



Electricity Act 1989

1989 CHAPTER 29

PART I

ELECTRICITY SUPPLY

Modification of licences

11 Modification by agreement.

[^{F1}(1) Subject to the following provisions of this section, the Authority may modify the conditions of a particular licence.

(1A) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications and, in the case of standard conditions of the licence, the Authority is of the opinion that the modifications—

- (a) are requisite to meet the circumstances of the particular case; and
- (b) are such that—
 - (i) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and
 - (ii) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).]

(2) Before making modifications under this section, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(3) A notice under subsection (2) above shall be given—

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- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the holder of the licence.
- (4) The Director shall also send a copy of a notice under subsection (2) above to the Secretary of State; and if, within the period specified in the notice, the Secretary of State directs the Director not to make any modifications, the Director shall comply with the direction.
- [^{F2}(5) The modification under this section of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.]

Textual Amendments

- F1** S. 11(1)(1A) substituted for s. 11(1) (1.10.2001) by 2000 c. 27, s. 34(1); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F2** S. 11(5) inserted (1.10.2001) by 2000 c. 27, s. 34(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

[^{F3}11A Modification of standard conditions of licences.

- (1) Subject to the following provisions of this section, the Authority may modify the standard conditions of licences of any type mentioned in section 6(1).
- (2) Where at any time the Authority modifies the standard conditions of licences of any type under this section the Authority may make such incidental or consequential modifications as it considers necessary or expedient of any conditions of any licence of that type.
- (3) Before making any modifications under this section, the Authority shall give notice—
 - (a) stating that it proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why it proposes to make the modifications; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made;
 and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) shall be given—
 - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by sending a copy of the notice to each relevant licence holder, to the Secretary of State and to the Council.
- (5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.
- (6) The Authority may not under this section make any modifications of the standard conditions of licences of any type unless—

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- (a) no notice of objection to those modifications is given to the Authority within the time specified in the notice under subsection (3) by any relevant licence holder;
 - (b) if one or more relevant licence holders give notice of objection to the Authority within that time—
 - (i) the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection is less than such percentage as may be prescribed; and
 - (ii) the percentage given by subsection (7) is less than such percentage as may be prescribed; or
 - (c) subsection (8) applies to the case.
- (7) The percentage given by this subsection is the proportion (expressed as a percentage) of the relevant licence holders who have given notice of objection, weighted according to their market share in such manner as may be prescribed.
- (8) This subsection applies where the Authority is satisfied that—
- (a) the effect of the standard conditions is such as to impose a burden affecting relevant licence holders in the carrying on of activities to which the modifications relate;
 - (b) the modifications would remove or reduce the burden without removing any necessary protection; and
 - (c) the modifications are such that no holder of a licence of the type in question would be unduly disadvantaged in competing with other holders of such licences.
- (9) Where the Authority modifies the standard conditions of licences of any type—
- (a) the Authority shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
 - (b) the Authority shall publish the modifications in such manner as it considers appropriate.
- (10) In this section—
- “prescribed” means prescribed in an order made by the Secretary of State; and
 - “relevant licence holder”, in relation to proposed modifications of standard conditions of licences of any type, means the holder of a licence of that type—
 - (a) which is to be modified under the proposals by the inclusion of any new standard condition; or
 - (b) which includes any standard conditions to which the proposals relate, other than standard conditions which are not in effect (by virtue of anything done under section 33(2) of the Utilities Act 2000) at the time specified in the notice under subsection (3).
- (11) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]

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Textual Amendments

- F3** S. 11A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 35; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

12 Modification references to Monopolies Commission.

- [^{F4}(1) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the carrying on of activities authorised or regulated by a particular licence and which are specified in the reference operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.
- (1A) The Authority may make to the Competition Commission a reference which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the carrying on of activities authorised or regulated by licences of any type mentioned in section 6(1), and which are specified in the reference operate, or may be expected to operate, against the public interest; and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions of licences of that type.]

