



# Competition Act 1998

## 1998 CHAPTER 41

An Act to make provision about competition and the abuse of a dominant position in the market; to confer powers in relation to investigations conducted in connection with Article 85 or 86 of the treaty establishing the European Community; to amend the Fair Trading Act 1973 in relation to information which may be required in connection with investigations under that Act; to make provision with respect to the meaning of “supply of services” in the Fair Trading Act 1973; and for connected purposes. [9th November 1998]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1** Act: power to modify conferred (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 209(1)**, 279; S.I. 2003/1397, **art. 2(1)**, **Sch.**

## PART I

### COMPETITION

### Modifications etc. (not altering text)

- C2** Pt. 1: certain functions made exercisable concurrently (26.11.1998 for certain purposes and *prosp.* otherwise) by [1984 c. 12](#), **s. 50(3)** (as substituted by [1998 c. 41](#), **s. 66(5)**, **Sch. 10 Pt. II para. 2(6)** (with **s. 73**); S.I. 1998/2750, **art. 2**)
- C3** Pt. 1 (except **ss. 38(1)-(6)**, 51) amended (1.2.2001) by [2000 c. 38](#), **ss. 86(1)(3)**, 89 (with **ss. 105(2)(d)** (5), 106); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. 1**
- C4** Pt. 1 (except **ss. 38(1)-(6)**, 51, 52(6) and (8) and 54) amended (1.2.2001) by [2000 c. 38](#), **s. 86(4)(b)(5)** (with **ss. 105(2)(d)(5)**, 106); S.I. 2001/57, **art. 3(1)**, **Sch. 2 Pt. 1**

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

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Pt. 1 (except ss. 38(1)-(6), 51) amended (1.2.2001) by 2000 c. 38, s. 86(7)(b) (with ss. 105(2)(d)(5), 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. 1

- C5** Pt. 1 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(3), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

## CHAPTER I

### AGREEMENTS

#### *Introduction*

#### **1 Enactments replaced.**

The following shall cease to have effect—

- (a) the Restrictive Practices Court Act 1976 (c. 33),
- (b) the Restrictive Trade Practices Act 1976 (c. 34),
- (c) the Resale Prices Act 1976 (c. 53), and
- (d) the Restrictive Trade Practices Act 1977 (c. 19).

#### **Commencement Information**

- II** S. 1 partly in force; s. 1 was not in force at Royal Assent, see. s. 76(2)(3); s. 1(b) to (d) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### *The prohibition*

#### **2 Agreements etc. preventing, restricting or distorting competition.**

- (1) Subject to section 3, agreements between undertakings, decisions by associations of undertakings or concerted practices which—
  - (a) may affect trade within the United Kingdom, and
  - (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom,
 are prohibited unless they are exempt in accordance with the provisions of this Part.
- (2) Subsection (1) applies, in particular, to agreements, decisions or practices which—
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development or investment;
  - (c) share markets or sources of supply;
  - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

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- (3) Subsection (1) applies only if the agreement, decision or practice is, or is intended to be, implemented in the United Kingdom.
- (4) Any agreement or decision which is prohibited by subsection (1) is void.
- (5) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).
- (6) Subsection (5) does not apply where the context otherwise requires.
- (7) In this section “the United Kingdom” means, in relation to an agreement which operates or is intended to operate only in a part of the United Kingdom, that part.
- (8) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter I prohibition”.

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

- C6 S. 2(1) excluded (18.6.2001) by 2000 c. 8, ss. 164(1)(2)(4); S.I. 2001/1820, art. 2, Sch.  
S. 2(1) excluded (3.9.2001) by 2000 c. 8, s. 311(9); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Excluded agreements*

**3 Excluded agreements.**

- (1) The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of—
  - (a) Schedule 1 (mergers and concentrations);
  - (b) Schedule 2 (competition scrutiny under other enactments);
  - (c) Schedule 3 (planning obligations and other general exclusions).<sup>F1</sup>...
  - <sup>F2</sup>(d) .....
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter I prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend Schedule 3, with respect to the Chapter I prohibition, by—
  - (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision—
    - (i) added by an order under this subsection; or
    - (ii) included in paragraph 1, 2, 8 or 9 of Schedule 3.
- (4) The power under subsection (3) to provide for an additional exclusion may be exercised only if it appears to the Secretary of State that agreements which fall within the additional exclusion—
  - (a) do not in general have an adverse effect on competition, or

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- (b) are, in general, best considered under Chapter II or [<sup>F3</sup>the <sup>M1</sup>Fair Trading Act 1973][<sup>F3</sup>the Enterprise Act 2002].
- (5) An order under subsection (2)(a) or (3)(a) may include provision (similar to that made with respect to any other exclusion provided by the relevant Schedule) for the exclusion concerned to cease to apply to a particular agreement.
- (6) Schedule 3 also gives the Secretary of State power to exclude agreements from the Chapter I prohibition in certain circumstances.

#### Textual Amendments

- F1** Word in s. 3(1) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F2** S. 3(1)(d) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), ss. 207, 279, Sch. 26 (with Sch. 24 paras. 20, 22); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F3** Words in s. 3(4)(b) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(2); S.I. 2003/1397, art. 2(1), Sch. (with art. 3(1)); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

#### Commencement Information

- I2** S. 3 wholly in force; s. 3 not in force at Royal Assent see s. 76(3); s. 3(1)(b) in force for certain purposes at 11.1.1999 and s. 3(1)(a)(c)(d)(2)-(6) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; s. 3(1)(b) fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

- M1** 1973 c. 41.

### *Exemptions*

#### 4 Individual exemptions.

- (1) The [<sup>F4</sup>OFT] may grant an exemption from the Chapter I prohibition with respect to a particular agreement if—
- (a) a request for an exemption has been made to [<sup>F4</sup>it] under section 14 by a party to the agreement; and
  - (b) the agreement is one to which section 9 applies.
- (2) An exemption granted under this section is referred to in this Part as an individual exemption.
- (3) The exemption—
- (a) may be granted subject to such conditions or obligations as the [<sup>F4</sup>OFT] considers it appropriate to impose; and
  - (b) has effect for such period as the [<sup>F4</sup>OFT] considers appropriate.
- (4) That period must be specified in the grant of the exemption.
- (5) An individual exemption may be granted so as to have effect from a date earlier than that on which it is granted.

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- (6) On an application made in such way as may be specified by rules under section 51, the [F<sup>4</sup>OFT] may extend the period for which an exemption has effect; but, if the rules so provide, [F<sup>4</sup>it] may do so only in specified circumstances.

#### Textual Amendments

- F4** Words in s. 4 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(3\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 5 Cancellation etc. of individual exemptions.

- (1) If the [F<sup>5</sup>OFT] has reasonable grounds for believing that there has been a material change of circumstance since [F<sup>5</sup>it] granted an individual exemption, [F<sup>5</sup>it] may by notice in writing—
- cancel the exemption;
  - vary or remove any condition or obligation; or
  - impose one or more additional conditions or obligations.
- (2) If the [F<sup>5</sup>OFT] has a reasonable suspicion that the information on which [F<sup>5</sup>it] based [F<sup>5</sup>its] decision to grant an individual exemption was incomplete, false or misleading in a material particular, [F<sup>5</sup>it] may by notice in writing take any of the steps mentioned in subsection (1).
- (3) Breach of a condition has the effect of cancelling the exemption.
- (4) Failure to comply with an obligation allows the [F<sup>5</sup>OFT], by notice in writing, to take any of the steps mentioned in subsection (1).
- (5) Any step taken by the [F<sup>5</sup>OFT] under subsection (1), (2) or (4) has effect from such time as may be specified in the notice.
- (6) If an exemption is cancelled under subsection (2) or (4), the date specified in the notice cancelling it may be earlier than the date on which the notice is given.
- (7) The [F<sup>5</sup>OFT] may act under subsection (1), (2) or (4) on [F<sup>5</sup>its] own initiative or on a complaint made by any person.

#### Textual Amendments

- F5** Words in s. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(4\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 6 Block exemptions.

- (1) If agreements which fall within a particular category of agreement are, in the opinion of the [F<sup>6</sup>OFT], likely to be agreements to which section 9 applies, the [F<sup>6</sup>OFT] may recommend that the Secretary of State make an order specifying that category for the purposes of this section.
- (2) The Secretary of State may make an order (“a block exemption order”) giving effect to such a recommendation—
- in the form in which the recommendation is made; or

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- (b) subject to such modifications as he considers appropriate.
- (3) An agreement which falls within a category specified in a block exemption order is exempt from the Chapter I prohibition.
- (4) An exemption under this section is referred to in this Part as a block exemption.
- (5) A block exemption order may impose conditions or obligations subject to which a block exemption is to have effect.
- (6) A block exemption order may provide—
- (a) that breach of a condition imposed by the order has the effect of cancelling the block exemption in respect of an agreement;
  - (b) that if there is a failure to comply with an obligation imposed by the order, the [F6OFT] may, by notice in writing, cancel the block exemption in respect of the agreement;
  - (c) that if the [F6OFT] considers that a particular agreement is not one to which section 9 applies, [F7it] may cancel the block exemption in respect of that agreement.
- (7) A block exemption order may provide that the order is to cease to have effect at the end of a specified period.
- (8) In this section and section 7 “specified” means specified in a block exemption order.

#### Textual Amendments

- F6** Word in s. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(5\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F7** Word in s. 6(6)(c) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(5\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 7 Block exemptions: opposition.

- (1) A block exemption order may provide that a party to an agreement which—
- (a) does not qualify for the block exemption created by the order, but
  - (b) satisfies specified criteria,
- may notify the [F8OFT] of the agreement for the purposes of subsection (2).
- (2) An agreement which is notified under any provision included in a block exemption order by virtue of subsection (1) is to be treated, as from the end of the notice period, as falling within a category specified in a block exemption order unless the [F8OFT]—
- (a) is opposed to its being so treated; and
  - (b) gives notice in writing to the party concerned of [F8its] opposition before the end of that period.
- (3) If the [F8OFT] gives notice of [F8its] opposition under subsection (2), the notification under subsection (1) is to be treated as both notification under section 14 and as a request for an individual exemption made under subsection (3) of that section.
- (4) In this section “notice period” means such period as may be specified with a view to giving the [F8OFT] sufficient time to consider whether to oppose under subsection (2).

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### Textual Amendments

- F8** Words in s. 7 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(6\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 8 Block exemptions: procedure.

- (1) Before making a recommendation under section 6(1), the [F<sup>9</sup>OFT] must—
  - (a) publish details of [F<sup>10</sup>its] proposed recommendation in such a way as [F<sup>10</sup>it] thinks most suitable for bringing it to the attention of those likely to be affected; and
  - (b) consider any representations about it which are made to [F<sup>10</sup>it].
- (2) If the Secretary of State proposes to give effect to such a recommendation subject to modifications, he must inform the [F<sup>9</sup>OFT] of the proposed modifications and take into account any comments made by the [F<sup>9</sup>OFT].
- (3) If, in the opinion of the [F<sup>9</sup>OFT], it is appropriate to vary or revoke a block exemption order [F<sup>11</sup>it] may make a recommendation to that effect to the Secretary of State.
- (4) Subsection (1) also applies to any proposed recommendation under subsection (3).
- (5) Before exercising [F<sup>10</sup>its] power to vary or revoke a block exemption order (in a case where there has been no recommendation under subsection (3)), the Secretary of State must—
  - (a) inform the [F<sup>9</sup>OFT] of the proposed variation or revocation; and
  - (b) take into account any comments made by the [F<sup>9</sup>OFT].
- (6) A block exemption order may provide for a block exemption to have effect from a date earlier than that on which the order is made.

### Textual Amendments

- F9** Words in s. 8 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(7\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F10** Word in s. 8(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(7\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F11** Word in s. 8(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(7\)\(c\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 9 The criteria for individual and block exemptions.

This section applies to any agreement which—

- (a) contributes to—
  - (i) improving production or distribution, or
  - (ii) promoting technical or economic progress,while allowing consumers a fair share of the resulting benefit; but
- (b) does not—
  - (i) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; or

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- (ii) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

## 10 Parallel exemptions.

- (1) An agreement is exempt from the Chapter I prohibition if it is exempt from the Community prohibition—
  - (a) by virtue of a Regulation,
  - (b) because it has been given exemption by the Commission, or
  - (c) because it has been notified to the Commission under the appropriate opposition or objection procedure and—
    - (i) the time for opposing, or objecting to, the agreement has expired and the Commission has not opposed it; or
    - (ii) the Commission has opposed, or objected to, the agreement but has withdrawn its opposition or objection.
- (2) An agreement is exempt from the Chapter I prohibition if it does not affect trade between Member States but otherwise falls within a category of agreement which is exempt from the Community prohibition by virtue of a Regulation.
- (3) An exemption from the Chapter I prohibition under this section is referred to in this Part as a parallel exemption.
- (4) A parallel exemption—
  - (a) takes effect on the date on which the relevant exemption from the Community prohibition takes effect or, in the case of a parallel exemption under subsection (2), would take effect if the agreement in question affected trade between Member States; and
  - (b) ceases to have effect—
    - (i) if the relevant exemption from the Community prohibition ceases to have effect; or
    - (ii) on being cancelled by virtue of subsection (5) or (7).
- (5) In such circumstances and manner as may be specified in rules made under section 51, the [F12OFT] may—
  - (a) impose conditions or obligations subject to which a parallel exemption is to have effect;
  - (b) vary or remove any such condition or obligation;
  - (c) impose one or more additional conditions or obligations;
  - (d) cancel the exemption.
- (6) In such circumstances as may be specified in rules made under section 51, the date from which cancellation of an exemption is to take effect may be earlier than the date on which notice of cancellation is given.
- (7) Breach of a condition imposed by the [F12OFT] has the effect of cancelling the exemption.
- (8) In exercising [F13its] powers under this section, the [F12OFT] may require any person who is a party to the agreement in question to give [F13it] such information as [F13it] may require.



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- (9) For the purpose of this section references to an agreement being exempt from the Community prohibition are to be read as including references to the prohibition being inapplicable to the agreement by virtue of a Regulation or a decision by the Commission.
- (10) In this section—
- “the Community prohibition” means the prohibition contained in—
  - (a) paragraph 1 of Article 85;
  - (b) any corresponding provision replacing, or otherwise derived from, that provision;
  - (c) such other Regulation as the Secretary of State may by order specify; and
- “Regulation” means a Regulation adopted by the Commission or by the Council.
- (11) This section has effect in relation to the prohibition contained in paragraph 1 of Article 53 of the EEA Agreement (and the EFTA Surveillance Authority) as it has effect in relation to the Community prohibition (and the Commission) subject to any modifications which the Secretary of State may by order prescribe.

#### Textual Amendments

- F12** Word in s. 10 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(8\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F13** Words in s. 10(8) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(8\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 11 Exemption for certain other agreements.

- (1) The fact that a ruling may be given by virtue of Article 88 of the Treaty on the question whether or not agreements of a particular kind are prohibited by Article 85 does not prevent such agreements from being subject to the Chapter I prohibition.
- (2) But the Secretary of State may by regulations make such provision as he considers appropriate for the purpose of granting an exemption from the Chapter I prohibition, in prescribed circumstances, in respect of such agreements.
- (3) An exemption from the Chapter I prohibition by virtue of regulations under this section is referred to in this Part as a section 11 exemption.

### *Notification*

## 12 Requests for [F14OFT] to examine agreements.

- (1) Sections 13 and 14 provide for an agreement to be examined by the [F14OFT] on the application of a party to the agreement who thinks that it may infringe the Chapter I prohibition.
- (2) Schedule 5 provides for the procedure to be followed—
- (a) by any person making such an application; and
  - (b) by the [F14OFT], in considering such an application.

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- (3) The Secretary of State may by regulations make provision as to the application of sections 13 to 16 and Schedule 5, with such modifications (if any) as may be prescribed, in cases where the [F14OFT]—
- (a) has given a direction withdrawing an exclusion; or
  - (b) is considering whether to give such a direction.

#### Textual Amendments

**F14** Words in s. 12 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(9\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### Commencement Information

**I3** S. 12 wholly in force; s. 12 not in force at Royal Assent see s. 76(3); s. 12(3) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); s. 12(1)(2) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

### 13 Notification for guidance.

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
- (a) notify the [F15OFT] of the agreement; and
  - (b) apply to [F15the OFT] for guidance.
- (2) On an application under this section, the [F15OFT] may give the applicant guidance as to whether or not, in [F15its] view, the agreement is likely to infringe the Chapter I prohibition.
- (3) If the [F15OFT] considers that the agreement is likely to infringe the prohibition if it is not exempt, [F15its] guidance may indicate—
- (a) whether the agreement is likely to be exempt from the prohibition under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (b) whether [F15it] would be likely to grant the agreement an individual exemption if asked to do so.
- (4) If an agreement to which the prohibition applies has been notified to the [F15OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
- (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [F15OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

#### Textual Amendments

**F15** Words in s. 13 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(10\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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

C7 S. 13 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 4

**14 Notification for a decision.**

- (1) A party to an agreement who applies for the agreement to be examined under this section must—
  - (a) notify the [F16OFT] of the agreement; and
  - (b) apply to [F16the OFT] for a decision.
- (2) On an application under this section, the [F16OFT] may make a decision as to—
  - (a) whether the Chapter I prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion or because the agreement is exempt from the prohibition.
- (3) If an agreement is notified to the [F16OFT] under this section, the application may include a request for the agreement to which it relates to be granted an individual exemption.
- (4) If an agreement to which the prohibition applies has been notified to the [F16OFT] under this section, no penalty is to be imposed under this Part in respect of any infringement of the prohibition by the agreement which occurs during the period—
  - (a) beginning with the date on which notification was given; and
  - (b) ending with such date as may be specified in a notice in writing given to the applicant by the [F16OFT] when the application has been determined.
- (5) The date specified in a notice under subsection (4)(b) may not be earlier than the date on which the notice is given.

**Textual Amendments**

F16 Words in s. 14 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(11); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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

C8 S. 14 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 5

**15 Effect of guidance.**

- (1) This section applies to an agreement if the [F17OFT] has determined an application under section 13 by giving guidance that—
  - (a) the agreement is unlikely to infringe the Chapter I prohibition, regardless of whether or not it is exempt;
  - (b) the agreement is likely to be exempt under—
    - (i) a block exemption;
    - (ii) a parallel exemption; or
    - (iii) a section 11 exemption; or
  - (c) [F17it] would be likely to grant the agreement an individual exemption if asked to do so.

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- (2) The [F17OFT] is to take no further action under this Part with respect to an agreement to which this section applies, unless—
- (a) [F17:it] has reasonable grounds for believing that there has been a material change of circumstance since [F17:it] gave [F17:its] guidance;
  - (b) [F17:it] has a reasonable suspicion that the information on which [F17:it] based [F17:its] guidance was incomplete, false or misleading in a material particular;
  - (c) one of the parties to the agreement applies to [F17:it] for a decision under section 14 with respect to the agreement; or
  - (d) a complaint about the agreement has been made to [F17:it] by a person who is not a party to the agreement.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.
- (4) But the [F17OFT] may remove the immunity given by subsection (3) if—
- (a) [F17:it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [F17:it] considers it likely that the agreement will infringe the prohibition; and
  - (c) [F17:it] gives notice in writing to the party on whose application the guidance was given that [F17:it] is removing the immunity as from the date specified in [F17:its] notice.
- (5) If the [F17OFT] has a reasonable suspicion that information—
- (a) on which [F17:it] based [F17:its] guidance, and
  - (b) which was provided to [F17:it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

#### Textual Amendments

**F17** Words in s. 15 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(12\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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

**C9** S. 15 applied (with modifications) (1.3.2000) by [S.I. 2000/263, art. 6](#)

## 16 Effect of a decision that the Chapter I prohibition has not been infringed.

- (1) This section applies to an agreement if the [F18OFT] has determined an application under section 14 by making a decision that the agreement has not infringed the Chapter I prohibition.
- (2) The [F18OFT] is to take no further action under this Part with respect to the agreement unless—
- (a) [F18:it] has reasonable grounds for believing that there has been a material change of circumstance since [F18:it] gave [F18:its] decision; or
  - (b) [F18:it] has a reasonable suspicion that the information on which [F18:it] based [F18:its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter I prohibition by an agreement to which this section applies.

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- (4) But the [F18OFT] may remove the immunity given by subsection (3) if—
- (a) [F18:it] takes action under this Part with respect to the agreement in one of the circumstances mentioned in subsection (2);
  - (b) [F18:it] considers that it is likely that the agreement will infringe the prohibition; and
  - (c) [F18:it] gives notice in writing to the party on whose application the decision was made that [F18:it] is removing the immunity as from the date specified in [F18:its] notice.
- (5) If the [F18OFT] has a reasonable suspicion that information—
- (a) on which [F18:it] based [F18:its] decision, and
  - (b) which was provided to [F18:it] by a party to the agreement,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

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#### Textual Amendments

**F18** Words in s. 16 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(13); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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

**C10** S. 16 applied (with modifications) (1.3.2000) by S.I. 2000/263, art. 7

## CHAPTER II

### ABUSE OF DOMINANT POSITION

#### *Introduction*

#### **17 Enactments replaced.**

Sections 2 to 10 of the <sup>M2</sup>Competition Act 1980 (control of anti-competitive practices) shall cease to have effect.

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#### Marginal Citations

**M2** 1980 c. 21.

#### *The prohibition*

#### **18 Abuse of dominant position.**

- (1) Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom.
- (2) Conduct may, in particular, constitute such an abuse if it consists in—

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- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.
- (3) In this section—  
     “dominant position” means a dominant position within the United Kingdom; and  
     “the United Kingdom” means the United Kingdom or any part of it.
- (4) The prohibition imposed by subsection (1) is referred to in this Act as “the Chapter II prohibition”.

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

- C11** S. 18(1) excluded (18.6.2001) by 2000 c. 8, s. 164(3)(5); S.I. 2001/1820, art. 2, Sch.  
 s. 18(1) excluded (3.9.2001) by 2000 c. 8, s. 312(2); S.I. 2001/2632, art. 2(2), Sch. Pt. 2

*Excluded cases*

**19 Excluded cases.**

- (1) The Chapter II prohibition does not apply in any of the cases in which it is excluded by or as a result of—
- (a) Schedule 1 (mergers and concentrations); or
  - (b) Schedule 3 (general exclusions).
- (2) The Secretary of State may at any time by order amend Schedule 1, with respect to the Chapter II prohibition, by—
- (a) providing for one or more additional exclusions; or
  - (b) amending or removing any provision (whether or not it has been added by an order under this subsection).
- (3) The Secretary of State may at any time by order amend paragraph 8 of Schedule 3 with respect to the Chapter II prohibition.
- (4) Schedule 3 also gives the Secretary of State power to provide that the Chapter II prohibition is not to apply in certain circumstances.

*Notification*

**20 Requests for [F19OFT] to consider conduct.**

- (1) Sections 21 and 22 provide for conduct of a person which that person thinks may infringe the Chapter II prohibition to be considered by the [F19OFT] on the application of that person.

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- (2) Schedule 6 provides for the procedure to be followed—
  - (a) by any person making an application, and
  - (b) by the [F19OFT], in considering an application.

#### Textual Amendments

**F19** Words in s. 20 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(14\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 21 Notification for guidance.

- (1) A person who applies for conduct to be considered under this section must—
  - (a) notify the [F20OFT] of it; and
  - (b) apply to [F20the OFT] for guidance.
- (2) On an application under this section, the [F20OFT] may give the applicant guidance as to whether or not, in [F20its] view, the conduct is likely to infringe the Chapter II prohibition.

#### Textual Amendments

**F20** Words in s. 21 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(15\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 22 Notification for a decision.

- (1) A person who applies for conduct to be considered under this section must—
  - (a) notify the [F21OFT] of it; and
  - (b) apply to [F21the OFT] for a decision.
- (2) On an application under this section, the [F21OFT] may make a decision as to—
  - (a) whether the Chapter II prohibition has been infringed; and
  - (b) if it has not been infringed, whether that is because of the effect of an exclusion.

#### Textual Amendments

**F21** Words in s. 22 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(16\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 23 Effect of guidance.

- (1) This section applies to conduct if the [F22OFT] has determined an application under section 21 by giving guidance that the conduct is unlikely to infringe the Chapter II prohibition.
- (2) The [F22OFT] is to take no further action under this Part with respect to the conduct to which this section applies, unless—

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- (a) [F<sup>22</sup>:it] has reasonable grounds for believing that there has been a material change of circumstance since [F<sup>22</sup>:it] gave [F<sup>22</sup>:its] guidance;
  - (b) [F<sup>22</sup>:it ] has a reasonable suspicion that the information on which [F<sup>22</sup>:it] based [F<sup>22</sup>:its] guidance was incomplete, false or misleading in a material particular; or
  - (c) a complaint about the conduct has been made to [F<sup>22</sup>:it].
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [F<sup>22</sup>OFT] may remove the immunity given by subsection (3) if—
- (a) [F<sup>22</sup>:it ] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) [F<sup>22</sup>:it ] considers that it is likely that the conduct will infringe the prohibition; and
  - (c) [F<sup>22</sup>:it ] gives notice in writing to the undertaking on whose application the guidance was given that [F<sup>22</sup>:it] is removing the immunity as from the date specified in [F<sup>22</sup>:its] notice.
- (5) If the [F<sup>22</sup>OFT] has a reasonable suspicion that information—
- (a) on which [F<sup>22</sup>:it] based [F<sup>22</sup>:its] guidance, and
  - (b) which was provided to [F<sup>22</sup>:it] by an undertaking engaging in the conduct,
- was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

#### Textual Amendments

**F22** Words in s. 23 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(17\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 24 Effect of a decision that the Chapter II prohibition has not been infringed.

