed as to require the Commission to investigate and report on the question whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so, to investigate and report—
  - (a) on the questions mentioned in paragraphs (a) to (d) of section 48 of this Act, and
  - (b) on the question whether any facts found by the Commission in pursuance of their investigations under the preceding provisions of this subsection operate, or may be expected to operate, against the public interest.
- (2) A monopoly reference may be so framed as to require the Commission to investigate and report on the questions whether a monopoly situation exists in relation to the matters set out in the reference in accordance with section 47 of this Act and, if so,—
  - (a) by virtue of which provisions of sections 6 to 8 of this Act that monopoly situation is to be taken to exist;
  - (b) in favour of what person or persons that monopoly situation exists; and
  - (c) whether any action or omission on the part of that person or those persons in respect of matters specified in the reference for the purposes of this paragraph operates, or may be expected to operate, against the public interest.
- (3) For the purposes of subsection (2)(c) of this section any matter may be specified in a monopoly reference if it relates to any of the following, that is to say—
  - (a) prices charged, or proposed to be charged, for goods or services of the description specified in the reference;
  - (b) any recommendation or suggestion made as to such prices;
  - (c) any refusal to supply goods or services of the description specified in the reference;
  - (d) any preference given to any person (whether by way of discrimination in respect of prices or in respect of priority of supply or otherwise) in relation to the supply of goods or services of that description;

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and any matter not falling within any of the preceding paragraphs may be specified for those purposes in a monopoly reference if, in the opinion of the person or persons making the reference, it is of a kind such that (if a monopoly situation is found to exist) that matter might reasonably be regarded as a step taken for the purpose of exploiting or maintaining that situation or as being attributable to the existence of that situation.

- (4) A monopoly reference framed in either of the ways mentioned in subsections (1) and (2) of this section is in this Act referred to as a “monopoly reference not limited to the facts”.

## 50 Monopoly references by Director.

- (1) Where it appears to the Director that a monopoly situation exists or may exist in relation to—
- (a) the supply of goods of any description, or
  - (b) the supply of services of any description, or
  - (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,

the Director, subject to section 12 of this Act and to the following provisions of this section, may if he thinks fit make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.

- (2) [<sup>F20</sup>Subject to subsection (2A) of this section] no monopoly reference shall be made by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of goods or services of any description specified in Part I of Schedule 5 or in Part I of Schedule 7 to this Act.

[<sup>F21</sup>(2A) Subsection (2) of this section shall not preclude the making of a monopoly reference by the Director with respect to the existence or possible existence of a monopoly situation in relation to the supply of such services as are specified in paragraph 5 of Schedule 5 to this Act in Great Britain, except in relation to the supply of any such services by—

- (a) a body corporate to which section 16 of this Act applies;
- (b) a subsidiary, within the meaning of section 736 of the <sup>M12</sup>Companies Act 1985, of any such body corporate; or
- (c) a publicly owned railway company, within the meaning of the Railways Act 1993.]

- (3) Notwithstanding anything in subsections (3) and (4) of section 10 of this Act—
- (a) for the purposes of any monopoly reference made by the Director the supply of goods or services of any description specified in the first column . . . <sup>F22</sup> of Part II of Schedule 7 to this Act in any manner specified in relation to that description of goods or services in the second column of Part II of the relevant Schedule shall be taken to be a separate form of supply, and
  - (b) any monopoly reference made by the Director in relation to the supply of goods or services of any such description shall be limited so as to exclude that form of supply.
- (4) For the purposes of any monopoly reference made by the Director in relation to goods of any description specified in the first column of Part III of Schedule 7 to this Act—
- (a) the supply of goods of that description in Northern Ireland in any manner specified in relation to that description of goods in the second column of that Part of that Schedule shall be taken to be a separate form of supply, and,



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- notwithstanding anything in section 10(3) and (4) of this Act, any monopoly reference so made in relation to the supply of goods of any such description in Northern Ireland shall be limited so as to exclude that form of supply, and
- (b) for the purposes of any such monopoly reference the Director shall so exercise his powers under section 9 of this Act as to comply with the requirements of the preceding paragraph.
- (5) The Secretary of State may by order made by statutory instrument vary any of the provisions of Schedule 7 to this Act, either by adding one or more further entries or by altering or deleting any entry for the time being contained in it; and any reference in this Act to that Schedule shall be construed as a reference to that Schedule as for the time being in force.
- (6) On making a monopoly reference to the Commission, the Director shall send a copy of it to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the reference is first published in the Gazette in accordance with section 53 of this Act, the Secretary of State directs the Commission not to proceed with the reference,—
- (a) the Commission shall not proceed with that reference, but
- (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, notwithstanding that it relates wholly or partly to the same matters.

#### Textual Amendments

- F20** Words in s. 50(2) inserted (1.4.1994) by 1993 c. 43, s. 66(1); S.I. 1994/571, art. 5
- F21** S. 50(2A) inserted (1.4.1994) by 1993 c. 43, s. 66(1); S.I. 1994/571, art. 5
- F22** Words repealed by Telecommunications Act 1984 (c. 12, SIF 96), s. 109(6), Sch. 7 Pt. I

#### Modifications etc. (not altering text)

- C21** S. 50 modified by Telecommunications Act 1984 (c. 12, SIF 96), s. 50(2)(b)
- S. 50 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 28(2)(b)
- S. 50 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 43(2)(b)
- S. 50: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 46(2)(b)(4); S.R. 1992/117, art. 3(1)
- S. 50: certain functions transferred (E.W.S.) (1.4.1999) by 1993 c. 43, s. 67(2)(b)(4); S.I. 1994/571, art. 5
- S. 50: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)
- S. 50: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(b) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2
- S. 50 amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- C22** S. 50(2) modified (27.5.1993) by 1993 c. viii, s. 4.
- S. 50(2) excluded (21.7.1994) by 1994 c. xi, s. 50(6)

#### Marginal Citations

- M12** 1985 c. 6.

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## 51 Monopoly references by Ministers.

- (1) Subject to the following provisions of this section, the Secretary of State, or the Secretary of State and any other Minister acting jointly, where it appears to him or them that a monopoly situation exists or may exist in relation to—
- (a) the supply of goods of any description, or
  - (b) the supply of services of any description, or
  - (c) exports of goods of any description from the United Kingdom, either generally or to any particular market,
- may, if the Secretary of State (or, in the case of joint action by the Secretary of State and another Minister, each of them) thinks fit, make a monopoly reference to the Commission with respect to the existence or possible existence of such a monopoly situation.
- (2) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in the preceding subsection, and that the goods or services in question are of a description specified in Part I of, . . . <sup>F23</sup>, Schedule 5 or Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with such one or more of the Ministers mentioned in the next following subsection as appear to him to have functions directly relating—
- (a) to the supply of goods or services of that description in the area (whether consisting of the whole or part of the United Kingdom) in relation to which the question arises, or
  - (b) to exports of goods of that description from the United Kingdom, as the case may be.
- (3) The Ministers referred to in subsection (2) of this section are the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Northern Ireland, the Secretary of State for the Environment, [<sup>F24</sup>the Secretary of State for Transport,] the Minister of Agriculture, Fisheries and Food, the Minister of Agriculture for Northern Ireland, the Minister of Commerce for Northern Ireland . . . . . <sup>F25</sup>
- (4) Where it appears to the Secretary of State that a monopoly situation exists or may exist as mentioned in subsection (1) of this section in relation to the supply in Northern Ireland of goods of a description specified in the first column of Part III of Schedule 7 to this Act, the Secretary of State shall not make a monopoly reference with respect to the existence or possible existence of that situation except jointly with the Minister of Agriculture for Northern Ireland.

### Textual Amendments

**F23** Words repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109(6), [Sch. 7 Pt. I](#)

**F24** Words in s. 51(3) inserted (1.4.1994) by 1993 c. 43, s. 66(2); S.I. 1994/571, [art. 5](#)

**F25** Words repealed by [S.I. 1974/691](#), [Sch.](#)

### Modifications etc. (not altering text)

**C23** [S. 51](#) explained (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), s. 21

**C24** Reference to Minister of Agriculture for Northern Ireland and Minister of Commerce for Northern Ireland to be construed as reference to Department of Agriculture for Northern Ireland and Department of Commerce for Northern Ireland: [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para 7\(1\)](#) and [Northern Ireland Act 1974 \(c. 28\)](#), [Sch. 1 para. 2\(1\)\(b\)\(4\)](#)

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## 52 Variation of monopoly reference.

- (1) Subject to the following provisions of this section, the Director may at any time vary a monopoly reference made by him, and the Secretary of State (or, in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) may vary a monopoly reference made by him or them.
- (2) A monopoly reference not limited to the facts shall not be varied so as to become a monopoly reference limited to the facts; but (subject to the following provisions of this section) a monopoly reference limited to the facts may be varied so as to become a monopoly reference not limited to the facts, whether the Commission have already reported on the reference as originally made or not.
- (3) A monopoly reference made by the Director shall not be varied so as to become a reference which he is precluded from making by any provisions of section 50 of this Act.
- (4) On varying a monopoly reference made by him, the Director shall send a copy of the variation to the Secretary of State; and if, before the end of the period of fourteen days from the day on which the variation is first published in the Gazette in accordance with the next following section, the Secretary of State directs the Commission not to give effect to the variation,—
  - (a) the Commission shall proceed with the reference as if that variation had not been made, but
  - (b) nothing in the preceding paragraph shall prevent the Commission from proceeding with any subsequent monopoly reference, or from giving effect to any subsequent variation, notwithstanding that it relates wholly or partly to the matters to which that variation related.
- (5) In this section and in sections 53 to 55 of this Act “Minister” includes [<sup>F26</sup>the Department of Agriculture for Northern Ireland and the Department of Commerce for Northern Ireland].

### Textual Amendments

**F26** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), Sch. 1 para. 2(1)(b)(4)

### Modifications etc. (not altering text)

**C25** Ss. 52, 53 modified by Telecommunications Act 1984 (c. 12, SIF 96), s. 50(2)(b)  
 Ss. 52, 53 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 28(2)(b)  
 Ss. 52, 53 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 43(2)(b)  
 S. 52: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 46(2)(b)(4); S.R. 1992/117, art.3(1)  
 S. 52 amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)  
 S. 52: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, s. 67(2)(b)(4); S.I. 1994/ 571, art. 5  
 S. 52: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(b) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2  
 S. 52: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

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### 53 Publication of monopoly references and variations, and of directions relating to them.

- (1) On making a monopoly reference, or a variation of a monopoly reference, the Director or, as the case may be, the Secretary of State (or, in the case of a monopoly reference or variation made by the Secretary of State acting jointly with one or more other Ministers, the Secretary of State and that Minister or those Ministers acting jointly) shall arrange for the reference or variation to be published in full in the Gazette, and shall arrange for the reference or variation to be published in such other manner as he or they may think most suitable for bringing it to the attention of persons who, in his or their opinion, would be affected by it.
- (2) Where the Secretary of State gives a direction under section 50(6) of this Act with respect to a monopoly reference, or gives a direction under section 52(4) of this Act with respect to a variation of a monopoly reference, the Secretary of State shall arrange for the direction to be published in the Gazette and otherwise in the same manner as the monopoly reference or variation was published in accordance with the preceding subsection.
- (3) In this section “the Gazette” means the London, Edinburgh and Belfast Gazettes, except that, in relation to a monopoly reference under which consideration is limited to a particular part of the United Kingdom in accordance with section 9 of this Act (including a reference under which consideration is required to be so limited by section 50(4)(b) of this Act), it means such one or more of those Gazettes as are appropriate to that part of the United Kingdom.
- (4) In sections 50 and 52 of this Act any reference to publication in the Gazette is a reference to publication in the London Gazette, the Edinburgh Gazette or the Belfast Gazette, whichever first occurs.

#### Modifications etc. (not altering text)

- C26** Ss. 52, 53 modified by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. **50(2)(b)**  
 Ss. 52, 53 modified (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. **28(2)(b)**  
 Ss. 52, 53 modified (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. **43(2)(b)**  
 S. 53: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. **46(2)(b)(4)**; S.R. 1992/117, art. **3(1)**  
 S. 53: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, s. **67(2)(b)(4)**; S.I. 1994/571, art. **5**  
 S. 53 amended (1.2.2001) by 2000 c. 38, ss. **86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in [Sch. 2 Pt. II](#))  
 S. 53: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. **23(2)(b)** (with [Sch. 7 paras. 2, 3\(2\)](#)); S.R. 1996/216, art. **2**  
 S. 53: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. **36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), [Sch. 3 para. 43](#); S.I. 1996/218, art. **2**

### 54 Report of Commission on monopoly reference.

- (1) A report of the Commission on a monopoly reference—
  - (a) if the reference was made by the Director, shall be made to the Secretary of State, and
  - (b) in any other case, shall be made to the Minister or Ministers by whom the reference was made.

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- (2) In making their report on a monopoly reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,
- as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (3) Where, on a monopoly reference not limited to the facts, the Commission find that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under subsection (1) or subsection (2) of section 49 of this Act operate, or may be expected to operate, against the public interest, the report shall specify those facts, and the conclusions to be included in the report, in so far as they relate to the operation of those facts, shall specify the particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have; and the Commission—
- (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
  - (b) may, if they think fit, include in their report recommendations as to such action.
- (4) In paragraph (a) of subsection (3) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
- (a) by one or more Ministers (including [<sup>F27</sup>Northern Ireland departments]) or other public authorities, or
  - (b) by the person or (as the case may be) one or more of the persons in whose favour, in accordance with the findings of the Commission, the monopoly situation in question exists.
- (5) Where, on a monopoly reference not limited to the facts, the Commission find—
- (a) that a monopoly situation exists, and
  - (b) that the person (or, if more than one, any of the persons) in whose favour it exists is a party to an agreement to which [<sup>F28</sup>the Act of 1976] applies,
- the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which . . . <sup>F29</sup> of that Act applies, operate, or may be expected to operate, against the public interest; and subsection (3) of this section, in so far as it refers to facts found by the Commission in pursuance of their investigations, shall have effect subject to the provisions of this subsection.

#### Textual Amendments

**F27** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), Sch. 1 para. 2(1)(b)(4)

**F28** Words substituted by Restrictive Trade Practices Act 1976 (c. 34), Sch. 5

**F29** Words repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

#### Modifications etc. (not altering text)

**C27** S. 54(3) amended by Financial Services Act 1986 (c. 60, SIF 69), ss. 124(3), 140, Sch. 11 paras. 12(1), 36(2)

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## **55 Time-limit for report on monopoly reference.**

- (1) A monopoly reference shall specify a period within which the Commission are to report on the reference; and, if a report of the Commission on the reference—
- (a) is not made before the end of the period so specified, or
  - (b) if one or more extended periods are allowed under the next following subsection, is not made before the end of that extended period or of the last of those extended periods, as the case may be,
- the reference shall cease to have effect and no action, or (if action has already been taken) no further action, shall be taken in relation to that reference under this Act.
- (2) Directions may be given—
- (a) in the case of a monopoly reference made by the Director or by the Secretary of State otherwise than jointly with one or more Ministers, by the Secretary of State, or
  - (b) in the case of a monopoly reference made by the Secretary of State jointly with one or more other Ministers, by the Secretary of State and that Minister or those Ministers acting jointly,

allowing to the Commission such extended period for the purpose of reporting on the reference as may be specified in the directions, or, if the period has already been extended once or more than once by directions under this subsection, allowing to the Commission such further extended period for that purpose as may be so specified.

## **56 Order of appropriate Minister on report on monopoly reference.**

- (1) The provisions of this section shall have effect where a report of the Commission on a monopoly reference not limited to the facts has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a monopoly situation exists and that facts found by the Commission in pursuance of their investigations under section 49 of this Act operate, or may be expected to operate, against the public interest, and
  - (b) specify particular effects, adverse to the public interest, which in their opinion those facts have or may be expected to have.
- (2) In the circumstances mentioned in the preceding subsection the appropriate Minister may (subject to subsection (6) of this section) by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he considers it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection; and those powers may be so exercised to such extent and in such manner as the appropriate Minister considers requisite for that purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the appropriate Minister shall take into account any recommendations included in the report of the Commission in pursuance of section 54(3)(b) of this Act and any advice given by the Director under section 88 of this Act.
- (4) Subject to the next following subsection, in this section “the appropriate Minister” means the Secretary of State.



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- (5) Where, in any such report as is mentioned in subsection (1) of this section, the person or one of the persons specified as being the person or persons in whose favour the monopoly situation in question exists is a body corporate fulfilling the following conditions, that is to say—
- (a) that the affairs of the body corporate are managed by its members, and
  - (b) that by virtue of an enactment those members are appointed by a Minister,
- then for the purpose of making any order under this section in relation to that body corporate (but not for the purpose of making any such order in relation to any other person) “the appropriate Minister” in this section means the Minister by whom members of that body corporate are appointed.
- (6) In relation to any such body corporate as is mentioned in subsection (5) of this section, the powers exercisable by virtue of subsection (2) of this section shall not include the powers specified in Part II of Schedule 8 to this Act.

#### Modifications etc. (not altering text)

**C28** S. 56 modified (13.5.1999) by 1994 c. 17, s. 33(3)(4)(a); S.I. 1999/1309, art. 2, Sch.

S. 56 modified (1.4.1999) by 1998 c. 41, s. 45(7), Sch. 7 Pt. II para. 20(2)(a) (with s. 73); S.I. 1999/505, art. 2, Sch. 2

**C29** S. 56(2) amended by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), ss. 144(2), 238(2)

*[<sup>F30</sup> Undertakings as alternative to monopoly reference by Director]*

#### Textual Amendments

**F30** S. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)(a)

#### 56A [<sup>F31</sup> Proposals by Director.]

- (1) The Director may propose that the Secretary of State accept undertakings in lieu of the Director making a monopoly reference if—
- (a) he considers that a monopoly situation exists and that there are facts relating to the monopoly situation which may now or in future operate against the public interest,
  - (b) he intends, apart from the question of undertakings being accepted in lieu, to make a monopoly reference with respect to the existence of the monopoly situation and that the reference should be a monopoly reference not limited to the facts, and
  - (c) he considers that undertakings offered to be given by particular persons would be sufficient to deal with such of the relevant adverse effects of the monopoly situation as he thinks need to be dealt with.
- (2) A proposal under this section shall include—
- (a) a statement of the terms of the proposed undertakings and the persons by whom they are proposed to be given,
  - (b) a statement of the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest, and

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- (c) a statement of the effects identified by the Director as the relevant adverse effects of the monopoly situation.
- (3) For the purposes of the law relating to defamation, absolute privilege shall attach to anything included in a proposal under this section pursuant to subsection (2)(b) or (c) of this section.
- (4) In this section, references to the relevant adverse effects of a monopoly situation are to the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have.

#### Textual Amendments

- F31** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**  
 Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**  
 (with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**  
 Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted  
 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

#### Modifications etc. (not altering text)

- C30** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 paras. 8, 9**  
**C31** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 1(1)**  
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 4(1)**  
 Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 5(1)**  
 Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2), 87, 89** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)  
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 11(1)**

#### [<sup>F32</sup>56B Proposals under section 56A: preparatory steps.

- (1) The Director may only make a proposal under section 56A of this Act if—
  - (a) the first or second condition is met, and
  - (b) the third condition is met.
- (2) The first condition is that the Director has published in an appropriate manner a notice containing—
  - (a) each of the matters mentioned in subsection (5) of this section, and
  - (b) the invitation mentioned in subsection (6) of this section.
- (3) The second condition is that the Director has published in an appropriate manner—
  - (a) a notice containing the matters mentioned in paragraphs (a) and (b) of subsection (5) of this section, and
  - (b) a notice containing—
    - (i) the matters mentioned in paragraphs (c), (d), (e) and (f) of that subsection, and
    - (ii) the invitation mentioned in subsection (6) of this section.
- (4) The third condition is that the Director has considered any representations made to him in accordance with the notice under this section which contains the invitation mentioned in subsection (6) of this section.
- (5) The matters referred to above are—



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- (a) the identity of the person or persons in whose favour the Director considers the monopoly situation exists,
  - (b) the terms of the proposed monopoly reference,
  - (c) the facts relating to the monopoly situation which the Director considers may now or in future operate against the public interest,
  - (d) the effects identified by the Director as the particular effects, adverse to the public interest, which the facts relating to the monopoly situation may now or in future have,
  - (e) the terms of the undertakings which the Director is, at the time of the notice, considering proposing the Secretary of State accept in lieu of the Director making the proposed monopoly reference (“the potential undertakings”), and
  - (f) the identity of the persons by whom the potential undertakings would be given.
- (6) The invitation referred to above is an invitation to make representations to the Director, within such time as he may specify, about the potential undertakings being the subject of a proposal under section 56A of this Act.
- (7) For the purposes of the law relating to defamation, absolute privilege shall attach to anything contained in a notice published under this section.
- (8) In this section, references to an appropriate manner, in relation to the publication of a notice by the Director, are to such manner as he considers most suitable for the purpose of bringing the notice to the attention of persons who, in his opinion, are likely to be interested in it.]

#### Textual Amendments

**F32** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)

Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(c)(4)(c) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

#### Modifications etc. (not altering text)

**C32** Ss. 56A-56G extended (E.W.) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9

**C33** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)

Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)

Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)

Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)

Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

#### [<sup>F33</sup> 56C Proposals under section 56A: exclusion of sensitive information.

- (1) The Director shall—
- (a) in formulating the statement required by section 56A(2)(b) or (c) of this Act, and
  - (b) in publishing a notice under section 56B of this Act containing the matters mentioned in subsection (5)(c) and (d) of that section,

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have regard to the need for excluding, so far as practicable, any matter to which subsection (2) or (3) of this section applies.

