



# Fair Trading Act 1973

## 1973 CHAPTER 41

### 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
  - (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.

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

C1 S. 84 extended (4.4.1980) by [Competition Act 1980 \(c. 21\)](#), s. 11(9) and extended *ibid.*, ss. 7(6), 33(5)

*Status: Point in time view as at 01/04/1999.*

*Changes to legislation: There are currently no known outstanding effects for the Fair Trading Act 1973, Part VIII. (See end of Document for details)*

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<sup>[F1(i)]</sup>, any documents which are specified or described in the notice<sup>[F2]</sup> or
  - (ii) any document which falls within a category of document which is 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<sup>[F3]</sup> forecasts], 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<sup>[F3]</sup> forecasts], returns or information are to be furnished.

<sup>[F4]</sup>(1A) For the purposes of subsection (1) above—

- (a) “document” includes information recorded in any form;
- (b) the power to require the production of documents includes power to take copies of, or extracts from, any document produced; and
- (c) in relation to information recorded otherwise than in legible form, the power to require it to be produced includes power to require it to be produced in legible form, so far as the means to do so are within the custody or under the control of the person on whom the requirement is imposed.]

(2) For the purposes of <sup>[F5]</sup>an investigation of the kind mentioned in subsection (1)] 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>F6</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>F7</sup>
- (b) .....<sup>F7</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>F8</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

- F1** Word in s. 85(1)(b) inserted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(10)(a)** (with s. 73); S.I. 1999/505, art. 2, **Sch.**
- F2** Word and subparagraph (ii) inserted in s. 85(1)(b) (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(10)(b)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F3** Words inserted in s. 85(1)(c) (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(11)** (with s. 73); S.I. 1999/505, art. 2, **Sch.**
- F4** S. 85(1A) inserted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(12)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F5** Words in s. 85(2) substituted (1.4.1999) by 1998 c. 41, s. 74(1), **Sch. 12 para. 1(13)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- F6** S. 85(5) repealed by **Companies Act 1989 (c. 40, SIF 27)**, ss. 153, 212, Sch. 20 para. 13(2), **Sch. 24**
- F7** 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**
- F8** 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)

- C2** 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**.
- C3** S. 85 applied with modifications by **Telecommunications Act 1984 (c. 12, SIF 96)**, s. **13(9)**  
S. 85 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. 85 applied (with modifications) (1.2.2001) by 2000 c. 38, s. **18(2)(b)** (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. 85 applied (with modifications) (1.10.2001) by 1989 c. 29, s. **14A(12)-(14)** (as inserted (1.10.2001) by 2000 c. 27, ss. **39**, **104(1)(2)(6)**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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- S. 85 applied (with modifications) (1.10.2001) by 1986 c. 44, **s. 26A(12)-(14)** (as inserted (1.10.2001) by 2000 c. 27, **ss. 83(4)**, 104(1)(2)(6)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- S. 85 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. 85 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. 85 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. 85 applied (with modifications) (26.3.2001) by 2000 c. 26, **s. 20(4)(5)(a)**; S.I. 2000/2957, art. 2(3), **Sch. 3**
- 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), **ss. 41(3)**, 75(2); 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. 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)**
- 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(6)-(8) modified (1.3.2000) by 1980 c. 21, **s. 13(8)** as substituted (1.3.2000) by 1998 c. 41, s. 74(1), **Sch. 12 Para. 4(4)(b)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**; S.I. 2000/344, art. 2, **Sch.**
- 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, **s. 13(8)(9)**; S.I. 1994/571, **art. 5**
- 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 1994 c. 12, s. 13(9) 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(7)** as substituted 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 1986 c. 44, **s. 24(7A)** as substituted 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(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**

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- S. 85 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. 13(8)(8A)** (with s. 73); S.I. 1999/505, art. 2, **Sch. 2**
- S. 85 applied (with modifications) (1.4.1999) by S.I. 1992/231 (N.I. 1), arts. 15(8), (9), 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) (1.4.1999) by S.I. 1996/275 (N.I. 2), **art. 15(9)** (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) (24.11.1999) by S.I. 1999/3088, **regs. 7, 8**
- S. 85 modified (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 modified (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 modified (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 modified (N.I.) (1.4.1999) by S.I. 1994/426 (N.I. 1), **art. 35(3)** 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**
- C4** S. 85(6)-(8) applied (with modifications) (26.11.2001) by S.I. 2001/3755, **reg. 13, Sch. 2 para. 4(3)** (with regs. 39, 45)

## 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>F9</sup>the Department of Agriculture for Northern Ireland and the Department of Commerce for Northern Ireland].