- (1) This section applies to conduct if the [F<sup>23</sup>OFT] has determined an application under section 22 by making a decision that the conduct has not infringed the Chapter II prohibition.
- (2) The [F<sup>23</sup>OFT] is to take no further action under this Part with respect to the conduct unless—
- (a) [F<sup>23</sup>:it] has reasonable grounds for believing that there has been a material change of circumstance since [F<sup>23</sup>:it] gave [F<sup>23</sup>:its] decision; or
  - (b) [F<sup>23</sup>:it] has a reasonable suspicion that the information on which [F<sup>23</sup>:it] based [F<sup>23</sup>:its] decision was incomplete, false or misleading in a material particular.
- (3) No penalty may be imposed under this Part in respect of any infringement of the Chapter II prohibition by conduct to which this section applies.
- (4) But the [F<sup>23</sup>OFT] may remove the immunity given by subsection (3) if—
- (a) [F<sup>23</sup>:it] takes action under this Part with respect to the conduct in one of the circumstances mentioned in subsection (2);
  - (b) [F<sup>23</sup>:it] considers that it is likely that the conduct will infringe the prohibition; and



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- (c) [F<sup>23</sup>:it] gives notice in writing to the undertaking on whose application the decision was made that [F<sup>23</sup>:it] is removing the immunity as from the date specified in [F<sup>23</sup>:its] notice.
- (5) If the [F<sup>23</sup>:OFT] has a reasonable suspicion that information—
- (a) on which [F<sup>23</sup>:it] based [F<sup>23</sup>:its] decision, and
  - (b) which was provided to [F<sup>23</sup>:it] by an undertaking engaging in the conduct, was incomplete, false or misleading in a material particular, the date specified in a notice under subsection (4)(c) may be earlier than the date on which the notice is given.

#### Textual Amendments

**F23** Words in s. 24 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(18\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## CHAPTER III

### INVESTIGATION AND ENFORCEMENT

#### *Investigations*

#### 25 [F<sup>24</sup>:OFT's] power to investigate.

The [F<sup>24</sup>:OFT] may conduct an investigation if there are reasonable grounds for suspecting—

- (a) that the Chapter I prohibition has been infringed; or
- (b) that the Chapter II prohibition has been infringed.

#### Textual Amendments

**F24** Words in s. 25 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(19\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### 26 Powers when conducting investigations.

- (1) For the purposes of an investigation under section 25, the [F<sup>25</sup>:OFT] may require any person to produce to [F<sup>25</sup>:it] a specified document, or to provide [F<sup>25</sup>:it] with specified information, which [F<sup>25</sup>:it] considers relates to any matter relevant to the investigation.
- (2) The power conferred by subsection (1) is to be exercised by a notice in writing.
- (3) A notice under subsection (2) must indicate—
- (a) the subject matter and purpose of the investigation; and
  - (b) the nature of the offences created by sections 42 to 44.
- (4) In subsection (1) “specified” means—
- (a) specified, or described, in the notice; or
  - (b) falling within a category which is specified, or described, in the notice.

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- (5) The [F26OFT] may also specify in the notice—
- (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
- (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
  - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

#### Textual Amendments

**F25** Words in s. 26(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(20\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F26** Word in s. 26(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(20\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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

**C12** S. 26 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))

**C13** Ss. 26-30 applied by [1986 c. 46, s. 9C\(2\)](#) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))

## 27 Power to enter premises without a warrant.

- (1) Any officer of the [F27OFT] who is authorised in writing by the [F27OFT] to do so (“an investigating officer”) may enter any premises in connection with an investigation under section 25.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
- (a) gives at least two working days’ notice of the intended entry;
  - (b) indicates the subject matter and purpose of the investigation; and
  - (c) indicates the nature of the offences created by sections 42 to 44.
- (3) Subsection (2) does not apply—
- (a) if the [F27OFT] has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which [F28it] is investigating under section 25(a); or
    - (ii) an undertaking the conduct of which [F28it] is investigating under section 25(b); or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

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- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
- (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
- (a) take with him such equipment as appears to him to be necessary;
  - (b) require any person on the premises—
    - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
    - (ii) if the document is produced, to provide an explanation of it;
  - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
  - (d) take copies of, or extracts from, any document which is produced;
  - (e) require any information which is [<sup>F29</sup>stored in any electronic form] and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible [<sup>F30</sup>or from which it can readily be produced in a visible and legible form].

#### Textual Amendments

- F27** Word in s. 27 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(21\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F28** Word in s. 27(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(21\)\(b\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F29** Words in s. 27(5)(e) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(a\)](#); [S.I. 2003/708, art. 2\(k\)](#)
- F30** Words in s. 27(5)(e) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(b\)](#); [S.I. 2003/708, art. 2\(k\)](#)

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

- C13** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))
- C14** S. 27 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))

## 28 Power to enter premises under a warrant.

- (1) On an application made by the [<sup>F31</sup>OFT] to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any premises documents—
    - (i) the production of which has been required under section 26 or 27; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any premises documents which the [<sup>F31</sup>OFT] has power under section 26 to require to be produced; and

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- (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 27 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the [<sup>F32</sup>OFT], and any other of [<sup>F33</sup>the OFT's officers whom the OFT] has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is [<sup>F34</sup>stored in any electronic form] and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is visible and legible [<sup>F35</sup>or from which it can readily be produced in a visible and legible form].
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- [<sup>F36</sup>(3A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.]
- (4) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
  - (5) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
  - (6) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
  - (7) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

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### Textual Amendments

- F31** Word in s. 28(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F32** Word in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(b\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F33** Words in s. 28(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(22\)\(b\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F34** Words in s. 28(2)(f) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(a\)](#); [S.I. 2003/708, art. 2\(k\)](#)
- F35** Words in s. 28(2)(f) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 21\(b\)](#); [S.I. 2003/708, art. 2\(k\)](#)
- F36** S. 28(3A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 203\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

### Modifications etc. (not altering text)

- C13** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))
- C15** S. 28 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\), s. 9C\(2\)](#) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#))
- C16** S. 28(2): powers of seizure extended (*prosp.*) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), [Sch. 1 Pt. 1 para. 67](#)
- C17** S. 28(2)(f) modified (*prosp.*) by 2001 c. 16, [ss. 63\(2\)\(h\)](#), 138(2)
- C18** S. 28(2)(f) modified (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 63, 138\(2\)](#); [S.I. 2003/708, art. 2\(a\)](#)
- C19** S. 28(7) applied (*prosp.*) by 2001 c. 16, [ss. 57\(1\)\(n\)\(2\)\(4\)](#), 138(2)
- C20** S. 28(7) applied (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), ss. 57\(1\)\(n\)](#), 138(2) (with [s. 57\(4\)](#)); [S.I. 2003/708, art. 2\(a\)](#)

## 29 Entry of premises under warrant: supplementary.

- (1) A warrant issued under section 28 must indicate—
  - (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offences created by sections 42 to 44.
- (2) The powers conferred by section 28 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
  - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—

“named officer” means the officer named in the warrant; and

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“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

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

- C13** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C21** S. 29 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

**30 Privileged communications.**

- (1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.
- (2) “Privileged communication” means a communication—
- (a) between a professional legal adviser and his client, or
  - (b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,
- which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.
- (3) In the application of this section to Scotland—
- (a) references to the High Court are to be read as references to the Court of Session; and
  - (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

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

- C13** Ss. 26-30 applied by 1986 c. 46, s. 9C(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279; S.I. 2003/1397, art. 2(1), Sch.)
- C22** S. 30 applied (prosp.) by [Company Directors Disqualification Act 1986 \(c. 46\)](#), s. 9C(2) (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 204(2)**, 279)

[<sup>F37</sup>**30A Use of statements in prosecution**

A statement made by a person in response to a requirement imposed by virtue of any of sections 26 to 28 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.]

**Textual Amendments**

- F37** S. 30A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 198**, 279; S.I. 2003/1397, art. 2(1), Sch.

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### 31 Decisions following an investigation.

- (1) Subsection (2) applies if, as the result of an investigation conducted under section 25, the [F38OFT] proposes to make—
  - (a) a decision that the Chapter I prohibition has been infringed, or
  - (b) a decision that the Chapter II prohibition has been infringed.
- (2) Before making the decision, the [F38OFT] must—
  - (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
  - (b) give that person (or those persons) an opportunity to make representations.

#### Textual Amendments

**F38** Word in s. 31 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(23\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### Enforcement

### 32 Directions in relation to agreements.

- (1) If the [F39OFT] has made a decision that an agreement infringes the Chapter I prohibition, [F39it] may give to such person or persons as [F39it] considers appropriate such directions as [F39it] considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the [F40OFT's] decision is made on [F40its] own initiative or on an application made to [F40it] under this Part.
- (3) A direction under this section may, in particular, include provision—
  - (a) requiring the parties to the agreement to modify the agreement; or
  - (b) requiring them to terminate the agreement.
- (4) A direction under this section must be given in writing.

#### Textual Amendments

**F39** Words in s. 32(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(24\)](#) (a); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F40** Words in s. 32(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(24\)](#) (b); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 33 Directions in relation to conduct.

- (1) If the [F41OFT] has made a decision that conduct infringes the Chapter II prohibition, [F41it] may give to such person or persons as [F41it] considers appropriate such directions as [F41it] considers appropriate to bring the infringement to an end.
- (2) Subsection (1) applies whether the [F42OFT's] decision is made on [F42its] own initiative or on an application made to [F42it] under this Part.
- (3) A direction under this section may, in particular, include provision—

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- (a) requiring the person concerned to modify the conduct in question; or
  - (b) requiring him to cease that conduct.
- (4) A direction under this section must be given in writing.

#### Textual Amendments

- F41** Words in s. 33(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(25\)\(a\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F42** Words in s. 33(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(25\)\(b\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 34 Enforcement of directions.

- (1) If a person fails, without reasonable excuse, to comply with a direction under section 32 or 33, the [<sup>F43</sup>OFT] may apply to the court for an order—
- (a) requiring the defaulter to make good his default within a time specified in the order; or
  - (b) if the direction related to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all of the costs of, or incidental to, the application for the order to be borne by—
- (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

#### Textual Amendments

- F43** Word in s. 34 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(26\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 35 Interim measures.

- (1) This section applies if the [<sup>F44</sup>OFT] —
- (a) has a reasonable suspicion that the Chapter I prohibition has been infringed, or
  - (b) has a reasonable suspicion that the Chapter II prohibition has been infringed, but has not completed [<sup>F44</sup>its] investigation into the matter.
- (2) If the [<sup>F44</sup>OFT] considers that it is necessary for [<sup>F44</sup>it] to act under this section as a matter of urgency for the purpose—
- (a) of preventing serious, irreparable damage to a particular person or category of person, or
  - (b) of protecting the public interest,
- [<sup>F44</sup>it] may give such directions as [<sup>F44</sup>it] considers appropriate for that purpose.
- (3) Before giving a direction under this section, the [<sup>F44</sup>OFT] must—



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- (a) give written notice to the person (or persons) to whom [F44]it proposes to give the direction; and
  - (b) give that person (or each of them) an opportunity to make representations.
- (4) A notice under subsection (3) must indicate the nature of the direction which the [F44]OFT is proposing to give and [F44]its reasons for wishing to give it.
- (5) A direction given under this section has effect while subsection (1) applies, but may be replaced if the circumstances permit by a direction under section 32 or (as appropriate) section 33.
- (6) In the case of a suspected infringement of the Chapter I prohibition, sections 32(3) and 34 also apply to directions given under this section.
- (7) In the case of a suspected infringement of the Chapter II prohibition, sections 33(3) and 34 also apply to directions given under this section.

#### Textual Amendments

**F44** Words in s. 35 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(27\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 36 Penalty for infringing Chapter I or Chapter II prohibition.

- (1) On making a decision that an agreement has infringed the Chapter I prohibition, the [F45]OFT may require an undertaking which is a party to the agreement to pay [F46]the OFT a penalty in respect of the infringement.
- (2) On making a decision that conduct has infringed the Chapter II prohibition, the [F45]OFT may require the undertaking concerned to pay [F46]the OFT a penalty in respect of the infringement.
- (3) The [F45]OFT may impose a penalty on an undertaking under subsection (1) or (2) only if [F47]the OFT is satisfied that the infringement has been committed intentionally or negligently by the undertaking.
- (4) Subsection (1) is subject to section 39 and does not apply if the [F45]OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the agreement.
- (5) Subsection (2) is subject to section 40 and does not apply if the [F45]OFT is satisfied that the undertaking acted on the reasonable assumption that that section gave it immunity in respect of the conduct.
- (6) Notice of a penalty under this section must—
  - (a) be in writing; and
  - (b) specify the date before which the penalty is required to be paid.
- (7) The date specified must not be earlier than the end of the period within which an appeal against the notice may be brought under section 46.
- (8) No penalty fixed by the [F45]OFT under this section may exceed 10% of the turnover of the undertaking (determined in accordance with such provisions as may be specified in an order made by the Secretary of State).

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- (9) Any sums received by the [F45OFT] under this section are to be paid into the Consolidated Fund.

#### Textual Amendments

- F45** Word in s. 36 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(28\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F46** Words in s. 36(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(28\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F47** Words in s. 36(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(28\)\(c\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 37 Recovery of penalties.

- (1) If the specified date in a penalty notice has passed and—
- (a) the period during which an appeal against the imposition, or amount, of the penalty may be made has expired without an appeal having been made, or
  - (b) such an appeal has been made and determined,
- the [F48OFT] may recover from the undertaking, as a civil debt due to [F48the OFT], any amount payable under the penalty notice which remains outstanding.
- (2) In this section—
- “penalty notice” means a notice given under section 36; and
- “specified date” means the date specified in the penalty notice.

#### Textual Amendments

- F48** Words in s. 37 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(29\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### 38 The appropriate level of a penalty.

- (1) The [F49OFT] must prepare and publish guidance as to the appropriate amount of any penalty under this Part.
- (2) The [F49OFT] may at any time alter the guidance.
- (3) If the guidance is altered, the [F49OFT] must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The [F49OFT] may, after consulting the Secretary of State, choose how [F49it] publishes [F49its] guidance.
- (6) If the [F49OFT] is preparing or altering guidance under this section [F49it] must consult such persons as [F49it] considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

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- (8) When setting the amount of a penalty under this Part, the [F49OFT] must have regard to the guidance for the time being in force under this section.
- (9) If a penalty or a fine has been imposed by the Commission, or by a court or other body in another Member State, in respect of an agreement or conduct, the [F49OFT], an appeal tribunal or the appropriate court must take that penalty or fine into account when setting the amount of a penalty under this Part in relation to that agreement or conduct.
- (10) In subsection (9) “the appropriate court” means—
  - (a) in relation to England and Wales, the Court of Appeal;
  - (b) in relation to Scotland, the Court of Session;
  - (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
  - (d) the House of Lords.

#### Textual Amendments

**F49** Words in s. 38 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(30\)](#); [S.I. 2003/766](#), [art. 2](#), [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

#### Commencement Information

**I4** S. 38 wholly in force; s. 38 not in force at Royal Assent see s. 76(3); s. 38(1)-(7) in force at 11.1.1999 by [S.I. 1998/3166](#), [art. 2](#), [Sch.](#); s. 38(8)-(10) in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

### 39 Limited immunity for small agreements.

- (1) In this section “small agreement” means an agreement—
  - (a) which falls within a category prescribed for the purposes of this section; but
  - (b) is not a price fixing agreement.
- (2) The criteria by reference to which a category of agreement is prescribed may, in particular, include—
  - (a) the combined turnover of the parties to the agreement (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the agreement (determined in that way).
- (3) A party to a small agreement is immune from the effect of section 36(1); but the [F50OFT] may withdraw that immunity under subsection (4).
- (4) If the [F50OFT] has investigated a small agreement, [F50it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [F50its] investigation, [F50it] considers that the agreement is likely to infringe the Chapter I prohibition.
- (5) The [F50OFT] must give each of the parties in respect of which immunity is withdrawn written notice of [F50its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.

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- (8) In determining the withdrawal date, the [<sup>F50</sup>OFT] must have regard to the amount of time which the parties are likely to require in order to secure that there is no further infringement of the Chapter I prohibition with respect to the agreement.
- (9) In subsection (1) “price fixing agreement” means an agreement which has as its object or effect, or one of its objects or effects, restricting the freedom of a party to the agreement to determine the price to be charged (otherwise than as between that party and another party to the agreement) for the product, service or other matter to which the agreement relates.

#### Textual Amendments

**F50** Words in s. 39 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(31); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### 40 Limited immunity in relation to the Chapter II prohibition.

- (1) In this section “conduct of minor significance” means conduct which falls within a category prescribed for the purposes of this section.
- (2) The criteria by reference to which a category is prescribed may, in particular, include—
- (a) the turnover of the person whose conduct it is (determined in accordance with prescribed provisions);
  - (b) the share of the market affected by the conduct (determined in that way).
- (3) A person is immune from the effect of section 36(2) if [<sup>F51</sup>its] conduct is conduct of minor significance; but the [<sup>F52</sup>OFT] may withdraw that immunity under subsection (4).
- (4) If the [<sup>F52</sup>OFT] has investigated conduct of minor significance, [<sup>F53</sup>it] may make a decision withdrawing the immunity given by subsection (3) if, as a result of [<sup>F53</sup>its] investigation, [<sup>F53</sup>it] considers that the conduct is likely to infringe the Chapter II prohibition.
- (5) The [<sup>F52</sup>OFT] must give the person, or persons, whose immunity has been withdrawn written notice of [<sup>F51</sup>its] decision to withdraw the immunity.
- (6) A decision under subsection (4) takes effect on such date (“the withdrawal date”) as may be specified in the decision.
- (7) The withdrawal date must be a date after the date on which the decision is made.
- (8) In determining the withdrawal date, the [<sup>F52</sup>OFT] must have regard to the amount of time which the person or persons affected are likely to require in order to secure that there is no further infringement of the Chapter II prohibition.

#### Textual Amendments

**F51** Word in s. 40(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(32)(c); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F52** Word in s. 40 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(32)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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**F53** Words in s. 40(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(32\)\(b\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### **41 Agreements notified to the Commission.**

- (1) This section applies if a party to an agreement which may infringe the Chapter I prohibition has notified the agreement to the Commission for a decision as to whether an exemption will be granted under Article 85 with respect to the agreement.
- (2) A penalty may not be required to be paid under this Part in respect of any infringement of the Chapter I prohibition after notification but before the Commission determines the matter.
- (3) If the Commission withdraws the benefit of provisional immunity from penalties with respect to the agreement, subsection (2) ceases to apply as from the date on which that benefit is withdrawn.
- (4) The fact that an agreement has been notified to the Commission does not prevent the [F54OFT] from investigating it under this Part.
- (5) In this section “provisional immunity from penalties” has such meaning as may be prescribed.

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#### **Textual Amendments**

**F54** Word in s. 41 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(33\); S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### *Offences*

#### **42 Offences.**

- (1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 26, 27 or 28.
- (2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—
  - (a) that the document was not in his possession or under his control; and
  - (b) that it was not reasonably practicable for him to comply with the requirement.
- (3) If a person is charged with an offence under subsection (1) in respect of a requirement—
  - (a) to provide information,
  - (b) to provide an explanation of a document, or
  - (c) to state where a document is to be found,it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.
- (4) Failure to comply with a requirement imposed under section 26 or 27 is not an offence if the person imposing the requirement has failed to act in accordance with that section.

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- (5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 27.
- (6) A person guilty of an offence under subsection (1) or (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 28 is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### 43 Destroying or falsifying documents.

- (1) A person is guilty of an offence if, having been required to produce a document under section 26, 27 or 28—
  - (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
  - (b) he causes or permits its destruction, disposal, falsification or concealment.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### 44 False or misleading information.

- (1) If information is provided by a person to the [F55OFT] in connection with any function of the [F55OFT] under this Part, that person is guilty of an offence if—
  - (a) the information is false or misleading in a material particular, and
  - (b) he knows that it is or is reckless as to whether it is.
- (2) A person who—
  - (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
  - (b) recklessly provides any information to another person which is false or misleading in a material particular,
 knowing that the information is to be used for the purpose of providing information to the [F55OFT] in connection with any of [F55its] functions under this Part, is guilty of an offence.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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#### Textual Amendments

**F55** Words in s. 44 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(34\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))

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

**C23** S. 44 applied (18.6.2001) by 2000 c. 8, s. 399; S.I. 2001/1820, art. 2, Sch.

## CHAPTER IV

### THE COMPETITION COMMISSION AND APPEALS

#### *The Commission*

#### **45 The Competition Commission.**

- (1) There is to be a body corporate known as the Competition Commission.
- (2) The Commission is to have such functions as are conferred on it by or as a result of this Act.
- (3) The Monopolies and Mergers Commission is dissolved and its functions are transferred to the Competition Commission.
- (4) In any enactment, instrument or other document, any reference to the Monopolies and Mergers Commission which has continuing effect is to be read as a reference to the Competition Commission.
- (5) The Secretary of State may by order make such consequential, supplemental and incidental provision as he considers appropriate in connection with—
  - (a) the dissolution of the Monopolies and Mergers Commission; and
  - (b) the transfer of functions effected by subsection (3).
- (6) An order made under subsection (5) may, in particular, include provision—
  - (a) for the transfer of property, rights, obligations and liabilities and the continuation of proceedings, investigations and other matters; or
  - (b) amending any enactment which makes provision with respect to the Monopolies and Mergers Commission or any of its functions.
- (7) [<sup>F56</sup>Schedules 7 and 7A make] further provision about the Competition Commission.
- [<sup>F57</sup>(8) The Secretary of State may by order make such modifications in Part 2 of Schedule 7 and in Schedule 7A (performance of the Competition Commission’s general functions) as he considers appropriate for improving the performance by the Competition Commission of its functions.]

**Textual Amendments**

**F56** Words in s. 45(7) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 187(1), 279; S.I. 2003/1397, art. 2(1), Sch.

**F57** S. 45(8) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(35); S.I. 2003/1397, art. 2(1), Sch.

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## Appeals

### 46 Appealable decisions.

- (1) Any party to an agreement in respect of which the [F58OFT] has made a decision may appeal to [F59the Tribunal] against, or with respect to, the decision.
- (2) Any person in respect of whose conduct the [F58OFT] has made a decision may appeal to [F59the Tribunal] against, or with respect to, the decision.
- (3) In this section “decision” means a decision of the [F58OFT]—
  - (a) as to whether the Chapter I prohibition has been infringed,
  - (b) as to whether the Chapter II prohibition has been infringed,
  - (c) as to whether to grant an individual exemption,
  - (d) in respect of an individual exemption—
    - (i) as to whether to impose any condition or obligation under section 4(3) (a) or 5(1)(c),
    - (ii) where such a condition or obligation has been imposed, as to the condition or obligation,
    - (iii) as to the period fixed under section 4(3)(b), or
    - (iv) as to the date fixed under section 4(5),
  - (e) as to—
    - (i) whether to extend the period for which an individual exemption has effect, or
    - (ii) the period of any such extension,
  - (f) cancelling an exemption,
  - (g) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,
  - <sup>F60</sup>(h) .....

and includes a direction given under section 32, 33 or 35 and such other decision [F61under this Part] as may be prescribed.
- (4) Except in the case of an appeal against the imposition, or the amount, of a penalty, the making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.
- (5) Part I of Schedule 8 makes further provision about appeals.

#### Textual Amendments

- F58** Word in s. 46 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(36\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F59** Words in s. 46(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F60** S. 46(3)(h) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(c\), Sch. 26](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)
- F61** Words in s. 46(3) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 2\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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

- C24** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261, rule 3](#)



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Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), [rule 6](#)

### [<sup>F62</sup>47 **Third party appeals**

- (1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to a decision falling within paragraphs (a) to (f) of section 46(3) or such other decision of the OFT under this Part as may be prescribed.
- (2) A person may make an appeal under subsection (1) only if the Tribunal considers that he has a sufficient interest in the decision with respect to which the appeal is made, or that he represents persons who have such an interest.
- (3) The making of an appeal under this section does not suspend the effect of the decision to which the appeal relates.]