- (2) This subsection applies to any matter which relates to the private affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual.
- (3) This subsection applies to any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body, unless in his opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the statement or notice, as the case may be.]

#### Textual Amendments

- F33** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**  
 Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**  
 (with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**  
 Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted  
 (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

#### Modifications etc. (not altering text)

- C34** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 paras. 8, 9**  
**C35** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 1(1)**  
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 4(1)**  
 Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 5(1)**  
 Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2), 87, 89** (with s. 106); S.I. 2001/57, **art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)  
 Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, **ss. 7, 82(2), Sch. 2 para. 11(1)**

#### [<sup>F34</sup> **56D Acceptance by Secretary of State of proposals under section 56A.**

- (1) Where the Secretary of State accepts a proposal under section 56A of this Act, then, within the period of twelve months from the date of acceptance of the undertakings to which the proposal relates, no monopoly reference may be made in the same, or substantially the same, terms as those published by the Director under section 56B of this Act preparatory to making the proposal.
- (2) Subsection (1) of this section shall not prevent a reference being made if the Director—
  - (a) considers that any of the undertakings has been breached, or needs to be varied or superseded, and
  - (b) has given notice of that fact to the person responsible for giving the undertaking.
- (3) The Secretary of State shall send to the Director a copy of every undertaking accepted pursuant to a proposal under section 56A of this Act.
- (4) For the purposes of subsection (1) of this section, the Secretary of State shall be treated as accepting a proposal under section 56A of this Act if he accepts the undertakings to which the proposal relates, either in the form in which they were proposed or with such modifications as he thinks fit; and references in this Act to an undertaking accepted pursuant to a proposal under that section shall be construed accordingly.]

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#### Textual Amendments

- F34** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**  
Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**  
(with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**  
Ss. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted  
(1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)

#### Modifications etc. (not altering text)

- C36** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 paras. 8(1), 9**  
**C37** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 1(1)**  
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 4(1)**  
Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, **ss. 86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art.  
**3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)  
Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 5(1)**  
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), **Sch. 2 para. 11(1)**

#### [<sup>F35</sup> 56E Review of undertakings.

- (1) The Director shall keep the carrying out of an undertaking to which this section applies under review, and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either—
  - (a) one or more of the parties to it can be released from it, or
  - (b) it needs to be varied or to be superseded by a new undertaking.
- (2) If it appears to the Director—
  - (a) that any one or more of the parties to an undertaking to which this section applies can be released from it,
  - (b) that such an undertaking needs to be varied or to be superseded by a new undertaking, or
  - (c) that there has been any failure to carry out such an undertaking,he shall give to the Secretary of State such advice as he may think proper in the circumstances.
- (3) Where the Director advises the Secretary of State under subsection (2) of this section that an undertaking needs to be varied or to be superseded by a new undertaking, he shall propose the terms of variation or, as the case may be, the new undertaking.
- (4) The Director shall, if the Secretary of State so requests, give him advice with respect to the release, variation or superseding of an undertaking to which this section applies.
- (5) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
  - (a) pursuant to a proposal under section 56A of this Act, or
  - (b) under section 56F of this Act.]

#### Textual Amendments

- F35** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, **ss. 7(1), 82(2)**  
Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(c)(4)(c)**  
(with **Sch. 7 paras. 2, 3(2)**); S.R. 1996/216, **art. 2**

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S. 56A-56G : certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

**Modifications etc. (not altering text)**

- C38** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9
- C39** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)
- Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)
- Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

**[<sup>F36</sup>56F Release, variation and replacement of undertakings.**

- (1) The Secretary of State may only—
- (a) accept a new undertaking in place of an undertaking to which this section applies,
  - (b) release a person from such an undertaking, or
  - (c) agree to the variation of such an undertaking,
- after considering the advice of the Director on the subject.
- (2) The Secretary of State shall send to the Director—
- (a) a copy of every undertaking accepted under this section,
  - (b) particulars of every variation of an undertaking agreed under this section, and
  - (c) particulars of every release of a person from an undertaking under this section.
- (3) In this section, references to an undertaking to which this section applies are to an undertaking accepted—
- (a) pursuant to a proposal under section 56A of this Act, or
  - (b) under this section.]

**Textual Amendments**

- F36** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)
- Ss. 56A-56G: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 23(2)(c)(4)(c) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2
- S. 56A-56G: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)

**Modifications etc. (not altering text)**

- C40** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9
- C41** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)
- Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)
- Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)
- Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

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[<sup>F37</sup>**56G Publication of undertakings etc.**

- (1) The Secretary of State shall arrange for the publication in such manner as he considers appropriate of—
  - (a) every undertaking accepted—
    - (i) pursuant to a proposal under section 56A of this Act, or
    - (ii) under section 56F of this Act, and
  - (b) every variation or release under that section.
- (2) Where the Secretary of State accepts undertakings pursuant to a proposal under section 56A of this Act, he shall arrange for the statements included in the proposal under subsection (2)(b) and (c) of that section to be published in such manner as he considers appropriate.
- (3) If it appears to the Secretary of State that the publication of any matter contained in a statement which falls to be published under subsection (2) of this section would be against the public interest, he shall exclude that matter from the statement as published under that subsection.
- (4) Without prejudice to subsection (3) of this section, if the Secretary of State considers that it would not be in the public interest to disclose—
  - (a) any matter contained in a statement which falls to be published under subsection (2) of this section relating to the private affairs of an individual whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter, or
  - (b) any matter contained in such a statement relating specifically to the affairs of a particular person whose interests would, in the opinion of the Secretary of State, be seriously and prejudicially affected by the publication of that matter,the Secretary of State shall exclude that matter from the statement as published under subsection (2) of this section.]

**Textual Amendments**

- F37** Ss. 56A-56G inserted (3.1.1995) by 1994 c. 40, ss. 7(1), 82(2)  
Ss. 56A-56G: certain functions transferred (E.W.S) (1.3.1996) by 1996 c. 44, s. 36A(2) (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), Sch. 3 para. 43; S.I. 1996/218, art. 2)  
Ss. 56A-56G: functions transferred (10.6.1996) by S.I. 1996/275 (N.I. 2), art. 22(2)(c)(4)(c) (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. 2

**Modifications etc. (not altering text)**

- C42** Ss. 56A-56G extended (E.W.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 paras. 8(1), 9  
**C43** Ss. 56A-56G extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 1(1)  
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 4(1)  
Ss. 56A-56G amended (1.2.2001) by 2000 c. 38, ss. 86(1)(2), 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I (subject to transitional provision and saving in Sch. 2 Pt. II)  
Ss. 56A-56G extended (N.I.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 5(1)  
Ss. 56A-56G extended (E.W.S.) (3.1.1995) by 1994 c. 40, ss. 7, 82(2), Sch. 2 para. 11(1)

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## PART V

### MERGERS

#### Modifications etc. (not altering text)

- C44** Pt. V (ss. 57–77) restricted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 30(4)
- C45** Pt. V (ss. 57–77) applied (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 29(9)(b), 30(6)
- C46** Pt. V (ss. 57–77) restricted (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), ss. 34(4), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C47** Pt. V (ss. 57–77) applied (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), ss. 35(2), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).

#### *Newspaper merger references*

#### 57 Meaning of “newspaper”, “transfer of newspaper or of newspaper assets” and related expressions.

(1) In this Part of this Act—

(a) “newspaper” means a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom;

[<sup>F38</sup>(b) “newspaper proprietor” includes (in addition to an actual proprietor of a newspaper) any member of a group of persons of which another member is an actual proprietor of a newspaper.

(1A) In this Part of this Act, any reference to the newspapers of a newspaper proprietor (“NP”) is to—

- (a) all newspapers of which NP is an actual proprietor, and
- (b) all newspapers of which a member of a group of persons of which NP is a member is an actual proprietor.]

and any reference to the newspapers of a newspaper proprietor includes all newspapers in relation to which he is a newspaper proprietor and, in the case of a body corporate, all newspapers in relation to which a person having a controlling interest in that body corporate is a newspaper proprietor.

(2) In this Part of this Act “transfer of a newspaper or of newspaper assets” means any of the following transactions, that is to say—

- (a) any transaction (whether involving a transfer or not) by virtue of which a person would become, or would acquire the right to become [<sup>F39</sup>—
- (i) an actual proprietor of a newspaper, or
- (ii) a person with a primary or secondary controlling interest in an actual proprietor of a newspaper;]
- (b) any transfer of assets necessary to the continuation of a newspaper as a separate newspaper (including goodwill or the right to use the name of the newspaper);
- (c) any transfer of plant or premises used in the publication of a newspaper, other than a transfer made without a view to a change in the ownership or control of the newspaper or to its ceasing publication;



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and “the newspaper concerned in the transfer”, in relation to any transaction falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, means the newspaper in relation to which (as mentioned in that paragraph) the transaction is or is to be effected.

- (3) In this Part of this Act “average circulation per day of publication”, in relation to a newspaper, means its average circulation for the appropriate period, ascertained by dividing the number of copies to which its circulation amounts for that period by the number of days on which the newspaper was published during that period (circulation being calculated on the basis of actual sales in the United Kingdom of the newspaper as published on those days); and for the purposes of this subsection “the appropriate period”—
- (a) in a case in which an application is made for consent under the next following section, means the period of six months ending six weeks before the date of the application, or
  - (b) in a case in which a transfer or purported transfer is made without any such application for consent, means the period of six months ending six weeks before the date of the transfer or purported transfer.
- (4) For the purposes of this section a person has a [<sup>F40</sup>primary]controlling interest in a body corporate if (but only if) he can, directly or indirectly, determine the manner in which one-quarter of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.
- [<sup>F41</sup>(5) For the purposes of this section a person (“A”) has a secondary controlling interest in a body corporate (“B”) if, without having a primary controlling interest in B—
- (a) A has a primary controlling interest in a body corporate which has a primary controlling interest in B, or
  - (b) A is connected to B by a chain of any number of other bodies corporate, in the first of which A has a primary controlling interest, in the second of which the first has a primary controlling interest, and so on, the last such body corporate having a primary controlling interest in B.
- (6) For the purposes of this section a group of persons consists of any number of persons of whom the first is—
- (a) a person other than a body corporate, or
  - (b) a body corporate in which no other person has a primary controlling interest, and the others are the bodies corporate in which the first has a primary or secondary controlling interest.
- (7) In determining for the purposes of subsection (6)(b) of this section whether a body corporate (“X”) is one in which another person has a primary controlling interest, there shall be disregarded any body corporate in which X has a primary or secondary controlling interest.]

#### Textual Amendments

- F38** S. 57(1)(b)(1A) substituted (retrospectively) for s. 57(1)(b) by 1994 c. 40, s. 8(2)(6); S.I. 1994/3188, arts. 2, 3(a)
- F39** Subparagraphs (i)(ii) substituted (retrospectively) for words in s. 57(2) by 1994 c. 40, s. 8(3)(6); S.I. 1994/3188, arts. 2, 3(a)
- F40** Word in s. 57(4) inserted (retrospectively) by 1994 c. 40, s. 8(4)(6); S.I. 1994/3188, arts. 2, 3(a)

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**F41** S. 57(5)(6)(7) inserted (retrospectively) by 1994 c. 40, s. 8(5)(6); S.I. 1994/3188, arts. 2, 3(a)

## **58 Prohibition of certain newspaper mergers.**

- (1) Subject to the following provisions of this section, a transfer of a newspaper or of newspaper assets to a newspaper proprietor whose newspapers have an average circulation per day of publication amounting, together with that of the newspaper concerned in the transfer, to 500,000 or more copies shall be unlawful and void, unless the transfer is made with written consent given (conditionally or unconditionally) by the Secretary of State.
- (2) Except as provided by subsections (3) and (4) of this section and by section 60(3) of this Act, the consent of the Secretary of State under the preceding subsection shall not be given in respect of a transfer until after the Secretary of State has received a report on the matter from the Commission.
- (3) Where the Secretary of State is satisfied that the newspaper concerned in the transfer is not economic as a going concern and as a separate newspaper, then—
  - (a) if he is also satisfied that, if the newspaper is to continue as a separate newspaper, the case is one of urgency, he may give his consent to the transfer without requiring a report from the Commission under this section;
  - (b) if he is satisfied that the newspaper is not intended to continue as a separate newspaper, he shall give his consent to the transfer, and shall give it unconditionally, without requiring such a report.
- (4) If the Secretary of State is satisfied that the newspaper concerned in the transfer has an average circulation per day of publication of not more than 25,000 copies, he may give his consent to the transfer without requiring a report from the Commission under this section.
- (5) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for any number specified in subsection (1) or subsection (4) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other number as is specified in the order.
- (6) In this section “satisfied” means satisfied by such evidence as the Secretary of State may require.

## **59 Newspaper merger reference.**

- (1) Where an application is made to the Secretary of State for his consent to a transfer of a newspaper or of newspaper assets, the Secretary of State, subject to the next following subsection, shall, within one month after receiving the application, refer the matter to the Commission for investigation and report.
- (2) The Secretary of State shall not make a reference to the Commission under the preceding subsection in a case where—
  - (a) by virtue of subsection (3) of section 58 of this Act he is required to give his consent unconditionally without requiring a report from the Commission under this section, or



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- (b) by virtue of subsection (3) or subsection (4) of that section he has power to give his consent without requiring such a report from the Commission, and determines to exercise that power,
- or where the application is expressed to depend on the operation of subsection (3) or subsection (4) of that section.
- (3) On a reference made to them under this section (in this Act referred to as a “newspaper merger reference”) the Commission shall report to the Secretary of State whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of news and free expression of opinion.

## 60 Time-limit for report on newspaper merger reference.

- (1) A report of the Commission on a newspaper merger reference shall be made before the end of [F42such period (not being longer than three months beginning with the date of the reference) as may be specified in the] reference or of such further period (if any) as the Secretary of State may allow for the purpose in accordance with the next following subsection.
- (2) The Secretary of State shall not allow any further period for a report on such a reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the [F43period specified in the newspaper merger reference]; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.
- (3) If on such a reference the Commission have not made their report before the end of the period specified in [F44the newspaper merger reference] or of any further period allowed under subsection (2) of this section, the Secretary of State may, without waiting for the report, give his consent to the transfer to which the reference relates.

### Textual Amendments

- F42 Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 153, Sch. 20 para. 2\(1\)\(a\)\(2\)](#)
- F43 Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 153, Sch. 20 para. 2\(1\)\(b\)\(2\)](#)
- F44 Words substituted by [Companies Act 1989 \(c. 40, SIF 27\), s. 153, Sch. 20 para. 2\(1\)\(c\)\(2\)](#)

## 61 Report on newspaper merger reference.

- (1) In making their report on a newspaper merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
- (b) such a survey of the general position with respect to the transfer of a newspaper or of newspaper assets to which the reference relates, and of the developments which have led to that position,
- as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.
- (2) Where on such a reference the Commission find that the transfer of a newspaper or of newspaper assets in question might operate against the public interest, the Commission shall consider whether any (and, if so, what) conditions might be attached to any

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consent to the transfer in order to prevent the transfer from so operating, and may, if they think fit, include in their report recommendations as to such conditions.

## 62 Enforcement provisions relating to newspaper mergers.

- (1) Any person who is knowingly concerned in, or privy to, a purported transfer of a newspaper or of newspaper assets which is unlawful by virtue of section 58 of this Act shall be guilty of an offence.
- (2) Where under that section the consent of the Secretary of State is given to a transfer of a newspaper or of newspaper assets, but is given subject to one or more conditions, any person who is knowingly concerned in, or privy to, a breach of that condition, or of any of those conditions, as the case may be, shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) No proceedings for an offence under this section shall be instituted—
  - (a) in England or Wales, except by, or with the consent of, the Director of Public Prosecutions, or
  - (b) in Northern Ireland, except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

### *Other merger references*

## 63 Mergers references to which ss. 64 to 75 apply.

- (1) Sections 64 [F45 to 75K of this Act shall not have effect in relation to] newspaper merger references; and accordingly in those sections “merger reference” shall be construed—
  - (a) as not including a reference made under section 59 of this Act, but
  - (b) as including any merger reference relating to a transfer of a newspaper or of newspaper assets, if the reference is made under section 64 or section 75 of this Act in a case falling within section 59(2) of this Act.
- (2) In the following provisions of this Part of this Act “enterprise” means the activities, or part of the activities, of a business.

### **Textual Amendments**

**F45** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 3](#)

### **Modifications etc. (not altering text)**

**C48** [S. 63\(2\)](#) (definition of "enterprise") applied (E.W.)(01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 35\(1\)](#), [223\(2\)](#) (with [ss. 82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14 para. 6](#)).

## 64 Merger situation qualifying for investigation.

- (1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that two or more enterprises (in this section referred to as “the relevant enterprises”), of which one at least was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the

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- United Kingdom, have, at a time or in circumstances falling within subsection (4) of this section, ceased to be distinct enterprises, and that either—
- (a) as a result, the condition specified in subsection (2) or in subsection (3) of this section prevails, or does so to a greater extent, with respect to the supply of goods or services of any description, or
  - (b) the value of the assets taken over exceeds [<sup>F46</sup>£70 million].
- (2) The condition referred to in subsection (1)(a) of this section, in relation to the supply of goods of any description, is that at least one-quarter of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom, either—
- (a) are supplied by one and the same person or are supplied to one and the same person, or
  - (b) are supplied by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or are supplied to those persons.
- (3) The condition referred to in subsection (1)(a) of this section, in relation to the supply of services of any description, is that the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is, to the extent of at least one-quarter, either—
- (a) supply by one and the same person, or supply for one and the same person, or
  - (b) supply by the persons by whom the relevant enterprises (so far as they continue to be carried on) are carried on, or supply for those persons.
- (4) For the purposes of subsection (1) of this section enterprises shall be taken to have ceased to be distinct enterprises at a time or in circumstances falling within this subsection if either—
- (a) they did so not earlier than six months before the date on which the merger reference relating to them is to be made, or
  - (b) they did so under or in consequence of arrangements or transactions which were entered into without prior notice being given to the Secretary of State or to the Director of material facts about the proposed arrangements or transactions and in circumstances in which those facts had not been made public, and notice of those facts was not given to the Secretary of State or to the Director or made public more than six months before the date mentioned in the preceding paragraph.
- (5) In determining whether to make a merger reference to the Commission the Secretary of State shall have regard, with a view to the prevention or removal of uncertainty, to the need for making a determination as soon as is reasonably practicable.
- (6) On making a merger reference, the Secretary of State shall arrange for it to be published in such manner as he thinks most suitable for bringing it to the attention of persons who in his opinion would be affected by it.
- (7) The Secretary of State may by order made by statutory instrument provide, subject to any transitional provisions contained in the order, that for the sum specified in subsection (1)(b) of this section (whether as originally enacted or as previously varied by an order under this subsection) there shall be substituted such other sum (not being less than £5 million) as is specified in the order.
- (8) The fact that two or more enterprises have ceased to be distinct enterprises in the circumstances described in subsection (1) of this section (including in those circumstances the result specified in paragraph (a), or fulfilment of the condition

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specified in paragraph (b), of that subsection) shall, for the purposes of this Act, be regarded as creating a merger situation qualifying for investigation; and in this Act “merger situation qualifying for investigation” and any reference to the creation of such a situation shall be construed accordingly.

- (9) In this section “made public” means so publicised as to be generally known or readily ascertainable.

#### Textual Amendments

**F46** Words in s. 64(1)(b) substituted (9.2.1994) by S.I. 1994/72, art. 2 (subject to the proviso that this variation shall not have effect in relation to any merger reference which was made to the Monopolies and Mergers Commission before 9.2.1994)

#### Modifications etc. (not altering text)

**C49** S. 64 applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 30(5)(b)(ii)

**C50** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 65 Enterprises ceasing to be distinct enterprises.

- (1) For the purposes of this Part of this Act any two enterprises shall be regarded as ceasing to be distinct enterprises if either—
- (a) they are brought under common ownership or common control (whether or not the business to which either of them formerly belonged continues to be carried on under the same or different ownership or control), or
  - (b) either of the enterprises ceases to be carried on at all and does so in consequence of any arrangements or transaction entered into to prevent competition between the enterprises.
- (2) For the purposes of the preceding subsection enterprises shall (without prejudice to the generality of the words “common control” in that subsection) be regarded as being under common control if they are—
- (a) enterprises of interconnected bodies corporate, or
  - (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control, or
  - (c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.
- (3) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate, or the policy of any person in carrying on an enterprise, but without having a controlling interest in that body corporate or in that enterprise, may for the purposes of subsections (1) and (2) of this section be treated as having control of it.
- (4) For the purposes of subsection (1)(a) of this section, in so far as it relates to bringing two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if—
- (a) being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate, or

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- (b) being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy.

#### Modifications etc. (not altering text)

- C51** S. 65 applied (with modifications) (11.1.1999) by 1998 c. 41, ss. 3(1)(a), 19(1)(a), Sch. 1 Pt. I paras. 1(4), 2(2) (with s. 73); S.I. 1998/3166, art. 2, Sch.
- C52** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 66 Time when enterprises cease to be distinct.