(2) The Director may, at any time, by notice given to the [^{F5}Competition Commission] vary a reference under this section by adding to the matters specified in the reference or by excluding from the reference some ^{F6}... of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Director may specify in a reference under this section, or a variation of such a reference, for the purpose of assisting the [^{F5}Competition Commission] in carrying out the investigation on the reference—

 - (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
 - (b) any modifications of the [^{F7}relevant conditions] by which, in his opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this section or a variation of such a reference, the Director—

 - (a) shall serve a copy of the reference or variation on the holder of the licence [^{F8}or, as the case may be, the relevant licence holders and the Council]; and
 - (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Director shall also send a copy of a reference under [^{F9}subsection (1A)], or a variation of such a reference, to the Secretary of State; and if, before the end of the period of 28 days beginning with the day on which the Secretary of State receives the copy of the reference or variation, the Secretary of State directs the [^{F5}Competition

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Commission] not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(6) It shall be the duty of the Director, for the purpose of assisting the [F5Competition Commission] in carrying out an investigation on a reference under this section [F10or in carrying out functions under section 14A], to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation [F10or the carrying out of those functions] and—
 - (i) is requested by the Commission for that purpose; or
 - (ii) 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 [F10or such functions], shall take account of any information given to them for that purpose under this subsection.

[F11(6A) In this section and sections [F1212A,] 13, 14 and 14A—

“relevant conditions”—

- (a) in relation to a reference under subsection (1), means the conditions of the licence to which the reference relates; and
- (b) in relation to a reference under subsection (1A), means the standard conditions of the licences to which the reference relates; and

“relevant licence holder” means the holder of a licence to which a reference under subsection (1A) relates.]

(7) In determining for the purposes of this section whether any particular matter operates, or may be expected to operate, against the public interest, the [F5Competition Commission] shall have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section [F133A to 3C].

F14(8)

F14(8A)

F15(9)

F15(9A)

Textual Amendments

- F4** S. 12(1)(1A) substituted for s. 12(1) (1.10.2001) by 2000 c. 27, s. 36(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F5** Words in S. 12(2)(3)(5)(6)(7) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)
- F6** Words in s. 12(2) repealed (1.10.2001) by 2000 c. 27, s. 108, Sch. 8; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F7** Words in s. 12(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 36(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F8** Words in s. 12(4)(a) inserted (1.10.2001) by 2000 c. 27, s. 36(4); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F9** Words in s. 12(5) substituted (1.10.2001) by 2000 c. 27, s. 36(5); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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- F10** Words in s. 12(6) inserted (1.10.2001) by 2000 c. 27, s. 36(6); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F11** S. 12(6A) inserted (1.10.2001) by 2000 c. 27, s. 36(7); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F12** Word in s. 12(6A) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(3)(a); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F13** Words in s. 12(7) substituted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 25; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F14** S. 12(8)(8A) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(3)(b), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F15** S. 12(9)(9A) repealed (1.10.2001) by 2000 c. 27, ss. 104(4), 108, Sch. 8 (with s. 104(5)(6)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

Modifications etc. (not altering text)

- C1** S. 12 amended (16.5.2001) by 2000 c. 27, s. 104(1)(b)(2) (with s. 104(6)); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)

[^{F16}12A References under section 12: time limits

- (1) Every reference under section 12 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 12 above shall not have effect (and no action shall be taken in relation to it under section 14 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
 - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
 - (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

Textual Amendments

- F16** Ss. 12A, 12B inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(4); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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12B References under section 12: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 12 above as they apply for the purposes of references under that Part—
 - (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) subsection (2) were omitted; and
 - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
 - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
 - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
 - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

Textual Amendments

F16 Ss. 12A, 12B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 20\(4\)](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#) (with [art. 8](#))

13 Reports on modification references.

- (1) In making a report on a reference under section 12 above, the [^{F17}Competition Commission]—
 - (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;

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- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
 - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the [^{F18}relevant conditions], shall specify in the report modifications by which those effects could be remedied or prevented.
- [^{F19}(1A) For the purposes of sections 14 and 14A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]
- ^{F20}(2)
- [^{F21}(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 12 above.
- (3A) In making any report on a reference under section 12 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.]
- (4) A report of the [^{F17}Competition Commission] on a reference under section 12 above shall be made to the Director.
- (5) Subject to subsection (6) below, the Director—
- (a) shall, on receiving [^{F22}a report on a reference under section 12(1), send a copy of it to the licence holder] and to the Secretary of State; and
 - (b) shall, not less than 14 days after that copy is received by the Secretary of State, [^{F23}send another copy to the Council and publish that other copy] in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

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- [^{F24}(5A) Subject to subsection (6), the Authority shall—
- (a) on receiving a report on a reference under section 12(1A), send a copy of it to the Secretary of State; and
 - (b) not less than 14 days after that copy is received by the Secretary of State—
 - (i) send another copy to the Council and to each relevant licence holder; and
 - (ii) not less than 24 hours after complying with sub-paragraph (i) above, publish the copy sent to the Council in such manner as it considers appropriate for bringing the report to the attention of persons likely to be affected by it.]
- (6) If it appears to the Secretary of State that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in [^{F25}subsection (5) or (5A), direct the Authority to exclude that matter from the copy of the report, or (as the case may be) each copy of the report, to be sent and published as mentioned in paragraph (b) of that subsection]