#### **Textual Amendments**

**F62** S. 47 substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), [ss. 17, 279](#); [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch. \(with art. 5\)](#)

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

**C25** Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), [rule. 3](#)  
Ss. 46-47 modified (1.3.2000) by [S.I. 2000/261](#), [rule 6](#)

### [<sup>F63</sup>47A **Monetary claims before Tribunal**

- (1) This section applies to—
  - (a) any claim for damages, or<sup>3</sup>
  - (b) any other claim for a sum of money,which a person who has suffered loss or damage as a result of the infringement of a relevant prohibition may make in civil proceedings brought in any part of the United Kingdom.
- (2) In this section “relevant prohibition” means any of the following—
  - (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty;
  - (e) the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community;
  - (f) the prohibition in Article 66(7) of that Treaty.
- (3) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules that would apply in such proceedings are to be disregarded.
- (4) A claim to which this section applies may (subject to the provisions of this Act and Tribunal rules) be made in proceedings brought before the Tribunal.
- (5) But no claim may be made in such proceedings—
  - (a) until a decision mentioned in subsection (6) has established that the relevant prohibition in question has been infringed; and

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- (b) otherwise than with the permission of the Tribunal, during any period specified in subsection (7) or (8) which relates to that decision.
- (6) The decisions which may be relied on for the purposes of proceedings under this section are —
- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition, the Chapter II prohibition or the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (d) a decision of the European Commission that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed; or
  - (e) a decision of the European Commission that the prohibition in Article 65(1) of the Treaty establishing the European Coal and Steel Community has been infringed, or a finding made by the European Commission under Article 66(7) of that Treaty.
- (7) The periods during which proceedings in respect of a claim made in reliance on a decision mentioned in subsection (6)(a), (b) or (c) may not be brought without permission are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46, section 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
  - (b) in the case of a decision of the OFT which is the subject of an appeal mentioned in paragraph (a), the period following the decision of the Tribunal on the appeal during which a further appeal may be made under section 49 or under those Regulations;
  - (c) in the case of a decision of the Tribunal mentioned in subsection (6)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
  - (d) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;
- and, where any appeal mentioned in paragraph (a), (b), (c) or (d) is made, the period specified in that paragraph includes the period before the appeal is determined.
- (8) The periods during which proceedings in respect of a claim made in reliance on a decision or finding of the European Commission may not be brought without permission are—
- (a) the period during which proceedings against the decision or finding may be instituted in the European Court; and
  - (b) if any such proceedings are instituted, the period before those proceedings are determined.
- (9) In determining a claim to which this section applies the Tribunal is bound by any decision mentioned in subsection (6) which establishes that the prohibition in question has been infringed.

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- (10) The right to make a claim to which this section applies in proceedings before the Tribunal does not affect the right to bring any other proceedings in respect of the claim.]

#### Textual Amendments

**F63** S. 47A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 18(1)**, 279 (with [s. 18\(2\)](#)); [S.I. 2003/1397](#), [art. 2\(1\)](#), Sch.

### [<sup>F64</sup>47B Claims brought on behalf of consumers

- (1) A specified body may (subject to the provisions of this Act and Tribunal rules) bring proceedings before the Tribunal which comprise consumer claims made or continued on behalf of at least two individuals.
- (2) In this section “consumer claim” means a claim to which section 47A applies which an individual has in respect of an infringement affecting (directly or indirectly) goods or services to which subsection (7) applies.
- (3) A consumer claim may be included in proceedings under this section if it is—
  - (a) a claim made in the proceedings on behalf of the individual concerned by the specified body; or
  - (b) a claim made by the individual concerned under section 47A which is continued in the proceedings on his behalf by the specified body;and such a claim may only be made or continued in the proceedings with the consent of the individual concerned.
- (4) The consumer claims included in proceedings under this section must all relate to the same infringement.
- (5) The provisions of section 47A(5) to (10) apply to a consumer claim included in proceedings under this section as they apply to a claim made in proceedings under that section.
- (6) Any damages or other sum (not being costs or expenses) awarded in respect of a consumer claim included in proceedings under this section must be awarded to the individual concerned; but the Tribunal may, with the consent of the specified body and the individual, order that the sum awarded must be paid to the specified body (acting on behalf of the individual).
- (7) This subsection applies to goods or services which—
  - (a) the individual received, or sought to receive, otherwise than in the course of a business carried on by him (notwithstanding that he received or sought to receive them with a view to carrying on a business); and
  - (b) were, or would have been, supplied to the individual (in the case of goods whether by way of sale or otherwise) in the course of a business carried on by the person who supplied or would have supplied them.
- (8) A business includes—
  - (a) a professional practice;
  - (b) any other undertaking carried on for gain or reward;

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- (c) any undertaking in the course of which goods or services are supplied otherwise than free of charge.
- (9) “Specified” means specified in an order made by the Secretary of State, in accordance with criteria to be published by the Secretary of State for the purposes of this section.
- (10) An application by a body to be specified in an order under this section is to be made in a form approved by the Secretary of State for the purpose.]

#### Textual Amendments

**F64** S. 47B inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 19**, 279; [S.I. 2003/1397](#), **art. 2(1)**, [Sch.](#)

### <sup>F65</sup> 48 Appeal tribunals.

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#### Textual Amendments

**F65** S. 48 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), **s. 279**, [Sch. 5 para. 3](#), **Sch. 26**; [S.I. 2003/766](#), **art. 2**, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), **reg. 3(2)**, [Sch.](#))

### [<sup>F66</sup> 49 Further appeals

- (1) An appeal lies to the appropriate court—
- (a) from a decision of the Tribunal as to the amount of a penalty under section 36;
  - (b) from a decision of the Tribunal as to the award of damages or other sum in respect of a claim made in proceedings under section 47A or included in proceedings under section 47B (other than a decision on costs or expenses) or as to the amount of any such damages or other sum; and
  - (c) on a point of law arising from any other decision of the Tribunal on an appeal under section 46 or 47.
- (2) An appeal under this section—
- (a) may be brought by a party to the proceedings before the Tribunal or by a person who has a sufficient interest in the matter; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section “the appropriate court” means the Court of Appeal or, in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session.]

#### Textual Amendments

**F66** S. 49 substituted (1.4.2003 for specified purposes, 18.7.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\)](#), **s. 279**, [Sch. 5 para. 4](#); [S.I. 2003/766](#), **art. 2**, [Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), **reg. 3(2)**, [Sch.](#)); [S.I. 2004/1866](#), **art. 2**

#### Commencement Information

**I5** S. 49 wholly in force; s. 49 not in force at Royal Assent see **s. 76(3)**; **s. 49(3)** in force at 1.4.1999 by [S.I. 1999/505](#), **art. 2 Sch. 2**; **s. 49(1)(2)** and **(4)** in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, [Sch.](#)

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## CHAPTER V

### MISCELLANEOUS

#### *Vertical agreements and land agreements*

#### **50 Vertical agreements and land agreements.**

- (1) The Secretary of State may by order provide for any provision of this Part to apply in relation to—
  - (a) vertical agreements, or
  - (b) land agreements,with such modifications as may be prescribed.
- (2) An order may, in particular, provide for exclusions or exemptions, or otherwise provide for prescribed provisions not to apply, in relation to—
  - (a) vertical agreements, or land agreements, in general; or
  - (b) vertical agreements, or land agreements, of any prescribed description.
- (3) An order may empower the [<sup>F67</sup>OFT] to give directions to the effect that in prescribed circumstances an exclusion, exemption or modification is not to apply (or is to apply in a particular way) in relation to an individual agreement.
- (4) Subsections (2) and (3) are not to be read as limiting the powers conferred by section 71.
- (5) In this section—
  - “land agreement” and “vertical agreement” have such meaning as may be prescribed; and
  - “prescribed” means prescribed by an order.

#### **Textual Amendments**

**F67** Word in s. 50 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(37\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *[<sup>F68</sup>OFT's] rules, guidance and fees*

#### **Textual Amendments**

**F68** Word in s. 51 cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### **51 Rules.**

- (1) The [<sup>F69</sup>OFT] may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of this Part as [<sup>F69</sup>it] considers appropriate.

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- (2) Schedule 9 makes further provision about rules made under this section but is not to be taken as restricting the [F70OFT] powers under this section.
- (3) If the [F71OFT] is preparing rules under this section [F71it] must consult such persons as he considers appropriate.
- (4) If the proposed rules relate to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (5) No rule made by the [F72OFT] is to come into operation until it has been approved by an order made by the Secretary of State.
- (6) The Secretary of State may approve any rule made by the [F72OFT]—
  - (a) in the form in which it is submitted; or
  - (b) subject to such modifications as he considers appropriate.
- (7) If the Secretary of State proposes to approve a rule subject to modifications he must inform the [F72OFT] of the proposed modifications and take into account any comments made by the [F72OFT].
- (8) Subsections (5) to (7) apply also to any alteration of the rules made by the [F72OFT].
- (9) The Secretary of State may, after consulting the [F72OFT], by order vary or revoke any rules made under this section.
- (10) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the [F73OFT] to exercise [F73its] powers under this section and make rules about that matter.

#### Textual Amendments

- F69** Words in s. 51(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#) (a); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F70** Word in s. 51(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F71** Words in s. 51(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#) (c); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F72** Word in s. 51(5)-(9) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#) (d); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F73** Words in s. 51(10) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(38\)](#) (e); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 52 Advice and information.

- (1) As soon as is reasonably practicable after the passing of this Act, the Director must prepare and publish general advice and information about—
  - (a) the application of the Chapter I prohibition and the Chapter II prohibition, and
  - (b) the enforcement of those prohibitions.
- (2) The [F74OFT] may at any time publish revised, or new, advice or information.
- (3) Advice and information published under this section must be prepared with a view to—

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- (a) explaining provisions of this Part to persons who are likely to be affected by them; and
  - (b) indicating how the [F74OFT] expects such provisions to operate.
- (4) Advice (or information) published by virtue of subsection (3)(b) may include advice (or information) about the factors which the [F75OFT] may take into account in considering whether, and if so how, to exercise a power conferred on [F75it] by Chapter I, II or III.
- (5) Any advice or information published by the [F76OFT] under this section is to be published in such form and in such manner as [F76it] considers appropriate.
- (6) If the [F77OFT] is preparing any advice or information under this section [F77it] must consult such persons as he considers appropriate.
- (7) If the proposed advice or information relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) In preparing any advice or information under this section about a matter in respect of which he may exercise functions under this Part, a regulator must consult—
  - (a) the [F78OFT];
  - (b) the other regulators; and
  - (c) such other persons as he considers appropriate.

#### Textual Amendments

- F74** Word in s. 52(2)(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(39\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F75** Words in s. 52(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(39\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F76** Words in s. 52(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(39\)\(c\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F77** Words in s. 52(6) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(39\)\(d\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F78** Word in s. 52(8) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(39\)\(e\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

## 53 Fees.

- (1) The [F79OFT] may charge fees, of specified amounts, in connection with the exercise by [F79it] of specified functions under this Part.
- (2) Rules may, in particular, provide—
  - (a) for the amount of any fee to be calculated by reference to matters which may include—
    - (i) the turnover of any party to an agreement (determined in such manner as may be specified);
    - (ii) the turnover of a person whose conduct the [F79OFT] is to consider (determined in that way);
  - (b) for different amounts to be specified in connection with different functions;
  - (c) for the repayment by the [F79OFT] of the whole or part of a fee in specified circumstances;

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- (d) that an application or notice is not to be regarded as duly made or given unless the appropriate fee is paid.
- (3) In this section—
  - (a) “rules” means rules made by the [<sup>F79</sup>OFT] under section 51; and
  - (b) “specified” means specified in rules.

#### Textual Amendments

**F79** Words in s. 53 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(40\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### Regulators

#### 54 Regulators.

- (1) In this Part “regulator” means [<sup>F80</sup>—
  - [<sup>F81</sup>(a) the Office of Communications;]
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Director General of Electricity Supply for Northern Ireland;
  - (d) the Director General of Water Services;
  - (e) the Rail Regulator;
  - (f) the Director General of Gas for Northern Ireland; and
  - (g) the Civil Aviation Authority.]
- (2) Parts II and III of Schedule 10 provide for functions of the [<sup>F82</sup>OFT] under this Part to be exercisable concurrently by regulators.
- (3) Parts IV and V of Schedule 10 make minor and consequential amendments in connection with the regulators’ competition functions.
- (4) The Secretary of State may make regulations for the purpose of co-ordinating the performance of functions under this Part (“Part I functions”) which are exercisable concurrently by two or more competent persons as a result of any provision made by Part II or III of Schedule 10 [<sup>F83</sup>to this Act, by Chapter 5 of Part 1 of the Transport Act 2000 or by section 371 of the Communications Act 2003].
- (5) The regulations may, in particular, make provision—
  - (a) as to the procedure to be followed by competent persons when determining who is to exercise Part I functions in a particular case;
  - (b) as to the steps which must be taken before a competent person exercises, in a particular case, such Part I functions as may be prescribed;
  - (c) as to the procedure for determining, in a particular case, questions arising as to which competent person is to exercise Part I functions in respect of the case;
  - (d) for Part I functions in a particular case to be exercised jointly—
    - (i) by the [<sup>F82</sup>OFT] and one or more regulators, or
    - (ii) by two or more regulators,
 and as to the procedure to be followed in such cases;



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- (e) as to the circumstances in which the exercise by a competent person of such Part I functions as may be prescribed is to preclude the exercise of such functions by another such person;
  - (f) for cases in respect of which Part I functions are being, or have been, exercised by a competent person to be transferred to another such person;
  - (g) for the person (“A”) exercising Part I functions in a particular case—
    - (i) to appoint another competent person (“B”) to exercise Part I functions on A’s behalf in relation to the case; or
    - (ii) to appoint officers of B (with B’s consent) to act as officers of A in relation to the case;
  - (h) for notification as to who is exercising Part I functions in respect of a particular case.
- (6) Provision made by virtue of subsection (5)(c) may provide for questions to be referred to and determined by the Secretary of State or by such other person as may be prescribed.
- (7) “Competent person” means the [<sup>F82</sup>OFT] or any of the regulators.

#### Textual Amendments

- F80** Words in s. 54(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(41\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F81** S. 54(1)(a) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), ss. 371\(5\)\(a\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)
- F82** Word in s. 54(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(41\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F83** Words in s. 54(4) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by virtue of [Communications Act 2003 \(c. 21\), ss. 371\(5\)\(b\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with art. 11)

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

- C26** S. 54(5)-(7) applied by 1986 c. 46, s. 9D(2) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))

#### Commencement Information

- I6** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 76(3); s. 54(2) in force for certain purposes at 26.11.1998 by [S.I. 1998/2750, art. 2](#); s. 54(3) in force for certain purposes at 11.1.1999 and s. 54(4)-(7) in force at the same date by [S.I. 1998/3166, art. 2, Sch.](#); s. 54(3) in force for certain purposes at 1.4.1999 by [S.I. 1999/505, art. 2, Sch. 2](#); s. 54(1)(2) and (3) wholly in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

*Confidentiality and immunity from defamation*

<sup>F84</sup>**55** **General restrictions on disclosure of information.**

.....

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#### Textual Amendments

**F84** S. 56 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 247(j), 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

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

**C27** S. 55 restricted (31.10.2003) by [Railways and Transport Safety Act 2003 \(c. 20\)](#), s. 115; S.I. 2003/2681, art. 2(b)

### <sup>F84</sup>56 **Director and Secretary of State to have regard to certain matters in relation to the disclosure of information.**

.....

#### Textual Amendments

**F84** S. 56 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 247(j), 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

### 57 **Defamation.**

For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision made, by the [<sup>F85</sup>OFT] in the exercise of any of [<sup>F85</sup>its] functions under this Part.

#### Textual Amendments

**F85** Words in s. 57 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(42)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### *Findings of fact by [<sup>F86</sup>OFT]*

#### Textual Amendments

**F86** Word in s. 58 cross-heading substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 38(43)**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### 58 **Findings of fact by [<sup>F87</sup>OFT].**

(1) Unless the court directs otherwise or the [<sup>F87</sup>OFT] has decided to take further action in accordance with section 16(2) or 24(2), [<sup>F88</sup>OFT's] finding which is relevant to an issue arising in Part I proceedings is binding on the parties if—

- (a) the time for bringing an appeal [<sup>F89</sup>under section 46 or 47] in respect of the finding has expired and the relevant party has not brought such an appeal; or
- (b) the decision of [<sup>F90</sup>the Tribunal] on such an appeal has confirmed the finding.

(2) In this section—

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“<sup>F88</sup>OFT’s] finding” means a finding of fact made by the [<sup>F87</sup>OFT] in the course of—

- (a) determining an application for a decision under section 14 or 22, or
- (b) conducting an investigation under section 25;

“Part I proceedings” means proceedings—

- (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; but
- (b) which are brought otherwise than by the [<sup>F87</sup>OFT];

“relevant party” means—

- (a) in relation to the Chapter I prohibition, a party to the agreement which is alleged to have infringed the prohibition; and
- (b) in relation to the Chapter II prohibition, the undertaking whose conduct is alleged to have infringed the prohibition.

- (3) Rules of court may make provision in respect of assistance to be given by the [<sup>F87</sup>OFT] to the court in Part I proceedings.

#### Textual Amendments

- F87** Word in s. 58 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(43\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F88** Words in s. 58 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(43\)\(b\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F89** Words in s. 58(1)(a) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 5\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F90** Words in s. 58(1)(b) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 5\(b\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### <sup>F91</sup>Findings of infringements

#### Textual Amendments

- F91** S. 58A and cross-heading inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 20\(1\)\(2\), 279 \(with s. 20\(2\)\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

### 58A Findings of infringements

- (1) This section applies to proceedings before the court in which damages or any other sum of money is claimed in respect of an infringement of—
  - (a) the Chapter I prohibition;
  - (b) the Chapter II prohibition;
  - (c) the prohibition in Article 81(1) of the Treaty;
  - (d) the prohibition in Article 82 of the Treaty.
- (2) In such proceedings, the court is bound by a decision mentioned in subsection (3) once any period specified in subsection (4) which relates to the decision has elapsed.
- (3) The decisions are—

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- (a) a decision of the OFT that the Chapter I prohibition or the Chapter II prohibition has been infringed;
  - (b) a decision of the OFT that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed;
  - (c) a decision of the Tribunal (on an appeal from a decision of the OFT) that the Chapter I prohibition or the Chapter II prohibition has been infringed, or that the prohibition in Article 81(1) or Article 82 of the Treaty has been infringed.
- (4) The periods mentioned in subsection (2) are—
- (a) in the case of a decision of the OFT, the period during which an appeal may be made to the Tribunal under section 46 or 47 or the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (S.I. 2001/2916);
  - (b) in the case of a decision of the Tribunal mentioned in subsection (3)(c), the period during which a further appeal may be made under section 49 or under those Regulations;
  - (c) in the case of any decision which is the subject of a further appeal, the period during which an appeal may be made to the House of Lords from a decision on the further appeal;

and, where any appeal mentioned in paragraph (a), (b) or (c) is made, the period specified in that paragraph includes the period before the appeal is determined.]

### *Interpretation and governing principles*

## **59 Interpretation.**

(1) In this Part—

<sup>F92</sup>  
...

“Article 85” means Article 85 of the Treaty;

“Article 86” means Article 86 of the Treaty;

“block exemption” has the meaning given in section 6(4);

“block exemption order” has the meaning given in section 6(2);

“the Chapter I prohibition” has the meaning given in section 2(8);

“the Chapter II prohibition” has the meaning given in section 18(4);

“the Commission” (except in relation to the Competition Commission) means the European Commission;

“the Council” means the Council of the European Union;

“the court”, except in sections 58 [<sup>F93</sup>, 58A] and 60 and the expression “European Court”, means—

(a) in England and Wales, the High Court;

(b) in Scotland, the Court of Session; and

(c) in Northern Ireland, the High Court;

<sup>F94</sup>  
...

“document” includes information recorded in any form;

“the EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

“the European Court” means the Court of Justice of the European Communities and includes the Court of First Instance;

“individual exemption” has the meaning given in section 4(2);

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“information” includes estimates and forecasts;

“investigating officer” has the meaning given in section 27(1);

“Minister of the Crown” has the same meaning as in the Ministers of the  
<sup>M3</sup>Crown Act 1975;

[<sup>F95</sup>“OFCOM” means the Office of Communications;]

“officer”, in relation to a body corporate, includes a director, manager or secretary and, in relation to a partnership in Scotland, includes a partner;

[<sup>F96</sup>“ the OFT” means the Office of Fair Trading;]

“parallel exemption” has the meaning given in section 10(3);

“person”, in addition to the meaning given by the <sup>M4</sup>Interpretation Act 1978, includes any undertaking;

“premises” does not include domestic premises unless—

- (a) they are also used in connection with the affairs of an undertaking, or
- (b) documents relating to the affairs of an undertaking are kept there,

but does include any vehicle;

“prescribed” means prescribed by regulations made by the Secretary of State;

“regulator” has the meaning given by section 54;

“section 11 exemption” has the meaning given in section 11(3); and

“the Treaty” means the treaty establishing the European Community.

[<sup>F97</sup>“ the Tribunal” means the Competition Appeal Tribunal;

“Tribunal rules” means rules under section 15 of the Enterprise Act 2002.]

- (2) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because of an exclusion provided by or under this Part or any other enactment, does not require those provisions of the agreement to which the exclusion relates to be disregarded when considering whether the agreement infringes the prohibition for other reasons.
- (3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.
- (4) Any power conferred on the [<sup>F98</sup>OFT] by this Part to require information includes power to require any document which [<sup>F98</sup>it] believes may contain that information.

#### Textual Amendments

**F92** Words in s. 59(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 5 para. 6\(a\), Sch. 26; S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F93** Word in s. 59(1) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 20\(3\), 279; S.I. 2003/1397, art. 2\(1\), Sch.](#)

**F94** Words in s. 59(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(44\)\(a\), Sch. 26; S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F95** Words in s. 59(1) inserted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), ss. 371\(7\), 411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

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- F96** Words in s. 59(1) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(44)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F97** Words in s. 59(1) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 6(b), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F98** Words in s. 59(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(44)(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

#### Commencement Information

- I7** S. 59 wholly in force at 11.1.1999; s. 59 not in force at Royal Assent see s. 76(3); s. 59 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; s. 59 in force in so far as not already in force by S.I. 1998/3166, art. 2, Sch.

#### Marginal Citations

- M3** 1975 c. 26.  
**M4** 1978 c. 30.

## 60 Principles to be applied in determining questions.

- (1) The purpose of this section is to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Part in relation to competition within the United Kingdom are dealt with in a manner which is consistent with the treatment of corresponding questions arising in Community law in relation to competition within the Community.
- (2) At any time when the court determines a question arising under this Part, it must act (so far as is compatible with the provisions of this Part and whether or not it would otherwise be required to do so) with a view to securing that there is no inconsistency between—
  - (a) the principles applied, and decision reached, by the court in determining that question; and
  - (b) the principles laid down by the Treaty and the European Court, and any relevant decision of that Court, as applicable at that time in determining any corresponding question arising in Community law.
- (3) The court must, in addition, have regard to any relevant decision or statement of the Commission.
- (4) Subsections (2) and (3) also apply to—
  - (a) the [F99OFT]; and
  - (b) any person acting on behalf of the [F99OFT], in connection with any matter arising under this Part.
- (5) In subsections (2) and (3), “court” means any court or tribunal.
- (6) In subsections (2)(b) and (3), “decision” includes a decision as to—
  - (a) the interpretation of any provision of Community law;
  - (b) the civil liability of an undertaking for harm caused by its infringement of Community law.

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### Textual Amendments

**F99** Word in s. 60 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(45\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### Modifications etc. (not altering text)

**C28** S. 60 applied by 1986 c. 46, s. 9A(11) (as inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 204\(2\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#))

## PART II

### INVESTIGATIONS IN RELATION TO ARTICLES 85 AND 86

#### 61 Introduction.

(1) In this Part—

“Article 85” and “Article 86” have the same meaning as in Part I;

“authorised officer”, in relation to the <sup>F100</sup>[OFT], means an officer to whom an authorisation has been given under subsection (2);

“the Commission” means the European Commission;

<sup>F101</sup>...

“Commission investigation” means an investigation ordered by a decision of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

<sup>F102</sup>“the OFT” means the Office of Fair Trading;

<sup>F103</sup>“OFT’s investigation” means an investigation conducted by the OFT] at the request of the Commission under a prescribed provision of Community law relating to Article 85 or 86;

<sup>F104</sup>“OFT’s special investigation” means an OFT’s] investigation conducted at the request of the Commission in connection with a Commission investigation;

“prescribed” means prescribed by order made by the Secretary of State;

“premises” means—

(a) in relation to a Commission investigation, any premises, land or means of transport which an official of the Commission has power to enter in the course of the investigation; and

(b) in relation to <sup>F105</sup>[an OFT’s] investigation, any premises, land or means of transport which an official of the Commission would have power to enter if the investigation were being conducted by the Commission.

(2) For the purposes of <sup>F106</sup>[an OFT’s] investigation, an officer of the <sup>F107</sup>[OFT] to whom an authorisation has been given has the powers of an official authorised by the Commission in connection with a Commission investigation under the relevant provision.

(3) “Authorisation” means an authorisation given in writing by the <sup>F108</sup>[OFT] which—

(a) identifies the officer;

(b) specifies the subject matter and purpose of the investigation; and

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- (c) draws attention to any penalties which a person may incur in connection with the investigation under the relevant provision of Community law.