- (1) Where under or in consequence of the same arrangements or transaction, or under or in consequence of successive arrangements or transactions between the same parties or interests, successive events to which this subsection applies occur within a period of two years, then for the purposes of a merger reference those events may, if the Secretary of State [<sup>F47</sup>or the Commission] thinks fit, be treated as having occurred simultaneously on the date on which the latest of them occurred.
- (2) The preceding subsection applies to any event whereby, under or in consequence of the arrangements or the transaction or transactions in question, any enterprises cease as between themselves to be distinct enterprises.
- (3) For the purposes of subsection (1) of this section any arrangements or transactions may be treated by the Secretary of State [<sup>F47</sup>or the Commission] as arrangements or transactions between the same interests if it appears to him to be appropriate that they should be so treated, having regard to the persons who are substantially concerned in them.
- (4) Subject to the preceding provisions of this section [<sup>F48</sup>and to section 66A of this Act], the time at which any two enterprises cease to be distinct enterprises, where they do so under or in consequence of any arrangements or transaction not having immediate effect, or having immediate effect in part only, shall be taken to be the time when the parties to the arrangements or transaction become bound to such extent as will result, on effect being given to their obligations, in the enterprises ceasing to be distinct enterprises.
- (5) In accordance with subsection (4) of this section (but without prejudice to the generality of that subsection) for the purpose of determining the time at which any two enterprises cease to be distinct enterprises no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

#### Textual Amendments

- F47** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 4(a), 10
- F48** Words inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 4(b), 10

#### Modifications etc. (not altering text)

- C53** S. 66 applied (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 29(9)
- C54** S. 66 applied (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), ss. 35(2), 223(2) (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6).
- C55** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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## [<sup>F49</sup>66A Obtaining control by stages.

- (1) Where an enterprise is brought under the control of a person or group of persons in the course of two or more transactions (referred to in this section as a “series of transactions”) falling within subsection (2) of this section, those transactions may, if the Secretary of State or, as the case may be, the Commission thinks fit, be treated for the purposes of a merger reference as having occurred simultaneously on the date on which the latest of them occurred.
- (2) The transactions falling within this subsection are—
  - (a) any transaction which—
    - (i) enables that person or group of persons directly or indirectly to control or materially to influence the policy of any person carrying on the enterprise,
    - (ii) enables that person or group of persons to do so to a greater degree, or
    - (iii) is a step (whether direct or indirect) towards enabling that person or group of persons to do so, and
  - (b) any transaction whereby that person or group of persons acquires a controlling interest in the enterprise or, where the enterprise is carried on by a body corporate, in that body corporate.
- (3) Where a series of transactions includes a transaction falling within subsection (2)(b) of this section, any transaction occurring after the occurrence of that transaction is to be disregarded for the purposes of subsection (1) of this section.
- (4) Where the period within which a series of transactions occurs exceeds two years, the transactions that may be treated as mentioned in subsection (1) of this section are any of those transactions that occur within a period of two years.
- (5) Sections 65(2) to (4) and 77(1) and (4) to (6) of this Act apply for the purposes of this section to determine whether an enterprise is brought under the control of a person or group of persons and whether a transaction falls within subsection (2) of this section as they apply for the purposes of section 65 of this Act to determine whether enterprises are brought under common control.
- (6) In determining for the purposes of this section the time at which any transaction occurs, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.]

### Textual Amendments

**F49** S. 66A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **s. 150(1)(2)**

### Modifications etc. (not altering text)

**C56** By [Water Act 1989 \(c. 15, SIF 130\)](#), **s. 29(9) s. 66A** is expressed to be applied (E.W.)

**C57** S. 66A applied (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 35(2), 223(2)** (with **ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6**).

Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 66(3)**; S.I. 1994/571, **art. 5**

## 67 Valuation of assets taken over.

- (1) The provisions of this section shall have effect for the purposes of section 64(1)(b) of this Act.



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- (2) Subject to subsection (4) of this section, the value of the assets taken over—
- (a) shall be determined by taking the total value of the assets employed in, or appropriated to, the enterprises which cease to be distinct enterprises, except
    - <sup>F50</sup>(i) any enterprise which remains under the same ownership and control, or
    - (ii) if none of the enterprises remains under the same ownership and control, the enterprise having the assets with the highest value, and]
  - (b) shall be so determined by reference to the values at which, on the enterprises ceasing to be distinct enterprises or (if they have not then done so) on the making of the merger reference to the Commission, the assets stand in the books of the relevant business, less any relevant provisions for depreciation, renewals or diminution in value.
- (3) For the purposes of subsection (2) of this section any assets of a body corporate which, on a change in the control of the body corporate or of any enterprise of it, are dealt with in the same way as assets appropriated to any such enterprise shall be treated as appropriated to that enterprise.
- (4) Where in accordance with subsection (1) of section 66 [<sup>F51</sup>or subsection (1) of section 66A] of this Act events to which [<sup>F52</sup>either of those subsections] applies are treated as having occurred simultaneously, subsection (2) of this section shall apply with such adjustments as appear to the Secretary of State or to the Commission to be appropriate.

#### Textual Amendments

**F50** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 5(1), **10**

**F51** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 5(2), **10**

**F52** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 5(2), **10**

#### Modifications etc. (not altering text)

**C58** Ss. 64-77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); S.I. 1994/571, **art. 5**

**C59** [Section 67\(3\)](#) applied (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), **s. 29(6)(d)–(8)**

**C60** [S. 67\(3\)\(4\)](#) applied (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), **ss. 33(3)(d), 223(2)** (with **ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6**).

**C61** [S. 67\(4\)](#) applied (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), **s. 29(6)(d)–(8)**

## 68 Supplementary provisions as to merger situations qualifying for investigation.

- (1) In relation to goods or services of any description which are the subject of different forms of supply—
- (a) references in subsection (2) of section 64 of this Act to the supply of goods, or
  - (b) references in subsection (3) of that section to the supply of services,
- shall be construed in whichever of the following ways appears to the Secretary of State or the Commission, as the case may be, to be appropriate in all the circumstances, that is to say, as references to any of those forms of supply taken separately, to all those forms of supply taken together, or to any of those forms of supply taken in groups.
- (2) For the purposes of the preceding subsection the Secretary of State or the Commission may treat goods or services as being the subject of different forms of supply whenever the transactions in question differ as to their nature, their parties, their terms or their

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surrounding circumstances, and the difference is one which, in the opinion of the Secretary of State or of the Commission, as the case may be, ought for the purposes of that subsection to be treated as a material difference.

- (3) For the purpose of determining whether the proportion of one-quarter mentioned in subsection (2) or subsection (3) of section 64 of this Act is fulfilled with respect to goods or services of any description, the Secretary of State or the Commission, as the case may be, shall apply such criterion (whether it be value or cost or price or quantity or capacity or number of workers employed or some other criterion, of whatever nature) or such combination of criteria as may appear to the Secretary of State or the Commission to be most suitable in all the circumstances.
- (4) The criteria for determining when goods or services can be treated, for the purposes of section 64 of this Act, as goods or services of a separate description shall be such as in any particular case the Secretary of State [<sup>F53</sup>or, as the case may be, the Commission] thinks most suitable in the circumstances of that case.

#### Textual Amendments

**F53** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 6, 10

#### Modifications etc. (not altering text)

**C62** Ss. 64-77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); [S.I. 1994/571, art. 5](#)

## 69 Different kinds of merger references.

- (1) Subject to the following provisions of this Part of this Act, on a merger reference the Commission shall investigate and report on the questions—
  - (a) whether a merger situation qualifying for investigation has been created, and
  - (b) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.
- (2) A merger reference may be so framed as to require the Commission, in relation to the question whether a merger situation qualifying for investigation has been created, to exclude from consideration paragraph (a) of subsection (1) of section 64 of this Act, or to exclude from consideration paragraph (b) of that subsection, or to exclude one of those paragraphs if the Commission find the other satisfied.
- (3) In relation to the question whether any such result as is mentioned in section 64(1)(a) of this Act has arisen, a merger reference may be so framed as to require the Commission to confine their investigation to the supply of goods or services in a specified part of the United Kingdom.
- (4) A merger reference may require the Commission, if they find that a merger situation qualifying for investigation has been created, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation operates, or may be expected to operate, against the public interest.



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### Modifications etc. (not altering text)

**C63** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 70 Time-limit for report on merger reference.

- (1) Every merger reference shall specify a period (not being longer than six months beginning with the date of the reference) within which a report on the reference is to be made; and a report of the Commission on a merger reference shall not have effect, and no action shall be taken in relation to it under this Act, unless the report is made before the end of that period or of such further period (if any) as may be allowed by the Secretary of State in accordance with the next following subsection.
- (2) The Secretary of State shall not allow any further period for a report on a merger reference except on representations made by the Commission and on being satisfied that there are special reasons why the report cannot be made within the period specified in the reference; and the Secretary of State shall allow only one such further period on any one reference, and no such further period shall be longer than three months.

### Modifications etc. (not altering text)

**C64** S. 70 applied with modifications (E.W.) (01.12.1991) by [Water Industry Act 1991](#) (c. 56, SIF 130), [ss. 14\(7\)](#), [223\(2\)](#) (with [ss. 82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14](#) para. 6).

S. 70 extended with modifications (1.4.1992) by S.I. 1992/231 (N.I. 1), [art. 15\(8\)](#); S.R. 1992/117, [art.3\(1\)](#)

S. 70 applied (with modifications) (1.2.2001) by 2000 c. 38, [s. 12\(9\)\(10\)\(a\)](#) (with s. 106); S.I. 2001/57, [art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to transitional provision and saving in [Sch. 2 Pt. II](#))

S. 70 applied (with modifications) (1.10.2001) by 1989 c. 29, [s. 56C](#) (as inserted (1.10.2001) by 2000 c. 27, [ss. 43](#), [104\(1\)\(2\)\(6\)](#)); S.I. 2001/3266, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

S. 70 applied (with modifications) (1.10.2001) by 1986 c. 44, [s. 41E\(7\)\(8\)](#) (as inserted (1.10.2001) by 2000 c. 27, [ss. 88](#), [104\(1\)\(2\)\(6\)](#)); S.I. 2001/3266, [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

S. 70 applied (with modifications) (30.11.2000) by 1993 c. 43, [Sch. 4A para. 10\(1\)\(2\)\(a\)](#) (as inserted (30.11.2000) by 2000 c. 38, [ss. 231\(2\)](#), [275\(4\)](#), [Sch. 24](#))

S. 70 applied (with modifications) (26.3.2001) by 2000 c. 26, [s. 20\(1\)\(2\)\(a\)](#); S.I. 2000/2957, [art. 2\(3\)](#), [Sch. 3](#)

S. 70 extended (4.4.1980) by [Competition Act 1980](#) (c. 21), [s. 11\(9\)](#) and extended *ibid.*, [ss. 7\(6\)](#), [33\(5\)](#)

S. 70 applied with modifications by [Telecommunications Act 1984](#) (c. 12, SIF 96), [s. 13\(9\)](#)

S. 70 applied with modifications (E.W.S.) by [Airports Act 1986](#) (c. 31, SIF 9), [s. 44\(3\)](#)

S. 70 applied with modifications (E.W.) by [Gas Act 1986](#) (c. 44, SIF 44:2), [ss. 24\(7\)](#), [48\(3\)\(4\)](#)

S. 70 applied with modifications (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), [s. 16\(7\)](#)

S. 70 applied with modifications (E.W.S.) by [Electricity Act 1989](#) (c. 29, SIF 44:1) s. 12(8)

S. 70 applied (with modifications) (E.W.S.) (1.4.1994) by 1993 c. 43, [s. 13\(8\)\(9\)](#); S.I. 1994/571, [art. 5](#)

Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, [s. 66\(3\)](#); S.I. 1994/571, [art. 5](#)

S. 70 applied (with modifications) (N.I.) (1.9.1995) by S.I. 1994/426 (N.I. 1), [art. 35\(3\)](#); S.R. 1995/294, [art. 2](#), [Sch.](#)

S. 70 applied (with modifications) (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), [art. 15\(9\)](#); S.R. 1996/216, [art. 2](#)

S. 70 applied (with modifications) (1.4.1999) by 1984 c. 12, [s. 13\(9\)\(9A\)](#) (as substituted (1.4.1999) by 1998 c. 41, [s. 54\(3\)](#), [Sch. 10 Pt. IV para. 9\(2\)](#) (with s. 73); S.I. 1999/505, [art. 2](#), [Sch. 2](#))

S. 70 applied (with modifications) (1.4.1999) by 1986 c. 44, [s. 24\(7\)\(7A\)](#) (as substituted (1.4.1999) by 1998 c. 41, [s. 54\(3\)](#), [Sch. 10 Pt. IV para. 10\(2\)](#) (with s. 73); S.I. 1999/505, [art. 2](#), [Sch. 2](#))

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- S. 70 applied (with modifications) (1.4.1999) by 1989 c. 29, **s. 12(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 12(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1991 c. 56, **s. 14(7)(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1993 c. 43, **s. 13(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 15(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1992/231 (N.I. 1), **art. 15(8)(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. V para. 17(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1996/275 (N.I. 2), **art. 15(9)(9A)** (with **Sch. 7 paras. 2, 3(2)**) (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. V para. 18(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1980 c. 21, **s. 11(9A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 4(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (1.4.1999) by 1986 c. 31, **s. 44(3)(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 7(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1994/426 (N.I. 1), **art. 35(3)(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 12 para. 20(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)
- S. 70 applied (with modifications) (24.11.1999) by S.I. 1999/3088, **regs. 7, 8**

## 71 Variation of certain merger references.

- (1) Subject to the following provisions of this section, the Secretary of State may at any time vary a merger reference . . . <sup>F54</sup>
- (2) . . . . . <sup>F55</sup>
- (3) Without prejudice to the powers of the Secretary of State under section 70 of this Act, a merger reference shall not be varied so as to specify a period within which a report on the reference is to be made which is different from the period specified in the reference in accordance with that section.

### Textual Amendments

**F54** Words repealed by **Companies Act 1989 (c. 40, SIF 27)**, ss. 153, 212, **Sch. 20 paras. 7(a), 10, Sch. 24**

**F55** **S.71(2)** repealed by **Companies Act 1989 (c. 40, SIF 27)**, ss. 153, 212, **Sch. 20 paras. 7(b), 10, Sch. 24**

### Modifications etc. (not altering text)

**C65** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 66(3)**; S.I. 1994/571, **art. 5**

## 72 Report of Commission on merger reference.

- (1) In making their report on a merger reference, the Commission shall include in it definite conclusions on the questions comprised in the reference, together with—
- (a) such an account of their reasons for those conclusions, and
  - (b) such a survey of the general position with respect to the subject-matter of the reference, and of the developments which have led to that position,
- as in their opinion are expedient for facilitating a proper understanding of those questions and of their conclusions.

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- (2) Where on a merger reference the Commission find that a merger situation qualifying for investigation has been created and that the creation of that situation operates or may be expected to operate against the public interest (or, in a case falling within subsection (4) of section 69 of this Act, find that one or more elements in or consequences of that situation which were specified in the reference in accordance with that subsection so operate or may be expected so to operate) the Commission shall specify in their report the particular effects, adverse to the public interest, which in their opinion the creation of that situation (or, as the case may be, those elements in or consequences of it) have or may be expected to have; and the Commission—
- (a) shall, as part of their investigations, consider what action (if any) should be taken for the purpose of remedying or preventing those adverse effects, and
  - (b) may, if they think fit, include in their report recommendations as to such action.
- (3) In paragraph (a) of subsection (2) of this section the reference to action to be taken for the purpose mentioned in that paragraph is a reference to action to be taken for that purpose either—
- (a) by one or more Ministers (including [<sup>F56</sup>Northern Ireland departments]) or other public authorities, or
  - (b) by one or more persons specified in the report as being persons carrying on, owning or controlling any of the enterprises which, in accordance with the conclusions of the Commission, have ceased to be distinct enterprises.

#### Textual Amendments

**F56** Words substituted by virtue of [Northern Ireland Act 1974 \(c. 28\)](#), [Sch. 1 para. 2\(1\)\(b\)\(4\)](#)

#### Modifications etc. (not altering text)

**C66** Ss. 64-77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); [S.I. 1994/571, art. 5](#)

### 73 Order of Secretary of State on report on merger reference.

- (1) The provisions of this section shall have effect where a report of the Commission on a merger reference has been laid before Parliament in accordance with the provisions of Part VII of this Act, and the conclusions of the Commission set out in the report, as so laid,—
- (a) include conclusions to the effect that a merger situation qualifying for investigation has been created and that its creation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest, and
  - (b) specify particular effects, adverse to the public interest, which in the opinion of the Commission the creation of that situation, or (as the case may be) those elements in or consequences of it, have or may be expected to have.
- (2) In the circumstances mentioned in the preceding subsection the Secretary of State may by order made by statutory instrument exercise such one or more of the powers specified in Parts I and II of Schedule 8 to this Act as he may consider it requisite to exercise for the purpose of remedying or preventing the adverse effects specified in the report as mentioned in the preceding subsection; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for that purpose.

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- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any recommendations included in the report of the Commission in pursuance of section 72(2)(b) of this Act and any advice given by the Director under section 88 of this Act.

**Modifications etc. (not altering text)**

- C67** S. 73 modified (1.4.1999) by 1998 c. 41, s. 45(7), **Sch. 7 Pt. II para. 20(2)(a)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- C68** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5
- C69** S.73(2) amended by Copyright, Designs and Patents Act 1988 (c.48, SIF 67A), ss. 144(2), 238(2)

**74 Interim order in respect of merger reference.**

- (1) Where a merger reference has been made to the Commission, . . . <sup>F57</sup>, then, with a view to preventing action to which this subsection applies, the Secretary of State, subject to subsection (3) of this section, may by order made by statutory instrument—
- (a) prohibit or restrict the doing of things which in his opinion would constitute action to which this subsection applies, or
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets, or
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner, or
  - (d) exercise any of the powers which, by virtue of [<sup>F58</sup>paragraph 12 and 12A] of Schedule 8 to this Act, are exercisable by an order under section 73 of this Act.
- (2) In relation to a merger reference the preceding subsection applies to any action which might prejudice the reference or impede the taking of any action under this Act which may be warranted by the Commission's report on the reference.
- (3) No order shall be made under this section in respect of a merger reference after whichever of the following events first occurs, that is to say—
- (a) the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report;
  - (b) the period of forty days beginning with the day on which a report of the Commission on the reference is laid before Parliament expires.
- (4) An order under this section made in respect of a merger reference (if it has not previously ceased to have effect) shall cease to have effect on the occurrence of whichever of those events first occurs, but without prejudice to anything previously done under the order.
- (5) Subsection (4) of this section shall have effect without prejudice—
- (a) to the operation, in relation to any such order, of section 134(1) of this Act, or
  - (b) to the operation of any order made under section 73 of this Act which exercises the same or similar powers to those exercised by the order under this section.

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### Textual Amendments

**F57** S.74(1) Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 paras. 8(a), 10, Sch. 24

**F58** Words substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 paras. 8(b), 10

### Modifications etc. (not altering text)

**C70** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

## 75 Reference in anticipation of merger.

- (1) A merger reference may be made to the Commission by the Secretary of State where it appears to him that it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.
- (2) Subject to the following provisions of this section, on a merger reference under this section the Commission shall proceed in relation to the prospective and (if events so require) the actual results of the arrangements proposed or made as, in accordance with the preceding provisions of this Part of this Act, they could proceed if the arrangements in question had actually been made, and the results in question had followed immediately before the date of the reference under this section.
- (3) A merger reference under this section may require the Commission, if they find that a merger situation qualifying for investigation has been created, or will be created if the arrangements in question are carried into effect, to limit their consideration thereafter to such elements in, or possible consequences of, the creation of that situation as may be specified in the reference, and to consider whether, in respect only of those elements or possible consequences, the situation might be expected to operate against the public interest.
- (4) In relation to a merger reference under this section, sections 66, [F59 66A], 67, 69, 71, 72, 73 and 74 of this Act shall apply subject to the following modifications, that is to say—
  - [F60(a) section 66 shall apply, where an event by which any enterprises cease as between themselves to be distinct enterprises will occur if the arrangements are carried into effect, as if the event had occurred immediately before the date of the reference;
  - (aa) section 66A shall apply, where a transaction falling within subsection (2) of that section will occur if the arrangements are carried into effect, as if the transaction had occurred immediately before the date of the reference;
  - (b) in section 67(4) the references to subsection (1) of section 66 and subsection (1) of section 66A shall be construed as references to those subsections as modified in accordance with paragraph (a) or (aa) of this subsection;]
  - (c) in section 69, subsection (1) shall be construed as modified by subsection (2) of this section; in subsections (2) and (3) any reference to the question whether a merger situation qualifying for investigation has been created, or whether a result mentioned in section 64(1)(a) of this Act has arisen, shall be construed as including a reference to the question whether such a situation will be created or such a result will arise if the arrangements in question are carried into effect; and subsection (4) of that section shall not apply;

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- (d) in section 71, in section 72(2) and in section 74(1), the references to section 69(4) of this Act shall be construed as references to subsection (3) of this section; and
  - (e) in section 73(1), the reference to conclusions to the effect that a merger situation qualifying for investigation has been created shall be construed as including a reference to conclusions to the effect that such a situation will be created if the arrangements in question are carried into effect.
- [<sup>F61</sup>(4A) Where a merger reference is made under this section, it shall be unlawful, except with the consent of the Secretary of State under subsection (4C) of this section—
- (a) for any person carrying on any enterprise to which the reference relates or having control of any such enterprise or for any subsidiary of his, or
  - (b) for any person associated with him or for any subsidiary of such a person, directly or indirectly to acquire, at any time during the period mentioned in subsection (4B) of this section, an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (4B) The period referred to in subsection (4A) of this section is the period beginning with the announcement by the Secretary of State of the making of the merger reference concerned and ending—
- (a) where the reference is laid aside at any time, at that time,
  - (b) where the time (including any further period) allowed to the Commission for making a report on the reference expires without their having made such a report, on the expiration of that time,
  - (c) where a report of the Commission on the reference not including such conclusions as are referred to in section 73(1)(b) of this Act is laid before Parliament, at the end of the day on which the report is so laid,
  - (d) where a report of the Commission on the reference including such conclusions is laid before Parliament, at the end of the period of forty days beginning with the day on which the report is so laid,
- and where such a report is laid before each House on different days, it is to be treated for the purposes of this subsection as laid on the earlier day.
- (4C) The consent of the Secretary of State—
- (a) may be either general or special,
  - (b) may be revoked by the Secretary of State, and
  - (c) shall be published in such way as, in the opinion of the Secretary of State, to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the Secretary of State's opinion publication is not necessary for that purpose.
- (4D) Section 93 of this Act applies to any contravention or apprehended contravention of subsection (4A) of this section as it applies to a contravention or apprehended contravention of an order to which section 90 of this Act applies.
- (4E) Subsections (4F) to (4K) of this section apply for the interpretation of subsection (4A).
- (4F) The circumstances in which a person acquires an interest in shares include those where—
- (a) he enters into a contract to acquire the shares (whether or not for cash),
  - (b) not being the registered holder, he acquires a right to exercise, or to control the exercise of, any right conferred by the holding of the shares, or

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- (c) he acquires a right to call for delivery of the shares to himself or to his order or to acquire an interest in the shares or assumes an obligation to acquire such an interest,
- but does not include those where he acquires an interest in pursuance of an obligation assumed before the announcement by the Secretary of State of the making of the merger reference concerned.
- (4G) The circumstances in which a person acquires a right mentioned in subsection (4F) of this section—
- (a) include those where he acquires a right or assumes an obligation the exercise or fulfilment of which would give him that right, but
- (b) does not include those where he is appointed as proxy to vote at a specified meeting of a company or of any class of its members or at any adjournment of the meeting or he is appointed by a corporation to act as its representative at any meeting of the company or of any class of its members,
- and references to rights and obligations in this subsection and subsection (4F) of this section include conditional rights and conditional obligations.
- (4H) Any reference to a person carrying on or having control of any enterprise includes a group of persons carrying on or having control of an enterprise and any member of such a group.
- (4J) Sections 65(2) to (4) and 77(1) and (4) to (6) of this Act apply to determine whether any person or group of persons has control of any enterprise and whether persons are associated as they apply for the purposes of section 65 of this Act to determine whether enterprises are brought under common control.
- (4K) “Subsidiary” has the meaning given by section 736 of the Companies Act 1985, but that section and section 736A of that Act also apply to determine whether a company is a subsidiary of an individual or of a group of persons as they apply to determine whether it is a subsidiary of a company and references to a subsidiary in subsections (8) and (9) of section 736A as so applied are to be read accordingly.
- (4L) In this section—
- “company” includes any body corporate, and
- “share” means share in the capital of a company, and includes stock.
- (4M) Nothing in subsection (4A) of this section makes anything done by a person outside the United Kingdom unlawful unless he is—
- (a) a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British National (Overseas),
- (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
- (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons.]
- (5) If, in the course of their investigations on a merger reference under this section, it appears to the Commission that the proposal to make arrangements such as are mentioned in the reference has been abandoned, the Commission—
- (a) shall, if the Secretary of State consents, lay the reference aside, but
- (b) shall in that case furnish to the Secretary of State such information as he may require as to the results until then of the investigations.