### Textual Amendments

- F9** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), **Sch. 1 para. 2(1)(b)(4)**

### Modifications etc. (not altering text)

- C5** 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)

*Status: Point in time view as at 01/04/1999.*

*Changes to legislation: There are currently no known outstanding effects for the Fair Trading Act 1973, Part VIII. (See end of Document for details)*

- 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>F10</sup>the Department of Agriculture for Northern Ireland], that [<sup>F10</sup>Department] shall lay a copy of the report before [<sup>F11</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>F12</sup>the Secretary of State] to [<sup>F11</sup>the Northern Ireland Assembly] otherwise than at or during the time of a sitting of [<sup>F11</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>F11</sup>the Assembly] as required by that subsection.

### Textual Amendments

- F10** Words substituted by virtue of Northern Ireland Act 1974 (c. 28), **Sch. 1 para. 2(1)(b)(4)**
- F11** Words substituted by virtue of Northern Ireland Constitution Act 1973 (c. 36), **Sch. 5 para. 3(2)**
- F12** 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,—



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- (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>F13</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>F14</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 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, [<sup>F15</sup>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 [<sup>F16</sup>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.

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- (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 [<sup>F17</sup>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 [<sup>F17</sup>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 . . . <sup>F18</sup>, 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

- F13** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 14(1)(5)**
- F14** [S. 88 \(2A\)](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 14(2)**.
- F15** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 14(3)(a)**
- F16** Words substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 14(3)(b)**
- F17** Words inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 14(3)**
- F18** 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)

- C6** 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**).
- 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**



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- 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)
- C7 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>F19</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>F20</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.
- (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>F21</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.

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### Textual Amendments

- F19** S. 89(1) paras. (a) and (b) substituted by [Companies Act 1989 \(c. 40, SIF 27\)](#), s. 153, **Sch. 20 para. 15(1)(4)**
- F20** Words repealed by [Companies Act 1989 \(c. 40, SIF 27\)](#), ss. 153, 212, [Sch. 20 para. 15\(2\)\(4\)](#), **Sch. 24**
- F21** 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>F22</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>F23</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
  - (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>M1</sup>Agricultural Marketing Act 1958 [<sup>F24</sup>or under the <sup>M2</sup>Agricultural Marketing Act (Northern Ireland) 1964][<sup>F25</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

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- (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

- F22** Words inserted by **Companies Act 1989** (c. 40, SIF 27), s. 153, **Sch. 20 para. 16(2)**  
**F23** S. 90(5) substituted by **Companies Act 1989** (c. 40, SIF 27), s. 153, **Sch. 20 para. 16(3)**  
**F24** 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**  
**F25** Words added by **S.I. 1982/1080**, (N.I. 12), art. 46(1), Sch. 8

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

- C8** S. 90 applied (with modifications) (28.8.1996) by **S.I. 1996/2199**, **reg. 24**  
**C9** S. 90(1) extended (1.5.1980) by **Competition Act 1980** (c. 21), **s. 12(6)**  
**C10** S. 90(1)(3) extended by **Competition Act 1980** (c. 21), **ss. 10(4), 33(5)**  
**C11** 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

- M1** 1958 c. 47.  
**M2** 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—
- stating his intention to make the order;
  - indicating the nature of the provisions to be embodied in the order; and
  - 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.

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

- C12** 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>F26</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**

- F26** S. 92(2)(3) substituted by [Companies Consolidation \(Consequential Provisions\) Act 1985 \(c. 9, SIF 27\)](#), s. 30, [Sch. 2](#)

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

- C13** 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

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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)

- C14** S. 93 extended (1.5.1980) by [Competition Act 1980 \(c. 21\)](#), **s. 12(6)** and extended *ibid.*, ss. 10(4), 33(5)
- C15** S. 93 applied (with modifications) (28.8.1996) by [S.I. 1996/2199](#), **reg. 24**
- C16** [S. 93\(3\)\(4\)](#) applied by [Channel Tunnel Act 1987 \(c. 53, SIF 102\)](#), **s. 33(7)**
- C17** [S. 93\(3\)\(4\)](#) extended (18.12.1996) by [1996 c. 61](#), **s. 26(3)**

#### [<sup>F27</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>F28</sup>pursuant to a proposal under section 56A of this Act or under section 56F or] 75G of this Act,
  - (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

- F27** [S. 93A](#) inserted by [Companies Act 1989 \(c. 40, SIF 27\)](#), **s. 148**
- F28** Words in [s. 93A\(1\)\(a\)](#) substituted (3.1.1995) by [1994 c. 40](#), ss. 39, 82(2)(e), **Sch. 11 para. 2(3)**

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

**C18** S. 93A applied (with modifications) (28.8.1996) by S.I. 1996/2199, **reg. 24**

**[<sup>F29</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**

**F29** S. 93B inserted by **Companies Act 1989** (c. 40, SIF 27), **s. 151**

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

- C19** 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**
- C20** 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**
- C21** 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)



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- 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**
- C22** 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)

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