#### Textual Amendments

- F100** Word in s. 61(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F101** Words in s. 61(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(ii\)](#), [Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F102** Words in s. 61(1) inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F103** Words in s. 61(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(iv\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F104** Words in s. 61(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(v\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F105** Words in s. 61(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(a\)\(vi\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F106** Words in s. 61(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(b\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F107** Word in s. 61(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(b\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)
- F108** Word in s. 61(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(46\)\(c\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

## 62 Power to enter premises: Commission investigations.

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the [<sup>F109</sup>OFT], that a Commission investigation is being, or is likely to be, obstructed.
- (2) A Commission investigation is being obstructed if—
  - (a) an official of the Commission (“the Commission official”), exercising his power in accordance with the provision under which the investigation is being conducted, has attempted to enter premises but has been unable to do so; and
  - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine.
- (3) A Commission investigation is also being obstructed if there are reasonable grounds for suspecting that there are books or records on the premises—
  - (a) the production of which has been required by an official of the Commission exercising his power in accordance with the provision under which the investigation is being conducted; and
  - (b) which have not been produced as required.
- (4) A Commission investigation is likely to be obstructed if—



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- (a) an official of the Commission (“the Commission official”) is authorised for the purpose of the investigation;
  - (b) there are reasonable grounds for suspecting that there are books or records on the premises which the Commission official has power to examine; and
  - (c) there are also reasonable grounds for suspecting that, if the Commission official attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
- (a) a named officer of the [F110OFT],
  - (b) any other of [F111the OFT’s officers whom the OFT] has authorised in writing to accompany the named officer, and
  - (c) any official of the Commission authorised for the purpose of the Commission investigation,
- to enter the premises specified in the warrant, and search for books and records which the official has power to examine, using such force as is reasonably necessary for the purpose.

[F112(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.]

- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

#### Textual Amendments

- F109** Word in s. 62(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(47\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F110** Word in s. 62(5)(a) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(47\)\(b\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F111** Words in s. 62(5)(b) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(47\)\(b\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F112** S. 62(5A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 203\(3\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

#### 63 Power to enter premises: [F113OFT’s] special investigations.

- (1) A judge of the High Court may issue a warrant if satisfied, on an application made to the High Court in accordance with rules of court by the [F114OFT, that an OFT’s] special investigation is being, or is likely to be, obstructed.

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- (2) [F<sup>115</sup>An OFT's] special investigation is being obstructed if—
- (a) an authorised officer of the [F<sup>115</sup>OFT] has attempted to enter premises but has been unable to do so;
  - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, concerned; and
  - (c) there are reasonable grounds for suspecting that there are books or records on the premises which the officer has power to examine.
- (3) [F<sup>115</sup>An OFT's] special investigation is also being obstructed if—
- (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the [F<sup>115</sup>OFT] has power to examine;
  - (b) the officer has produced his authorisation to the undertaking, or association of undertakings, and has required production of the books or records; and
  - (c) the books and records have not been produced as required.
- (4) [F<sup>115</sup>An OFT's] special investigation is likely to be obstructed if—
- (a) there are reasonable grounds for suspecting that there are books or records on the premises which an authorised officer of the [F<sup>115</sup>OFT] has power to examine; and
  - (b) there are also reasonable grounds for suspecting that, if the officer attempted to exercise his power to examine any of the books or records, they would not be produced but would be concealed, removed, tampered with or destroyed.
- (5) A warrant under this section shall authorise—
- (a) a named authorised officer of the [F<sup>116</sup>OFT],
  - (b) any other authorised officer accompanying the named officer, and
  - (c) any named official of the Commission,
- to enter the premises specified in the warrant, and search for books and records which the authorised officer has power to examine, using such force as is reasonably necessary for the purpose.
- [F<sup>117</sup>(5A) A warrant under this section may authorise persons specified in the warrant to accompany the named authorised officer who is executing it.]
- (6) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (7) On leaving any premises which he has entered by virtue of the warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (8) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (9) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

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#### Textual Amendments

**F113** Word in s. 63 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(48\)\(d\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

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- F114** Words in s. 63(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(48\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F115** Words in s. 63(2)-(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(48\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F116** Word in s. 63(5) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(48\)\(c\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F117** S. 63(5A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), ss. 203\(4\), 279](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#)

#### **64 Entry of premises under sections 62 and 63: supplementary.**

- (1) A warrant issued under section 62 or 63 must indicate—
  - (a) the subject matter and purpose of the investigation;
  - (b) the nature of the offence created by section 65.
- (2) The powers conferred by section 62 or 63 are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
  - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.
- (5) In this section—

“named officer” means the officer named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

#### **65 Offences.**

- (1) A person is guilty of an offence if he intentionally obstructs any person in the exercise of his powers under a warrant issued under section 62 or 63.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### **PART III**

#### **MONOPOLIES**

#### **F118 66 Monopoly investigations: general.**

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#### Textual Amendments

**F118** S. 67 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

### **F118** 67 Offences.

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#### Textual Amendments

**F118** S. 67 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

### **68** Services relating to use of land.

In section 137 of the Fair Trading Act 1973, after subsection (3) insert—

“(3A) The Secretary of State may by order made by statutory instrument—

- (a) provide that “the supply of services” in the provisions of this Act is to include, or to cease to include, any activity specified in the order which consists in, or in making arrangements in connection with, permitting the use of land; and
- (b) for that purpose, amend or repeal any of paragraphs (c), (d), (e) or (g) of subsection (3) above.

(3B) No order under subsection (3A) above is to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.

(3C) The provisions of Schedule 9 to this Act apply in the case of a draft of any such order as they apply in the case of a draft of an order to which section 91(1) above applies.”

### **69** Reports: monopoly references.

In section 83 of the <sup>M5</sup>Fair Trading Act 1973—

- (a) in subsection (1), omit “Subject to subsection (1A) below”; and
- (b) omit subsection (1A) (reports on monopoly references to be transmitted to certain persons at least twenty-four hours before laying before Parliament).

#### Marginal Citations

**M5** 1973 c. 41.

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## PART IV

### SUPPLEMENTAL AND TRANSITIONAL

#### 70 Contracts as to patented products etc.

Sections 44 and 45 of the <sup>M6</sup>Patents Act 1977 shall cease to have effect.

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#### Marginal Citations

M6 1977 c. 37.

#### 71 Regulations, orders and rules.

- (1) Any power to make regulations or orders which is conferred by this Act is exercisable by statutory instrument.
- (2) The power to make rules which is conferred by section 48 is exercisable by statutory instrument.
- (3) Any statutory instrument made under this Act may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases.
- (4) No order is to be made under—
  - (a) section 3,
  - (b) section 19,
  - (c) section 36(8),
  - [<sup>F119</sup>(ca) section 45(8),]
  - (d) section 50, or
  - (e) paragraph 6(3) of Schedule 4,unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (5) Any statutory instrument made under this Act, apart from one made—
  - (a) under any of the provisions mentioned in subsection (4), or
  - (b) under section 76(3),shall be subject to annulment by a resolution of either House of Parliament.

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#### Textual Amendments

F119 S. 71(4)(ca) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(49); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### 72 Offences by bodies corporate etc.

- (1) This section applies to an offence under any of sections 42 to 44, 55(8) or 65.
- (2) If an offence committed by a body corporate is proved—

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- (a) to have been committed with the consent or connivance of an officer, or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) In subsection (2) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
  - (4) If the affairs of a body corporate are managed by its members, subsection (2) applies 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.
  - (5) If an offence committed by a partnership in Scotland is proved—
    - (a) to have been committed with the consent or connivance of a partner, or
    - (b) to be attributable to any neglect on his part,
 the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
  - (6) In subsection (5) “partner” includes a person purporting to act as a partner.

### 73 **Crown application.**

- (1) Any provision made by or under this Act binds the Crown except that—
  - (a) the Crown is not criminally liable as a result of any such provision;
  - (b) the Crown is not liable for any penalty under any such provision; and
  - (c) nothing in this Act affects Her Majesty in her private capacity.
- (2) Subsection (1)(a) does not affect the application of any provision of this Act in relation to persons in the public service of the Crown.
- (3) Subsection (1)(c) is to be interpreted as if section 38(3) of the <sup>M7</sup>Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.
- (4) If, in respect of a suspected infringement of the Chapter I prohibition or of the Chapter II prohibition otherwise than by the Crown or a person in the public service of the Crown, an investigation is conducted under section 25—
  - (a) the power conferred by section 27 may not be exercised in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, without the written consent of the appropriate person; and
  - (b) section 28 does not apply in relation to land so occupied.
- (5) In any case in which consent is required under subsection (4), the person who is the appropriate person in relation to that case is to be determined in accordance with regulations made by the Secretary of State.
- (6) Sections 62 and 63 do not apply in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, unless the matter being investigated is a suspected infringement by the Crown or by a person in the public service of the Crown.
- (7) In subsection (6) “infringement” means an infringement of Community law relating to Article 85 or 86 of the Treaty establishing the European Community.

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- (8) If the Secretary of State certifies that it appears to him to be in the interests of national security that the powers of entry—
- (a) conferred by section 27, or
  - (b) that may be conferred by a warrant under section 28, 62 or 63,
- should not be exercisable in relation to premises held or used by or on behalf of the Crown and which are specified in the certificate, those powers are not exercisable in relation to those premises.
- (9) Any amendment, repeal or revocation made by this Act binds the Crown to the extent that the enactment amended, repealed or revoked binds the Crown.

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**Marginal Citations**

M7 1947 c. 44.

**74 Amendments, transitional provisions, savings and repeals.**

- (1) The minor and consequential amendments set out in Schedule 12 are to have effect.
- (2) The transitional provisions and savings set out in Schedule 13 are to have effect.
- (3) The enactments set out in Schedule 14 are repealed.

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**Commencement Information**

**I8** S. 74 partly in force; s. 74 not in force at Royal Assent see s. 76(3); s. 74 in force for certain purposes at 1.11.1999 by S.I. 1998/3166, art. 2, Sch.; s. 74(1)(3) in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; s. 74 in force for certain purposes at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

**75 Consequential and supplementary provision.**

- (1) The Secretary of State may by order make such incidental, consequential, transitional or supplemental provision as he thinks necessary or expedient for the general purposes, or any particular purpose, of this Act or in consequence of any of its provisions or for giving full effect to it.
- (2) An order under subsection (1) may, in particular, make provision—
  - (a) for enabling any person by whom any powers will become exercisable, on a date specified by or under this Act, by virtue of any provision made by or under this Act to take before that date any steps which are necessary as a preliminary to the exercise of those powers;
  - (b) for making savings, or additional savings, from the effect of any repeal made by or under this Act.
- (3) Amendments made under this section shall be in addition, and without prejudice, to those made by or under any other provision of this Act.
- (4) No other provision of this Act restricts the powers conferred by this section.

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## 76 Short title, commencement and extent.

- (1) This Act may be cited as the Competition Act 1998.
- (2) Sections 71 and 75 and this section and paragraphs 1 to 7 and 35 of Schedule 13 come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (4) This Act extends to Northern Ireland.

### Subordinate Legislation Made

- P1** [S. 76](#) power partly exercised (9.11.1998): 26.11.1998 appointed for specified provisions by [S.I. 1998/2750, art. 2](#)
- P2** [S. 76](#) power partly exercised (16.12.1998): 11.1.1999 appointed for specified provisions by [S.I. 1998/3166, art. 2, Sch.](#)
- P3** [S. 76](#) power partly exercised (2.3.1999): 1.4.1999 appointed for specified provisions by [S.I. 1999/505, art. 2, Sch. 2](#)
- P4** [S. 76](#) power partly exercised (19.10.1999): 10.11.1999 appointed for specified provisions by [S.I. 1999/2859, art. 2](#)



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## SCHEDULES

### SCHEDULE 1

Sections 3(1)(a) and 19(1)(a).

#### EXCLUSIONS: MERGERS AND CONCENTRATIONS

#### PART I

#### MERGERS

##### *Enterprises ceasing to be distinct: the Chapter I prohibition*

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of [F120Part V of the M8Fair Trading Act 1973 (“the 1973 Act”)] [F120Part 3 of the Enterprise Act 2002 (“the 2002 Act”)], the Chapter I prohibition does not apply to the agreement.
- (2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.
- (3) In sub-paragraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in sub-paragraph (1).
- (4) [F121Section 65 of the 1973 Act][F121Section 26 of the 2002 Act] applies for the purposes of this paragraph as if—
- (a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
  - (b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
- for “may” there were substituted “ must ”.

#### Textual Amendments

**F120** Words in Sch. 1 para. 1(1) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(a\)\(i\)](#); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F121** Words in Sch. 1 para. 1(4) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(a\)\(ii\)](#); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

#### Marginal Citations

**M8** 1973 c. 41.

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*Enterprises ceasing to be distinct: the Chapter II prohibition*

- 2 (1) To the extent to which conduct (either on its own or when taken together with other conduct)—
  - (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of [F122Part V of the 1973 Act][F122Part 3 of the 2002 Act]), or
  - (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),
 the Chapter II prohibition does not apply to that conduct.
- (2) [F123Section 65 of the 1973 Act][F123Section 26 of the 2002 Act] applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

**Textual Amendments**

**F122** Words in Sch. 1 para. 2(1)(a) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(b)(i); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

**F123** Words in Sch. 1 para. 2(2) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(b)(ii); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

*Transfer of a newspaper or of newspaper assets*

F124<sub>3</sub> .....

**Textual Amendments**

**F124** Sch. 1 para. 3 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

*Withdrawal of the paragraph 1 exclusion*

- 4 (1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the [F125OFT] gives a direction under this paragraph to that effect.
- (2) If the [F125OFT] is considering whether to give a direction under this paragraph, [F126;it] may by notice in writing require any party to the agreement in question to give [F126the OFT] such information in connection with the agreement as [F126it] may require.
- (3) The [F125OFT] may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).
- (4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the [F125OFT] may give a direction under this paragraph.
- (5) The [F125OFT] may also give a direction under this paragraph if—
  - (a) [F127it] considers—
    - (i) that the agreement will, if not excluded, infringe the Chapter I prohibition; and

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- (ii) that <sup>F127</sup>it] is not likely to grant it an unconditional individual exemption; and
  - (b) the agreement is not a protected agreement.
- (6) For the purposes of sub-paragraph (5), an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (7) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

#### Textual Amendments

- F125** Word in Sch. 1 para. 4 substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(c\)\(i\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F126** Words in Sch. 1 para. 4(2) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(c\)\(ii\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F127** Words in Sch. 1 para. 4(5) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(c\)\(iii\)](#); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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

- C29** Sch. 1 para. 4 applied (1.3.2000) by [S.I. 2000/310, art. 7](#)

#### *Protected agreements*

- 5 An agreement is a protected agreement for the purposes of paragraph 4 if—
- <sup>F128</sup>(a) the OFT or (as the case may be) the Secretary of State has published its or his decision not to make a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
  - (b) the OFT or (as the case may be) the Secretary of State has made a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
  - (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 26 of the 2002 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
  - (d) the OFT has made a reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.]

#### Textual Amendments

- F128** Sch. 1 para. 5(a)(d) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(50\)\(d\)](#); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(4)8)

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

- C30** Sch. 1 para. 5(a)(b) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 1(1), [Sch. 4 para. 15\(1\)\(a\)](#)
- C31** Sch. 1 para. 5(b) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 1(1), [Sch. 4 para. 15\(1\)\(b\)](#)

**PART II**

CONCENTRATIONS SUBJECT TO EC CONTROLS

- 6 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (2) To the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (3) In this paragraph—
- “concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
- “Merger Regulation” means Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997.

SCHEDULE 2

Section 3(1)(b).

EXCLUSIONS: OTHER COMPETITION SCRUTINY

**PART I**

FINANCIAL SERVICES

*The Financial Services Act 1986 (c.60)*

- 1 (1) The Financial Services Act 1986 is amended as follows.
- (2) For section 125 (effect of the <sup>M9</sup>Restrictive Trade Practices Act 1976), substitute—

**“125 The Competition Act 1998: Chapter I prohibition.**

- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
  - (b) a recognised investment exchange, or
  - (c) a recognised clearing house,

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to the extent to which the agreement relates to the regulating provisions of the body concerned.

(2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—

- (a) a self-regulating organisation,
- (b) an investment exchange, or
- (c) a clearing house,

to the extent to which the agreement relates to the regulating provisions of the body concerned.

(3) The exclusion provided by subsection (2) above applies only if—

- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
- (b) the application has not been determined.

(4) The Chapter I prohibition does not apply to a decision made by—

- (a) a recognised self-regulating organisation,
- (b) a recognised investment exchange, or
- (c) a recognised clearing house,

to the extent to which the decision relates to any of that body's regulating provisions or specified practices.

(5) The Chapter I prohibition does not apply to the specified practices of—

- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
- (b) a person who is subject to—
  - (i) the rules of one of those bodies, or
  - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.

(6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—

- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
- (b) a person who is subject to—
  - (i) the rules of one of those bodies, or
  - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,

to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body's regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.

(7) The Chapter I prohibition does not apply to—

- (a) any clearing arrangements; or
- (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement

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consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.

(8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.

(9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;

“regulating provisions” means—

- (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
- (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
- (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;

“specified practices” means—

- (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));
- (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

(3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the <sup>M10</sup>Competition Act 1980).

(4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

**“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition.**

(1) This section applies to—

- (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that

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- body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
- (b) any other agreement, the parties to which consist of or include—
- (i) a recognised professional body,
  - (ii) a person certified by such a body, or
  - (iii) a member of such a body,
- and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—
- (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,
- the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
- (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
  - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
- (a) notify the Treasury of his intention to do so; and
  - (b) give the Treasury particulars of the agreement and such other information—
    - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
    - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
- (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or

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- (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—  
 “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,  
 “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and  
 expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

**Marginal Citations**

- M9** 1976 c. 34.  
**M10** 1980 c. 21.

**PART II**

COMPANIES

*The Companies Act 1989 (c.40)*

- 2 (1) The Companies Act 1989 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the <sup>M11</sup>Restrictive Trade Practices Act 1976), substitute—

*“ The Competition Act 1998*

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—  
 (a) rules of, or guidance issued by, the body; and  
 (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—  
 (a) a recognised supervisory or qualifying body, or



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- (b) any person mentioned in paragraph 3(5) or (6) above,  
to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
  - (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,  
and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

**Marginal Citations**

M11 1976 c. 34.

*The Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))*

- 3 (1) The Companies (Northern Ireland) Order 1990 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the Restrictive Trade Practices Act 1976), substitute—

*“ The Competition Act 1998*

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
  - (a) rules of, or guidance issued by, the body; and
  - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
  - (a) a recognised supervisory or qualifying body, or
  - (b) any person mentioned in paragraph 3(5) or (6),  
to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.

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- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b).
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) are to continue to apply for a period of 6 months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
  - (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
  - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
 and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

### PART III

#### BROADCASTING

##### *The Broadcasting Act 1990 (c.42)*

- 4 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 194A (which modifies the <sup>M12</sup>Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—
  - “(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.
  - (3) The conditions are that—
    - (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
    - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
      - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
      - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).

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- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
  - (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
  - (c) make a declaration, even though he has notified the Director of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.
- (7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—
  - (a) he has notified the Secretary of State of his intention to do so; and
  - (b) the Secretary of State—
    - (i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
    - (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—
  - (a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or
  - (b) as the Secretary of State may request.
- (9) In this section—

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;

“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;

“Director” means the Director General of Fair Trading;

“regional Channel 3 licence” has the same meaning as in Part I;

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.

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- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

#### Marginal Citations

M12 1976 c. 34.

#### *Networking arrangements under the Broadcasting Act 1990 (c.42)*

- 5 [F129](1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—

- (a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or
- (b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;

nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.]

- (2) [F130OFCOM] must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).

- (3) [F131OFCOM] must—

- (a) consult the Director before publishing the list, and
- (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.

- [F132(4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.]

#### Textual Amendments

**F129** Sch. 2 para. 5(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(3)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F130** Words in Sch. 2 para. 5(2) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(a)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

**F131** Words in Sch. 2 para. 5(3) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(b)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

**F132** Sch. 2 para. 5(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(4)**, 411(2) (with [Sch. 18](#)); [S.I. 2003/3142](#), [art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

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## PART IV

### ENVIRONMENTAL PROTECTION

#### *Producer responsibility obligations*

- 6 (1) The <sup>M13</sup>Environment Act 1995 is amended as follows.
- (2) In section 94(1) (supplementary provisions about regulations imposing producer responsibility obligations on prescribed persons), after paragraph (o), insert—
- “(oa) the exclusion or modification of any provision of Part I of the Competition Act 1998 in relation to exemption schemes or in relation to any agreement, decision or concerted practice at least one of the parties to which is an operator of an exemption scheme;”.
- (3) After section 94(6), insert—
- “(6A) Expressions used in paragraph (oa) of subsection (1) above which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”
- (4) After section 94, insert—

#### **“94A Producer responsibility: competition matters.**

- (1) For the purposes of this section, the relevant paragraphs are paragraphs (n), (o), (oa) and (ya) of section 94(1) above.
- (2) Regulations made by virtue of any of the relevant paragraphs may include transitional provision in respect of agreements or exemption schemes—
- (a) in respect of which information has been required for the purposes of competition scrutiny under any regulation made by virtue of paragraph (ya);
- (b) which are being, or have been, considered for the purposes of competition scrutiny under any regulation made by virtue of paragraph (n) or (ya); or
- (c) in respect of which provisions of the <sup>M14</sup>Restrictive Trade Practices Acts 1976 and <sup>M15</sup>1977 have been modified or excluded in accordance with any regulation made by virtue of paragraph (o).
- (3) Subsections (2), (3), (5) to (7) and (10) of section 93 above do not apply to a statutory instrument which contains only regulations made by virtue of any of the relevant paragraphs or subsection (2) above.
- (4) Such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

#### **Marginal Citations**

**M13** 1995 c. 25.

**M14** 1976 c. 34.

**M15** 1977 c. 19.

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## SCHEDULE 3

Sections 3(1)(c) and 19(1)(b).

### GENERAL EXCLUSIONS

#### *Planning obligations*

- 1 (1) The Chapter I prohibition does not apply to an agreement—
- (a) to the extent to which it is a planning obligation;
  - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the <sup>M16</sup>Town and Country Planning (Scotland) Act 1997; or
  - (c) which is made under Article 40 of the <sup>M17</sup>Planning (Northern Ireland) Order 1991.
- (2) In sub-paragraph (1)(a), “planning obligation” means—
- (a) a planning obligation for the purposes of section 106 of the <sup>M18</sup>Town and Country Planning Act 1990; or
  - (b) a planning obligation for the purposes of section 299A of that Act.

#### **Marginal Citations**

**M16** 1997 c. 8.

**M17** S.I. 1991/1220 (N.I. 11).

**M18** 1990 c. 8.

#### *Section 21(2) agreements*

- 2 (1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the <sup>M19</sup>Restrictive Trade Practices Act 1976 is in force immediately before the coming into force of section 2 (“a section 21(2) agreement”).
- (2) If a material variation is made to a section 21(2) agreement, sub-paragraph (1) ceases to apply to the agreement on the coming into force of the variation.
- (3) Sub-paragraph (1) does not apply to a particular section 21(2) agreement if the [<sup>F133</sup>OFT] gives a direction under this paragraph to that effect.
- (4) If the [<sup>F133</sup>OFT] is considering whether to give a direction under this paragraph, [<sup>F134</sup>it] may by notice in writing require any party to the agreement in question to give [<sup>F134</sup>the OFT] such information in connection with the agreement as [<sup>F134</sup>it] may require.
- (5) The [<sup>F133</sup>OFT] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [<sup>F133</sup>OFT] may give a direction under this paragraph.
- (7) The [<sup>F133</sup>OFT] may also give a direction under this paragraph [<sup>F135</sup>if it] considers—
- (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and

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- (b) that [<sup>F135</sup>the OFT is]not likely to grant it an unconditional individual exemption.
- (8) For the purposes of sub-paragraph (7) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (9) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

#### Textual Amendments

- F133** Word in Sch. 3 para. 2 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(a\)\(i\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F134** Words in Sch. 3 para. 2(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(a\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F135** Words in Sch. 3 para. 2(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(a\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### Marginal Citations

- M19** [1976 c. 34.](#)

### *EEA Regulated Markets*

- 3 (1) The Chapter I prohibition does not apply to an agreement for the constitution of an EEA regulated market to the extent to which the agreement relates to any of the rules made, or guidance issued, by that market.
- (2) The Chapter I prohibition does not apply to a decision made by an EEA regulated market, to the extent to which the decision relates to any of the market's regulating provisions.
- (3) The Chapter I prohibition does not apply to—
- (a) any practices of an EEA regulated market; or
  - (b) any practices which are trading practices in relation to an EEA regulated market.
- (4) The Chapter I prohibition does not apply to an agreement the parties to which are or include—
- (a) an EEA regulated market, or
  - (b) a person who is subject to the rules of that market,
- to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by the regulating provisions of that market.
- (5) In this paragraph—
- “EEA regulated market” is a market which—
- (a) is listed by an EEA State other than the United Kingdom pursuant to article 16 of Council Directive No. [93/22/EEC](#) of 10th May 1993 on investment services in the securities field; and

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- (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which any trading facilities are provided or on any trading floor that the market may have;

“EEA State” means a State which is a contracting party to the EEA Agreement;

“regulating provisions”, in relation to an EEA regulated market, means—

- (a) rules made, or guidance issued, by that market,
- (b) practices of that market, or
- (c) practices which, in relation to that market, are trading practices;

“trading practices”, in relation to an EEA regulated market, means practices of persons who are subject to the rules made by that market, and—

- (a) which relate to business in respect of which those persons are subject to the rules of that market, and which are required or contemplated by those rules or by guidance issued by that market; or
- (b) which are otherwise attributable to the conduct of that market as such.