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#### Textual Amendments

- F59** “66A” inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 9(a), **10**  
**F60** [S. 75\(4\)\(a\)\(aa\)\(b\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, Sch. 20 paras. 9(b), **10**  
**F61** [S. 75\(4A\)–\(4M\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. **149**

#### Modifications etc. (not altering text)

- C71** Ss. 64–77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); S.I. 1994/571, **art. 5**  
**C72** [S. 75\(5\)](#) applied (1.4.1999) by [1998 c. 41, s. 45\(7\)](#), **Sch. 7 Pt. II para. 15(7)(b)** (with s. 73): S.I. 1999/505, **art. 2, Sch. 2**

*[<sup>F62</sup> Restriction on power to make merger reference where prior notice has been given*

#### Textual Amendments

- F62** Ss. 75A–75F inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. **146**

### **75A General rule where notice given by acquirer and no reference made within period for considering notice.**

- (1) Notice may be given to the Director by a person authorised by regulations to do so of proposed arrangements which might result in the creation of a merger situation qualifying for investigation.
- (2) The notice must be in the prescribed form and state that the existence of the proposal has been made public.
- (3) If the period for considering the notice expires without any reference being made to the Commission with respect to the notified arrangements, no reference may be made under this Part of this Act to the Commission with respect to those arrangements or to the creation or possible creation of any merger situation qualifying for investigation which is created in consequence of carrying those arrangements into effect.
- (4) Subsection (3) of this section is subject to sections 75B(5) and 75C of this Act.
- (5) A notice under subsection (1) of this section is referred to in sections 75B to 75F of this Act as a “merger notice”.

#### Modifications etc. (not altering text)

- C73** Ss. 64–77 modified (E.W.S.) (1.4.1994) by [1993 c. 43, s. 66\(3\)](#); S.I. 1994/571, **art. 5**

### **75B The role of the Director.**

- (1) The Director shall, when the period for considering any merger notice begins, take such action as he considers appropriate to bring the existence of the proposal, the fact that the merger notice has been given and the date on which the period for considering the notice may expire to the attention of those who in his opinion would be affected if the arrangements were carried into effect.



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- (2) The period for considering a merger notice is the period of twenty days, determined in accordance with subsection (9) of this section, beginning with the first day after—
  - (a) the notice has been received by the Director, and
  - (b) any fee payable to the Director in respect of the notice has been paid.
- (3) The Director may, and shall if required to do so by the Secretary of State, by notice to the person who gave the merger notice [<sup>F63</sup>extend the period mentioned in subsection (2) of this section by a further fifteen days].
- (4) The Director may by notice to the person who gave the merger notice request him to provide the Director within such period as may be specified in the notice with such information as may be so specified.
- (5) If the Director gives to the person who gave the merger notice (in this subsection referred to as “the relevant person”) a notice stating that the Secretary of State is seeking undertakings under section 75G of this Act, section 75A(3) of this Act does not prevent a reference being made to the Commission unless—
  - (a) after the Director has given that notice, the relevant person has given a notice to the Director stating that he does not intend to give such undertakings, and
  - (b) the period of ten days beginning with the first day after the notice under paragraph (a) of this subsection was received by the Director has expired.
- (6) A notice by the Director under subsection (3), (4) or (5) of this section must either be given to the person who gave the merger notice before the period for considering the merger notice expires or be sent in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that period expires.
- (7) The Director may, at any time before the period for considering any merger notice expires, reject the notice if—
  - (a) he suspects that any information given in respect of the notified arrangements, whether in the merger notice or otherwise, by the person who gave the notice or any connected person is in any material respect false or misleading,
  - (b) he suspects that it is not proposed to carry the notified arrangements into effect, [<sup>F64</sup>or]
  - (c) any prescribed information is not given in the merger notice or any information requested by notice under subsection (4) of this section is not provided within the period specified in the notice.

[<sup>F64</sup>or,

  - (d) it appears to him that the notified arrangements are, or if carried into effect would result in, a concentration with a Community dimension within the meaning of Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings.]
- (8) If—
  - (a) under subsection [<sup>F63</sup>(3)] of this section the period for considering a merger notice has been extended by a further fifteen days, but
  - (b) the Director has not made any recommendation to the Secretary of State under section 76(b) of this Act as to whether or not it would in the Director’s opinion be expedient for the Secretary of State to make a reference to the Commission with respect to the notified arrangements,

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then, during the last five of those fifteen days, the power of the Secretary of State to make a reference to the Commission with respect to the notified arrangements is not affected by the absence of any such recommendation.

- (9) In determining any period for the purposes of subsections (2), (3) and (5) of this section no account shall be taken of—
- (a) Saturday, Sunday, Good Friday and Christmas Day, and
  - (b) any day which is a bank holiday in England and Wales.

#### Textual Amendments

**F63** Words in s. 75B(3)(8)(a) substituted (18.8.1994) by S.I. 1994/1934, reg. 3

**F64** By S.I. 1990/1563, reg. 2 it is provided that for the purpose of determining the effect of giving a merger notice and the steps which may be or are to be taken by any person in connection with such a notice in a case in which the arrangements in question are or would result in a concentration with a Community dimension, section 75B is amended by omitting the word “or” at the end of paragraph (b) of subsection (7) and adding the word “or” and para. (d) at the end of that subsection

#### Modifications etc. (not altering text)

**C74** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3), 154(2); S.I. 1994/571, art. 5

### 75C Cases where power to refer unaffected.

- (1) Section 75A(3) of this Act does not prevent any reference being made to the Commission if—
- (a) before the end of the period for considering the merger notice, it is rejected by the Director under section 75B(7) of this Act,
  - (b) before the end of that period, any of the enterprises to which the notified arrangements relate cease to be distinct from each other,
  - (c) any information (whether prescribed information or not) that—
    - (i) is, or ought to be, known to the person who gave the merger notice or any connected person, and
    - (ii) is material to the notified arrangements;
 is not disclosed to the Secretary of State or the Director by such time before the end of that period as may be specified in regulations,
  - (d) at any time after the merger notice is given but before the enterprises to which the notified arrangements relate cease to be distinct from each other, any of those enterprises ceases to be distinct from any enterprise other than an enterprise to which those arrangements relate,
  - (e) the six months beginning with the end of the period for considering the merger notice expires without the enterprises to which the notified arrangements relate ceasing to be distinct from each other,
  - (f) the merger notice is withdrawn, or
  - (g) any information given in respect of the notified arrangements, whether in the merger notice or otherwise, by the person who gave the notice or any connected person is in any material respect false or misleading.

- (2) Where—

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- (a) two or more transactions which have occurred or, if any arrangements are carried into effect, will occur may be treated for the purposes of a merger reference as having occurred simultaneously on a particular date, and
  - (b) subsection (3) of section 75A of this Act does not prevent such a reference with respect to the last of those transactions,
- that subsection does not prevent such a reference with respect to any of those transactions which actually occurred less than six months before—
- (i) that date, or
  - (ii) the actual occurrence of another of those transactions with respect to which such a reference may be made (whether or not by virtue of this subsection).
- (3) In determining for the purposes of subsection (2) of this section the time at which any transaction actually occurred, no account shall be taken of any option or other conditional right until the option is exercised or the condition is satisfied.

**Modifications etc. (not altering text)**

**C75** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, ss. 66(3); S.I. 1994/571, art. 5

## 75D Regulations

- (1) The Secretary of State may make regulations for the purposes of sections 75A to 75C of this Act.
- (2) The regulations may, in particular—
  - (a) provide for section 75B(2) or (3) or section 75C(1)(e) of this Act to apply as if any reference to a period of days or months were a reference to a period specified in the regulations for the purposes of the provision in question,
  - (b) provide for the manner in which any merger notice is authorised or required to be given, rejected or withdrawn, and the time at which any merger notice is to be treated as received or rejected,
  - (c) provide for the manner in which any information requested by the Director or any other material information is authorised or required to be provided or disclosed, and the time at which such information is to be treated as provided or disclosed,
  - (d) provide for the manner in which any notice under section 75B of this Act is authorised or required to be given,
  - (e) provide for the time at which any notice under section 75B(5)(a) of this Act is to be treated as received,
  - (f) provide for the address which is to be treated for the purposes of section 75B(6) of this Act and of the regulations as a person's proper address,
  - (g) provide for the time at which any fee is to be treated as paid, and
  - (h) provide that a person is, or is not, to be treated, in such circumstances as may be specified in the regulations, as acting on behalf of a person authorised by regulations to give a merger notice or a person who has given such a notice.
- (3) The regulations may make different provision for different cases.
- (4) Regulations under this section shall be made by statutory instrument.

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**Modifications etc. (not altering text)**

C76 Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**75E Interpretation of sections 75A to 75D.**

In this section and sections 75A to 75D of this Act—

“connected person”, in relation to the person who gave a merger notice, means—

- (a) any person who, for the purposes of section 77 of this Act, is associated with him, or
- (b) any subsidiary of the person who gave the merger notice or of any person so associated with him,

“merger notice” is to be interpreted in accordance with section 75A(5) of this Act,

“notified arrangements” means the arrangements mentioned in the merger notice or arrangements not differing from them in any material respect,

“prescribed” means prescribed by the Director by notice having effect for the time being and published in the London, Edinburgh and Belfast Gazettes,

“regulations” means regulations under section 75D of this Act, and “and regulations” means regulations under section 75D of this Act, and

“subsidiary” has the meaning given by section 75(4K) of this Act,

and references to the enterprises to which the notified arrangements relate are references to those enterprises that would have ceased to be distinct from one another if the arrangements mentioned in the merger notice in question had been carried into effect at the time when the notice was given.

**Modifications etc. (not altering text)**

C77 Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, ss. 66(3); S.I. 1994/571, art. 5

**75F Power to amend sections 75B to 75D.**

- (1) The Secretary of State may, for the purpose of determining the effect of giving a merger notice and the steps which may be or are to be taken by any person in connection with such a notice, by regulations made by statutory instrument amend sections 75B to 75D of this Act.
- (2) The regulations may make different provision for different cases and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
- (3) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by resolution of each House of Parliament.]

**Modifications etc. (not altering text)**

C78 Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

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*F<sup>65</sup> Undertakings as alternative to merger reference*

**Textual Amendments**

**F65** Ss. 75G–75K inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), [s. 147](#)

**75G Acceptance of undertakings.**

(1) Where—

- (a) the Secretary of State has power to make a merger reference to the Commission under section 64 or 75 of this Act,
- (b) the Director has made a recommendation to the Secretary of State under section 76 of this Act that such a reference should be made, and
- (c) the Director has (in making that recommendation or subsequently) given advice to the Secretary of State specifying particular effects adverse to the public interest which in his opinion the creation of the merger situation qualifying for investigation may have or might be expected to have,

the Secretary of State may, instead of making a merger reference to the Commission, accept from such of the parties concerned as he considers appropriate undertakings <sup>F66</sup> . . . to take specified action which the Secretary of State considers appropriate to remedy or prevent the effects adverse to the public interest specified in the advice. the Secretary of State may, instead of making a merger reference to the Commission, accept from such of the parties concerned as he considers appropriate undertakings complying with subsections (2) and (3) of this section to take specified action which the Secretary of State considers appropriate to remedy or prevent the effects adverse to the public interest specified in the advice.

<sup>F67</sup>(2) . . . . .

<sup>F67</sup>(3) . . . . .

- (4) If the Secretary of State has accepted one or more undertakings under this section, no reference may be made to the Commission with respect to the creation or possible creation of the merger situation qualifying for investigation by reference to which the undertakings were accepted, except in a case falling within subsection (5) of this section.
- (5) Subsection (4) of this section does not prevent a reference being made to the Commission if material facts about the arrangements or transactions, or proposed arrangements or transactions, in consequence of which the enterprises concerned ceased or may cease to be distinct enterprises were not—
  - (a) notified to the Secretary of State or the Director, or
  - (b) made public,before the undertakings were accepted.
- (6) In subsection (5) of this section “made public” has the same meaning as in section 64 of this Act.

**Textual Amendments**

**F66** Words in [s. 75G\(1\)](#) repealed (3.1.1995) by [1994 c. 40, ss. 81, 82\(2\)\(e\)](#), [Sch. 17](#)

**F67** [S. 75G\(2\)\(3\)](#) repealed (3.1.1995) by [1994 c. 40, ss. 9\(1\), 81, 82\(2\)\(a\)\(e\)](#), [Sch. 17](#)

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**Modifications etc. (not altering text)**

**C79** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**75H Publication of undertakings.**

- (1) The Secretary of State shall arrange for—
  - (a) any undertaking accepted by him under section 75G of this Act,
  - (b) the advice given by the Director for the purposes of subsection (1)(c) of that section in any case where such an undertaking has been accepted, and
  - (c) any variation or release of such an undertaking, to be published in such manner as he may consider appropriate.
- (2) In giving advice for the purposes of section 75G(1)(c) of this Act the Director shall have regard to the need for excluding, so far as practicable, any matter to which subsection (4) of this section applies.
- (3) The Secretary of State shall exclude from any such advice as published under this section—
  - (a) any matter to which subsection (4) of this section applies and in relation to which he is satisfied that its publication in the advice would not be in the public interest, and
  - (b) any other matter in relation to which he is satisfied that its publication in the advice would be against the public interest.
- (4) This subsection applies to—
  - (a) any matter which relates to the private affairs of an individual, where publication of that matter would or might, in the opinion of the Director or the Secretary of State, as the case may be, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director or the Secretary of State, as the case may be, seriously and prejudicially affect the interests of that body, unless in his opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the advice.
- (5) For the purposes of the law relating to defamation, absolute privilege shall attach to any advice given by the Director for the purposes of section 75G(1)(c) of this Act.

**Modifications etc. (not altering text)**

**C80** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**75J Review of undertakings.**

Where an undertaking has been accepted by the Secretary of State under section 75G of this Act, it shall be the duty of the Director—

- (a) to keep under review the carrying out of that undertaking, and from time to time consider whether, by reason of any change of circumstances, the undertaking is no longer appropriate and either—



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- (i) one or more of the parties to it can be released from it, or
- (ii) it needs to be varied or to be superseded by a new undertaking, and
- (b) if it appears to him that the undertaking has not been or is not being fulfilled, that any person can be so released or that the undertaking needs to be varied or superseded, to give such advice to the Secretary of State as he may think proper in the circumstances.

**Modifications etc. (not altering text)**

C81 Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**75K Order of Secretary of State where undertaking not fulfilled.**

- (1) The provisions of this section shall have effect where it appears to the Secretary of State that an undertaking accepted by him under section 75G of this Act has not been, is not being or will not be fulfilled.
- (2) The Secretary of State may by order made by statutory instrument exercise such one or more of the as he may consider it requisite to exercise for the [F68relevant powers]purpose of remedying or preventing the adverse effects specified in the advice given by the Director for the purposes of section 75G(1)(c) of this Act; and those powers may be so exercised to such extent and in such manner as the Secretary of State considers requisite for the purpose.
- (3) In determining whether, or to what extent or in what manner, to exercise any of those powers, the Secretary of State shall take into account any advice given by the Director under section 75J(b) of this Act.
- (4) The provision contained in an order under this section may be different from that contained in the undertaking.
- (5) On the making of an order under this section, the undertaking and any other undertaking accepted under section 75G of this Act by reference to the same merger situation qualifying for investigation are released by virtue of this section.

[ In subsection (2) of this section, “the relevant powers” means—

- F69(6) (a) in relation to an undertaking to which subsection (7) of this section applies (“a divestment undertaking”), the powers specified in paragraphs 9A and 12 to 12C and Part II of Schedule 8 to this Act, and
- (b) in relation to an undertaking which is not a divestment undertaking, the powers specified in that Schedule.
- (7) This subsection applies to an undertaking which provides for—
  - (a) the division of a business by the sale of any part of the undertaking or assets or otherwise (for which purpose all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business),
  - (b) the division of a group of interconnected bodies corporate, or
  - (c) the separation, by the sale of any part of the undertaking or assets concerned or other means, of enterprises which are under common control otherwise than by reason of their being enterprises of interconnected bodies corporate.



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- (8) Schedule 8 to this Act shall, to such extent as is necessary for the purpose of giving effect to subsection (2) of this section, have effect as if, in paragraph 1 of that Schedule, after “section 73” there were inserted “or section 75K”.]]

#### Textual Amendments

- F68** Words in s. 75K(2) substituted (3.1.1995) by 1994 c. 40, ss. 9(2), 82(2)(a)  
**F69** S. 75K(6)(7)(8) inserted (3.1.1995) by 1994 c. 40, ss. 9(3), 82(2)(a)

#### Modifications etc. (not altering text)

- C82** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571. art. 5

### Supplementary

#### 76 Functions of Director in relation to merger situations.

It shall be the duty of the Director—

- (a) to take all such steps as are reasonably practicable for keeping himself informed about actual or prospective arrangements or transactions which may constituted or result in the creation of merger situations qualifying for investigation, and
- (b) to make recommendations to the Secretary of State as to any action under this Part of this Act which in the opinion of the Director it would be expedient for the Secretary of State to take in relation to any such arrangements or transactions.

[<sup>F70</sup>(2) In exercising his duty under this section the Director shall take into consideration any representations made to him by persons appearing to him to have a substantial interest in any such arrangements or transactions or by bodies appearing to him to represent substantial numbers of persons who have such an interest.]