Textual Amendments

- F17** Words in S. 13(1)(2)(3)(4) substituted (1.4.1999) by S.I. 1999/506, **art. 24(b)**
- F18** Words in s. 13(1)(c) substituted (1.10.2001) by 2000 c. 27, **s. 37(2)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F19** S. 13(1A)(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(5)(a)**; S.I. 2003/1397, **art. 2(1), Sch.** (with **art. 8**)
- F20** S. 13(2) repealed (1.3.2000) by 1998 c. 41, ss. 54(3), 66(5), 74(3), **Sch. 10 Pt. IV para. 12(3), Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, **art. 2, Sch.**
- F21** S. 13(3)-(3D) substituted for s. 13(3) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(5)(b)**; S.I. 2003/1397, **art. 2(1), Sch.** (with **art. 8**)
- F22** Words in s. 13(5)(a) substituted (1.10.2001) by 2000 c. 27, **s. 37(3)(a)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F23** Words in s. 13(5)(b) substituted (1.10.2001) by 2000 c. 27, **s. 37(3)(b)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F24** S. 13(5A) inserted (1.10.2001) by 2000 c. 27, **s. 37(4)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)
- F25** Words in s. 13(6) substituted (1.10.2001) by 2000 c. 27, **s. 37(5)**; S.I. 2001/3266, **art. 2, Sch.** (subject to transitional provisions in **arts. 3-20**)

14 Modification following report.

- (1) Where a report of the [^{F26}Competition Commission] on a reference under section 12 above—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of [^{F27}the relevant conditions]; and
 - (d) specifies modifications by which those effects could be remedied or prevented,

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the Director shall, subject to the following provisions of this section, make such modifications of [^{F27}the relevant conditions] as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

- [^{F28}(1A) Where at any time it modifies under subsection (1) the standard conditions of licences of any type in consequence of a reference under section 12(1A), the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.]
- (2) Before making modifications under this section, the Director shall have regard to the modifications specified in the report.
- (3) Before making modifications under this section, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) A notice under subsection (3) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the holder of the licence [^{F29}or, as the case may be, the relevant licence holders].
- [^{F30}(5) After considering any representations or objections made in response to proposals set out in a notice under subsection (3), the Authority shall give notice to the Competition Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
 - (b) stating the reasons for making the modifications.
- (6) The Authority shall include with the notice under subsection (5) a copy of any representations or objections received in relation to the notice under subsection (3).
- (7) If the period of four weeks from the date on which the notice under subsection (5) is given elapses without a direction under section 14A(1)(a) having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
 - (b) if a direction under section 14A(1)(b) has been given, make the modifications which are not specified in the direction.
- (8) The modification under subsection (1) of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (9) Where the Authority modifies the standard conditions of licences of any type as mentioned in subsection (1A), the Authority—

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- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.]

Textual Amendments

- F26** Words in S. 14(1) substituted (1.4.1999) by S.I. 1999/506, art. 24(b)
- F27** Words in s. 14(1) substituted (1.10.2001) by 2000 c. 27, s. 38(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F28** S. 14(1A) inserted (1.10.2001) by 2000 c. 27, s. 38(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F29** Words in s. 14(4)(b) inserted (1.10.2001) by 2000 c. 27, s. 38(4); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F30** S. 14(5)-(9) inserted (1.10.2001) by 2000 c. 27, s. 38(5); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

[^{F31}14A Competition Commission's power to veto modifications following report.

- (1) The Competition Commission (in this section referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under section 14(5), direct the Authority—
 - (a) not to make the modifications set out in that notice; or
 - (b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.
- (2) The Secretary of State may, within the period of four weeks after the date on which the Commission is given a notice under section 14(5) and on the application of the Commission, direct that the period for giving a direction under subsection (1) (and, accordingly, the period mentioned in section 14(7)) shall be extended by 14 days.
- (3) The power to give a direction under subsection (1) may only be exercised in respect of such of the modifications set out in the notice under section 14(5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.
- (4) If the Commission gives a direction under subsection (1), the Commission—
 - (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
 - (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under subsection (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under subsection (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under section 14(7)(b).

Status: Point in time view as at 20/06/2003.