*Services of general economic interest etc.*

- 4 Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

*Compliance with legal requirements*

- 5 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.
- (2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.
- (3) In this paragraph “legal requirement” means a requirement—
- (a) imposed by or under any enactment in force in the United Kingdom;
  - (b) imposed by or under the Treaty or the EEA Agreement and having legal effect in the United Kingdom without further enactment; or
  - (c) imposed by or under the law in force in another Member State and having legal effect in the United Kingdom.

*Avoidance of conflict with international obligations*

- 6 (1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.



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- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.
- (6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.
- (7) In this paragraph and paragraph 7 “specified” means specified in the order.

#### *Public policy*

- 7 (1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—
  - (a) a particular agreement, or
  - (b) any agreement of a particular description,he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

#### *Coal and steel*

- 8 (1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.

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- (2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).
- (3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (4) Sub-paragraph (3) ceases to have effect on the expiry date.
- (5) In this paragraph—
  - “coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and
  - “ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

#### *Agricultural products*

- 9 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it relates to production of or trade in an agricultural product and—
  - (a) forms an integral part of a national market organisation;
  - (b) is necessary for the attainment of the objectives set out in Article 39 of the Treaty; or
  - (c) is an agreement of farmers or farmers’ associations (or associations of such associations) belonging to a single member State which concerns—
    - (i) the production or sale of agricultural products, or
    - (ii) the use of joint facilities for the storage, treatment or processing of agricultural products,
 and under which there is no obligation to charge identical prices.
- (2) If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from Article 85(1), the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.
- (3) The agriculture exclusion does not apply to a particular agreement if the [F136OFT] gives a direction under this paragraph to that effect.
- (4) If the [F136OFT] is considering whether to give a direction under this paragraph, [F137it] may by notice in writing require any party to the agreement in question to give [F138the OFT] such information in connection with the agreement as [F137it] may require.
- (5) The [F136OFT] may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (4), the [F136OFT] may give a direction under this paragraph.
- (7) The [F136OFT] may also give a direction under this paragraph if [F138it] considers that an agreement (whether or not [F138it] considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.

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- (8) A direction under this paragraph—
- (a) must be in writing;
  - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).
- (9) In this paragraph—
- “agricultural product” means any product of a kind listed in Annex II to the Treaty; and
  - “provision for agricultural products” means Council Regulation (EEC) No. 26/62 of 4th April 1962 applying certain rules of competition to production of and trade in agricultural products.

#### Textual Amendments

- F136** Words in Sch. 3 para. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(b\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F137** Words in Sch. 3 para. 9(4) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(b\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F138** Words in Sch. 3 para. 9(7) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(51\)\(b\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### F139 SCHEDULE 4

Section 3(1)(d).

#### Textual Amendments

- F139** Sch. 4 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 207, 279, Sch. 26](#) (with [Sch. 24 paras. 2022](#)); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

### SCHEDULE 5

Section 12(2).

#### NOTIFICATION UNDER CHAPTER I: PROCEDURE

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

- C32** Sch. 5 applied (with modifications) (1.3.2000) by [S.I. 2000/263, art. 8](#)

#### Commencement Information

- I9** Sch. 5 partly in force; Sch. 5 not in force at Royal Assent, see s. 431; Sch. 5 partly in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

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### *Terms used*

- 1 In this Schedule—
- “applicant” means the person making an application to which this Schedule applies;
  - “application” means an application under section 13 or an application under section 14;
  - “application for guidance” means an application under section 13;
  - “application for a decision” means an application under section 14;
  - “rules” means rules made by the [F140OFT] under section 51; and
  - “specified” means specified in the rules.

#### **Textual Amendments**

**F140** Words in Sch. 5 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(52)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### *General rules about applications*

- 2 (1) An application must be made in accordance with rules.
- (2) A party to an agreement who makes an application must take all reasonable steps to notify all other parties to the agreement of whom he is aware—
- (a) that the application has been made; and
  - (b) as to whether it is for guidance or a decision.
- (3) Notification under sub-paragraph (2) must be in the specified manner.

### *Preliminary investigation*

- 3 (1) If, after a preliminary investigation of an application, the [F140OFT] considers that it is likely—
- (a) that the agreement concerned will infringe the Chapter I prohibition, and
  - (b) that it would not be appropriate to grant the agreement an individual exemption,
- [F141it] may make a decision (“a provisional decision”) under this paragraph.
- (2) If the [F140OFT] makes a provisional decision—
- (a) the [F140OFT] must notify the applicant in writing of [F141its] provisional decision; and
  - (b) section 13(4) or (as the case may be) section 14(4) is to be taken as never having applied.
- (3) When making a provisional decision, the [F140OFT] must follow such procedure as may be specified.
- (4) A provisional decision does not affect the final determination of an application.
- (5) If the [F140OFT] has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 14.

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#### Textual Amendments

- F140** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F141** Words in Sch. 5 para. 3 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Procedure on application for guidance*

- 4 When determining an application for guidance, the [F140OFT] must follow such procedure as may be specified.

#### Textual Amendments

- F140** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the [F140OFT] must follow such procedure as may be specified.
- (2) The [F140OFT] must arrange for the application to be published in such a way as [F142it thinks] most suitable for [F143bringing the application] to the attention of those likely to be affected by it, unless [F144the OFT is] satisfied that it will be sufficient <sup>F145</sup>... to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the [F140OFT] must take into account any representations made to [F146it] by persons other than the applicant.

#### Textual Amendments

- F140** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F142** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(i\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F143** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F144** Words in Sch. 5 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F145** Words in Sch. 5 para. 5(2) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(c\)\(iv\), Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))
- F146** Word in Sch. 5 para. 5(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(d\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Publication of decisions*

- 6 If the [F140OFT] determines an application for a decision [F147it] must publish [F147its] decision, together with [F147its] reasons for making it, in such manner as may be specified.

#### **Textual Amendments**

**F140** Words in Sch. 5 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F147** Words in Sch. 5 para. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(52\)\(e\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

PROSPECTIVE

### *[ Delay by the [F140OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the [F140OFT] to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the [F140OFT] in determining the application.
- (2) The court may give such directions to the [F140OFT] as it considers appropriate for securing that the application is determined without unnecessary further delay.]

## SCHEDULE 6

Section 20(2).

### NOTIFICATION UNDER CHAPTER II: PROCEDURE

#### *Terms used*

- 1 In this Schedule—
- “applicant” means the person making an application to which this Schedule applies;
  - “application” means an application under section 21 or an application under section 22;
  - “application for guidance” means an application under section 21;
  - “application for a decision” means an application under section 22;
  - “other party”, in relation to conduct of two or more persons, means one of those persons other than the applicant;
  - “rules” means rules made by the [F148OFT] under section 51; and
  - “specified” means specified in the rules.

*Status:* Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

**F148** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

### *General rules about applications*

- 2
- (1) An application must be made in accordance with rules.
  - (2) If the conduct to which an application relates is conduct of two or more persons, the applicant must take all reasonable steps to notify all of the other parties of whom he is aware—
    - (a) that the application has been made; and
    - (b) as to whether it is for guidance or a decision.
  - (3) Notification under sub-paragraph (2) must be in the specified manner.

### Modifications etc. (not altering text)

**C33** Sch. 6 paras. 2-2C amended (1.3.2000) by [S.I. 2000/947, art. 6](#)

### *Preliminary investigation*

- 3
- (1) If, after a preliminary investigation of an application, the [F148OFT] considers that it is likely that the conduct concerned will infringe the Chapter II prohibition, [F149:it] may make a decision (“a provisional decision”) under this paragraph.
  - (2) If the [F148OFT] makes a provisional decision, [F149:it] must notify the applicant in writing of that decision.
  - (3) When making a provisional decision, the [F148OFT] must follow such procedure as may be specified.
  - (4) A provisional decision does not affect the final determination of an application.
  - (5) If the [F148OFT] has given notice to the applicant under sub-paragraph (2) in respect of an application for a decision, he may continue with the application under section 22.

### Textual Amendments

**F148** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

**F149** Word in Sch. 6 para. 3(1)(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(b\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\)](#), Sch.)

### *Procedure on application for guidance*

- 4
- When determining an application for guidance, the [F148OFT] must follow such procedure as may be specified.

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#### Textual Amendments

**F148** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Procedure on application for a decision*

- 5 (1) When determining an application for a decision, the [F148OFT] must follow such procedure as may be specified.
- (2) The [F148OFT] must arrange for the application to be published in such a way as [F150it thinks] most suitable for [F151bringing the application] to the attention of those likely to be affected by it, unless [F152the OFT is] satisfied that it will be sufficient [F153... to seek information from one or more particular persons other than the applicant.
- (3) In determining the application, the [F148OFT] must take into account any representations made to [F154it] by persons other than the applicant.

#### Textual Amendments

**F148** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F150** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(c\)\(i\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F151** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(c\)\(ii\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F152** Words in Sch. 6 para. 5(2) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(c\)\(iii\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F153** Words in Sch. 6 para. 5(2) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(c\)\(iv\), Sch. 26](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F154** Word in [Sch. 6 para. 5\(3\)](#) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(d\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *Publication of decisions*

- 6 If the [F148OFT] determines an application for a decision [F155it] must publish [F155its] decision, together with [F155its] reasons for making it, in such manner as may be specified.

#### Textual Amendments

**F148** Words in Sch. 6 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(53\)\(a\)](#); [S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))



*Status:* Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.

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**F155** Words in Sch. 6 para. 6 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(53) (e); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

PROSPECTIVE

*[Delay by the <sup>F148</sup>OFT]*

- 7 (1) This paragraph applies if the court is satisfied, on the application of a person aggrieved by the failure of the <sup>F148</sup>OFT to determine an application for a decision in accordance with the specified procedure, that there has been undue delay on the part of the <sup>F148</sup>OFT in determining the application.
- (2) The court may give such directions to the <sup>F148</sup>OFT as it considers appropriate for securing that the application is determined without unnecessary further delay.]

## SCHEDULE 7

Section 45(7).

### THE COMPETITION COMMISSION

#### PART I

#### GENERAL

#### *Interpretation*

1 In this Schedule—

“the 1973 Act” means the <sup>M20</sup>Fair Trading Act 1973;

<sup>F156</sup> ...

“Chairman” means the chairman of the Commission;

“the Commission” means the Competition Commission;

“Council” has the meaning given in paragraph 5;

“general functions” means any functions of the Commission other than functions—

(a) <sup>F157</sup> ...

(b) which are to be discharged by the Council;

“member” means a member of the Commission;

“newspaper merger reference” means a <sup>F158</sup>reference under section 45 of the Enterprise Act 2002 which specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act) or a reference under section 62 of that Act which specifies a consideration specified in section 58(2A) or (2B) of that Act];

<sup>F159</sup>“newspaper panel member” means a member of the panel maintained under paragraph 22;]

<sup>F156</sup> ...

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

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“reporting panel member” means a member appointed under paragraph 2(1)(b);

“secretary” means the secretary of the Commission appointed under paragraph 9; and

“specialist panel member” means a member appointed under any of the provisions mentioned in paragraph 2(1)(d).

#### Textual Amendments

**F156** Words in Sch. 7 para. 1 repealed (1.4.2003) by virtue of [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 7(2)(a), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F157** Words in Sch. 7 para. 1 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 7(2)(b), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F158** Words in Sch. 7 para. 1 substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 388, 411(2) (with Sch. 18); [S.I. 2003/3142](#), art. 3(1), Sch. 1 (with art. 11)

**F159** Words in Sch. 7 para. 1 inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 11 para. 2](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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

**C34** Sch. 7 para. 1 applied (with modifications) by [S.I. 2003/1592](#), Sch. 4 para. 15(2)(za) (as inserted (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 1(1), [Sch. para. 10\(17\)](#))

#### Marginal Citations

**M20** 1973 c. 41.

### *Membership of the Commission*

- 2 (1) The Commission is to consist of—
- <sup>F160</sup>(a) .....
  - (b) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s general functions;
  - (c) [<sup>F161</sup>members appointed (in accordance with paragraph 15(5)) from][<sup>F161</sup>the members of] the panel maintained under paragraph 22;
  - (d) members appointed by the Secretary of State under or by virtue of—
    - <sup>F162</sup>(i) .....
    - [<sup>F163</sup>(ii) section 104 of the Utilities Act 2000; .]
    - <sup>F164</sup>(iii) .....
    - (iv) Article 15(9) of the <sup>M21</sup>Electricity (Northern Ireland) Order 1992.
  - [<sup>F165</sup>(e) one or more members appointed by the Secretary of State to serve on the Council.]
- [<sup>F166</sup>(1A) A person may not be, at the same time, a member of the Commission and a member of the Tribunal.]

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- (2) A person who is appointed as a member of a kind mentioned in one of paragraphs [F167(a)][F167(aa)] to (c) of sub-paragraph (3) may also be appointed as a member of either or both of the other kinds mentioned in those paragraphs.
- (3) The kinds of member are—
- F168(a) . . . . .
- [F169(aa) a newspaper panel member;]
- (b) a reporting panel member;
- (c) a specialist panel member.
- F170(4) . . . . .
- (5) The validity of the Commission’s proceedings is not affected by a defect in the appointment of a member.

**Textual Amendments**

- F160** Sch. 7 para. 2(1)(a) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 7(3), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F161** Words in Sch. 7 para. 2(1)(c) substituted (1.4.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 3(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F162** Sch. 7 para. 2(1)(d)(i) repealed (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), Sch. 7 para. 32(3), Sch. 9 Pt. 3; S.I. 2004/641, art. 3(y)(z), Sch. 2
- F163** Sch. 7 para. 2(1)(d)(ii) substituted (16.5.2001) by 2000 c. 27, s. 104(3) (with s. 104(6)); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10)
- F164** Sch. 7 para. 2(1)(d)(iii) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 19(1) Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F165** Sch. 7 para. 2(1)(e) inserted (1.4.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 3(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F166** Sch. 7 para. 2(1A) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 3(c); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F167** Word in Sch. 7 para. 2(2) substituted (1.4.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 3(d); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F168** Sch. 7 para. 2(3)(a) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 7(3), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F169** Sch. 7 para. 2(3)(aa) inserted (1.4.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 3(e); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F170** Sch. 7 para. 2(4) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 7(3), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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

- C35** Sch. 7 para. 2: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by S.I. 1999/678, arts. 2, 3, Sch. (with art. 7)
- C36** Sch. 7 para. 2(4) modified (30.6.1999) by S.I. 1999/1748, art. 3, Sch. 1 para. 21  
Sch. 7 para. 2(4): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

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### Marginal Citations

M21 S.I. 1992/231 (N.I.1).

### *Chairman and deputy chairmen*

- 3 (1) The Commission is to have a chairman appointed by the Secretary of State from among the reporting panel members.
- (2) The Secretary of State may appoint one or more of the reporting panel members to act as deputy chairman.
- (3) The Chairman, and any deputy chairman, may resign that office at any time by notice in writing addressed to the Secretary of State.
- (4) If the Chairman (or a deputy chairman) ceases to be a member he also ceases to be Chairman (or a deputy chairman).
- (5) If the Chairman is absent or otherwise unable to act, or there is no chairman, any of his functions may be performed—
- (a) if there is one deputy chairman, by him;
  - (b) if there is more than one—
    - (i) by the deputy chairman designated by the Secretary of State; or
    - (ii) if no such designation has been made, by the deputy chairman designated by the deputy chairmen;
  - (c) if there is no deputy chairman able to act—
    - (i) by the member designated by the Secretary of State; or
    - (ii) if no such designation has been made, by the member designated by the Commission.

### *President*

F171<sub>4</sub> .....

### Textual Amendments

**F171** Sch. 7 para. 4 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 7(4), **Sch. 26**; [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### Modifications etc. (not altering text)

**C37** Sch. 7 para. 4: functions of the Lord Advocate transferred to the Secretary of State, and all property, rights and liabilities to which the Lord Advocate is entitled or subject in connection with any such function transferred to the Secretary of State for Scotland (19.5.1999) by [S.I. 1999/678](#), art. 2, 3, **Sch.** (with art. 7)

### *The Council*

- 5 (1) The Commission is to have a [<sup>F172</sup>management] board to be known as the Competition Commission Council (but referred to in this Schedule as “the Council”).
- (2) The Council is to consist of—
- (a) the Chairman [<sup>F173</sup>and any deputy chairmen of the Commission];

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- <sup>F174</sup>(b) . . . . .
- [<sup>F175</sup>(bb) the member or members appointed under paragraph 2(1)(e);]  
(c) such other members as the Secretary of State may appoint; and  
(d) the secretary.

(3) In exercising its functions under paragraphs 3 and 7 to 12 <sup>F176</sup>... , the Commission is to act through the Council.

[<sup>F177</sup>(3A) Without prejudice to the question whether any other functions of the Commission are to be so discharged, the functions of the Commission under sections 106, 116, and 171 of the Enterprise Act 2002 (and under section 116 as applied for the purposes of references under Part 4 of that Act by section 176 of that Act) are to be discharged by the Council.]

(4) The Council may determine its own procedure including, in particular, its quorum.

(5) The Chairman (and any person acting as Chairman) is to have a casting vote on any question being decided by the Council.

#### Textual Amendments

- F172** Word in Sch. 7 para. 5(1) repealed (1.4.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 11 para. 4\(a\)](#), [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F173** Words in Sch. 7 para. 5(2)(a) inserted (1.4.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 11 para. 4\(b\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F174** Sch. 7 para. 5(2)(b) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 7\(5\)\(a\)](#), [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F175** Sch. 7 para. 5(2)(bb) inserted (1.4.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 11 para. 4\(c\)](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F176** Words in Sch. 7 para. 5(3) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 7\(5\)\(b\)](#), [Sch. 26](#); [S.I. 2003/766](#), art. 2, [Sch.](#) (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), [Sch.](#))
- F177** Sch. 7 para. 5(3A) inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 11 para. 4\(d\)](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

#### *Term of office*

- 6 (1) Subject to the provisions of this Schedule, each member is to hold and vacate office in accordance with the terms of his appointment.
- (2) A person is not to be appointed as a member for more than [<sup>F178</sup>five years at a time][<sup>F178</sup>eight years (but this does not prevent a re-appointment for the purpose only of continuing to act as a member of a group selected under paragraph 15 before the end of his term of office)].
- (3) Any member may at any time resign by notice in writing addressed to the Secretary of State.
- (4) The Secretary of State may remove a member on the ground of incapacity or misbehaviour.

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- <sup>F179</sup>(5) No person is to be prevented from being appointed as a member merely because he has previously been a member.

**Textual Amendments**

**F178** Words in Sch. 7 para. 6(2) substituted (1.4.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 5\(a\)](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

**F179** Sch. 7 para. 6(5) repealed (1.4.2003 for specified purposes) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 5\(b\), Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

*Expenses, remuneration and pensions*

- 7 (1) The Secretary of State shall pay to the Commission such sums as he considers appropriate to enable it to perform its functions.
- (2) The Commission may pay, or make provision for paying, to or in respect of each member such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities as the Secretary of State may determine.
- (3) If a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.

<sup>F180</sup>(4) . . . . .

**Textual Amendments**

**F180** Sch. 7 para. 7(4) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 6, Sch. 26](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

*The Commission's powers*

- [<sup>F181</sup>7A The Commission may publish advice and information in relation to any matter connected with the exercise of its functions.]

**Textual Amendments**

**F181** Sch. 7 para. 7A inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 7](#); [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

- 8 Subject to the provisions of this Schedule, the Commission has power to do anything (except borrow money)—
- (a) calculated to facilitate the discharge of its functions; or
- (b) incidental or conducive to the discharge of its functions.

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### *Staff*

- 9 (1) The Commission is to have a secretary, appointed by the Secretary of State on such terms and conditions of service as he considers appropriate.
- (2) The approval of the Treasury is required as to those terms and conditions.
- (3) Before appointing a person to be secretary, the Secretary of State must consult the Chairman <sup>F182</sup>...
- (4) Subject to obtaining the approval of [<sup>F183</sup>the Secretary of State as to numbers and terms and conditions of service] the Commission may appoint such staff as it thinks appropriate.

#### **Textual Amendments**

**F182** Words in Sch. 7 para. 9(3) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 8(a), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F183** Words in Sch. 7 para. 9(4) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 8(b); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

### *Procedure*

<sup>F184</sup>10 .....

#### **Textual Amendments**

**F184** Sch. 7 para. 10 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 9, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

### *Application of seal and proof of instruments*

- 11 (1) The application of the seal of the Commission must be authenticated by the signature of the secretary or of some other person authorised for the purpose.
- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.
- (3) A document purporting to be duly executed under the seal of the Commission—
- (a) is to be received in evidence; and
  - (b) is to be taken to have been so executed unless the contrary is proved.

### *Accounts*

- 12 (1) The Commission must—
- (a) keep proper accounts and proper records in relation to its accounts;
  - (b) prepare a statement of accounts in respect of each of its financial years; and
  - (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.

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- (2) The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it,
  - (b) the manner in which the information contained in it is to be presented, or
  - (c) the methods and principles according to which the statement is to be prepared,
- and must contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for informing Parliament.
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on each statement received by him as a result of this paragraph; and
  - (b) lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph “financial year” means the period beginning with the date on which the Commission is established and ending with March 31st next, and each successive period of twelve months.

### *f<sup>F185</sup> Annual reports*

#### **Textual Amendments**

**F185** Sch. 7 para. 12A and cross-heading inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), ss. 186, 279; S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

- 12A (1) The Commission shall make to the Secretary of State a report for each financial year on its activities during the year.
- (2) The annual report must be made before the end of August next following the financial year to which it relates.
- (3) The Secretary of State shall lay a copy of the annual report before Parliament and arrange for the report to be published.]

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

**C38** Sch. 7 para. 12A excluded (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\), arts. 1\(2\), 6\(10\); S.R. 2003/203, art. 2, Sch.](#)

### *f<sup>F185</sup> Status*

- 13 (1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown.]



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## PART II

### PERFORMANCE OF THE COMMISSION'S GENERAL FUNCTIONS

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

- C39** Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1984 c. 12, s. 13(9A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. IV para. 9(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1986 c. 44, s. 24(7A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. IV para. 10(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1989 c. 29, s. 12(8A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. IV para. 12(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1991 c. 56, s. 14(7A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. IV para. 13(3) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by 1993 c. 43, s. 13(8A) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. IV para. 15(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by S.I. 1992/231 (N.I. 1), art. 15(8)(9) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. V para. 17(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (1.4.1999) by S.I. 1996/275 (N.I. 2), art. 15(9) (as substituted (1.4.1999) by 1998 c. 41, s. 66(5), Sch. 10 Pt. V para. 18(2) (with s. 73); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II 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)
- Sch. 7 Pt. II 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)
- Sch. 7 Pt. II modified (1.4.1999) by 1990 c. 42, ss. 67, 77, 121, Sch. 7 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)
- Sch. 7 Pt. II modified (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); S.I. 1999/505, art. 2, Sch. 2)
- Sch. 7 Pt. II applied (with modifications) (24.11.1999) by S.I. 1999/3088, regs. 7, 8
- SCh. 7 Pt. II applied (with modifications) (26.3.2001) by 2000 c. 26, s. 20(1)(2)(c); S.I. 2000/2957, art. 2(3), Sch. 3
- Sch. 7 Pt. II applied (with modifications) (26.3.2001) by 2000 c. 26, s. 20(4)(5)(c); S.I. 2000/2957, art. 2(3), Sch. 3
- Sch. 7 Pt. II applied (with modifications) (30.11.2000) by 1993 c. 43, Sch. 4A, para. 10(2)(b) (as inserted (30.11.2000) by 2000 c. 38, ss. 231, 275(4), Sch. 24
- Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1989 c. 29, s. 14A(13)(d) (as inserted (1.10.2001) by 2000 c. 27, s. 39 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, Sch. (subject to arts. 3-20))
- Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1989 c. 29, s. 56C(8)(b) (as inserted (1.10.2001) by 2000 c. 27, s. 43 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, Sch. (subject to arts. 3-20))
- Sch. 7 Pt. II applied (with modifications) (1.2.2001) by 2000 c. 38, s. 12(10)(c) (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I
- Sch. 7 Pt. II applied (with modifications) (1.2.2001) by 2000 c. 38, s. 18(2)(e) (with s. 106); S.I. 2001/57, art. 3(1), Sch. 2 Pt. I
- Sch. 7 Pt. II applied (with modifications) (1.10.2001) by Gas Act 1986 c. 44, s. 26A(13)(d) (as inserted (1.10.2001) by 2000 c. 27, s. 83(4) (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, Sch. (subject to arts. 3-20))
- SCh. 7 Pt. II applied (with modifications) (1.10.2001) by Gas Act 1986 c. 44, s. 41E (8)(b) (as inserted (1.10.2001) by 2000 c. 27, s. 88 (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, Sch. (subject to arts. 3-20))
- Sch. 7 Pt. II applied (with modifications) (1.10.2001) by 1986 c. 44, s. 26A(12)-(14) (as inserted (1.10.2001) by 2000 c. 27, s. 83(4) (with s. 104(1)(2)(6)); S.I. 2001/3266, art. 2, Sch. (subject to arts. 3-20))

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### Interpretation

- 14 In this Part of this Schedule “group” means a group selected under paragraph 15.