#### Textual Amendments

- F70** S. 76(2) added by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 11

#### Modifications etc. (not altering text)

- C83** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

#### 77 Associated persons.

(1) For the following purposes, that is to say—

- (a) for the purpose of determining under section 57(1) [<sup>F71</sup>or (1A)] of this Act whether a person is a newspaper proprietor and, if so, which newspapers are his newspapers;
- (b) for the purpose of determining under section 65 of this Act whether any two enterprises have been brought under common ownership or common control; and
- (c) for the purpose of determining what activities are carried on by way of business by any one person, in so far as that question arises in the application,

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- by virtue of an order under section 73 of this Act, of paragraph 14 of Schedule 8 to this Act,
- associated persons, and any bodies corporate which they or any of them control, shall (subject to the next following subsection) be treated as one person.
- (2) The preceding subsection shall not have effect—
- (a) for the purpose mentioned in paragraph (a) of that subsection so as to exclude from section 58 of this Act any case which would otherwise fall within that section, or
  - (b) for the purpose mentioned in paragraph (b) of the preceding subsection so as to exclude from section 65 of this Act any case which would otherwise fall within that section.
- (3) A merger reference other than a newspaper merger reference (whether apart from this section the reference could be made or not) may be so framed as to exclude from consideration, either altogether or for any specified purpose or to any specified extent, any matter which, apart from this section, would not have been taken into account on that reference.
- (4) For the purposes of this section the following persons shall be regarded as associated with one another, that is to say—
- (a) any individual and that individual’s husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual’s husband or wife;
  - (b) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
  - (c) persons carrying on business in partnership and the husband or wife and relatives of any of them;
  - (d) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets.
- (5) The reference in subsection (1) of this section to bodies corporate which associated persons control shall be construed as follows, that is to say—
- (a) in its application for the purpose mentioned in paragraph (a) of that subsection, “control” in that reference means having a [<sup>F72</sup>primary] controlling interest within the meaning of section 57(4) of this Act, and
  - (b) in its application for any other purpose mentioned in subsection (1) of this section, “control” in that reference shall be construed in accordance with section 65(3) and (4) of this Act.
- (6) In this section “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child or any person, or anyone adopted by a person, whether legally or otherwise, as his child, being taken into account as a relative or to trace a relationship in the same way as that person’s child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

#### Textual Amendments

**F71** Words inserted in s. 77(1)(a) (3.1.1995) by 1994 c. 40, s. 39, **Sch. 11 para. 2(2)(a)**; S.I. 1994/3188, **arts. 2, 3(f)(q)**

**F72** Word inserted in s. 77(5)(a) (3.1.1995) by 1994 c. 40, s. 39, **Sch. 11 para. 2(2)(b)**; S.I. 1994/3188, **arts. 2, 3(f)(q)**

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**Modifications etc. (not altering text)**

**C84** Ss. 64-77 modified (E.W.S.) (1.4.1994) by 1993 c. 43, s. 66(3); S.I. 1994/571, art. 5

**PART VI**

REFERENCES TO COMMISSION OTHER THAN MONOPOLY AND MERGER REFERENCES

**78 General references.**

- (1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time require the Commission to submit to him or them a report on the general effect on the public interest—
  - (a) of practices of a specified class which, in his or their opinion, are commonly adopted as a result of, or for the purpose of preserving, monopoly situations, or
  - (b) of any specified practices which appear to him or them to be uncompetitive practices.
- (2) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may also at any time require the Commission to submit to him or them a report on the desirability of action of any specified description for the purpose of remedying or preventing effects, adverse to the public interest, which result or might result from monopoly situations or from any such practices as are mentioned in the preceding subsection.
- (3) The matters to be taken into consideration by the Commission on any reference under this section shall not include any provisions of any agreement in so far as they are provisions by virtue of which it is an agreement to which [<sup>F73</sup>the Act of 1976] applies.

**Textual Amendments**

**F73** Words substituted by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 5](#)

**79 References as to restrictive labour practices.**

- (1) The Secretary of State, or the Secretary of State and any other Minister acting jointly, may at any time refer to the Commission the questions—
  - (a) whether a practice of a description specified in the reference exists and, if so, whether it is a restrictive labour practice, and
  - (b) if it exists and is a restrictive labour practice, whether it operates or may be expected to operate against the public interest and, if so, what particular effects, adverse to the public interest, it has or may be expected to have.
- (2) A reference under this section may refer those questions to the Commission either—
  - (a) in relation to commercial activities in the United Kingdom generally, or
  - (b) in relation to such commercial activities in the United Kingdom as consist of the supply of goods of a description specified in the reference, or of the supply of services of a description so specified, or of the export from the United Kingdom of goods of a description so specified.

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- (3) The Commission shall examine any questions referred to them under this section and shall report to the Minister or Ministers who referred them to the Commission.
- (4) For the purposes of their functions under subsection (3) of this section the Commission shall disregard anything which appears to them to have been done, or omitted to be done, in contemplation or furtherance of an industrial dispute within the meaning of the <sup>M13</sup>Industrial Relations Act 1971.
- (5) In this section “restrictive labour practice” means any practice whereby restrictions or other requirements, not being restrictions or requirements relating exclusively to rates of remuneration, operate in relation to the employment of workers in any commercial activities in the United Kingdom or in relation to work done by any such workers, and are restrictions or requirements which—
  - (a) could be discontinued without thereby contravening the provisions of an enactment or of any instrument having effect by virtue of an enactment, and
  - (b) are not necessary for, or are more stringent than is necessary for, the efficient conduct of those activities.

#### Marginal Citations

M13 1971 c. 72.

## 80 Variation of reference under Part VI.

A reference made under this Part of this Act may at any time be varied by the Minister or Ministers by whom the reference was made.

## PART VII

### PROVISIONS RELATING TO REFERENCES TO ADVISORY COMMITTEE OR TO COMMISSION

## 81 Procedure in carrying out investigations

- (1) The Advisory Committee, in carrying out an investigation on a reference to which section 17 of this Act applies, and the Commission, in carrying out an investigation on a reference made to them under this Act (whether it is a monopoly reference or a merger reference or a reference under Part VI of this Act),—
  - (a) shall take into consideration any representations made to them by persons appearing to them to have a substantial interest in the subject-matter of the reference, or by bodies appearing to them to represent substantial numbers of persons who have such an interest, and
  - (b) unless in all the circumstances they consider it not reasonably necessary or not reasonably practicable to do so, shall permit any such person or body to be heard orally by the Advisory Committee or the Commission, as the case may be, or by a member of the Committee or of the Commission nominated by them for that purpose.
- (2) Subject to subsection (1) of this section, the Advisory Committee or the Commission may determine their own procedure for carrying out any investigation on a reference under this Act, and in particular may determine—

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- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed to be present or to be heard, either by themselves or by their representatives, or to cross-examine witnesses or otherwise take part in the investigation, and
  - (b) the extent, if any, to which the sittings of the Advisory Committee or of the Commission are to be held in public.
- (3) In determining their procedure under subsection (2) of this section, and, in the case of the Commission, in exercising any powers conferred on them by section 85 of this Act, the Advisory Committee or the Commission, as the case may be, shall act in accordance with any general directions which may from time to time be given to them by the Secretary of State.
- (4) The Secretary of State shall lay before each House of Parliament a copy of any directions given by him under subsection (3) of this section.

**Modifications etc. (not altering text)**

- C85** S. 81 applied with modifications (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 14\(7\)](#), [223\(2\)](#) (with [ss. 82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14 para. 6](#)).
- S. 81 extended with modifications (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 15\(8\)](#); [S.R. 1992/117](#), [art.3\(1\)](#)
- S. 81 modified by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 39, [Sch. 4 para. 4\(7\)\(a\)](#)
- S. 81 applied with modifications (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#) s. 12(8)
- S. 81 applied with modifications (E.W.) by [Water Act 1989 \(c. 15, SIF 44:2\)](#) ss. 24(7), 48(3)(4)
- S. 81 applied with modifications (E.W.S.) by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), [ss. 24\(7\)](#), [48\(3\)\(4\)](#)
- S. 81 applied with modifications (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\)](#), [s. 44\(3\)](#)
- S. 81 applied (with modifications) (E.W.S.) (1.4.1994) by [1993 c. 43, s. 13\(8\)\(9\)](#); [S.I. 1994/571](#), [art. 5](#)
- S. 81 applied (with modifications) (N.I.) (10.6.1996) by [S.I. 1996/275 \(N.I. 2\)](#), [art. 15\(9\)](#) (with [Sch. 7 paras. 2, 3\(2\)](#)); [S.R. 1996/216](#), [art. 2](#)
- S. 81 applied (with modifications) (N.I.) (1.9.1995) by [S.I. 1994/426 \(N.I. 1\)](#), [art. 35\(3\)](#); [S.R. 1995/294](#), [art. 2](#), [Sch.](#)
- S. 81 applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), [art. 16](#)

**82 General provisions as to reports.**

- (1) In making any report under this Act the Advisory Committee or the Commission shall have regard to the need for excluding, so far as that is practicable,—
- (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in their opinion, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Advisory Committee or of the Commission, as the case may be, seriously and prejudicially affect the interests of that body, unless in their opinion the inclusion of that matter relating specifically to that body is necessary for the purposes of the report.
- (2) For the purposes of the law relating to defamation, absolute privilege shall attach to any report of the Advisory Committee or of the Commission under this Act.
- (3) Subject to the next following subsection, if—

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- (a) on a reference to the Advisory Committee under this Act, or
- (b) on a reference to the Commission, other than a monopoly reference limited to the facts,

a member of the Advisory Committee or of the Commission, as the case may be, dissents from any conclusions contained in the report on the reference as being conclusions of the Committee or of the Commission, the report shall, if that member so desires, include a statement of his dissent and of his reasons for dissenting.

- (4) In relation to a report made by a group of members of the Commission in pursuance of paragraph 10 or paragraph 11 of Schedule 3 to this Act, subsection (3) of this section shall have effect subject to paragraph 14(1) of that Schedule.

#### Modifications etc. (not altering text)

- C86** S. 82 extended (E.W.) (01.12.1991) by *Water Industry Act 1991* (c. 56, SIF 130), **ss. 15(3)**, 223(2) (with **ss. 82(3)**, 186(1), 188, 222(1), Sch. 14 para. 6).  
 S. 82 applied (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 16(3)**; S.R. 1992/117, **art.3(1)**  
 S. 82 applied (N.I.) (1.9.1995) by S.I. 1994/426 (N.I. 1), **art. 36(4)**; S.R. 1995/294, **art. 2, Sch.**  
 s. 82 applied (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 16(3)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**  
 S. 82 extended by *Broadcasting Act 1990* (c. 42, SIF 96), s. 39, **Sch. 4 para. 5(5)**  
 S. 82 extended (E.W.) by *Water Act 1989* (c. 15, SIF 130), **s. 17(3)**  
 S. 82 extended (E.W.S.) by *Electricity Act 1989* (c. 29, SIF 44:1) s. 13(3)  
 S. 82 extended (E.W.S.) by *Gas Act 1986* (c. 44, SIF 44:2), **ss. 25(3)**, 48(3)(4)  
 S. 82 extended (E.W.S.) by *Airports Act 1986* (c. 31, SIF 9), **s. 45(4)**  
 S. 82 extended by *Telecommunications Act 1984* (c. 12, SIF 96), **s. 14(3)**  
 S. 82 applied (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 14(3)(7)**; S.I. 1994/571. art. 5  
 S. 82 applied (with modifications) (28.8.1996) by S.I. 1996/2199, **reg. 16**
- C87** S. 82(1)(2) extended (24.11.1999) by S.I. 1999/3088, **reg. 11**

### 83 Laying before Parliament and publication of reports.

- (1) [<sup>F74</sup>Subject to subsection (1A) below] the Minister or Ministers to whom any report of the Advisory Committee on a reference to which section 17 of this Act applies, or any report of the Commission under this Act, is made shall lay a copy of the report before each House of Parliament, and shall arrange for the report to be published in such manner as appears to the Minister or Ministers to be appropriate.

[<sup>F75</sup>(1A) The Minister or Ministers to whom a report of the Commission on a monopoly reference is made shall not lay a copy of the report before either House of Parliament unless at least twenty-four hours before doing so he transmits or they transmit to every person named in the report as a person in whose favour a monopoly situation exists a copy of the report in the form in which it is laid (or by virtue of subsection (2) below is treated as being laid) before each House of Parliament.]

- (2) If such a report is presented by command of Her Majesty to either House of Parliament otherwise than at or during the time of a sitting of that House, the presentation of the report shall for the purposes of this section be treated as the laying of a copy of it before that House by the Minister or Ministers to whom the report was made.
- (3) If it appears to the Minister or Ministers to whom any report of the Advisory Committee or of the Commission under this Act is made that the publication of any matter in the report would be against the public interest, the Minister or Ministers shall



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exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.

[<sup>F76</sup>(3A) Without prejudice to subsection (3) above, if the Minister or Ministers to whom any such report is made consider that it would not be in the public interest to disclose—

- (a) any matter contained in the report relating to the private affairs of an individual whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter, or
- (b) any matter contained in the report relating specifically to the affairs of a particular person whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter,

the Minister or Ministers shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.]

- (4) Any reference in this Act to a report of the Advisory Committee or of the Commission as laid before Parliament shall be construed as a reference to the report in the form in which copies of it are laid (or by virtue of subsection (2) of this section are treated as having been laid) before each House of Parliament under this section.

#### Textual Amendments

**F74** Words inserted (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 22\(a\)](#)

**F75** [S. 83\(1A\)](#) inserted (1.5.1980) by [Competition Act 1980 \(c. 21\), s. 22\(b\)](#)

**F76** [S. 83\(3A\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\), s. 153, Sch. 20 para. 12](#)

#### Modifications etc. (not altering text)

**C88** [S. 83](#) applied (with modifications) (28.8.1996) by [S.I. 1996/2199, reg. 16](#)

## PART VIII

### ADDITIONAL PROVISIONS RELATING TO REFERENCES TO COMMISSION

#### 84 Public interest.

(1) In determining for any purposes to which this section applies whether any particular matter operates, or may be expected to operate, against the public interest, the Commission shall take into account all matters which appear to them in the particular circumstances to be relevant and, among other things, shall have regard to the desirability—

- (a) of maintaining and promoting effective competition between persons supplying goods and services in the United Kingdom;
- (b) of promoting the interests of consumers, purchasers and other users of goods and services in the United Kingdom in respect of the prices charged for them and in respect of their quality and the variety of goods and services supplied;
- (c) of promoting, through competition, the reduction of costs and the development and use of new techniques and new products, and of facilitating the entry of new competitors into existing markets;
- (d) of maintaining and promoting the balanced distribution of industry and employment in the United Kingdom; and



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- (e) of maintaining and promoting competitive activity in markets outside the United Kingdom on the part of producers of goods, and of suppliers of goods and services, in the United Kingdom.
- (2) This section applies to the purposes of any functions of the Commission under this Act other than functions to which section 59(3) of this Act applies.

**Modifications etc. (not altering text)**

**C89** S. 84 extended (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), [s. 11\(9\)](#) and extended *ibid.*, ss. 7(6), 33(5)  
S. 84 applied (with modifications) (1.4.1999) by [1980 c. 21](#), [s. 11\(9A\)](#) (as substituted (1.4.1999) by [1998 c. 41](#), [s. 74\(1\)](#), [Sch. 12 para. 4\(3\)](#) (with s. 73); S.I. 1999/505, art. 2, [Sch. 2](#))

**85 Attendance of witnesses and production of documents.**

- (1) For the purposes of any investigation on a reference made to them under this Act the Commission may, by notice in writing signed on their behalf by any of their members or by their secretary,—
- (a) require any person to attend at a time and place specified in the notice, and to give evidence to the Commission or a member of the Commission nominated by them for the purpose, or
  - (b) require any person to produce, at a time and place specified in the notice, to the Commission or to any person nominated by the Commission for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation, or
  - (c) require any person carrying on any business to furnish to the Commission such estimates, returns or other information as may be specified or described in the notice, and specify the time, the manner and the form in which any such estimates, returns or information are to be furnished.
- (2) For the purposes of any such investigation the Commission, or a member of the Commission nominated by them for that purpose, may take evidence on oath, and for that purpose may administer oaths.
- (3) No person shall be compelled for the purpose of any such investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in such proceedings.
- (4) No person shall be required, in obedience to a notice under subsection (1) of this section, to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.
- (5) . . . . .<sup>F77</sup>
- (6) Any person who—
- (a) wilfully alters, suppresses or destroys any document which he has been required by any such notice to produce, . . .<sup>F78</sup>
  - (b) . . . . .<sup>F78</sup>

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400 or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

[<sup>F79</sup>(7) If any person (referred to in subsection (7A) of this section as “the defaulter”) refuses or otherwise fails to comply with any notice under subsection (1) of this section, any one of those who, in relation to the investigation in question, are performing the functions of the Commission may certify that fact in writing to the court and the court may enquire into the case.

(7A) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did without reasonable excuse refuse or otherwise fail to comply with the notice, the court may punish the defaulter (and, in the case of a body corporate, any director or officer) in like manner as if the defaulter had been guilty of contempt of court.]

(8) In this section “the court”—

- (a) in relation to England and Wales, means the High Court;
- (b) in relation to Scotland, means the Court of Session; and
- (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.

#### Textual Amendments

- F77** S. 85(5) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 153, 212, [Sch. 20 para. 13\(2\)](#), [Sch. 24](#)
- F78** Word “or” and s. 85(6)(b) repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 153, 212, [Sch. 20 para. 13\(2\)](#), [Sch. 24](#)
- F79** S. 85(7)(7A) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 13\(1\)](#)

#### Modifications etc. (not altering text)

- C90** S. 85 applied with modifications (E.W.) (1.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), ss. [14\(7\)](#), [223\(2\)](#) (with ss. [82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14 para. 6](#)).
- C91** S. 85 applied with modifications by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. [13\(9\)](#)
- S. 85 applied with modifications (E.W.S.) by [Airports Act 1986 \(c. 31, SIF 9\)](#), s. [44\(3\)](#)
- S. 85 applied with modifications (E.W.S.) by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), ss. [24\(7\)](#), [48\(3\)\(4\)](#)
- S. 85 applied with modifications (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. [16\(7\)](#)
- S. 85 applied with modifications (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. [12\(8\)](#)
- S. 85 modified by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 39, [Sch. 4 para. 4\(7\)\(a\)](#)
- S. 85 extended (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), s. [11\(9\)](#) and extended *ibid.*, ss. 7(6), 33(5)
- S. 85 (6)-(8) applied by [Financial Services Act 1986 \(c. 60, SIF 69\)](#), ss. 123(3), 140, [Sch. 11 para. 36\(2\)](#)
- S. 85(6)-(8) applied with modifications by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 47(1), [Sch. 14 para. 4\(5\)](#)
- S. 85(6)-(8) applied (S.) (30.9.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), s. [41\(3\)](#); S.I. 1991/2151, art. 3, [Sch.](#)
- S. 85(6)-(8) applied (S.) (3.6.1991) by [Solicitors \(Scotland\) Act 1980 \(c. 46, SIF 76:2\)](#), s. [64C\(3\)](#) (As inserted (3.6.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 76:2\)](#), s. 43; S.I. 1991/1252, art.3, [Sch. I](#)
- S. 85(6)-(8) applied (E.W.) (*prosp*) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. [46\(3\)](#), [124\(3\)](#)
- S. 85(6)-(8) applied with modifications by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 39, [Sch. 4 para. 8\(3\)](#)

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S. 85(6)-(8) applied with modifications by S.I. 1990/593 (N.I.5), art. 49(1), **Sch. 14 para. 4(5)**  
S. 85(6)-(8) extended with modifications by S.I. 1990/1715, **reg. 3(1)**  
S. 85 extended with modifications (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 15(8)**; S.R. 1992/117, **art.3(1)**  
S. 85 applied (with modifications) (E.W.S.) (1.4.1994) by 1993 c. 43, **ss. 13(8)(9)**, 154(2).  
S. 85 applied (with modifications) (N.I.) (1.9.1995) by S.I. 1994/426 (N.I. 1), **art. 35(3)**; S.R. 1995/294, art. 2, **Sch.**  
S. 85 applied (with modifications) (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 15(9)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**  
S. 85 applied (with modifications) (28.8.1996) by S.I. 1996/2199, **reg. 16**  
S. 85 applied (with modifications) (1.4.1999) by 1984 c. 12, **s. 13(9A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 9(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1986 c. 44, **s. 24(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 10(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1989 c. 29, **s. 12(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 12(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1991 c. 56, **s. 14(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 13(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1993 c. 43, **s. 13(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 15(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1992/231 (N.I. 1), **art. 15(8A)** (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 17(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1996/275 (N.I. 2), **art. 15(9A)** (with Sch. 7 paras. 2, 3(2)) (as substituted (1.4.1999) by 1998 c. 41, s. 54(3), **Sch. 10 Pt. IV para. 18(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1980 c. 21, **s. 11(9A)** (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 4(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1986 c. 31, **s. 44(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 7(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (1.4.1999) by 1990 c. 42, **Sch. 4 para. 4(7A)** (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 14(3)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)  
S. 85 applied (with modifications) (N.I.) (1.4.1999) by S.I. 1994/426 (N.I. 1), **art. 35(3A)** (as substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 20(2)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**)

## 86 Director to receive copies of reports.

- (1) Subject to the next following subsection, a copy of every report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, shall be transmitted by the Commission to the Director; and the Minister or Ministers to whom any such report is made shall take account of any advice given to him or them by the Director with respect to a report of which a copy is transmitted to the Director under this section.
- (2) The preceding subsection shall not apply to a report made on a monopoly reference, where the reference was made by a Minister or Ministers and (by virtue of any of the provisions of section 50 of this Act) could not have been made by the Director.
- (3) In this section “Minister” includes [<sup>F80</sup>the Department of Agriculture for Northern Ireland and the Department of Commerce for Northern Ireland].