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- (5) In exercising its function under subsection (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.
- (6) Before making modifications under subsection (4)(b) the Commission shall give notice—
- (a) stating that it proposes to make the modifications and setting them out;
 - (b) stating the reason why it proposes to make them;
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (4)(a) or (6) shall be given—
- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.
- (8) After making modifications under this section the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.
- (9) Where, in consequence of a reference under section 12(1A), the Commission modifies under subsection (4)(b) the standard conditions of licences of any type, the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.
- (10) Where the Commission modifies the standard conditions of licences of any type as mentioned in subsection (9), the Authority—
- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
 - (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.
- (11) The modification under this section of part of a standard condition of a particular licence in consequence of a reference under section 12(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- [For the purposes of the law relating to defamation, absolute privilege attaches to any
- ^{F32}(11A) notice under subsection (4)(a), (6) or (8).
- (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.
- (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

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- (11D) The second consideration is the need to exclude from disclosure (so far as practicable)
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
 - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
- (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
 - (b) section 110 (enforcement of powers under section 109: general);
 - (c) section 111 (penalties);
 - (d) section 112 (penalties: main procedural requirements);
 - (e) section 113 (payments and interest by instalments);
 - (f) section 114 (appeals in relation to penalties);
 - (g) section 115 (recovery of penalties); and
 - (h) section 116 (statement of policy).
- (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—
- (a) subsection (2) were omitted;
 - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction has been given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period;” and
 - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction is given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections

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by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.

(11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.]

^{F33}(12)

^{F33}(13)

(14) This section does not apply to the modification of a licence following a report of the Commission made before the commencement of section 39 of the Utilities Act 2000.]

Textual Amendments

- F31** S. 14A inserted (1.10.2001) by 2000 c. 27, ss. 39, 104(1)(b)(2) (with s. 104(6)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F32** Ss. 14A(11A)-(11J) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(6) (a); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F33** S. 14A(12)(13) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 20(6)(b), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

15 Modification by order under other enactments.

[^{F34}(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.]

[^{F34}(2) In subsection (1) above “relevant order” means—

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

[^{F35}(2A) The modification under subsection (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

[^{F36}(2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—

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- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
 - (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of any licence of that type granted before that time.]
- (2C) Where at any time the [^{F37}relevant authority] modifies standard conditions under subsection (2B)(a) for the purposes of their incorporation in licences granted after that time, [^{F38}the relevant authority] shall publish those modifications in such manner as [^{F38}the relevant authority] considers appropriate.]
- [^{F39}(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.]

Textual Amendments

- F34** S. 15(1)(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(2); S.I. 2003/1397, art. 2(1), Sch.
- F35** S. 15(2A)-(2C) inserted (1.10.2001) by 2000 c. 27, s. 40(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F36** S. 15(2B) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(3); S.I. 2003/1397, art. 2(1), Sch.
- F37** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(4)(a); S.I. 2003/1397, art. 2(1), Sch.
- F38** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(4)(b); S.I. 2003/1397, art. 2(1), Sch.
- F39** S. 15(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 5(5); S.I. 2003/1397, art. 2(1), Sch.

Modifications etc. (not altering text)

- C2** S. 15(1): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

[^{F40}15A Licence modifications relating to new electricity trading arrangements.

- (1) The Secretary of State may, in accordance with this section, modify—
 - (a) the conditions of a particular licence; or
 - (b) the standard conditions of licences of any type mentioned in section 6(1), where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity.
- (2) The power to modify licence conditions under paragraph (a) or (b) of subsection (1) includes power—
 - (a) to make modifications relating to the operation of transmission systems and distribution systems; and
 - (b) to make incidental or consequential, or transitional, modifications.
- (3) Before making modifications under this section the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.

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- (4) Any consultation undertaken by the Secretary of State before the commencement of this section shall be as effective, for the purposes of subsection (3), as if undertaken after that commencement.
- (5) Any modification of part of a standard condition of a licence under subsection (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (6) Where the standard conditions of licences of any type are modified under subsection (1)(b), the Secretary of State shall make (as nearly as may be) the same modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (7) The Secretary of State shall publish any modifications under this section in such manner as he considers appropriate.
- (8) The power of the Secretary of State under this section may not be exercised after the end of the period of two years beginning with the passing of the Utilities Act 2000.]

Textual Amendments

F40 S. 15A inserted (28.7.2000) by 2000 c. 27, s. 68(1)(2)

Status:

Point in time view as at 20/06/2003.

Changes to legislation:

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