#### Discharge of certain functions by groups

- 15 (1) Except where sub-paragraph (7) [<sup>F186</sup>or (8)] gives the Chairman power to act on his own, any general function of the Commission must be performed through a group selected for the purpose by the Chairman.
- (2) The group must consist of at least three persons one of whom may be the Chairman.
- (3) In selecting the members of the group, the Chairman must comply with any requirement as to its constitution imposed by any enactment applying to specialist panel members.
- (4) If the functions to be performed through the group relate to a newspaper merger reference, the group must, subject to sub-paragraph (5), consist of such reporting panel members as the Chairman may select.
- [<sup>F187</sup>(5) The Chairman must select one or more newspaper panel members to be members of the group dealing with functions relating to a newspaper merger reference and, if he selects at least three such members, the group may consist entirely of those members.]
- (6) Subject to sub-paragraphs (2) to (5), a group must consist of reporting panel members or specialist panel members selected by the Chairman.
- (7) While a group is being constituted to perform a particular general function of the Commission, the Chairman may—
- (a) take such steps (falling within that general function) as he considers appropriate to facilitate the work of the group when it has been constituted; or
- [<sup>F188</sup>(b) exercise the power conferred by section 75(5) of the 1973 Act (setting aside references).]
- [<sup>F189</sup>(8) The Chairman may exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 while a group is being constituted to perform a relevant general function of the Commission or, when it has been so constituted, before it has held its first meeting.]

#### Textual Amendments

- F186** Words in Sch. 7 para. 15(1) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 10(2); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F187** Sch. 7 para. 15(5) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 10(3); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F188** Sch. 7 para. 15(7)(b) repealed (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 10(4), Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F189** Sch. 7 para. 15(8) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 11 para. 10(5); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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

- C40** Sch. 7 para. 15(8) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), Sch. 4 para. 15(2)(a)

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- C41** Sch. 7 para. 15(7) modified (prosp.) by [Financial Services and Markets Act 2000 \(c. 8\)](#), Sch. 14 para. 2B (as inserted (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 25 para. 40(20)(b)**)
- C42** Sch. 7 para. 15(7) modified (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 40(20)(b)**; [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

#### *Chairmen of groups*

- 16 The Chairman must appoint one of the members of a group to act as the chairman of the group.

#### *Replacement of member of group*

- 17 (1) If, during the proceedings of a group—
- (a) a member of the group ceases to be a member of the Commission,
  - (b) the Chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group, or
  - (c) it appears to the Chairman that because of a particular interest of a member of the group it is inappropriate for him to remain in the group,
- the Chairman may appoint a replacement.
- (2) The Chairman may also at any time appoint any reporting panel member to be an additional member of a group.

#### *Attendance of other members*

- 18 (1) At the invitation of the chairman of a group, any reporting panel member who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group.
- (2) But any person attending in response to such an invitation may not—
- (a) vote in any proceedings of the group; or
  - (b) have a statement of his dissent from a conclusion of the group included in a report made by them.
- (3) Nothing in sub-paragraph (1) is to be taken to prevent a group, or a member of a group, from consulting any member of the Commission with respect to any matter or question with which the group is concerned.

#### *Procedure*

- 19 (1) Subject to any special or general directions given by the Secretary of State, each group may determine its own procedure.
- (2) Each group may, in particular, determine its quorum and determine—
- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed—
    - (i) to be present or to be heard, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses; or
    - (iii) otherwise to take part; and
  - (b) the extent, if any, to which sittings of the group are to be held in public.

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- (3) In determining its procedure a group must have regard to any guidance issued by the Chairman.
- (4) Before issuing any guidance for the purposes of this paragraph the Chairman must consult the members of the Commission.
- [<sup>F190</sup>(5) This paragraph does not apply to groups for which rules must be made under paragraph 19A.]

#### Textual Amendments

**F190** Sch. 7 para. 19(5) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 187(2), 279; S.I. 2003/1397, art. 2(1), Sch.

- [<sup>F191</sup>19A] (1) The Chairman must make rules of procedure in relation to merger reference groups, market reference groups and special reference groups.
  - (2) Schedule 7A makes further provision about rules made under this paragraph but is not to be taken as restricting the Chairman's powers under this paragraph.
  - (3) The Chairman must publish rules made under this paragraph in such manner as he considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
  - (4) The Chairman must consult the members of the Commission and such other persons as he considers appropriate before making rules under this paragraph.
  - (5) Rules under this paragraph may—
    - (a) make different provision for different cases or different purposes;
    - (b) be varied or revoked by subsequent rules made under this paragraph.
  - (6) Subject to rules made under this paragraph, each merger reference group, market reference group and special reference group may determine its own procedure.
  - (7) In determining how to proceed in accordance with rules made under this paragraph and in determining its procedure under sub-paragraph (6), a group must have regard to any guidance issued by the Chairman.
  - (8) Before issuing any guidance for the purposes of this paragraph the Chairman shall consult the members of the Commission and such other persons as he considers appropriate.
  - (9) In this paragraph and in Schedule 7A—
 

“market reference group” means any group constituted in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);

“merger reference group” means any group constituted in connection with a reference under <sup>F192</sup>... section 32 of the Water Industry Act 1991 (c. 56) or section 22, 33, 45 or 62 of the Enterprise Act 2002; and

“special reference group” means any group constituted in connection with a reference or (in the case of the Financial Services and Markets Act 2000 (c. 8)) an investigation under—

    - (a) section 11 of the Competition Act 1980 (c. 21);
    - (b) <sup>F192</sup>...

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- (c) section 43 of the Airports Act 1986 (c. 31);
- (d) section 24 or 41E of the Gas Act 1986 (c. 44);
- (e) section 12 or 56C of the Electricity Act 1989 (c. 29);
- (f) <sup>F192</sup> ...
- (g) section 12 or 14 of the Water Industry Act 1991 (c. 56);
- (h) article 15 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
- (i) section 13 of, or Schedule 4A to, the Railways Act 1993 (c. 43);
- (j) article 34 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1));
- (k) article 15 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
- (l) section 15 of the Postal Services Act 2000 (c. 26);
- (m) section 162 or 306 of the Financial Services and Markets Act 2000 (c. 8); <sup>F192</sup> ...
- (n) section 12 of the Transport Act 2000 (c. 38). [<sup>F193</sup> or]
- (o) section 193 of the Communications Act 2003.]

#### Textual Amendments

**F191** Sch. 7 para. 19A inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), **ss. 187(3)**, 279; S.I. 2003/1397, art. 2(1), Sch.

**F192** Words in Sch. 7 para. 19A(9) repealed (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

**F193** Words in Sch. 7 para. 19A(9) inserted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 153(3)** (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

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

**C43** Sch. 7 para. 19A(9) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\)](#), art. 1(1), **Sch. 4 para. 15(2)(b)**

#### *Effect of exercise of functions by group*

- 20 (1) Subject to [<sup>F194</sup>sub-paragraph (2)][<sup>F194</sup>sub-paragraphs (2) to (9)], anything done by or in relation to a group in, or in connection with, the performance of functions to be performed by the group is to have the same effect as if done by or in relation to the Commission.
- [<sup>F195</sup>(2) For the purposes of Part 3 of the Enterprise Act 2002 (mergers) any decision of a group under section 35(1) or 36(1) of that Act (questions to be decided on non-public interest merger references) that there is an anti-competitive outcome is to be treated as a decision under that section that there is not an anti-competitive outcome if the decision is not that of at least two-thirds of the members of the group.
- (3) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—
- (a) any decision of a group under section 47 of that Act (questions to be decided on public interest merger references) that a relevant merger situation has

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- been created is to be treated as a decision under that section that no such situation has been created;
- (b) any decision of a group under section 47 of that Act that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
  - (c) any decision of a group under section 47 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation is to be treated as a decision under that section that no such arrangements are in progress or in contemplation; and
  - (d) any decision of a group under section 47 of that Act that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation may be expected not to result in such a substantial lessening of competition.
- (4) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—
- (a) any decision of a group under section 63 of that Act (questions to be decided on special public interest merger references) that a special merger situation has been created is to be treated as a decision under that section that no such situation has been created; and
  - (b) any decision of a group under section 63 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation is to be treated as a decision under that section that no such arrangements are in progress or in contemplation.
- (5) For the purposes of Part 4 of the Act of 2002 (market investigations), if the decision is not that of at least two-thirds of the members of the group, any decision of a group under section 134 or 141 (questions to be decided on market investigation references) that a feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom is to be treated as a decision that the feature or (as the case may be) combination of features does not prevent, restrict or distort such competition.
- (6) Accordingly, for the purposes of Part 4 of the Act of 2002, a group is to be treated as having decided under section 134 or 141 that there is no adverse effect on competition if—
- (a) one or more than one decision of the group is to be treated as mentioned in sub-paragraph (5); and
  - (b) there is no other relevant decision of the group.
- (7) In sub-paragraph (6) “relevant decision” means a decision which is not to be treated as mentioned in sub-paragraph (5) and which is that a feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

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- (8) Expressions used in sub-paragraphs (2) to (7) shall be construed in accordance with Part 3 or (as the case may be) 4 of the Act of 2002.
- (9) Sub-paragraph (1) is also subject to specific provision made by or under other enactments about decisions which are not decisions of at least two-thirds of the members of a group.]

#### Textual Amendments

- F194** Words in Sch. 7 para. 20(1) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 11\(2\)](#); S.I. 2003/1397, art. 2(1), [Sch. \(with arts. 3\(1\), 8\)](#); S.I. 2004/3233, art. 2, [Sch. \(with arts. 3-5\)](#)
- F195** Sch. 7 para. 20(2)-(9) substituted for Sch. 7 para. 20(2) (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 11\(3\)](#); S.I. 2003/1397, art. 2(1), [Sch. \(with arts. 3\(1\), 8\)](#); S.I. 2004/3233, art. 2, [Sch. \(with arts. 3-5\)](#)

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

- C44** Sch. 7 para. 20(4)(a) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 1\(1\), Sch. 4 para. 15\(2\)\(e\)](#)
- C45** Sch. 7 para. 20(4) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 1\(1\), Sch. 4 para. 15\(2\)\(c\)](#)
- C46** Sch. 7 para. 20(4)(a)(b) amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 1\(1\), Sch. 4 para. 15\(2\)\(d\)](#)
- C47** Sch. 7 para. 20(2)(a) modified (1.4.1999) by [1980 c. 21, s. 11\(9\)](#) (as substituted (1.4.1999) by [1998 c. 41, s. 74\(1\), Sch. 12 para. 4\(3\)\(c\)](#) (with s. 73); S.I. 1999/505, art. 2, [Sch. 2](#))

#### Marginal Citations

- M22** [1958 c. 47.](#)
- M23** [S.I. 1982/1080 \(N.I. 12\).](#)

#### Casting votes

- 21 The chairman of a group is to have a casting vote on any question to be decided by the group.

#### Newspaper merger references

- 22 <sup>[F196]</sup>There are to be members of the Commission appointed by the Secretary of State to form a panel of persons available] for selection as members of a group constituted in connection with a newspaper merger reference.

#### Textual Amendments

- F196** Words in Sch. 7 para. 22 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 11 para. 12](#); S.I. 2003/766, art. 2, [Sch. \(with art. 3\)](#) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), [Sch.](#))

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**F197 PART III**

APPEALS

**Textual Amendments**

**F197** Sch. 7 Pt. III repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 7(6), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

*Interpretation*

23 .....

*Training of appeal panel members*

24 .....

*Acting President*

25 .....

*Panel of tribunal chairmen*

26 .....

*Constitution of tribunals*

27 .....

**PART IV**

MISCELLANEOUS

*Disqualification of members for House of Commons*

28 In Part II of Schedule 1 to the <sup>M24</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place— “ The Competition Commission ”.

**Marginal Citations**

**M24** 1975 c. 24.

*Disqualification of members for Northern Ireland Assembly*

29 In Part II of Schedule 1 to the <sup>M25</sup>Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place — “ The Competition Commission ”.



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**Marginal Citations**

M25 1975 c. 25.

**PART V**

TRANSITIONAL PROVISIONS

*Interpretation*

- 30 In this Part of this Schedule—
- “commencement date” means the date on which section 45 comes into force; and
- “MMC” means the Monopolies and Mergers Commission.

*Chairman*

- 31 (1) The person who is Chairman of the MMC immediately before the commencement date is on that date to become both a member of the Commission and its chairman as if he had been duly appointed under paragraphs 2(1)(b) and 3.
- (2) He is to hold office as Chairman of the Commission for the remainder of the period for which he was appointed as Chairman of the MMC and on the terms on which he was so appointed.

*Deputy chairmen*

- 32 The persons who are deputy chairmen of the MMC immediately before the commencement date are on that date to become deputy chairmen of the Commission as if they had been duly appointed under paragraph 3(2).

*Reporting panel members*

- 33 (1) The persons who are members of the MMC immediately before the commencement date are on that date to become members of the Commission as if they had been duly appointed under paragraph 2(1)(b).
- (2) Each of them is to hold office as a member for the remainder of the period for which he was appointed as a member of the MMC and on the terms on which he was so appointed.

*Specialist panel members*

- 34 (1) The persons who are members of the MMC immediately before the commencement date by virtue of appointments made under any of the enactments mentioned in paragraph 2(1)(d) are on that date to become members of the Commission as if they had been duly appointed to the Commission under the enactment in question.
- (2) Each of them is to hold office as a member for such period and on such terms as the Secretary of State may determine.

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### Secretary

- 35 The person who is the secretary of the MMC immediately before the commencement date is on that date to become the secretary of the Commission as if duly appointed under paragraph 9, on the same terms and conditions.

### Council

- 36 (1) The members who become deputy chairmen of the Commission under paragraph 32 are also to become members of the Council as if they had been duly appointed under paragraph 5(2)(c).
- (2) Each of them is to hold office as a member of the Council for such period as the Secretary of State determines.

## [<sup>F198</sup>SCHEDULE 7A

### THE COMPETITION COMMISSION: PROCEDURAL RULES FOR MERGERS AND MARKET REFERENCES ETC.

#### Textual Amendments

**F198** Sch. 7A inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 187(4), 279, Sch. 12; S.I. 2003/1397, art. 2(1), Sch.

- 1 In this Schedule—
- “market investigation” means an investigation carried out by a market reference group in connection with a reference under section 131 or 132 of the Enterprise Act 2002 (including that section as it has effect by virtue of another enactment);
- “market reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act;
- “merger investigation” means an investigation carried out by a merger reference group in connection with a reference under <sup>F199</sup>... section 32 of the Water Industry Act 1991 (c. 56) or section 22, 33, 45 or 62 of the Act of 2002;
- “merger reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act;
- “relevant group” means a market reference group, merger reference group or special reference group;
- “special investigation” means an investigation carried out by a special reference group—
- (a) in connection with a reference under a provision mentioned in any of paragraphs (a) to (l) [<sup>F200</sup>, (n) and (o)] of the definition of “special reference group” in paragraph 19A(9) of Schedule 7 to this Act; or
- (b) under a provision mentioned in paragraph (m) of that definition; and
- “special reference group” has the meaning given by paragraph 19A(9) of Schedule 7 to this Act.

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### Textual Amendments

**F199** Words in Sch. 7A para. 1 repealed (29.12.2003) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/3142, art. 3\(1\), Sch. 1](#) (with [art. 11](#))

**F200** Words in Sch. 7A para. 1 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 17 para. 154](#) (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(2\)](#) (with [art. 11](#))

### Modifications etc. (not altering text)

**C48** Sch. 7A para. 1 amended (20.6.2003) by [The Enterprise Act 2002 \(Protection of Legitimate Interests\) Order 2003 \(S.I. 2003/1592\), art. 1\(1\), Sch. 4 para. 15\(3\)](#)

- 2 Rules may make provision—
- (a) for particular stages of a merger investigation, a market investigation or a special investigation to be dealt with in accordance with a timetable and for the revision of that timetable;
  - (b) as to the documents and information which must be given to a relevant group in connection with a merger investigation, a market investigation or a special investigation;
  - (c) as to the documents or information which a relevant group must give to other persons in connection with such an investigation.
- 3 Rules made by virtue of paragraph 2(a) and (b) may, in particular, enable or require a relevant group to disregard documents or information given after a particular date.
- 4 Rules made by virtue of paragraph 2(c) may, in particular, make provision for the notification or publication of, and for consultation about, provisional findings of a relevant group.
- 5 Rules may make provision as to the quorum of relevant groups.
- 6 Rules may make provision—
- (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration which is specified or described in the rules are allowed—
    - (i) to be (either by themselves or by their representatives) present before a relevant group or heard by that group;
    - (ii) to cross-examine witnesses; or
    - (iii) otherwise to take part;
  - (b) as to the extent (if any) to which sittings of a relevant group are to be held in public; and
  - (c) generally in connection with any matters permitted by rules made under paragraph (a) or (b) (including, in particular, provision for a record of any hearings).
- 7 Rules may make provision for—
- (a) the notification or publication of information in relation to merger investigations, market investigations or special investigations;
  - (b) consultation about such investigations.]

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## SCHEDULE 8

Sections 46(5) and 48(4).

## APPEALS

## PART I

## GENERAL

*Interpretation*

F201 1 .....

**Textual Amendments**

**F201** Sch. 8 para. 1 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(2), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*General procedure*

- 2 (1) An appeal to the [F202Tribunal under section 46 or 47 must be made by sending a notice of appeal to it] within the specified period.
- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—
- under which provision of this Act the appeal is brought;
  - to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and
  - to what extent (if any) the appellant is appealing against the [F203OFT's exercise of its] discretion in making the disputed decision.
- (3) The [F204Tribunal] may give an appellant leave to amend the grounds of appeal identified in the notice of appeal.
- [F205(4) In this paragraph references to the Tribunal are to the Tribunal as constituted (in accordance with section 14 of the Enterprise Act 2002) for the purposes of the proceedings in question.
- (5) Nothing in this paragraph restricts the power under section 15 of the Enterprise Act 2002 (Tribunal rules) to make provision as to the manner of instituting proceedings before the Tribunal.]

**Textual Amendments**

**F202** Words in Sch. 8 para. 2(1) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(3\)](#) (a); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F203** Words in Sch. 8 para. 2(2)(c) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 25 para. 38\(54\)\(b\)](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

**F204** Word in Sch. 8 para. 2(3) substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 5 para. 8\(3\)](#) (b); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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**F205** Sch. 8 para. 2(4)(5) inserted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 8(3)(c); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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

**C49** Sch. 8 para. 2(2) applied (1.3.2000) by S.I. 2000/261, Rule 6

*Decisions of the tribunal*

- 3 (1) The [F206Tribunal] must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
- (2) The [F206Tribunal] may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—
- (a) remit the matter to the [F207OFT],
  - (b) impose or revoke, or vary the amount of, a penalty,
  - (c) grant or cancel an individual exemption or vary any conditions or obligations imposed in relation to the exemption by the [F207OFT],
  - (d) give such directions, or take such other steps, as the [F207OFT] could [F208itself] have given or taken, or
  - (e) make any other decision which the [F207OFT] could [F208itself] have made.
- (3) Any decision of the [F206Tribunal] on an appeal has the same effect, and may be enforced in the same manner, as a decision of the [F207OFT].
- (4) If the [F206Tribunal] confirms the decision which is the subject of the appeal it may nevertheless set aside any finding of fact on which the decision was based.

**Textual Amendments**

**F206** Word in Sch. 8 para. 3 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 8(4), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F207** Words in Sch. 8 substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(54)(a); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F208** Word in Sch. 8 para. 3(2)(d)(e) substituted (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(54)(c); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**F209**4 .....

**Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 5 para. 8(5), Sch. 26; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

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## PART II

### RULES

#### *Registrar of Appeal Tribunals*

F209<sup>5</sup> .....

#### Textual Amendments

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### *Notice of appeal*

F209<sup>6</sup> .....

#### Textual Amendments

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### *Response to the appeal*

F209<sup>7</sup> .....

#### Textual Amendments

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### *Pre-hearing reviews and preliminary matters*

F209<sup>8</sup> .....

#### Textual Amendments

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

#### *Conduct of the hearing*

F209<sup>9</sup> .....

#### Textual Amendments

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), [Sch. 26](#); [S.I. 2003/766](#), art. 2, Sch. (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

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### *Interest*

F209<sup>10</sup> .....

#### **Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### *Fees*

F209<sup>11</sup> .....

#### **Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### *Withdrawing an appeal*

F209<sup>12</sup> .....

#### **Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### *Interim orders*

F209<sup>13</sup> .....

#### **Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

### *Miscellaneous*

F209<sup>14</sup> .....

#### **Textual Amendments**

**F209** Sch. 8 paras. 4-14 repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 5 para. 8(5), **Sch. 26**; [S.I. 2003/766, art. 2, Sch.](#) (with [art. 3](#)) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), Sch.)

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULE 9

Section 51(2).

### [<sup>F210</sup>OFT’S] RULES

#### Textual Amendments

**F210** Words in Sch. 9 substituted (1.4.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 38\(55\); S.I. 2003/766, art. 2, Sch. \(with art. 3\)](#) (as amended (20.7.2007) by [S.I. 2007/1846, reg. 3\(2\), Sch.](#))

#### *General*

- 1 In this Schedule—
- “application for guidance” means an application for guidance under section 13 or 21;
  - “application for a decision” means an application for a decision under section 14 or 22;
  - “guidance” means guidance given under section 13 or 21;
  - “rules” means rules made by the [<sup>F210</sup>OFT] under section 51; and
  - “specified” means specified in rules.

#### *Applications*

- 2 Rules may make provision—
- (a) as to the form and manner in which an application for guidance or an application for a decision must be made;
  - (b) for the procedure to be followed in dealing with the application;
  - (c) for the application to be dealt with in accordance with a timetable;
  - (d) as to the documents and information which must be given to the [<sup>F210</sup>OFT] in connection with the application;
  - (e) requiring the applicant to give such notice of the application, to such other persons, as may be specified;
  - (f) as to the consequences of a failure to comply with any rule made by virtue of sub-paragraph (e);
  - (g) as to the procedure to be followed when the application is subject to the concurrent jurisdiction of the [<sup>F210</sup>OFT] and a regulator.

#### *Provisional decisions*

- 3 Rules may make provision as to the procedure to be followed by the [<sup>F210</sup>OFT] when making a provisional decision under paragraph 3 of Schedule 5 or paragraph 3 of Schedule 6.

#### *Guidance*

- 4 Rules may make provision as to—
- (a) the form and manner in which guidance is to be given;
  - (b) the procedure to be followed if—



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- (i) the [F210OFT] takes further action with respect to an agreement after giving guidance that it is not likely to infringe the Chapter I prohibition; or
- (ii) the [F210OFT] takes further action with respect to conduct after giving guidance that it is not likely to infringe the Chapter II prohibition.

#### *Decisions*

- 5 (1) Rules may make provision as to—
- (a) the form and manner in which notice of any decision is to be given;
  - (b) the person or persons to whom the notice is to be given;
  - (c) the manner in which the [F210OFT] is to publish a decision;
  - (d) the procedure to be followed if—
    - (i) the [F210OFT] takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition; or
    - (ii) the [F210OFT] takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition.
- (2) In this paragraph “decision” means a decision of the [F210OFT] (whether or not made on an application)—
- (a) as to whether or not an agreement has infringed the Chapter I prohibition, or
  - (b) as to whether or not conduct has infringed the Chapter II prohibition,
- and, in the case of an application for a decision under section 14 which includes a request for an individual exemption, includes a decision as to whether or not to grant the exemption.

#### *Individual exemptions*

- 6 Rules may make provision as to—
- (a) the procedure to be followed by the [F210OFT] when deciding whether, in accordance with section 5—
    - (i) to cancel an individual exemption that [F210it] has granted,
    - (ii) to vary or remove any of its conditions or obligations, or
    - (iii) to impose additional conditions or obligations;
  - (b) the form and manner in which notice of such a decision is to be given.
- 7 Rules may make provision as to—
- (a) the form and manner in which an application under section 4(6) for the extension of an individual exemption is to be made;
  - (b) the circumstances in which the [F210OFT] will consider such an application;
  - (c) the procedure to be followed by the [F210OFT] when deciding whether to grant such an application;
  - (d) the form and manner in which notice of such a decision is to be given.

#### *Block exemptions*

- 8 Rules may make provision as to—

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- (a) the form and manner in which notice of an agreement is to be given to the [F<sup>210</sup>OFT] under subsection (1) of section 7;
- (b) the procedure to be followed by the [F<sup>210</sup>OFT] if [F<sup>210</sup>it] is acting under subsection (2) of that section;
- (c) as to the procedure to be followed by the [F<sup>210</sup>OFT] if [F<sup>210</sup>it] cancels a block exemption.