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### Textual Amendments

**F80** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), **Sch. 1 para. 2(1)(b)(4)**

### Modifications etc. (not altering text)

- C92** S. 86 amended (E.W.) (01.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 31(4)(b), 35(4), 223(2)** (with **ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6**).
- S. 86 amended (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)
- S. 86: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)(b)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)(b)**; S.R. 1992/117, **art.3(1)**
- S. 86 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)**; S.R. 1992/117, **art.3(1)**
- S. 86 modified by Telecommunications Act 1984 (c. 12, SIF 96), **s. 50(2)**
- S. 86 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 28(2)**
- S. 86 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1) s. 43(2)
- S. 86 modified (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(6)(a)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(4)(a)(5)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86 amended (1.2.2001) by 2000 c. 38, **s. 86(7)(a)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 86: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(6)(b)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86 amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- S. 86: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(b)(4)**; S.I. 1994/571, **art. 5**
- S. 86: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A** (as inserted by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)
- S. 86 amended (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(4)**; S.I. 1994/571, **art. 5**

## 87 Supplementary provisions as to laying reports before Parliament.

- (1) Where under section 83 of this Act the Secretary of State lays before Parliament a copy of a report of the Commission on a newspaper merger reference, then—
  - (a) if before laying it the Secretary of State has consented to the transfer of a newspaper or of newspaper assets to which the report relates, he shall annex a copy of that consent to the copy of the report laid before Parliament, or
  - (b) if he subsequently consents to that transfer, he shall thereupon lay before Parliament a copy of that consent.
- (2) Where the persons to whom a report of the Commission is made under this Act include [<sup>F81</sup>the Department of Agriculture for Northern Ireland], that [<sup>F81</sup>Department] shall lay a copy of the report before [<sup>F82</sup>the Northern Ireland Assembly], and shall arrange for it to be published in Northern Ireland in such manner as appears to him to be appropriate.
- (3) If a report to which subsection (2) of this section applies is presented by command of [<sup>F83</sup>the Secretary of State] to [<sup>F82</sup>the Northern Ireland Assembly] otherwise than at or

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during the time of a sitting of [<sup>F82</sup>the Assembly], the presentation of the report shall for the purposes of that subsection be treated as the laying of a copy of it before [<sup>F82</sup>the Assembly] as required by that subsection.

#### Textual Amendments

- F81** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), Sch. 1 para. 2(1)(b)(4)  
**F82** Words substituted by virtue of Northern Ireland Constitution Act 1973 (c. 36), Sch. 5 para. 3(2)  
**F83** Words substituted by virtue of Northern Ireland Constitution Act 1973 (c. 36), Sch. 5 para. 4(1)

### 88 Action by Director in consequence of report of Commission on monopoly or merger reference.

- (1) Where a report of the Commission on a monopoly reference, or on a merger reference other than a newspaper merger reference, as laid before Parliament,—
- (a) in the case of a monopoly reference, sets out such conclusions as are mentioned in section 56(1) of this Act, or
  - (b) in the case of a merger reference, sets out such conclusions as are mentioned in section 73(1) or in section 75(4)(e) of this Act,
- and a copy of the report is transmitted to the Director under section 86 of this Act, it shall be the duty of the Director, [<sup>F84</sup>to comply with any request of the appropriate Minister or Ministers to consult with any persons mentioned in the request (referred to below in this section as “the relevant parties”)] with a view to obtaining from them undertakings to take action indicated in the request made to the Director as being action requisite, in the opinion of the appropriate Minister or Ministers, for the purpose of remedying or preventing the adverse effects specified in the report.
- (2) The Director shall report to the appropriate Minister or Ministers the outcome of his consultations under the preceding subsection; and if any undertaking is given by any of the relevant parties to take action indicated in the request made to the Director as mentioned in that subsection (in this section referred to as an “appropriate undertaking”) the Minister to whom the undertaking is given shall furnish particulars of it to the Director.

[<sup>F85</sup>(2A) Where—

- (a) an undertaking is given under this section after the commencement of this subsection, or
  - (b) an undertaking given under this section is varied or released after that time, the Minister to whom the undertaking is or was given shall cause the undertaking or, as the case may be, the variation or release to be published in such manner as the Minister may consider appropriate.]
- (3) Where in his consultations under subsection (1) of this section the Director seeks to obtain an appropriate undertaking from any of the relevant parties, and either—
- (a) he is satisfied that no such undertaking is likely to be given by that party within a reasonable time, or
  - (b) having allowed such time as in his opinion is reasonable for the purpose, he is satisfied that no such undertaking has been given by that party,

the Director shall give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances (including, if the Director thinks fit, advice with



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respect to the exercise by the appropriate Minister or Ministers of his or their powers under section 56 or section 73 of this Act, as the case may be).

- (4) Where the Director has made a report under subsection (2) of this section, and particulars of an undertaking given by any of the relevant parties have been furnished to the Director in accordance with that subsection, it shall be the duty of the Director—
- (a) to keep under review the carrying out of that undertaking, and from time to time to consider whether, by reason of any change of circumstances, [F86 the undertaking is no longer appropriate and either the relevant parties (or any of them) can be released from the undertaking or the undertaking] needs to be varied or to be superseded by a new undertaking, and
  - (b) if it appears to him [F87 that any person can be so released or that an undertaking] has not been or is not being fulfilled, or needs to be varied or superseded, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (5) Where, in consequence of a report of which a copy is transmitted to the Director under section 86 of this Act, an order is made under section 56 or section 73 of this Act in relation to any of the matters to which the report relates, it shall be the duty of the Director to keep under review the action (if any) taken in compliance with that order, and from time to time to consider whether, by reason of any change of circumstances, the order should be varied [F88 or revoked] or should be superseded by a new order, and—
- (a) if it appears to him that the order has in any respect not been complied with, to consider whether any action (by way of proceedings in accordance with section 93 of this Act or otherwise) should be taken for the purpose of securing compliance with the order, and (where in his opinion it is appropriate to do so) to take such action himself or give advice to any Minister or other person by whom such action might be taken, or
  - (b) if it appears to him that the order needs to be varied [F88 or revoked] or to be superseded by a new order, to give such advice to the appropriate Minister or Ministers as he may think proper in the circumstances.
- (6) In this section . . . F89, in relation to a report of the Commission, “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report is made, “undertaking” means an undertaking given to that Minister or to one of those Ministers, as the case may be, and, in subsections (3) and (5) of this section, the references to section 73 of this Act shall be construed as including references to that section as applied by section 75(4) of this Act.

#### Textual Amendments

- F84** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 14\(1\)\(5\)](#)  
**F85** [S. 88 \(2A\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 14\(2\)](#).  
**F86** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 14\(3\)\(a\)](#)  
**F87** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 14\(3\)\(b\)](#)  
**F88** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 14\(3\)](#)  
**F89** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 153, 212, [Sch. 20 para. 14\(4\)\(5\)](#), [Sch. 24](#)

#### Modifications etc. (not altering text)

- C93** [S. 88](#) amended (E.W.) (01.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [ss. 31\(4\)\(b\)](#), [35\(4\)](#), [223\(2\)](#) (with [ss. 82\(3\)](#), [186\(1\)](#), [188](#), [222\(1\)](#), [Sch. 14 para. 6](#)).

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- S. 88 amended (1.2.2001) by 2000 c. 38, ss. **86(1)(2)**, 87, 89 (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88 amended (1.2.2001) by 2000 c. 38, s. **86(4)(a)(5)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88 amended (1.2.2001) by 2000 c. 38, s. **86(7)(a)** (with s. 106); S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to transitional provision and saving in Sch. 2 Pt. II)
- S. 88(4) amended by Price Commission Act 1977 (c. 33), s. **19(3)**
- S. 88(5) amended by Price Commission Act 1977 (c. 33), s. **19(4)**
- S. 88 modified by Telecommunications Act 1984 (c. 12, SIF 96), s. **50(2)**
- S. 88 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), s. **28(2)**
- S. 88 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. **43(2)**
- S. 88: certain functions transferred (1.4.1992) by S.I. 1992/231 (N.I. 1), art. **46(2)(b)**; S.R. 117, art.3(1)
- S. 88 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), art. **46(2)**; S.R. 1992/117, art.3(1)
- S. 88: certain functions transferred (E.W.S.) (1.4.1994) by 1993 c. 43, s. **67(2)(b)(4)**; S.I. 1994/571, art. **5**
- S. 88: certain functions transferred (E.W.S.) (1.3.1996) by 1986 c. 44, s. **36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, art. 2)
- S. 88 amended (E.W.S.) (1.4.1994) by 1993 c. 43, s. **67(2)(4)**; S.I. 1994/571, art. **5**.
- S. 88: functions transferred (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. **23(2)(b)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. **2**
- S. 88 modified (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. **23(6)(a)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. **2**
- S. 88 amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), art. **23(2)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, art. **2**
- S. 88 amended (E.W.S.) (1.3.1996) by 1986 c. 44, s. **36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, art. 2)
- C94** S. 88(2)-(5) applied (with modifications) (28.8.1996) by S.I. 1996/2199, reg. **22(2)**

## 89 Interim order after report of Commission under s. 54 or s. 72.

- (1) The provisions of this section shall have effect where—
- [<sup>F90</sup>(a) in the circumstances specified in subsection (1) of any of the following sections—
- (i) sections 56, 73 and 75K of this Act, and
- (ii) section 10 of the Competition Act 1980,
- the Secretary of State makes, has made, or has under consideration the making of, an order under the section in question exercising any of the powers specified in Schedule 8 to this Act, or
- (b) in the circumstances specified in subsection (1) of section 12 of the Competition Act 1980 the Secretary of State makes, has made, or has under consideration the making of, an order under subsection (5) of that section exercising any of those powers.] and in those provisions “the principal order” means the order which the Secretary of State makes, or has it under consideration to make, as mentioned in paragraph (a) or paragraph (b) of this subsection.
- (2) With a view to achieving the purpose for which any of the powers specified in . . . <sup>F91</sup> that Schedule are, or are proposed to be, exercised by the principal order, the Secretary of State may by order made by statutory instrument exercise any of the powers mentioned in the next following subsection.



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- (3) An order under this section may—
- (a) prohibit or restrict the doing of things which, in the opinion of the Secretary of State, might impede the operation of the principal order or, where it has not yet been made, might be an impediment to making it;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - [<sup>F92</sup>(bb) require any person to furnish any such information to the Director as may be specified or described in the order;]
  - (c) provide for the carrying on of any activities or the safe-guarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order under this section) or in any other manner.

#### Textual Amendments

**F90** S. 89(1) paras. (a) and (b) substituted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 15(1)(4)

**F91** Words repealed by Companies Act 1989 (c. 40, SIF 27), ss. 153, 212, Sch. 20 para. 15(2)(4), Sch. 24

**F92** S. 89(3)(bb) inserted by Companies Act 1989 (c. 40, SIF 27), s. 153, Sch. 20 para. 15(3)(4)

## 90 General provisions as to orders under ss. 56, 73, 74 and 89.

- (1) This section applies to any order under section 56, section 73, section 74 [<sup>F93</sup>section 75K]or section 89 of this Act.
- (2) Any such order declaring anything to be unlawful may declare it to be unlawful either for all persons or for such persons as may be specified or described in the order.
- (3) Nothing in any such order shall have effect so as to apply to any person in relation to his conduct outside the United Kingdom unless that person is—
  - (a) a citizen of the United Kingdom and Colonies, or
  - (b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom, or
  - (c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more other persons,
 but, in the case of a person falling within paragraph (a), paragraph (b) or paragraph (c) of this subsection, any such order may extend to acts or omissions outside the United Kingdom.
- (4) An order to which this section applies may extend so as to prohibit the carrying out of agreements already in existence on the date on which the order is made.
- [<sup>F94</sup>(5) Nothing in any order to which this section applies shall have effect so as to—
  - (a) cancel or modify conditions in licences granted—
    - (i) under a patent granted under the Patents Act 1949 or the Patents Act 1977 or a European patent (UK) (within the meaning of the Patents Act 1977), or
    - (ii) in respect of a design registered under the Registered Designs Act 1949,
 by the proprietor of the patent or design, or

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- (b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.]
- (6) Nothing in any such order shall affect the conduct of a board established under a scheme made under the <sup>M14</sup>Agricultural Marketing Act 1958 [<sup>F95</sup>or under the <sup>M15</sup>Agricultural Marketing Act (Northern Ireland) 1964][<sup>F96</sup>or the Agricultural Marketing (Northern Ireland) Order 1982.]
- (7) An order to which this section applies may authorise the Minister making the order to give directions to a person specified in the directions, or to the holder for the time being of an office so specified in any company or association,—
- (a) to take such steps within his competence as may be specified or described in the directions for the purpose of carrying out, or securing compliance with, the order, or
- (b) to do or refrain from doing anything so specified or described which he might be required by the order to do or refrain from doing,
- and may authorise that Minister to vary or revoke any directions so given.

#### Textual Amendments

- F93** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 16\(2\)](#)
- F94** [S. 90\(5\)](#) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, [Sch. 20 para. 16\(3\)](#)
- F95** Words repealed (*prosp.*) (but by S.R.s 1984 No. 422 and 1989 No. 47 the repeal came into operation in relation to the Pigs Marketing Board (Northern Ireland) on 31.12.1984 and in relation to the Milk Marketing Board for Northern Ireland on 1.4.1989 respectively) by [S.I. 1982/1080 \(N.I. 12\)](#), [art. 46\(2\)](#), [Sch. 9](#)
- F96** Words added by [S.I. 1982/1080](#), (N.I. 12), [art. 46\(1\)](#), [Sch. 8](#)

#### Modifications etc. (not altering text)

- C95** [S. 90](#) applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), [reg. 24](#)
- C96** [S. 90\(1\)](#) extended (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), [s. 12\(6\)](#)
- C97** [S. 90\(1\)\(3\)](#) extended by [Competition Act 1980 \(c. 21\)](#), [ss. 10\(4\)](#), 33(5)
- C98** [S. 90\(4\)](#) extended (9.5.1998) by 1993 c. 21, [s. 33\(5\)](#); [S.I. 1998/1138](#), [art. 2\(e\)\(vii\)](#)  
[S. 90\(4\)](#) extended (13.5.1999) by 1994 c. 17, [s. 33\(5\)](#); [S.I. 1999/1309](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

- M14** 1958 c. 47.
- M15** 1964 c. 13 (N.I.)

## 91 Procedure relating to orders to which s. 90 applies.

- (1) No order to which section 90 of this Act applies and which exercises any of the powers specified in Part II of Schedule 8 to this Act, and no order varying or revoking any such order, shall be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament; and the provisions of Schedule 9 to this Act shall have effect with respect to the procedure to be followed before laying before Parliament a draft of any such order.
- (2) Before making any order under section 56 or section 73 of this Act other than any such order as is mentioned in the preceding subsection, the Minister proposing to make the order shall publish, in such manner as appears to him to be appropriate, a notice—

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- (a) stating his intention to make the order;
- (b) indicating the nature of the provisions to be embodied in the order; and
- (c) stating that any person whose interests are likely to be affected by the order, and who is desirous of making representations in respect of it, should do so in writing (stating his interest and the grounds on which he wishes to make the representations) before a date specified in the notice (that date being not earlier than the end of the period of thirty days beginning with the day on which publication of the notice is completed);

and the Minister shall not make the order before the date specified in the notice in accordance with paragraph (c) of this subsection and shall consider any representations duly made to him in accordance with the notice before that date.

**Modifications etc. (not altering text)**

- C99** S. 91(2) extended (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), [s. 12\(6\)](#) and extended *ibid.*, ss. 10(4), 33(5)  
 S. 91(2) applied (28.8.1996) by [S.I. 1996/2199](#), [reg. 23\(3\)](#)

**92 Investigation of company or association with reference to order to which s. 90 applies.**

(1) For the purpose of determining whether to make an order to which section 90 of this Act applies whereby any powers are to be exercised in relation to a company or association, or for the purpose of obtaining information on which to exercise by or under any such order any powers in relation to a company or association, the Secretary of State may appoint an inspector to investigate and report to him on any such matters falling within the next following subsection as are specified or described in the appointment.

[<sup>F97</sup>(2) The matters which may be so specified or described are any matters which in the case of a company registered under the Companies Act 1985 (or the previous corresponding legislation)—

- (a) could in accordance with sections 432 and 433 of that Act be investigated by an inspector appointed under section 432, or
- (b) could in accordance with section 442 of that Act, or in accordance with any provisions as applied by section 443(1), be investigated by an inspector appointed under section 442.

(3) For purposes connected with any investigation made by an inspector appointed under this section—

- (a) sections 434 to 436 of the Companies Act 1985 (or those sections as applied by section 443(1) ) shall have effect as they do for the purposes of any investigation under section 432 or 442 of that Act, and
- (b) the provisions of that Act referred to in this and the last preceding subsection shall be taken to extend throughout the United Kingdom.]

**Textual Amendments**

- F97** S. 92(2)(3) substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

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**Modifications etc. (not altering text)**

C100 S. 92 applied (with modifications) (28.8.1996) by S.I. 1996/2199, reg. 24

**93 Enforcement of orders to which s. 90 applies.**

- (1) No criminal proceedings shall, by virtue of the making of an order to which section 90 of this Act applies, lie against any person on the grounds that he has committed, or aided, abetted, counselled or procured the commission of, or conspired or attempted to commit, or incited others to commit, any contravention of the order.
- (2) Nothing in the preceding subsection shall limit any right of any person to bring civil proceedings in respect of any contravention or apprehended contravention of any such order, and (without prejudice to the generality of the preceding words) compliance with any such order shall be enforceable by civil proceedings by the Crown for an injunction or interdict or for any other appropriate relief.
- (3) If any person makes default in complying with any directions given under section 90(7) of this Act, the court may, on the application of the Secretary of State, make an order requiring him to make good the default within a time specified in the order, or, if the directions related to anything to be done in the management or administration of a company or association, requiring the company or association or any officer of it to do so.
- (4) Any order of the court under subsection (3) of this section may provide that all the costs or expenses of or incidental to the application for the order shall be borne by any person in default or by any officers of a company or association who are responsible for its default.
- (5) In this section “the court”—
  - (a) in relation to England and Wales, means the High Court;
  - (b) in relation to Scotland, means the Court of Session; and
  - (c) in relation to Northern Ireland, means the High Court or a judge of the High Court.

**Modifications etc. (not altering text)**

C101 S. 93 extended (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), s. 12(6) and extended *ibid.*, ss. 10(4), 33(5)

C102 S. 93 applied (with modifications) (28.8.1996) by S.I. 1996/2199, reg. 24

C103 S. 93(3)(4) applied by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), s. 33(7)

C104 S. 93(3)(4) extended (18.12.1996) by 1996 c. 61, s. 26(3)

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**[<sup>F98</sup>93A Enforcement of undertakings.**

- (1) This section applies where a person (in this section referred to as “the responsible person”) has given an undertaking which—
  - (a) has been accepted by the Secretary of State [<sup>F99</sup>pursuant to a proposal under section 56A of this Act or under section 56F or] 75G of this Act,

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- (b) has been accepted by the appropriate Minister or Ministers under section 88 of this Act after the commencement of this section, or
  - (c) has been accepted by the Director under section 4 or 9 of the Competition Act 1980 after that time.
- (2) Any person may bring civil proceedings in respect of any failure, or apprehended failure, of the responsible person to fulfil the undertaking, as if the obligations imposed by the undertaking on the responsible person had been imposed by an order to which section 90 of this Act applies.]

#### Textual Amendments

**F98** S. 93A inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 148

**F99** Words in s. 93A(1)(a) substituted (3.1.1995) by 1994 c. 40, ss. 39, 82(2)(e), [Sch. 11 para. 2\(3\)](#)

#### Modifications etc. (not altering text)

**C105** S. 93A applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), reg. 24

### [<sup>F100</sup>93B False or misleading information.

- (1) If a person furnishes any information—
- (a) to the Secretary of State, the Director or the Commission in connection with any of their functions under Parts IV, V, VI or this Part of this Act or under the Competition Act 1980, or
  - (b) to the Commission in connection with the functions of the Commission under the Telecommunications Act 1984 or the Airports Act 1986,
- and either he knows the information to be false or misleading in a material particular, or he furnishes the information recklessly and it is false or misleading in a material particular, he is guilty of an offence.
- (2) A person who—
- (a) furnishes any information to another which he knows to be false or misleading in a material particular, or
  - (b) recklessly furnishes any information to another which is false or misleading in a material particular,
- knowing that the information is to be used for the purpose of furnishing information as mentioned in subsection (1)(a) or (b) of this section, is guilty of an offence.
- (3) A person guilty of an offence under subsection (1) or (2) of this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) Section 129(1) of this Act does not apply to an offence under this section.”]

#### Textual Amendments

**F100** S. 93B inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 151

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**Modifications etc. (not altering text)**

- C106** S. 93B extended by **S.I. 1990/1715, reg. 4**  
S. 93B extended (3.1.1995) by 1994 c. 40, ss. 7, 82(2)(a)(b), **Sch. 2 para. 14**
- C107** S. 93B applied by **Broadcasting Act 1990** (c. 42, SIF 96), s. 39, **Sch. 4 para. 8(4)**  
S. 93B applied (28.8.1996) by **S.I. 1996/2199, reg. 25**
- C108** S. 93B modified (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(9)**; **S.I. 1994/571, art. 5**  
S. 93B applied (with modifications) (1.2.2001) by 2000 c. 38, **s. 12(9)(10)(a)** (with s. 106); **S.I. 2001/57, art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)  
S. 93B applied (with modifications) (1.2.2001) by 2000 c. 38, **s. 18(1)(2)(c)** (with s. 106); **S.I. 2001/57, art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)  
S. 93B applied (with modifications) (26.3.2001) by 2000 c. 26, **s. 20(1)(2)(a)**; **S.I. 2000/2957, art. 2(3), Sch. 3**  
S. 93B applied (with modifications) (26.3.2001) by 2000 c. 38, **s. 20(4)(5)(a)**; **S.I. 2000/2957, art. 2(3), Sch. 3**  
S. 93B applied (with modifications) (1.10.2001) by 1989 c. 29, **s. 56C(7)(8)** (as inserted (1.10.2001) by 2000 c. 27, **ss. 43, 104(1)(2)(6)**); **S.I. 2001/3266, art. 2, Sch.** (subject to transitional provisions in arts. 3-20)  
S. 93B applied (with modifications) (1.10.2001) by 1986 c. 44, **s. 42E(7)(8)** (as inserted (1.10.2001) by 2000 c. 27, **ss. 88, 104(1)(2)(6)**); **S.I. 2001/3266, art. 2, Sch.** (subject to transitional provisions in arts. 3-20)  
S. 93B applied (with modifications) (*prosp.*) by 1993 c. 43, **Sch. 4A para. 10(2)(a)** (as inserted (*prosp.*) by 2000 c. 38, **ss. 231, 275(1), Sch. 24**)  
S. 93B modified (1.3.1996) by 1986 c. 44, **s. 36A(8)** (as inserted (1.3.1996) by 1995 c. 45, s. 1(1), **Sch. 3 para. 43**; **S.I. 1996/218, art. 2**)  
S. 93B modified (1.4.1999) by 1984 c. 12, **s. 50(6A)** (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 9(5)**; **S.I. 1999/505, art. 2, Sch.**)  
S. 93B modified (1.4.1999) by 1989 c. 29, **s. 43(6A)** (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 12(6)**; **S.I. 1999/505, art. 2, Sch.**)  
S. 93B modified (1.4.1999) by 1991 c. 56, **s. 31(8A)** (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. IV para. 13(8)**; **S.I. 1999/505, art. 2, Sch.**)  
S. 93B modified (N.I.) (1.4.1999) by **S.I. 1992/231 (N.I. 1), art. 46(6A)** (as inserted (1.4.1999) by 1998 c. 41, s. 54, **Sch. 10 Pt. V para. 17(6)**; **S.I. 1999/505, art. 2, Sch.**)  
S. 93B modified (N.I.) (10.6.1996) by **S.I. 1996/275 (N.I. 2), art. 23(7)** (with **Sch. 7 paras. 2, 3(2)**); **S.R. 1996/216, art. 2**
- C109** S. 93B(1)(a) amended (1.2.2001) by 2000 c. 38, **s. 86(4)(a)(5)** (with s. 106); **S.I. 2001/57, art. 3(1), Sch. 2 Pt. I** (subject to transitional provision and saving in **Sch. 2 Pt. II**)

**PART IX**

**AMENDMENTS OF RESTRICTIVE TRADE PRACTICES ACTS**

**94 Transfer of functions of Registrar to Director.**

- (1) Subject to the transitional provisions having effect by virtue of section 139 of this Act, the functions of the Registrar of Restrictive Trading Agreements are hereby transferred to the Director, and the office of Registrar of Restrictive Trading Agreements is hereby abolished.

- (2) . . . . . **F101**



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**Textual Amendments**  
F101 S. 94(2) repealed by [Resale Prices Act 1976 \(c. 53\)](#), [Sch. 3 Pt. 1](#)

95— ..... F102  
106.

**Textual Amendments**  
F102 [Ss. 95–117](#) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#)

**PART X**

107— ..... F103  
117.

**Textual Amendments**  
F103 [Ss. 95–117](#) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#)

**PART XI**

**PYRAMID SELLING AND SIMILAR TRADING SCHEMES**

**118 Trading schemes to which Part XI applies.**

- (1) This Part of this Act applies to any trading scheme which includes the following elements, that is to say—
  - (a) goods or services, or both, are to be provided by the person promoting the scheme (in this Part of this Act referred to as “the promoter”) or, in the case of a scheme promoted by two or more persons acting in concert (in this Part of this Act referred to as “the promoters”), are to be provided by one or more of those persons;
  - (b) the goods or services so provided are to be supplied to or for other persons under transactions effected by persons (other than the promoter or any of the promoters) who participate in the scheme (each of whom is in this Part of this Act referred to as a “participant”);
  - (c) those transactions, or most of them, are to be effected elsewhere than at premises at which the promoter or any of the promoters or the participant effecting the transaction carries on business; and
  - (d) the prospect is held out to participants of receiving payments or other benefits in respect of any one or more of the matters specified in the next following subsection.
- (2) The matters referred to in paragraph (d) of subsection (1) of this section are—
  - (a) the introduction of other persons who become participants;



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- (b) the promotion, transfer or other change of status of participants within the trading scheme;
  - (c) the supply of goods to other participants;
  - (d) the supply of training facilities or other services for other participants;
  - (e) transactions effected by other participants under which goods are to be supplied to, or services are to be supplied for, other persons.
- (3) For the purposes of this Part of this Act a trading scheme shall be taken to include the element referred to in paragraph (b) of subsection (1) of this section whether the transactions referred to in that paragraph are to be effected by participants in the capacity of servants or agents of the promoter or of one of the promoters or in any other capacity.
- (4) In determining, for the purposes of paragraph (c) of subsection (1) of this section, whether any premises are premises at which a participant in a trading scheme carries on business, no account shall be taken of transactions effected or to be effected by him under that trading scheme.
- (5) For the purposes of this Part of this Act such a prospect as is mentioned in paragraph (d) of subsection (1) of this section shall be taken to be held out to a participant—
- (a) whether it is held out so as to confer on him a legally enforceable right or not, and
  - (b) in so far as it relates to the introduction of new participants, whether it is limited to the introduction of new participants by him or extends to the introduction of new participants by other persons.
- (6) In this Part of this Act “trading scheme” includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not.
- (7) In this section any reference to the provision of goods or services by a person shall be construed as including a reference to the provision of goods or services under arrangements to which that person is a party.

## **119 Regulations relating to such trading schemes.**

- (1) Regulations made by the Secretary of State by statutory instrument may make provision with respect to the issue, circulation or distribution of documents, whether being advertisements, prospectuses, circulars or notices, which—
- (a) contain any invitation to persons to become participants in a trading scheme to which this Part of this Act applies, or
  - (b) contain any information calculated to lead directly or indirectly to persons becoming participants in such a trading scheme,
- and may prohibit any such document from being issued, circulated or distributed unless it complies with such requirements as to the matters to be included or not included in it as may be prescribed by the regulations.
- (2) Regulations made by the Secretary of State by statutory instrument may prohibit the promoter or any of the promoters of, or any participant in, a trading scheme to which this Part of this Act applies from—
- (a) supplying any goods to a participant in the trading scheme, or
  - (b) supplying any training facilities or other services for such a participant, or

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- (c) providing any goods or services under a transaction effected by such a participant, or
  - (d) being a party to any arrangements under which goods or services are supplied or provided as mentioned in any of the preceding paragraphs, or
  - (e) accepting from any such participant any payment, or any undertaking to make a payment, in respect of any goods or services supplied or provided as mentioned in any of paragraphs (a) to (d) of this subsection or in respect of any goods or services to be so supplied or provided,
- unless (in any such case) such requirements as are prescribed by the regulations are complied with.
- (3) Any requirements prescribed by regulations under subsection (2) of this section shall be such as the Secretary of State considers necessary or expedient for the purpose of preventing participants in trading schemes to which this Part of this Act applies from being unfairly treated; and, without prejudice to the generality of this subsection, any such requirements may include provisions—
- (a) requiring the rights and obligations of every participant under such a trading scheme to be set out in full in an agreement in writing made between the participant and the promoter or (if more than one) each of the promoters;
  - (b) specifying rights required to be conferred on every such participant, and obligations required to be assumed by the promoter or promoters, under any such trading scheme; or
  - (c) imposing restrictions on the liabilities to be incurred by such a participant in respect of any of the matters mentioned in paragraphs (a) to (e) of subsection (2) of this section.
- (4) Regulations made under subsection (2) of this section—
- (a) may include provision for enabling a person who has made a payment as a participant in a trading scheme to which this Part of this Act applies, in circumstances where any of the requirements prescribed by the regulations were not complied with, to recover the whole or part of that payment from any person to whom or for whose benefit it was paid, and
  - (b) subject to any provision made in accordance with the preceding paragraph, may prescribe the degree to which anything done in contravention of the regulations is to be treated as valid or invalid for the purposes of any civil proceedings.
- (5) The power to make regulations under this section may be exercised so as to make different provision—
- (a) in relation to different descriptions of trading schemes to which this Part of this Act applies, or
  - (b) in relation to trading schemes which are or were in operation on a date specified in the regulations and trading schemes which are or were not in operation on that date,
- or in relation to different descriptions of participants in such trading schemes.

## **120 Offences under Part XI.**

- (1) Subject to the next following section, any person who issues, circulates or distributes, or causes another person to issue, circulate or distribute, a document in contravention

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- of any regulations made under subsection (1) of section 119 of this Act shall be guilty of an offence.
- (2) Any person who contravenes any regulations made under subsection (2) of that section shall be guilty of an offence.
- (3) If any person who is a participant in a trading scheme to which this Part of this Act applies, or has applied or been invited to become a participant in such a trading scheme,
- 
- (a) makes any payment to or for the benefit of the promoter or (if there is more than one) any of the promoters, or to or for the benefit of a participant in the trading scheme, and
- (b) is induced to make that payment by reason that the prospect is held out to him of receiving payments or other benefits in respect of the introduction of other persons who become participants in the trading scheme,
- any person to whom or for whose benefit that payment is made shall be guilty of an offence.
- (4) If the promoter or any of the promoters of a trading scheme to which this Part of this Act applies, or any other person acting in accordance with such a trading scheme, by holding out to any person such a prospect as is mentioned in subsection (3)(b) of this section, attempts to induce him—
- (a) if he is already a participant in the trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in the trading scheme, or
- (b) if he is not already a participant in the trading scheme, to become such a participant and to make any such payment as is mentioned in the preceding paragraph,
- the person attempting to induce him to make that payment shall be guilty of an offence.
- (5) In determining, for the purposes of subsection (3) or subsection (4) of this section, whether an inducement or attempt to induce is made by holding out such a prospect as is therein mentioned, it shall be sufficient if such a prospect constitutes or would constitute a substantial part of the inducement.
- (6) Where the person by whom an offence is committed under subsection (3) or subsection (4) of this section is not the sole promoter of the trading scheme in question, any other person who is the promoter or (as the case may be) one of the promoters of the trading scheme shall, subject to the next following section, also be guilty of that offence.
- (7) Nothing in subsections (3) to (6) of this section shall be construed as limiting the circumstances in which the commission of any act may constitute an offence under subsection (1) or subsection (2) of this section.
- (8) In this section any reference to the making of a payment to or for the benefit of a person shall be construed as including the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.

## **121 Defences in certain proceedings under Part XI.**

- (1) Where a person is charged with an offence under subsection (1) of section 120 of this Act in respect of an advertisement, it shall be a defence for him to prove that he is a person whose business it is to publish or arrange for the publication of advertisements,

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and that he received the advertisement for publication in the ordinary course of business and did not know, and had no reason to suspect, that its publication would amount to an offence under that subsection.

- (2) Where a person is charged with an offence by virtue of subsection (6) of section 120 of this Act, it shall be a defence for him to prove—
- (a) that the trading scheme to which the charge relates was in operation before the commencement of this Act, and
  - (b) that the act constituting the offence was committed without his consent or connivance.

## 122 Penalties for offences under Part XI.

A person guilty of an offence under this Part of this Act shall be liable—

- (a) on summary conviction, to a fine not exceeding £400 or to imprisonment for a term not exceeding three months or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

## 123 Enforcement provisions.

- (1) The provisions of sections 29 to 32 of this Act shall have effect for the purposes of this Part of this Act as if in those provisions—
- (a) references to a weights and measures authority or a duly authorised officer of such an authority were omitted, and
  - (b) any reference to an offence under section 23 of this Act were a reference to an offence under this Part of this Act.
- (2) For the purposes of the application to Northern Ireland of those provisions as applied by the preceding subsection—
- (a) any reference to the Secretary of State shall be construed as a reference to [F104the Department of Commerce for Northern Ireland], and
  - (b) paragraphs (c) and(d) of section 33(2) of this Act shall have effect as they have effect for the purposes of the application of Part II of this Act to Northern Ireland.

### Textual Amendments

**F104** Words substituted by virtue of [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para. 8\(1\)](#)

## PART XII

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

## 124 Publication of information and advice.

- (1) With respect to any matter in respect of which the Director has any duties under section 2(1) of this Act, he may arrange for the publication, in such form and in such manner as he may consider appropriate, of such information and advice as it may appear to him to be expedient to give to consumers in the United Kingdom.

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- (2) In arranging for the publication of any such information or advice, the Director shall have regard to the need for excluding, so far as that is practicable,—
  - (a) any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual, and
  - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.
- (3) Without prejudice to the exercise of his powers under subsection (1) of this section, it shall be the duty of the Director to encourage relevant associations to prepare, and to disseminate to their members, codes of practice for guidance in safeguarding and promoting the interests of consumers in the United Kingdom.
- (4) In this section “relevant association” means any association (whether incorporated or not) whose membership consists wholly or mainly of persons engaged in the production or supply of goods or in the supply of services or of persons employed by or representing persons so engaged and whose objects or activities include the promotion of the interests of persons so engaged.

#### Modifications etc. (not altering text)

- C110** s. 124 restricted (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991](#) (c. 60, SIF 130), ss. 2, 4(2), [Sch. 1 para. 24\(1\)](#)  
S. 124 restricted by [Gas Act 1986](#) (c. 44, SIF 44:2), s. 67(1), [Sch. 7 para. 15\(1\)](#)  
S. 124 restricted (1.2.2001) by [2000 c. 38, s. 90\(6\)](#) (with s. 106); S.I. 2001/57, art. 3(1), [Sch. 2 Pt. I](#) (subject to transitional provision and saving in [Sch. 2 Pt. II](#))  
S. 124 restricted (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(1), [Sch. 25 para. 45\(1\)](#)  
S. 124 restricted (E.W.S.) by [Electricity Act 1989](#) (c. 29, SIF 44:1), [s. 48\(3\)](#)  
S. 124(1) restricted by [Telecommunications Act 1984](#) (c. 12, SIF 96), s. 109, [Sch. 4 para. 57\(1\)](#), [Sch. 5 para. 45](#)  
S. 124 restricted (1.4.1992) by [S.I. 1992/231 \(N.I. 1\)](#), [art. 51\(3\)](#); [S.R. 1992/117](#), [art.3\(1\)](#)  
S. 124 restricted (E.W.S.) (1.4.1994) by [1993 c. 43, s. 71\(3\)](#); [S.I. 1994/571](#), [art. 5](#)

## 125 Annual and other reports of Director.

- (1) The Director shall, as soon as practicable after the end of the year 1974 and of each subsequent calendar year, make to the Secretary of State a report on his activities, and the activities of the Advisory Committee and of the Commission, during that year.
- (2) Every such report shall include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s duties under any enactment (including any enactment contained in this Act, other than this section) <sup>F105</sup>and shall set out any directions given to the Director under section 2(2) of the <sup>M16</sup>Consumer Credit Act 1974 during that year].
- (3) The Secretary of State shall lay a copy of every report made by the Director under subsection (1) of this section before each House of Parliament, and shall arrange for every such report to be published in such manner as he may consider appropriate.

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- (4) The Director may also prepare such other reports as appear to him to be expedient with respect to such matters as are mentioned in subsection (2) of this section, and may arrange for any such report to be published in such manner as he may consider appropriate.
- (5) In making any report under this Act the Director shall have regard to the need for excluding, so far as that is practicable, any such matter as is specified in paragraph (a) or paragraph (b) of section 124(2) of this Act.
- (6) For the purposes of this section any period between the commencement of this Act and the end of the year 1973 shall be treated as included in the year 1974.

#### Textual Amendments

**F105** Words inserted by [Consumer Credit Act 1974 \(c. 39\)](#), **s. 5**

#### Modifications etc. (not altering text)

**C111** S. 125(1) excluded by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 57(2), **Sch. 5 para. 45**

S. 125(1) excluded by [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(1), **Sch. 7 para. 15(2)**

S. 125(1) excluded (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), **Sch. 25 para. 45(2)**

S. 125(1) excluded (20.12.2000) by 2000 c. 27, **s. 5(9)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15)

S. 125(1) excluded (E.W.S.) by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), **s. 50(6)**

S. 125(1) excluded (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(2), **Sch. 1 para. 24(2)**

S. 125(1) excluded (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 53(6)**; S.R. 1992/117, **art.3(1)**

S. 125(1) excluded (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 74(7)**; S.I. 1994/571, **art. 5**

**C112** S. 125(1) excluded (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2, 4(2), **Sch. 1 para. 24(2)**

#### Marginal Citations

**M16** 1974 c. 39.

**126** ..... **F106**

#### Textual Amendments

**F106** S. 126 repealed by [Patents Act 1977 \(c. 37\)](#), **Sch. 6**

#### **127 Additional power to make orders under Agricultural Marketing Act 1958.**

The following section shall be inserted in the <sup>M17</sup>Agricultural Marketing Act 1958 after section 19 :—

- (1) The provisions of this section shall have effect where a report made by the Monopolies and Mergers Commission under section 54 of the Fair Trading Act 1973, as laid before Parliament, contains conclusions to the effect—

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- (a) that certain matters indicated in the report operate, or may be expected to operate, against the public interest, and
  - (b) that those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme.
- (2) In the circumstances mentioned in subsection (1) of this section, the Minister shall have the like power to make orders under section 19 of this Act as if those conclusions of the Monopolies and Mergers Commission—
- (a) had been to the effect that the provision of the scheme in question, or the act or omission of the board to which those conclusions relate, were contrary to the interest of consumers of the regulated product, and
  - (b) had been contained in a report of a committee of investigation.”

**Modifications etc. (not altering text)**

**C113** The text of section 127 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M17** 1958 c. 47.

**128** ..... <sup>F107</sup>

**Textual Amendments**

**F107** S. 128 repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

**129 Time-limit for prosecutions.**

- (1) No prosecution for an offence under this Act shall be commenced after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Notwithstanding anything in [<sup>F108</sup>section 127(1) of the Magistrates’ Courts Act 1980], a magistrates’ court may try an information for an offence under this Act if the information was laid within twelve months from the commission of the offence.
- (3) Notwithstanding anything in [<sup>F109</sup>section 331 of the <sup>M18</sup>Criminal Procedure (Scotland) Act 1975], summary proceedings in Scotland for an offence under this Act may be commenced within twelve months from the commission of the offence, and [<sup>F109</sup>subsection (3) of the said section 331] shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (4) In the application of this section to Northern Ireland, for the references in subsection (2) to [<sup>F110</sup>section 127(1) of the Magistrates’ Courts Act 1980] and to the trial and laying of an information there shall be substituted respectively references to [<sup>F111</sup>Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981] and to the hearing and determination and making of a complaint [<sup>F112</sup>and as if in that subsection



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for the words “an offence under this Act” there were substituted the words “an offence under section 30(1) or 46(2) of this Act”].

#### Textual Amendments

**F108** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 118](#)

**F109** Words substituted by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21\)](#), s. 460(7)

**F110** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 118](#)

**F111** Words substituted by [S.I. 1981/1675 \(N.I. 26\)](#), art. 170(2), [Sch. 6 para. 30](#)

**F112** Words added (22.6.1980) by [S.I. 1980/704 \(N.I. 6\)](#), [Sch. 1 Pt. II para. 70](#)

#### Marginal Citations

**M18** [1975 c. 21](#).

### 130 Notice to Director of intended prosecution.

- (1) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under section 23 of this Act, or for an offence under the <sup>M19</sup>Trade Descriptions Act 1968, other than an offence under section 28(5) or section 29 of that Act, [<sup>F113</sup>or for an offence under any provision made by or under Part III of the Consumer Protection Act 1987,]<sup>F114</sup>or for an offence under section 1 of, or paragraph 6 of the Schedule to, the Property Misdescriptions Act 1991,<sup>F115</sup>or for an offence under section 2 of the Timeshare Act 1992] it shall, as between the authority and the Director, be the duty of the authority to give to the Director notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded, and to postpone institution of the proceedings until either—
- (a) twenty-eight days have elapsed since the giving of that notice, or
  - (b) the Director has notified the authority that he has received the notice and the summary of the facts.
- (2) In relation to offences under the <sup>M20</sup>Trade Descriptions Act 1968, the preceding subsection shall have effect subject to the transitional provisions having effect by virtue of section 139 of this Act.

#### Textual Amendments

**F113** Words inserted by [Consumer Protection Act 1987 \(c. 43, SIF 109:1\)](#), s. 48(1), [Sch. 4 para. 3](#)

**F114** Words in s. 130(1) inserted by [Property Misdescriptions Act 1991 \(c. 29, SIF 124:4\)](#), s. 3, [Sch. paras. 2\(1\)\(2\)](#), [8](#).

**F115** Words in s. 130(1) inserted (12.10.1992) by [Timeshare Act 1992 \(c. 35\)](#), s. 10, [Sch. para.2, 6](#); [S.I. 1992/1941](#), [art.2](#)

#### Marginal Citations

**M19** [1968 c. 29](#).

**M20** [1968 c. 29](#).

### 131 Notification of convictions and judgments to Director.

- (1) Where in any criminal proceedings a person is convicted of an offence by or before a court in the United Kingdom, or a judgment is given against a person in civil proceedings in any such court, and it appears to the court—

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- (a) having regard to the functions of the Director under Part III of this Act [F116 or under the M21 Estate Agents Act 1979], that it would be expedient for the conviction or judgment to be brought to his attention, and
- (b) that it may not be brought to his attention unless arrangements for the purpose are made by the court,

the court may make arrangements for that purpose notwithstanding that the proceedings have been finally disposed of by the court.

- (2) In this section “judgment” includes any order or decree, and any reference to the giving of a judgment shall be construed accordingly.