#### *Parallel exemptions*

- 9 Rules may make provision as to—
- (a) the circumstances in which the [F<sup>210</sup>OFT] may—
    - (i) impose conditions or obligations in relation to a parallel exemption,
    - (ii) vary or remove any such conditions or obligations,
    - (iii) impose additional conditions or obligations, or
    - (iv) cancel the exemption;
  - (b) as to the procedure to be followed by the [F<sup>210</sup>OFT] if [F<sup>210</sup>it] is acting under section 10(5);
  - (c) the form and manner in which notice of a decision to take any of the steps in sub-paragraph (a) is to be given;
  - (d) the circumstances in which an exemption may be cancelled with retrospective effect.

#### *Section 11 exemptions*

- 10 Rules may, with respect to any exemption provided by regulations made under section 11, make provision similar to that made with respect to parallel exemptions by section 10 or by rules under paragraph 9.

#### *Directions withdrawing exclusions*

- 11 Rules may make provision as to the factors which the [F<sup>210</sup>OFT] may take into account when [F<sup>210</sup>it] is determining the date on which a direction given under paragraph 4(1) of Schedule 1 or paragraph 2(3) or 9(3) of Schedule 3 is to have effect.

#### *Disclosure of information*

- 12 (1) Rules may make provision as to the circumstances in which the [F<sup>210</sup>OFT] is to be required, before disclosing information given to [F<sup>210</sup>it] by a third party in connection with the exercise of any of the [F<sup>210</sup>OFT’s] functions under Part I, to give notice, and an opportunity to make representations, to the third party.
- (2) In relation to the agreement (or conduct) concerned, “third party” means a person who is not a party to the agreement (or who has not engaged in the conduct).

#### *Applications under section 47*

- 13 Rules may make provision as to—
- (a) the period within which an application under section 47(1) must be made;

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- (b) the procedure to be followed by the [F210OFT] in dealing with the application;
- (c) the person or persons to whom notice of the [F210OFT's] response to the application is to be given.

### *Enforcement*

14 Rules may make provision as to the procedure to be followed when the [F210OFT] takes action under any of sections 32 to 41 with respect to the enforcement of the provisions of this Part.

## SCHEDULE 10

Sections 54 and 66(5).

### REGULATORS

#### PART I

#### MONOPOLIES

F211 1 .....

#### Textual Amendments

**F211** Sch. 10 para. 1 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### PART II

#### THE PROHIBITIONS

#### *Telecommunications*

- 2 F212(1) .....
- F212(2) .....
- F212(3) .....
- F212(4) .....
- F212(5) .....
- F212(6) .....
- F213(7) .....
- F214(8) .....
- F215(9) .....

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F216(10) .....

**Textual Amendments**

- F212** Sch. 10 para. 2(1)-(6) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F213** Sch. 10 para. 2(7) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)
- F214** Sch. 10 para. 2(8) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F215** Sch. 10 para. 2(9) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(1), [Sch. 1](#) (with art. 11)
- F216** Sch. 10 para. 2(10) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

**Commencement Information**

- I10** Sch. 10 para. 2 wholly in force; Sch. 10 para. 2 not in force at Royal Assent see s. 76(3); Sch. 10 para. 2 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), **art. 2**; Sch. 10 para. 2 fully in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, **Sch.**

*Gas*

3 (1) In consequence of the repeal by this Act of provisions of the <sup>M26</sup>Competition Act 1980, the functions transferred by subsection (3) of section 36A of the <sup>M27</sup>Gas Act 1986 (functions with respect to competition) are no longer exercisable by the Director General of Gas Supply.

(2) Accordingly, that Act is amended as follows.

F217(3) .....

(4) Section 36A is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to the carrying on of activities to which this subsection applies.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to

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the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

F218(6) .....

(7) In subsection (6), omit “or (3)”.

(8) In subsection (7), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

F219(9) .....

F219(10) .....

F219(11) .....

#### Textual Amendments

**F217** Sch. 10 para. 3(3) repealed (1.10.2001) by 2000 c. 27, ss. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20)

**F218** Sch. 10 para. 3(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

**F219** Sch. 10 para. 3(9)-(11) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

#### Commencement Information

**I11** Sch. 10 para. 3 wholly in force; Sch. 10 para. 3 not in force at Royal Assent see s. 76(3); Sch. 10 para. 3 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; Sch. 10 para. 3 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

**M26** 1980 c. 21.

**M27** 1986 c. 44.

### *Electricity*

4 (1) In consequence of the repeal by this Act of provisions of the <sup>M28</sup>Competition Act 1980, the functions transferred by subsection (3) of section 43 of the <sup>M29</sup>Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.

(2) Accordingly, that Act is amended as follows.

F220(3) .....

(4) Section 43 is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions

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of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F221</sup>(6) .....

(7) In subsection (5), omit “or (3)”.

(8) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F222</sup>(9) .....

#### Textual Amendments

**F220** Sch. 10 para. 4(3) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to arts. 3-20)

**F221** Sch. 10 para. 4(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

**F222** Sch. 10 para. 4(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)

#### Commencement Information

**I12** Sch. 10 para. 4 wholly in force; Sch. 10 para. 4 not in force at Royal Assent see s. 76(3); Sch. 10 para. 4 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; Sch. 10 para. 4 fully in force at 1.3.2000 by S.I. 2000/344, **art. 2**, **Sch.**

#### Marginal Citations

**M28** 1980 c. 21.

**M29** 1989 c. 29.

### *Water*

5 (1) In consequence of the repeal by this Act of provisions of the <sup>M30</sup>Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the <sup>M31</sup>Water Industry Act 1991 (functions of Director with respect to competition) are no longer exercisable by the Director General of Water Services.

(2) Accordingly, that Act is amended as follows.

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(3) In section 2 (general duties with respect to water industry), in subsection (6)(a), at the beginning, insert “ subject to subsection (6A) below ”.

(4) In section 2, after subsection (6), insert—

“(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(5) Section 31 is amended as follows.

(6) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”

F223(7) .....

(8) After subsection (4), insert—

“(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

F224(9) .....

F224(10) .....

(11) In subsection (7), omit “or (3)”.

(12) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

F225(13) .....

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#### Textual Amendments

- F223** Sch. 10 para. 5(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F224** Sch. 10 para. 5(9)(10) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F225** Sch. 10 para. 5(13) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I13** Sch. 10 para. 5 wholly in force; Sch. 10 para. 5 not in force at Royal Assent see s. 76(3); Sch. 10 para. 5 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; S.I. 2000/344, **art. 2**, **Sch.**

#### Marginal Citations

- M30** 1980 c. 21.  
**M31** 1991 c. 56.

### Railways

- 6 (1) In consequence of the repeal by this Act of provisions of the <sup>M32</sup>Competition Act 1980, the functions transferred by subsection (3) of section 67 of the <sup>M33</sup>Railways Act 1993 (respective functions of the Regulator and the Director etc) are no longer exercisable by the Rail Regulator.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 4 (general duties of the Secretary of State and the Regulator), after subsection (7), insert—
- “(7A) Subsections (1) to (6) above do not apply in relation to anything done by the Regulator in the exercise of functions assigned to him by section 67(3) below (“Competition Act functions”).
- (7B) The Regulator may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (4) Section 67 is amended as follows.
- (5) For subsection (3) substitute—
- “(3) The Regulator shall be entitled to exercise, concurrently with the Director, the functions of the Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, which relate to the supply of railway services.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director are to be read as including a reference to the Regulator (except



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

F226(6) . . . . .

(7) In subsection (6)(a), omit “or (3)”.

(8) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

F227(9) . . . . .

#### Textual Amendments

**F226** Sch. 10 para. 6(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F227** Sch. 10 para. 6(9) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

**I14** Sch. 10 para. 6 wholly in force; Sch. 10 para. 6 not in force at Royal Assent see s. 76(3); Sch. 10 para. 6 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, art. 2; Sch. 10 para. 6 fully in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

#### Marginal Citations

**M32** 1980 c. 21.

**M33** 1993 c. 43.

## PART III

### THE PROHIBITIONS: NORTHERN IRELAND

#### *Electricity*

7 (1) In consequence of the repeal by this Act of provisions of the <sup>M34</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the <sup>M35</sup>Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.

(2) Accordingly, that Order is amended as follows.

(3) [<sup>F228</sup>In Article 6 (general duties of the Director), after paragraph (2), add—

“(3) Paragraph (1) does not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 46(3) (“Competition Act functions”).

(4) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by paragraph (1) (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function

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mentioned in Article 4(7) or paragraph (2), regard may not be had to any general matter.”]

(4) Article 46 is amended as follows.

(5) For paragraph (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F229</sup>(6) . . . . .

(7) In paragraph (5), omit “or (3)”.

(8) In paragraph (6), for sub-paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F230</sup>(9) . . . . .

#### Textual Amendments

**F228** Sch. 10 para. 7(3) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, Sch.

**F229** Sch. 10 para. 7(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

**F230** Sch. 10 para. 7(9) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

#### Commencement Information

**I15** Sch. 10 para. 7 wholly in force; Sch. 10 para. 7 not in force at Royal Assent see s. 76(3); Sch. 10 para. 7 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), [art. 2](#); Sch. 10 para. 7 fully in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

**M34** 1980 c. 21.

**M35** [S.I. 1992/231 \(N.I. 1\)](#).

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Gas*

8 (1) In consequence of the repeal by this Act of provisions of the <sup>M36</sup>Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the <sup>M37</sup>Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.

(2) Accordingly, that Order is amended as follows.

(3) [<sup>F231</sup>In Article 5 (general duties of the Department and Director), after paragraph (4), insert—

“(4A) Paragraphs (2) to (4) do not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 23(3) (“Competition Act functions”).

(4B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (4), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”]

(4) Article 23 is amended as follows.

(5) For paragraph (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or

(b) conduct of the kind mentioned in section 18(1) of that Act, connected with the conveyance, storage or supply of gas.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).”

<sup>F232</sup>(6) . . . . .

(7) In paragraph (5), omit “or (3)”.

(8) In paragraph (6), for sub-paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

<sup>F233</sup>(9) . . . . .

<sup>F233</sup>(10) . . . . .

<sup>F233</sup>(11) . . . . .

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F231** Sch. 10 para. 8(3) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, Sch.
- F232** Sch. 10 para. 8(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)
- F233** Sch. 10 para. 8(9)-(11) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I16** Sch. 10 para. 8 wholly in force; Sch. 10 para. 8 not in force at Royal Assent see s. 76(3); Sch. 10 para. 8 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), [art. 2](#); Sch. 10 para. 8 fully in force at 1.3.2000 by [S.I. 2000/344](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

- M36** 1980 c. 21.
- M37** [S.I. 1996/275 \(N.I. 2\)](#).

## PART IV

### UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Telecommunications Act 1984 (c.12)*

- 9 (1) The Telecommunications Act 1984 is amended as follows.
- F234**(2) .....
- F234**(3) .....
- F234**(4) .....
- F235**(5) .....
- F236**(6) .....
- (7) In section 101(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M38</sup>Resale Prices Act 1976);
- (b) after paragraph (m), insert—
- “(n) the Competition Act 1998”.
- (8) At the end of section 101, insert—
- “(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

*Status:* Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F234** Sch. 10 para. 9(2)-(4) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F235** Sch. 10 para. 9(5) repealed (20.6.2003) by **Enterprise Act 2002 (c. 40)**, s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F236** Sch. 10 para. 9(6) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

### Commencement Information

- I17** Sch. 10 para. 9 wholly in force; Sch. 10 para. 9 not in force at Royal Assent see s. 76(3); Sch. 10 para. 9 in force for certain purposes at 26.11.1998 by S.I. 1998/2750, **art. 2**; Sch. 10 para. 9(7)(b) in force at 11.1.1999 by S.I. 1998/3166, **art. 2**, **Sch.**; Sch. 10 para. 9(1)(2)(5) in force at 1.4.1999 by S.I. 1999/505, **art. 2**, **Sch. 2**; Sch. 10 para. 9(3)(4)(6)(7)(a) and (8) in force at 1.3.2000 by S.I. 2000/344, **art. 2**, **Sch.**

### Marginal Citations

- M38** 1976 c. 53.

### *The Gas Act 1986 (c.44)*

- 10 (1) The Gas Act 1986 is amended as follows.
- <sup>F237</sup>(2) .....
- (3) In section 25, omit subsection (2) (which falls with the repeal of the <sup>M39</sup>Restrictive Trade Practices Act 1976).
- <sup>F238</sup>(4) .....
- (5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or  
(c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 42(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M40</sup>Resale Prices Act 1976);
- (b) after paragraph (n), insert—  
“(o) the Competition Act 1998”.
- (7) At the end of section 42, insert—  
“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F237** Sch. 10 para. 10(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(2)**
- F238** Sch. 10 para. 10(4) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 26**; [S.I. 2003/1397](#), art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I18** Sch. 10 para. 10 wholly in force; Sch. 10 para. 10 not in force at Royal Assent see s. 76(3); Sch. 10 para. 10 in force for certain purposes at 26.11.1998 by [S.I. 1998/2750](#), **art. 2**; Sch. 10 para. 10(6)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), **art. 2**, **Sch.**; Sch. 10 para. 10(1)(2) in force at 1.4.1999 by [S.I. 1999/505](#), **art. 2**, **Sch. 2**; Sch. 10 para. 10 (3)-(5)(6)(a) and (7) in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, **Sch.**

#### Marginal Citations

- M39** 1976 c. 34.  
**M40** 1976 c. 53.

#### *The Water Act 1989 (c.15)*

- 11 In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (l), insert—
 

“(ll) the Competition Act 1998”.

#### Commencement Information

- I19** Sch. 10 para. 11 wholly in force; Sch. 10 para. 11 not in force at Royal Assent see s. 76(3); Sch. 10 para. 11(b) in force at 11.1.1999 by [S.I. 1998/3166](#), **art. 2**, **Sch.**; Sch. 10 para. 11(a) in force at 1.3.2000 by [S.I. 2000/344](#), **art. 2**, **Sch.**

#### *The Electricity Act 1989 (c.29)*

- 12 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.

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- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.

(9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”

(3) In section 13, omit subsection (2) (which falls with the repeal of the <sup>M41</sup>Restrictive Trade Practices Act 1976).

<sup>F239</sup>(4) . . . . .

(5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or

(d) that the most appropriate way of proceeding is under the Competition Act 1998.”

<sup>F240</sup>(6) . . . . .

(7) In section 57(3) (general restrictions on disclosure of information)—

(a) omit paragraphs (d) and (e) (which refer to the <sup>M42</sup>Restrictive Trade Practices Act 1976 and the <sup>M43</sup>Resale Prices Act 1976);

(b) after paragraph (no), insert—  
“(nop) the Competition Act 1998”.

(8) At the end of section 57, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Textual Amendments

**F239** Sch. 10 para. 12(4) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

**F240** Sch. 10 para. 12(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

**I20** Sch. 10 para. 12 wholly in force; Sch. 10 para. 12 not in force at Royal Assent see s. 76(3); Sch. 10 para. 12(7)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 10 para. 12(1)(2)(6) in force at 1.4.1999 by S.I. 1999/505, art. 2, Sch. 2; Sch. 10 para. 12 (3)-(5)(7)(a) and (8) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

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#### Marginal Citations

- M41** 1976 c. 34.  
**M42** 1976 c. 34.  
**M43** 1976 c. 53.

#### *The Water Industry Act 1991 (c.56)*

- 13 (1) The Water Industry Act 1991 is amended as follows.
- (2) [F241In section 12(5) (determinations under conditions of appointment)—
- (a) after “this Act”, insert “ or ”;
  - (b) omit “or the 1980 Act”.]
- (3) [F241In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—
- “(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (7A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”]
- (4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (5) In section 17 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “ or ”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (4), omit “or the 1980 Act”.



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- (6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—
- “(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 19(3), after “subsection (1) above”, insert “ or, in the case of the Director, is satisfied as mentioned in subsection (1A) above, ”.
- <sup>F242</sup>(8) . . . . .
- (9) After section 206(9) (restriction on disclosure of information), insert—
- “(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”
- (10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the <sup>M44</sup>Restrictive Trade Practices Act 1976 and the <sup>M45</sup>Resale Prices Act 1976;
- (b) after the entry relating to the <sup>M46</sup>Railways Act 1993, insert the entry— “ The Competition Act 1998 ”.

**Textual Amendments**

**F241** Sch. 10 para. 13(2)(3) repealed (1.4.2004 for specified purposes, 1.10.2004 in so far as not already in force) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 32\(4\)\(b\)](#), [Sch. 9 Pt. 3](#); [S.I. 2004/641](#), art. 3(y)(z), [Sch. 2](#); [S.I. 2004/2528](#), art. 2(t)(ii)(u)

**F242** Sch. 10 para. 13(8) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch. \(with art. 8\)](#)

**Commencement Information**

**I21** Sch. 10 para. 13 wholly in force; Sch. 10 para. 13 not in force at Royal Assent see s. 76(3); Sch. 10 para. 13(10)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 13(1)(3)(8) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 10 para. 13 (2)(4)-(7)(9) and (10)(a) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

**Marginal Citations**

**M44** 1976 c. 34.

**M45** 1976 c. 53.

**M46** 1993 c. 43.

*The Water Resources Act 1991 (c.57)*

- 14 In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
- (b) after the entry relating to the <sup>M47</sup>Coal Industry Act 1994, insert the entry— “ The Competition Act 1998 ”.

*Status: Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.*

*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I22** Sch. 10 para. 14 wholly in force; Sch. 10 para. 14 not in force at Royal Assent see s. 76(3); Sch. 10 para. 14(b) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 10 para. 14(a) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### Marginal Citations

**M47** 1994 c. 21.

### *The Railways Act 1993 (c.43)*

- 15 (1) The Railways Act 1993 is amended as follows.
- <sup>F243</sup>(2) .....
- (3) In section 14, omit subsection (2) (which falls with the repeal of the <sup>M48</sup>Restrictive Trade Practices Act 1976).
- <sup>F244</sup>(4) .....
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.
- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
- (a) which is connected with an access agreement; and
- (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—
- “(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
- <sup>F245</sup>(a) .....
- (b) in subsection (11), for “subsection (10)” substitute “ subsections (5A) and (10) ”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).
- (9) In section 145(3) (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the <sup>M49</sup>Restrictive Trade Practices Act 1976 and the <sup>M50</sup>Resale Prices Act 1976);
- (b) after paragraph (q), insert—
- “(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—

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*Changes to legislation: Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

#### Textual Amendments

- F243** Sch. 10 para. 15(2) repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 32(2)**
- F244** Sch. 10 para. 15(4) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F245** Sch. 10 para. 15(7)(a) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art 3(1), **Sch. 2 Pt. I**

#### Commencement Information

- I23** Sch. 10 para. 15 wholly in force; Sch. 10 para. 15 not in force at Royal Assent see s. 76(3); Sch. 10 para. 15(9)(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 10 para. 15(1)(2) in force at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 10 para. 15(3)-(8), (9)(a) and (10) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

- M48** 1976 c. 34.  
**M49** 1976 c. 34.  
**M50** 1976 c. 53.

#### *The Channel Tunnel Rail Link Act 1996 (c.61)*

- 16 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert “other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).
- (7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
- (a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
- (b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”
- (3) In section 22 (restriction of functions in relation to competition etc.), for subsection (3) substitute—
- “(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the <sup>M51</sup>Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
- (a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or

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- (b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,  
 a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”

**Marginal Citations**

M51 1993 c. 43.

**PART V**

MINOR AND CONSEQUENTIAL AMENDMENTS: NORTHERN IRELAND

*The Electricity (Northern Ireland) Order 1992*

- 17 (1) The <sup>M52</sup>Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (modification references to Competition Commission), for paragraphs (8) and (9) substitute—
- “(8) The provisions mentioned in paragraph (8A) are to apply in relation to references under this Article as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included a reference under this Article;
- (c) in section 70 of the 1973 Act—
- (i) references to the Secretary of State were references to the Director, and
- (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group.”
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the <sup>M53</sup>Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
- (b) in paragraph (2)—

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- (i) after sub-paragraph (a), insert “ or ”;
  - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (3), omit “or the 1980 Act”.
- (5) [F246In Article 28 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”]
- F247(6) .....
- (7) [F248In Article 61(3) (general restrictions on disclosure of information)—
- (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the M54Resale Prices Act 1976);
  - (b) after sub-paragraph (t), add—  
“(u) the Competition Act 1998”.]
- (8) [F248At the end of Article 61, insert—
- “(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (6).”]
- (9) In Schedule 12, omit paragraph 16 (which amends the M55Restrictive Trade Practices Act 1976).

#### Textual Amendments

**F246** Sch. 10 para. 17(5) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, [Sch.](#)

**F247** Sch. 10 para. 17(6) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); [S.I. 2003/1397](#), art. 2(1), [Sch.](#) (with art. 8)

**F248** Sch. 10 para. 17(7)(8) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), [Sch. 5](#); [S.R. 2003/203](#), art. 2, [Sch.](#)

#### Commencement Information

**I24** Sch. 10 para. 17 partly in force; Sch. 10 para. 17 not in force at Royal Assent see s. 76(3); Sch. 10 para. 17(7)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, [Sch.](#); Sch. 10 para. 17(1)(2)(6) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, [Sch. 2](#); Sch. 10 para. 17(3)-(5)(7)(a)(8) and (9) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, [Sch.](#)

#### Marginal Citations

**M52** [S.I. 1992/231 \(N.I. 1\)](#).

**M53** 1976 c. 34.

**M54** 1976 c. 53.

**M55** 1976 c. 34.

#### *The Gas (Northern Ireland) Order 1996*

- 18 (1) The M56Gas (Northern Ireland) Order 1996 is amended as follows.

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- <sup>F249</sup>(2) .....
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (3)—
    - (i) after sub-paragraph (a), insert “ or ”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (5), omit “or the 1980 Act”.
- (5) [<sup>F250</sup>In Article 19 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”]

(6) [<sup>F250</sup>In Article 44(4) (general restrictions on disclosure of information)—

    - (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the <sup>M57</sup>Resale Prices Act 1976);
    - (b) after sub-paragraph (u), add—
 

“(v) the Competition Act 1998”.]

(7) [<sup>F251</sup>At the end of Article 44, insert—

“(8) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (7).”]

#### Textual Amendments

**F249** Sch. 10 para. 18(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(2)**

**F250** Sch. 10 para. 18(5)(6) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), **Sch. 5**; S.R. 2003/203, art. 2, Sch.

**F251** Sch. 10 para. 18(7) repealed (N.I.) (1.4.2003) by [The Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419\)](#), art. 1(2), **Sch. 5**; S.R. 2003/203, art. 2, Sch.

#### Commencement Information

**I25** Sch. 10 para. 18 partly in force; Sch. 10 para. 18 not in force at Royal Assent see s. 76(3); Sch. 10 para. 18(6)(b) in force at 11.1.1999 by [S.I. 1998/3166](#), art. 2, **Sch.**; Sch. 10 para. 18(1)(2) in force at 1.4.1999 by [S.I. 1999/505](#), art. 2, **Sch. 2**; Sch. 10 para. 18(3)-(5)(6)(a) and (7) in force at 1.3.2000 by [S.I. 2000/344](#), art. 2, **Sch.**

#### Marginal Citations

**M56** [S.I. 1996/275 \(N.I. 2\)](#).

**M57** 1976 c. 53.

*Status:* Point in time view as at 01/04/2004. This version of this Act contains provisions that are prospective.

*Changes to legislation:* Competition Act 1998 is up to date with all changes known to be in force on or before 07 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F252 SCHEDULE 11

Section 55(4).

**Textual Amendments**

F252 Sch. 11 repealed (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 247(j), 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 6)

SCHEDULE 12

Section 74(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*The Fair Trading Act 1973 (c.41)*

- 1 (1) The Fair Trading Act 1973 is amended as follows.
- (2) Omit section 4 and Schedule 3 (which make provision in respect of the Monopolies and Mergers Commission).
- (3) Omit—
  - (a) section 10(2),
  - (b) section 54(5),
  - (c) section 78(3),
  - (d) paragraph 3(1) and (2) of Schedule 8,(which fall with the repeal of the <sup>M58</sup>Restrictive Trade Practices Act 1976).
- F253 (4) .....
- F253 (5) .....
- F253 (6) .....
- F253 (7) .....
- (8) Omit section 45 (power of the Director to require information about complex monopoly situations).
- F254 (9) .....
- F255 (10) .....
- F255 (11) .....
- F255 (12) .....
- F255 (13) .....
- F256 (14) .....
- (15) In section 135(1) (financial provisions)—

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- (a) in the words before paragraph (a) and in paragraph (b), omit “or the Commission”; and
- (b) omit paragraph (a).

#### Textual Amendments

- F253** Sch. 12 para. 1(4)-(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F254** Sch. 12 para. 1(9) repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 32(3)(a)**
- F255** Sch. 12 para. 1(10)-(13) repealed (29.12.2003) by The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 (S.I. 2003/3180), art. 1(1), **Sch. para. 6(2)** (with art. 3)
- F256** Sch. 12 para. 1(14) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

#### Commencement Information

- I26** Sch. 12 para. 1 wholly in force; Sch. 12 para. 1 not in force at Royal Assent see s. 76(3); Sch. 12 para. 1(14) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 12 para. 1(1)(2)(9)-(13)(15) in force at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 12 para. 1(3)(a)(b)(d) in force at 10.11.1999 by S.I. 1999/2859, art. 2; Sch. 12 para. 1(3)(c)(4)-(8) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

- M58** 1976 c. 34.