#### Textual Amendments

F116 Words inserted by [Estate Agents Act 1979 \(c. 38\), ss. 9\(5\), 36\(2\)](#)

#### Marginal Citations

M21 [1979 c. 38.](#)

### 132 Offences by bodies corporate.

- (1) Where an offence under section 23, section 46, section 85(6) [F117 section 93B] or Part XI of this Act, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### Textual Amendments

F117 Words inserted by [Companies Act 1989 \(c. 40, SIF 27\), s. 153, Sch. 20 para. 17](#)

#### Modifications etc. (not altering text)

C114 [S. 132](#) applied (with modifications) (28.8.1996) by [S.I. 1996/2199, reg. 27](#)

### 133 General restrictions on disclosure of information.

- (1) Subject to subsections (2) to (4) of this section, no information with respect to any particular business which has been obtained under or by virtue of the provisions (other than Part II) of this Act. . . . F118 shall, so long as that business continues to be carried on, be disclosed without the consent of the person for the time being carrying on that business.
- (2) The preceding subsection does not apply to any disclosure of information which is made—
  - (a) for the purpose of facilitating the performance of any functions of the Director [F119 the Director General of Telecommunications,] [F120 the Director General

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of Gas Supply,<sup>[F121]</sup> the Civil Aviation Authority,<sup>[F122]</sup> the Director General of Water Services,<sup>[F123]</sup> the Director General of Electricity Supply,<sup>[F124]</sup> the Director General of Electricity Supply for Northern Ireland<sup>[F125]</sup> or the Director General of Gas for Northern Ireland<sup>[F126]</sup> the Rail Regulator<sup>[F126]</sup> the Authorised Conveyancing Practitioners Board, the Coal Authority], the Commission, the Secretary of State or any other Minister under this Act, <sup>[F127]</sup> the <sup>M22</sup> Restrictive Trade Practices Act 1956 or the <sup>M23</sup> Restrictive Trade Practices Act 1968] or <sup>[F128]</sup> the <sup>M24</sup> Estate Agents Act 1979, or <sup>[F129]</sup> the <sup>M25</sup> Competition Act 1980 <sup>[F119]</sup> or the Telecommunications Act 1984 <sup>[F130]</sup> or Chapter XIV of Part I of the Financial Services Act 1986,<sup>[F120]</sup> or the Gas Act 1986,<sup>[F121]</sup> or the Airports Act 1986,<sup>[F122]</sup> or the Water Act 1989,<sup>[F131]</sup> the Water Industry Act 1991 or any of the other consolidation Acts (within the meaning of section 206 of that Act of 1991)<sup>[F123]</sup> or the Electricity Act 1989,<sup>[F132]</sup> or the Electricity (Northern Ireland) Order 1992<sup>[F125]</sup> or the Gas (Northern Ireland) Order 1996<sup>[F133]</sup> or the Broadcasting Act 1990,], or <sup>[F134]</sup> the Control of Misleading Advertisements Regulations 1988 <sup>[F126]</sup> or the Railways Act 1993<sup>[F135]</sup> or the Coal Industry Act 1994]

(b) in pursuance of a Community obligation within the meaning of the <sup>M26</sup> European Communities Act 1972.

(3) Subsection (1) of this section does not apply to any disclosure of information which is made for the purposes of any proceedings before the Restrictive Practices Court or of any other legal proceedings, whether civil or criminal, under this Act, <sup>[F136]</sup> the <sup>M27</sup> Restrictive Trade Practices Act 1956 or the <sup>M28</sup> Restrictive Trade Practices Act 1968<sup>[F137]</sup> or the Control of Misleading Advertisement Regulations 1988].

(4) Nothing in subsection (1) of this section shall be construed—

(a) as limiting the matters which may be included in, or made public as part of, a report of the Advisory Committee or of the Commission;

(b) .....<sup>F138</sup>, or

(c) as applying to any information which has been made public as part of such a report or as part of that register.

(5) Any person who discloses any information in contravention of this section shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding £400;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) In this section references to this Act shall be construed as including references to any enactment repealed by this Act.

#### Textual Amendments

**F118** Words repealed by Restrictive Trade Practices Act 1976 (c. 34), Sch. 6

**F119** Words inserted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 57(3), Sch. 5 para. 45

**F120** Words inserted by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), Sch. 7 para. 15(3)

**F121** Words inserted by Airports Act 1986 (c. 31, SIF 9), s. 83(1), Sch. 4 para. 3

**F122** Words inserted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(1), Sch. 25 para. 45(3)

**F123** Words inserted (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), Sch. 16 para. 16(4)

**F124** Words in s. 133(2)(a) inserted (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), Sch. 12 para. 10(a); S.R. 1992/117, art. 3(1)

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- F125** Words in s. 133(2)(a) inserted (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 71(1)** (with Sch. 7 paras. 2, 3(2)), Sch. 6; S.R. 1996/216, **art. 2**
- F126** Words in s. 133(2)(a) inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(a), 152(1), **Sch. 12 para. 7**; S.I. 1993/3237, **art. 2(2)**.
- F127** Words substituted by Restrictive Trade Practices Act 1976 (c. 34, SIF 124:1), s. 44, **Sch. 5**
- F128** Words added by Estate Agents Act 1979 (c. 38, SIF 124:4), **s. 10(4)(a)**
- F129** Words added by Competition Act 1980 (c. 21, SIF 124:1), **s. 19(4)(c)**
- F130** Words inserted by Financial Services Act 1986 (c. 60, SIF 69), s. 182, **Sch. 13 para. 1**
- F131** Words in s. 133(2)(a) inserted (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2, 4(2), **Sch. 1 para. 24(3)**
- F132** Words in s. 133(2)(a) inserted (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(1), **Sch. 12 para. 10(b)**; S.R. 1992/117, **art. 3(1)**
- F133** Words inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(1), **Sch. 20 para. 20**
- F134** Words inserted by S.I. 1988/915, **art. 7(6)(a)(i)**
- F135** Words in s. 133(2)(a) inserted (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9 para. 14(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F136** Words substituted by Restrictive Trade Practices Act 1976 (c. 34), **Sch. 5**
- F137** Words inserted by S.I. 1988/915, **art. 7(6)(a)(ii)**
- F138** S. 133(4)(b) repealed by Restrictive Trade Practices Act 1976 (c. 34), **Sch. 6**

#### Modifications etc. (not altering text)

- C115** S. 133 amended (E.W.S.) (1.3.1996) by 1986 c. 44, **s. 36A(2)** (as inserted (1.3.1996) by 1995 c. 45, s. 10(1), **Sch. 3 para. 43**; S.I. 1996/218, **art. 2**)  
S. 133 amended (N.I.) (10.6.1996) by S.I. 1996/275 (N.I. 2), **art. 23(2)** (with Sch. 7 paras. 2, 3(2)); S.R. 1996/216, **art. 2**
- C116** "That register" means register under REstrictive Trade Practices Act 1976 (c. 34)  
S. 133 modified by Telecommunications Act 1984 (c. 12, SIF 96), **s. 50(2)**  
S. 133 modified (E.W.) by Water Act 1989 (c. 15, SIF 130), **s. 28(2)**  
S. 133 modified (E.W.S.) by Electricity Act 1989 (c. 29, SIF 44:1), **s. 43(2)**  
S. 133 extended by S.I. 1990/1715, **reg. 4**  
S. 133(1) excluded by Broadcasting Act 1990 (c. 42, SIF 96), **s. 197(5)(a)**  
S. 133 amended (E.W.) (1.12.1991) by Water Industry Act 1991 (c. 56, SIF 130), **ss. 31(4)(b), 35(4), 223(2)** (with ss. 82(3), 186(1), 188, 222(1), Sch. 14 para. 6)  
S. 133 modified (1.4.1992) by S.I. 1992/231 (N.I. 1), **art. 46(2)**; S.R. 1992/117, **art. 3(1)**  
S. 133 amended (E.W.S.) (1.4.1994) by 1993 c. 43, **s. 67(2)(4)**; S.I. 1994/571, **art. 5**

#### Marginal Citations

- M22** 1956 c. 68.  
**M23** 1968 c. 66.  
**M24** 1979 c. 38(124:4).  
**M25** 1980 c. 21(124:1).  
**M26** 1972 c. 68.  
**M27** 1956 c. 68.  
**M28** 1968 c. 66.

## 134 Provisions as to orders.

- (1) Any statutory instrument whereby any order is made under any of the preceding provisions of this Act, other than a provision which requires a draft of the order to be laid before Parliament before making the order, or whereby any regulations are made under this Act, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (2) Any power conferred by any provision of this Act to make an order by statutory instrument shall include power to revoke or vary the order by a subsequent order made under that provision.

**135 Financial provisions.**

- (1) The Secretary of State shall pay all remuneration, allowances or other sums payable under this Act to or in respect of persons who are or have been members of the Advisory Committee or the Commission, and shall defray—
  - (a) all expenses duly incurred by the Commission in the payment of remuneration or allowances payable under this Act to staff of the Commission, and
  - (b) to such amount as the Secretary of State with the approval of the Minister for the Civil Service may determine, all other expenses duly incurred by the Advisory Committee or the Commission.
- (2) There shall be defrayed out of moneys provided by Parliament—
  - (a) all expenses incurred by the Secretary of State in consequence of the provisions of this Act;
  - (b) any expenses incurred in consequence of those provisions by any other Minister of the Crown or government department, not being a [F139Northern Ireland department];
  - (c) the remuneration of, and any travelling or other allowances payable under this Act to, the Director and any staff of the Director, any other sums payable under this Act to or in respect of the Director, and any expenses duly incurred by the Director or by any of his staff in consequence of the provisions [F140of this or any other Act];
  - (d) any increase attributable to this Act in the sums payable out of moneys so provided under the M29Superannuation Act 1972.

(3) ..... F141

**Textual Amendments**  
 F139 Words substituted by virtue of Northern Ireland Act 1974 (c. 28), Sch. 1 para. 2(1)(b)(4)  
 F140 Words substituted (4.4.1980) by Competition Act 1980 (c. 21), s. 32(2)  
 F141 S. 135(3) repealed by S.I. 1973/2163, Sch. 6

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**Marginal Citations**  
 M29 1972 c. 11.

**136** ..... F142

**Textual Amendments**  
 F142 S. 136 repealed by Statute Law (Repeals) Act 1977 (c. 18), Sch. 1 Pt. XIII

**137 General interpretation provisions.**

- (1) In this Act—

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“the Act of 1948” means the <sup>M30</sup>Monopolies and Restrictive Practices (Inquiry and Control) Act 1948;

[<sup>F143</sup>“the Act of 1976” means the <sup>M31</sup>Restrictive Trade Practices Act 1976];

<sup>F144</sup>  
. . . .

“the Act of 1965” means the <sup>M32</sup>Monopolies and Mergers Act 1965;

<sup>F145</sup>  
. . . .

“assignment”, in relation to Scotland, means assignment;

“contract of employment” means a contract of service or of apprenticeship, whether it is express or implied, and (if it is express) whether it is oral or in writing;

“scale” (where the reference is to the scale on which any services are, or are to be, made available, supplied or obtained) means scale measured in terms of money or money’s worth or in any other manner.

(2) Except in so far as the context otherwise requires, in this Act, . . . <sup>F146</sup> the following expressions have the meanings hereby assigned to them respectively, that is to say—

“the Advisory Committee” means the Consumer Protection Advisory Committee;

“agreement” means any agreement or arrangement, in whatever way and in whatever form it is made, and whether it is, or is intended to be, legally enforceable or not;

“business” includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

“commercial activities in the United Kingdom” means any of the following, that is to say, the production and supply of goods in the United Kingdom, the supply of services in the United Kingdom and the export of goods from the United Kingdom;

“the Commission” means the Monopolies and Mergers Commission;

“complex monopoly situation” has the meaning assigned to it by section 11 of this Act;

“consumer” (subject to subsection (6) of this section) means any person who is either—

(a) a person to whom goods are or are sought to be supplied (whether by way of sale or otherwise) in the course of a business carried on by the person supplying or seeking to supply them, or

(b) a person for whom services are or are sought to be supplied in the course of a business carried on by the person supplying or seeking to supply them,

and who does not receive or seek to receive the goods or services in the course of a business carried on by him;

“the Director” means the Director General of Fair Trading;

“enactment” includes an enactment of the Parliament of Northern Ireland;

“goods” includes buildings and other structures, and also includes ships, aircraft and hovercraft, . . . <sup>F147</sup>;

“group” (where the reference is to a group of persons fulfilling specified conditions, other than the condition of being interconnected bodies corporate)

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means any two or more persons fulfilling those conditions, whether apart from fulfilling them they would be regarded as constituting a group or not;

“merger reference” has the meaning assigned to it by section 5(3) of this Act;

“merger situation qualifying for investigation” has the meaning assigned to it by section 64(8) of this Act;

“Minister” includes a government department but shall not by virtue of this provision be taken to include the establishment consisting of the Director and his staff, and, except where the contrary is expressly provided, does not include any [<sup>F148</sup>Northern Ireland department];

“monopoly reference” and “monopoly situation” have the meanings assigned to them by section 5(3) of this Act;

“newspaper merger reference” has the meaning assigned to it by section 59(3) of this Act;

“practice” means any practice, whether adopted in pursuance of an agreement or otherwise;

“price” includes any charge or fee, by whatever name called;

“produce”, in relation to the production of minerals or other substances, includes getting them, and, in relation to the production of animals or fish, includes taking them;

“supply”, in relation to the supply of goods, includes supply by way of sale, lease, hire or hire-purchase, and, in relation to buildings or other structures, includes the construction of them by a person for another person;

“uncompetitive practices” means practices having the effect of preventing, restricting or distorting competition in connection with any commercial activities in the United Kingdom;

“worker” (subject to subsection (7) of this section) has the meaning assigned to it by [<sup>F149</sup>section 30 of the <sup>M33</sup>Trade Union and Labour Relations Act 1974].

- (3) In the provisions of this Act . . . <sup>F146</sup>“the supply of services” does not include the rendering of any services under a . . . contract of employment but, . . . <sup>F146</sup>—
- (a) includes the undertaking and performance for gain or reward of engagements (whether professional or other) for any matter other than the supply of goods, and
  - (b) includes both the rendering of services to order and the provision of services by making them available to potential users [<sup>F150</sup>, and
  - (c) includes the making of arrangements for a person to put or keep on land a caravan (within the meaning of Part I of the <sup>M34</sup>Caravan Sites and Control of Development Act 1960) other than arrangements by virtue of which the person may occupy the caravan as his only or main residence][<sup>F151</sup>and
  - (d) includes the making of arrangements for the use by public service vehicles (within the meaning of the Public Passenger Vehicles Act 1981) of a parking place which is used as a point at which passengers on services provided by means of such vehicles may be taken up or set down.][<sup>F152</sup>and
  - (e) includes the making of arrangements permitting use of the tunnel system (within the meaning of the Channel Tunnel Act 1987) by a person operating services for the carriage of passengers or goods by rail.][<sup>F153</sup>and
  - (f) includes the making of arrangements, by means of such an agreement as is mentioned in section 189(2) of the Broadcasting Act 1990, for the sharing



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of the use of any telecommunication apparatus (within the meaning of Schedule 2 to the Telecommunications Act 1984).]]<sup>F154</sup>and

(g) includes the supply of network services and station services, within the meaning of Part I of the Railways Act 1993;]

and any reference in those provisions to services supplied or to be supplied, or to services provided or to be provided, shall be construed accordingly.

(4) .....<sup>F155</sup>

(5) For the purposes of the provisions of this Act . . . <sup>F146</sup>, any two bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of [<sup>F156</sup>section 736 of the Companies Act 1985]) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and in those provisions “interconnected bodies corporate” shall be construed accordingly, and “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of whom are interconnected with each other.

(6) For the purposes of the application of any provision of this Act in relation to goods or services of a particular description or to which a particular practice applies, “consumers” means persons who are consumers (as defined by subsection (2) of this section) in relation to goods or services of that description or in relation to goods or services to which that practice applies.

(7) For the purposes of the application of this Act to Northern Ireland, the definition of “worker” in subsection (2) of this section shall apply as if [<sup>F149</sup>the <sup>M35</sup>Trade Union and Industrial Relations Act 1974] extended to Northern Ireland but, in [<sup>F149</sup>section 30(2) (a)] of that Act, references to general medical services, pharmaceutical services, general dental services or general ophthalmic services provided under the enactments mentioned in that subsection were references to the corresponding services provided in Northern Ireland under the corresponding enactments there in force.

(8) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment, including this Act.

### Textual Amendments

- F143** Words substituted by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 5**
- F144** Definition repealed by [Resale Prices Act 1976 \(c. 53\)](#), **Sch. 3 Pt. 1**
- F145** Definition repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 6**
- F146** Words repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), **Sch. 6**
- F147** Words repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(4), **Sch. 18**
- F148** Words substituted by virtue of [Northern Ireland Act 1974 \(c. 28\)](#), **Sch. 1 para. 2(1)(b)(4)**
- F149** Words substituted by virtue of [Interpretation Act 1978 \(c. 30\)](#), s. 17(2)(a)
- F150** Word and s. 137(3)(c) inserted (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), s. 23
- F151** S. 137(3)(d) added by [Transport Act 1985 \(c. 67, SIF 126\)](#), s. 116(1)
- F152** S. 137(3)(e) added by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), s. 33(10)
- F153** S. 137(3)(f) inserted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 192(1)
- F154** Words in s. 137(3) inserted (1.4.1994) by 1993 c. 43, s. 66(4); S.I. 1994/571, art. 5
- F155** S. 137(4) repealed by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(4), **Sch. 18**
- F156** Words substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, **Sch. 2**

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#### Modifications etc. (not altering text)

**C117** Reference to enactment of Parliament of Northern Ireland to be construed as including reference to Measure of Northern Ireland Assembly: [Northern Ireland Constitution Act 1973 \(c. 36\)](#), [Sch. 5 para. 1\(1\)\(2\)](#)

#### Marginal Citations

**M30** 1948 c. 66.  
**M31** 1976 c. 34.  
**M32** 1965 c. 50.  
**M33** 1974 c. 52.  
**M34** 1960 c. 62.  
**M35** 1974 c. 52.

### 138 Supplementary interpretation provisions.

- (1) This section applies to the following provisions of this Act, that is to say, section 2(4), Parts II and III, section 137(6), and the definition of “consumer” contained in section 137(2).
- (2) For the purposes of any provisions to which this section applies it is immaterial whether any person supplying goods or services has a place of business in the United Kingdom or not.
- (3) For the purposes of any provisions to which this section applies any goods or services supplied wholly or partly outside the United Kingdom, if they are supplied in accordance with arrangements made in the United Kingdom, whether made orally or by one or more documents delivered in the United Kingdom or by correspondence posted from and to addresses in the United Kingdom, shall be treated as goods supplied to, or services supplied for, persons in the United Kingdom.
- (4) In relation to the supply of goods under a hire-purchase agreement, a credit-sale agreement or a conditional sale agreement, the person conducting any antecedent negotiations, as well as the owner or seller, shall for the purposes of any provisions to which this section applies be treated as a person supplying or seeking to supply the goods.
- [<sup>F157</sup>(5) In subsection (4) of this section, the following expressions have the meanings given by, or referred to in, section 189 of the <sup>M36</sup>Consumer Credit Act 1974—
  - “antecedent negotiations”,
  - “conditional sale agreement”,
  - “credit-sale agreement”,
  - “hire-purchase agreement”.]
- (6) In any provisions to which this section applies—
  - (a) any reference to a person to or for whom goods or services are supplied shall be construed as including a reference to any guarantor of such a person, and
  - (b) any reference to the terms or conditions on or subject to which goods or services are supplied shall be construed as including a reference to the terms or conditions on or subject to which any person undertakes to act as such a guarantor;
 and in this subsection “guarantor”, in relation to a person to or for whom goods or services are supplied, includes a person who undertakes to indemnify the supplier of

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the goods or services against any loss which he may incur in respect of the supply of the goods or services to or for that person.

- (7) For the purposes of any provisions to which this section applies goods or services supplied by a person carrying on a business shall be taken to be supplied in the course of that business if payment for the supply of the goods or services is made or (whether under a contract or by virtue of an enactment or otherwise) is required to be made.

**Textual Amendments**

**F157** S. 138(5) substituted by [Consumer Credit Act 1974 \(c. 39, SIF 60\)](#), s. 192(4), [Sch. 4 Pt. I para. 37](#)

**Marginal Citations**

**M36** 1974 c. 39.

**139 Amendments, repeals and transitional provisions.**

- (1) Subject to the transitional provisions and savings contained in Schedule 11 to this Act—
- (a) the enactments specified in Schedule 12 to this Act shall have effect subject to the amendments specified in that Schedule (being minor amendments or amendments consequential upon the preceding provisions of this Act), and
  - (b) the enactments specified in Schedule 13 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (2) The provisions of Schedule 11 to this Act shall have effect for the purposes of this Act.

**140 †Short title, citation, commencement and extent.**

- (1) This Act may be cited as the Fair Trading Act 1973.
- (2) ..... **F158**
- (3) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint; and different dates may be so appointed for, or for different purposes of, any one or more of the provisions of this Act (including, in the case of section 139 of this Act, the amendment or repeal of different enactments specified in Schedule 12 or Schedule 13 to this Act or of different provisions of any enactment so specified).
- (4) Where any provision of this Act, other than a provision contained in Schedule 11, refers to the commencement of this Act, it shall be construed as referring to the day appointed under this section for the coming into operation of that provision.
- (5) This Act extends to Northern Ireland.

**Textual Amendments**

**F158** S. 140(2) repealed by [Restrictive Trade Practices Act 1976 \(c. 34\)](#), [Sch. 6](#)

**Modifications etc. (not altering text)**

**C118** Unreliable marginal note.

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**C119** Power of appointment conferred by s. 140(3) fully exercised.

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