#### *The Energy Act 1976 (c.76)*

- 2 In the Energy Act 1976, omit section 5 (temporary relief from restrictive practices law in relation to certain agreements connected with petroleum).

#### *The Estate Agents Act 1979 (c.38)*

- 3 In section 10(3) of the Estate Agents Act 1979 (restriction on disclosure of information), in paragraph (a)—
- (a) omit “or the <sup>M59</sup>Restrictive Trade Practices Act 1976”; and
  - (b) after “the <sup>M60</sup>Coal Industry Act 1994”, insert “ or the Competition Act 1998 ”.

#### Commencement Information

- I27** Sch. 12 para. 3 wholly in force; Sch. 12 para. 3 not in force at Royal Assent see s. 76(3); Sch. 12 para. 3(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 12 para. 3(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

#### Marginal Citations

- M59** 1976 c. 34.  
**M60** 1994 c. 21.

#### *The Competition Act 1980 (c.21)*

- 4 (1) The Competition Act 1980 is amended as follows.



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- (2) In section 11(8) (public bodies and other persons referred to the Commission), omit paragraph (b) and the “and” immediately before it.
- (3) <sup>F257</sup>For section 11(9) (which makes provision for certain functions of the Competition Commission under the <sup>M61</sup>Fair Trading Act 1973 to apply in relation to references under the Competition Act 1980) substitute—
- “(9) The provisions mentioned in subsection (9A) are to apply in relation to a reference under this section as if—
- (a) the functions of the Competition Commission under this section were functions under the Fair Trading Act 1973;
  - (b) the expression “merger reference” included a reference to the Commission under this section; and
  - (c) in paragraph 20(2)(a) of Schedule 7 to the Competition Act 1998, the reference to section 56 of the Fair Trading Act 1973 were a reference to section 12 below.
- (9A) The provisions are—
- (a) sections 70 (time limit for report on merger), 84 (public interest) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973; and
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions).”]

(4) <sup>F257</sup>In section 13 (investigation of prices directed by Secretary of State)—

    - (a) in subsection (1), omit from “but the giving” to the end;
    - (b) for subsection (6) substitute—

“(6) For the purposes of an investigation under this section the Director may, by notice in writing signed by him—

    - (a) require any person to produce—
      - (i) at a time and a place specified in the notice,
      - (ii) to the Director or to any person appointed by him 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
    - (b) require any person carrying on any business to—
      - (i) furnish to the Director such estimates, forecasts, returns or other information as may be specified or described in the notice; and
      - (ii) specify the time, manner and form in which any such estimates, forecasts, returns or information are to be furnished.

(7) No person shall be compelled, for the purpose of any investigation under this section—

    - (a) to produce any document which he could not be compelled to produce in civil proceedings before the High Court or, in Scotland, the Court of Session; or

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- (b) 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.
- (8) Subsections (6) to (8) of section 85 of the <sup>M62</sup>Fair Trading Act 1973 (enforcement provisions relating to notices requiring production of documents etc.) shall apply in relation to a notice under subsection (6) above as they apply in relation to a notice under section 85(1) but as if, in section 85(7), for the words from “any one” to “the Commission” there were substituted “the Director.””]
- (5) In section 15 (special provisions for agricultural schemes) omit subsections (2)(b), (3) and (4).
- (6) In section 16 (reports), omit subsection (3).
- (7) In section 17 (publication etc. of reports)—
- (a) in subsections (1) and (3) to (5), omit “8(1)”;
  - (b) in subsection (2), omit “8(1) or”;
  - (c) in subsection (6), for “sections 9, 10 or” substitute “ section ”.
- (8) In section 19(3) (restriction on disclosure of information), omit paragraphs (d) and (e).
- (9) In section 19(3), after paragraph (q), insert—
- “(r) the Competition Act 1998”.
- (10) In section 19(5)(a), omit “or in anything published under section 4(2)(a) above”.
- (11) Omit section 22 (which amends the <sup>M63</sup>Fair Trading Act 1973).
- <sup>F258</sup>(12) .....
- (13) Omit sections 25 to 30 (amendments of the <sup>M64</sup>Restrictive Trade Practices Act 1976).
- (14) In section 31 (orders and regulations)—
- (a) omit subsection (2); and
  - (b) in subsection (3), omit “10”.
- (15) In section 33 (short title etc)—
- <sup>F259</sup>(a) .....
  - (b) omit subsections (3) and (4).

#### Textual Amendments

- F257** Sch. 12 para. 4(3)(4) repealed (20.6.2003 for specified purposes) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F258** Sch. 12 para. 4(12) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F259** Sch. 12 para. 4(15)(a) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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#### Commencement Information

**I28** Sch. 12 para. 4 wholly in force; Sch. 12 para. 4 not in force at Royal Assent see s. 76(3); Sch. 12 para. 4(9) (11) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 12 para. 4(1)(3)(12) in force at 1.4.1999 by [S.I. 1999/505, art. 2, Sch. 2](#); Sch. 12 para. 4(2), (4)-(8)(10)(13)-(15) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### Marginal Citations

**M61** 1973 c. 41.  
**M62** 1973 c. 41.  
**M63** 1973 c. 41.  
**M64** 1976 c. 34.

#### *Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))*

- 5 In Schedule 6 to the Magistrates' Courts (Northern Ireland) Order 1981, omit paragraphs 42 and 43 (which amend the Restrictive Trade Practices Act 1976).

#### *Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))*

- 6 In Schedule 8 to the Agricultural Marketing (Northern Ireland) Order 1982—
- (a) omit the entry relating to paragraph 16(2) of Schedule 3 to the <sup>M65</sup>Fair Trading Act 1973; and
  - (b) in the entry relating to the <sup>M66</sup>Competition Act 1980—
    - (i) for “sections” substitute “ section ”;
    - (ii) omit “and 15(3)”.

#### Commencement Information

**I29** Sch. 12 para. 6 wholly in force; Sch. 12 para. 6 not in force at Royal Assent see s. 76(3); Sch. 12 para. 6(a) in force at 1.4.1999 by [S.I. 1999/505, art. 2, Sch. 2](#); Sch. 12 para. 6(b) in force at 1.3.2000 by [S. I. 2000/344, art. 2, Sch.](#)

#### Marginal Citations

**M65** 1973 c. 41.  
**M66** 1980 c. 21.

#### *The Airports Act 1986 (c.31)*

F2607 .....

#### Textual Amendments

**F260** Sch. 12 para. 7 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\), art. 1, Sch. para. 32\(3\)\(b\)](#)

#### *The Financial Services Act 1986 (c.60)*

- 8 In Schedule 11 to the Financial Services Act 1986, in paragraph 12—
- (a) in sub-paragraph (1), omit “126”;

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(b) omit sub-paragraph (2).

*The Companies Consolidation (Consequential Provisions)  
 (Northern Ireland) Order 1986 (S.I. 1986/1035 (N.I. 9))*

- 9 In Part II of Schedule 1 to the <sup>M67</sup>Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986, omit the entries relating to the <sup>M68</sup>Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.

**Marginal Citations**

**M67** 1976 c. 34.  
**M68** 1976 c. 53.

*The Consumer Protection Act 1987 (c.43)*

- 10 In section 38(3) of the Consumer Protection Act 1987 (restrictions on disclosure of information)—
- (a) omit paragraphs (e) and (f); and
  - (b) after paragraph (o), insert—
    - “(p) the Competition Act 1998.”

**Commencement Information**

**I30** Sch. 12 para. 10 wholly in force; Sch. 12 para. 10 not in force at Royal Assent see s. 76(3); Sch. 12 para. 10(b) in force at 11.1.1999 by S.I. 1998/3166, art. 2, **Sch.**; Sch. 12 para. 10(a) in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

*The Channel Tunnel Act 1987 (c.53)*

<sup>F261</sup>11 .....

**Textual Amendments**

**F261** Sch. 12 para. 11 repealed (20.6.2003) by The Enterprise Act 2002 (Consequential and Supplemental Provisions) Order 2003 (S.I. 2003/1398), art. 1, **Sch. para. 32(3)(c)**

*The Road Traffic (Consequential Provisions) Act 1988 (c.54)*

- 12 In Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (consequential amendments), omit paragraph 19.

*The Companies Act 1989 (c.40)*

- 13 In Schedule 20 to the Companies Act 1989 (amendments about mergers and related matters), omit paragraphs 21 to 24.

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*The Broadcasting Act 1990 (c.42)*

F262 14 .....

**Textual Amendments**

**F262** Sch. 12 para. 14 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(3)(d)**

*The Tribunals and Inquiries Act 1992 (c.53)*

15 In Schedule 1 to the Tribunals and Inquiries Act 1992 (tribunals under the supervision of the Council on Tribunals), after paragraph 9, insert—

“Competition	9A. An appeal tribunal established under section 48 of the Competition Act 1998.”
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*The Osteopaths Act 1993 (c.21)*

F263 16 .....

**Textual Amendments**

**F263** Sch. 12 para. 16 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(3)(e)**

*The Chiropractors Act 1994 (c.17)*

F264 17 .....

**Textual Amendments**

**F264** Sch. 12 para. 17 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 32(3)(f)**

*The Coal Industry Act 1994 (c.21)*

18 In section 59(4) of the Coal Industry Act 1994 (information to be kept confidential by the Coal Authority)—

- (a) omit paragraphs (e) and (f); and
- (b) after paragraph (m), insert—
  - “(n) the Competition Act 1998.”

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#### Commencement Information

- I31** Sch. 12 para. 18 wholly in force; Sch. 12 para. 18 not in force at Royal Assent see s. 76(3); Sch. 12 para. 18(b) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 12 para. 18(a) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### *The Deregulation and Contracting Out Act 1994 (c.40)*

- 19 (1) The Deregulation and Contracting Out Act 1994 is amended as follows.
- (2) Omit—
- (a) section 10 (restrictive trade practices: non-notifiable agreements); and
  - (b) section 11 (registration of commercially sensitive information).
- (3) In section 12 (anti-competitive practices: competition references), omit subsections (1) to (6).
- (4) In Schedule 4, omit paragraph 1.
- (5) In Schedule 11 (miscellaneous deregulatory provisions: consequential amendments), in paragraph 4, omit sub-paragraphs (3) to (7).

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

F265 20 .....

#### Textual Amendments

- F265** Sch. 12 para. 20 repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\), art. 1, Sch. para. 32\(3\)\(g\)](#)

#### *The Broadcasting Act 1996 (c.55)*

- 21 In section 77 of the Broadcasting Act 1996 (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), omit subsection (2).

### SCHEDULE 13

Section 74(2).

#### TRANSITIONAL PROVISIONS AND SAVINGS

#### PART I

#### GENERAL

#### *Interpretation*

- 1 (1) In this Schedule—

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“RPA” means the <sup>M69</sup>Resale Prices Act 1976;  
“RTPA” means the Restrictive Trade Practices Act 1976;  
“continuing proceedings” has the meaning given by paragraph 15;  
“the Court” means the Restrictive Practices Court;  
“Director” means the Director General of Fair Trading;  
“document” includes information recorded in any form;  
“enactment date” means the date on which this Act is passed;  
“information” includes estimates and forecasts;  
“interim period” means the period beginning on the enactment date and ending immediately before the starting date;  
“prescribed” means prescribed by an order made by the Secretary of State;  
“regulator” means any person mentioned in paragraphs (a) to (g) of paragraph 1 of Schedule 10 [<sup>F266</sup>and the Civil Aviation Authority];  
“starting date” means the date on which section 2 comes into force;  
“transitional period” means the transitional period provided for in Chapters III and IV of Part IV of this Schedule.

- (2) Sections 30, 44, 51, 53, 55, 56, 57 and 59(3) and (4) and paragraph 12 of Schedule 9 (“the applied provisions”) apply for the purposes of this Schedule as they apply for the purposes of Part I of this Act.
- (3) Section 2(5) applies for the purposes of any provisions of this Schedule which are concerned with the operation of the Chapter I prohibition as it applies for the purposes of Part I of this Act.
- (4) In relation to any of the matters in respect of which a regulator may exercise powers as a result of paragraph 35(1), the applied provisions are to have effect as if references to the Director included references to the regulator.
- (5) The fact that to a limited extent the Chapter I prohibition does not apply to an agreement, because a transitional period is provided by virtue of this Schedule, does not require those provisions of the agreement in respect of which there is a transitional period to be disregarded when considering whether the agreement infringes the prohibition for other reasons.

#### Textual Amendments

**F266** Words in the definition of “regulator” in Sch. 13 para. 1(1) inserted (1.2.2001) by 2000 c. 38, ss. 97, **Sch. 8 Pt. IV para. 16(2)** (with s. 106); S.I. 2001/57, art. 3, **Sch. 2 Pt. I**

#### Marginal Citations

**M69** 1976 c. 53.

#### *General power to make transitional provision and savings*

- 2 (1) Nothing in this Schedule affects the power of the Secretary of State under section 75 to make transitional provisions or savings.
- (2) An order under that section may modify any provision made by this Schedule.

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### *Advice and information*

- 3 (1) The Director may publish advice and information explaining provisions of this Schedule to persons who are likely to be affected by them.
- (2) Any advice or information published by the Director under this paragraph is to be published in such form and manner as he considers appropriate.

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

**C50** Sch. 13 para. 3 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(8), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

## PART II

### DURING THE INTERIM PERIOD

#### *Block exemptions*

- 4 (1) The Secretary of State may, at any time during the interim period, make one or more orders for the purpose of providing block exemptions which are effective on the starting date.
- (2) An order under this paragraph has effect as if properly made under section 6.

#### *Certain agreements to be non-notifiable agreements*

- 5 An agreement which—
- (a) is made during the interim period, and
  - (b) satisfies the conditions set out in paragraphs (a), (c) and (d) of section 27A(1) of the RTPA,
- is to be treated as a non-notifiable agreement for the purposes of the RTPA.

#### *Application of RTPA during the interim period*

- 6 In relation to agreements made during the interim period—
- (a) the Director is no longer under the duty to take proceedings imposed by section 1(2)(c) of the RTPA but may continue to do so;
  - (b) section 21 of that Act has effect as if subsections (1) and (2) were omitted; and
  - (c) section 35(1) of that Act has effect as if the words “or within such further time as the Director may, upon application made within that time, allow” were omitted.

#### *Guidance*

- 7 (1) Sub-paragraphs (2) to (4) apply in relation to agreements made during the interim period.



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- (2) An application may be made to the Director in anticipation of the coming into force of section 13 in accordance with directions given by the Director and such an application is to have effect on and after the starting date as if properly made under section 13.
- (3) The Director may, in response to such an application—
  - (a) give guidance in anticipation of the coming into force of section 2; or
  - (b) on and after the starting date, give guidance under section 15 as if the application had been properly made under section 13.
- (4) Any guidance so given is to have effect on and after the starting date as if properly given under section 15.

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

**C51** Sch. 13 para. 7 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(8), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

### PART III

#### ON THE STARTING DATE

##### *Applications which fall*

- 8 (1) Proceedings in respect of an application which is made to the Court under any of the provisions mentioned in sub-paragraph (2), but which is not determined before the starting date, cease on that date.
- (2) The provisions are—
  - (a) sections 2(2), 35(3), 37(1) and 40(1) of the RTPA and paragraph 5 of Schedule 4 to that Act;
  - (b) section 4(1) of the RTPA so far as the application relates to an order under section 2(2) of that Act; and
  - (c) section 25(2) of the RPA.
- (3) The power of the Court to make an order for costs in relation to any proceedings is not affected by anything in this paragraph or by the repeals made by section 1.

##### *Orders and approvals which fall*

- 9 (1) An order in force immediately before the starting date under—
  - (a) section 2(2), 29(1), 30(1), 33(4), 35(3) or 37(1) of the RTPA; or
  - (b) section 25(2) of the RPA,ceases to have effect on that date.
- (2) An approval in force immediately before the starting date under section 32 of the RTPA ceases to have effect on that date.

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## PART IV

### ON AND AFTER THE STARTING DATE

#### CHAPTER I

##### GENERAL

###### *Duty of Director to maintain register etc.*

- 10 (1) This paragraph applies even though the relevant provisions of the RTPA are repealed by this Act.
- (2) The Director is to continue on and after the starting date to be under the duty imposed by section 1(2)(a) of the RTPA to maintain a register in respect of agreements—
- (a) particulars of which are, on the starting date, entered or filed on the register;
  - (b) which fall within sub-paragraph (4);
  - (c) which immediately before the starting date are the subject of proceedings under the RTPA which do not cease on that date by virtue of this Schedule; or
  - (d) in relation to which a court gives directions to the Director after the starting date in the course of proceedings in which a question arises as to whether an agreement was, before that date—
    - (i) one to which the RTPA applied;
    - (ii) subject to registration under that Act;
    - (iii) a non-notifiable agreement for the purposes of that Act.
- (3) The Director is to continue on and after the starting date to be under the duties imposed by section 1(2)(a) and (b) of the RTPA of compiling a register of agreements and entering or filing certain particulars in the register, but only in respect of agreements of a kind referred to in paragraph (b), (c) or (d) of sub-paragraph (2).
- (4) An agreement falls within this sub-paragraph if—
- (a) it is subject to registration under the RTPA but—
    - (i) is not a non-notifiable agreement within the meaning of section 27A of the RTPA, or
    - (ii) is not one to which paragraph 5 applies;
  - (b) particulars of the agreement have been provided to the Director before the starting date; and
  - (c) as at the starting date no entry or filing has been made in the register in respect of the agreement.
- (5) Sections 23 and 27 of the RTPA are to apply after the starting date in respect of the register subject to such modifications, if any, as may be prescribed.
- (6) In sub-paragraph (2)(d) “court” means—
- (a) the High Court;
  - (b) the Court of Appeal;
  - (c) the Court of Session;
  - (d) the High Court or Court of Appeal in Northern Ireland; or
  - (e) the House of Lords.

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#### Commencement Information

**I32** Sch. 13 para. 10 wholly in force; Sch. 13 para. 10 not in force at Royal Assent see s. 76(3); Sch. 13 para. 10(5) in force at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#) Sch. 13 para. 10(1)-(4) and (6) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### *RTPA section 3 applications*

- 11 (1) Even though section 3 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed—
- (a) in relation to a continuing application under that section; or
  - (b) so as to allow an application to be made under that section on or after the starting date in respect of a continuing application under section 1(3) of the RTPA.
- (2) “Continuing application” means an application made, but not determined, before the starting date.

#### Commencement Information

**I33** Sch. 13 para. 11 partly in force; Sch. 13 para. 11 not in force at Royal Assent see s. 76(3); Sch. 13 para. 11 in force for certain purposes at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#)

#### *RTPA section 26 applications*

- 12 (1) Even though section 26 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply, with such modifications (if any) as may be prescribed, in relation to an application which is made under that section, but not determined, before the starting date.
- (2) If an application under section 26 is determined on or after the starting date, this Schedule has effect in relation to the agreement concerned as if the application had been determined immediately before that date.

#### Commencement Information

**I34** Sch. 13 para. 12 wholly in force; Sch. 13 para. 12 not in force at Royal Assent see s. 76(3); Sch. 13 para. 12(1) in force for certain purposes at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 13 para. 12(1) and (2) fully in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

#### *Right to bring civil proceedings*

- 13 (1) Even though section 35 of the RTPA is repealed by this Act, its provisions (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of section 27ZA or 35(2) of that Act to bring civil proceedings in respect of an agreement (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

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- (2) Even though section 25 of the RPA is repealed by this Act, the provisions of that section (and so far as necessary that Act) are to continue to apply in respect of a person who, immediately before the starting date, has a right by virtue of subsection (3) of that section to bring civil proceedings (but only so far as that right relates to any period before the starting date or, where there are continuing proceedings, the determination of the proceedings).

## CHAPTER II

### CONTINUING PROCEEDINGS

#### *The general rule*

- 14 (1) The Chapter I prohibition does not apply to an agreement at any time when the agreement is the subject of continuing proceedings under the RTPA.
- (2) The Chapter I prohibition does not apply to an agreement relating to goods which are the subject of continuing proceedings under section 16 or 17 of the RPA to the extent to which the agreement consists of exempt provisions.
- (3) In sub-paragraph (2) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
- (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.
- (4) If the Chapter I prohibition does not apply to an agreement because of this paragraph, the provisions of, or made under, the RTPA or the RPA are to continue to have effect in relation to the agreement.
- (5) The repeals made by section 1 do not affect—
- (a) continuing proceedings; or
  - (b) proceedings of the kind referred to in paragraph 11 or 12 of this Schedule which are continuing after the starting date.

#### *Meaning of “continuing proceedings”*

- 15 (1) For the purposes of this Schedule “continuing proceedings” means proceedings in respect of an application made to the Court under the RTPA or the RPA, but not determined, before the starting date.
- (2) But proceedings under section 3 or 26 of the RTPA to which paragraph 11 or 12 applies are not continuing proceedings.
- (3) The question whether (for the purposes of Part III, or this Part, of this Schedule) an application has been determined is to be decided in accordance with sub-paragraphs (4) and (5).
- (4) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—

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- (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
  - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (5) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.

*RTPA section 4 proceedings*

- 16 Proceedings on an application for an order under section 4 of the RTPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under that section is granted before the starting date but the application itself is not made before that date.

*RPA section 16 or 17 proceedings*

- 17 Proceedings on an application for an order under section 16 or 17 of the RPA are also continuing proceedings if—
- (a) leave to make the application is applied for before the starting date but the proceedings in respect of that application for leave are not determined before that date; or
  - (b) leave to make an application for an order under section 16 or 17 of the RPA is granted before the starting date, but the application itself is not made before that date.

*Continuing proceedings which are discontinued*

- 18 (1) On an application made jointly to the Court by all the parties to any continuing proceedings, the Court must, if it is satisfied that the parties wish it to do so, discontinue the proceedings.
- (2) If, on an application under sub-paragraph (1) or for any other reason, the Court orders the proceedings to be discontinued, this Schedule has effect (subject to paragraphs 21 and 22) from the date on which the proceedings are discontinued as if they had never been instituted.

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### CHAPTER III

#### THE TRANSITIONAL PERIOD

##### *The general rule*

- 19 (1) Except where this Chapter or Chapter IV provides otherwise, there is a transitional period, beginning on the starting date and lasting for one year, for any agreement made before the starting date.
- (2) The Chapter I prohibition does not apply to an agreement to the extent to which there is a transitional period for the agreement.
- (3) The Secretary of State may by regulations provide for sections 13 to 16 and Schedule 5 to apply with such modifications (if any) as may be specified in the regulations, in respect of applications to the Director about agreements for which there is a transitional period.

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

**C52** Sch. 13 para. 19(3) modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(8), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

#### **Commencement Information**

**I35** Sch. 13 para. 19 wholly in force; Sch. 13 para. 19 not in force at Royal Assent see s. 76(3); Sch. 13 para. 19(3) in force at 11.1.1999 by S.I. 1998/3166, art. 2, Sch.; Sch. 13 para. 19(1) and (2) in force at 1.3.2000 by S.I. 2000/344, art. 2, Sch.

##### *Cases for which there is no transitional period*

- 20 (1) There is no transitional period for an agreement to the extent to which, immediately before the starting date, it is—
- (a) void under section 2(1) or 35(1)(a) of the RTPA;
  - (b) the subject of an order under section 2(2) or 35(3) of the RTPA; or
  - (c) unlawful under section 1, 2 or 11 of the RPA or void under section 9 of that Act.
- (2) There is no transitional period for an agreement to the extent to which, before the starting date, a person has acted unlawfully for the purposes of section 27ZA(2) or (3) of the RTPA in respect of the agreement.
- (3) There is no transitional period for an agreement to which paragraph 25(4) applies.
- (4) There is no transitional period for—
- (a) an agreement in respect of which there are continuing proceedings, or
  - (b) an agreement relating to goods in respect of which there are continuing proceedings,
- to the extent to which the agreement is, when the proceedings are determined, void or unlawful.

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#### *Continuing proceedings under the RTPA*

- 21 In the case of an agreement which is the subject of continuing proceedings under the RTPA, the transitional period begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.

#### *Continuing proceedings under the RPA*

- 22 (1) In the case of an agreement relating to goods which are the subject of continuing proceedings under the RPA, the transitional period for the exempt provisions of the agreement begins—
- (a) if the proceedings are discontinued, on the date of discontinuance;
  - (b) otherwise, when the proceedings are determined.
- (2) In sub-paragraph (1) “exempt provisions” has the meaning given by paragraph 14(3).

#### *Provisions not contrary to public interest*

- 23 (1) To the extent to which an agreement contains provisions which, immediately before the starting date, are provisions which the Court has found not to be contrary to the public interest, the transitional period lasts for five years.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) To the extent to which an agreement which on the starting date is the subject of continuing proceedings is, when the proceedings are determined, found by the Court not to be contrary to the public interest, the transitional period lasts for five years.

#### *Goods*

- 24 (1) In the case of an agreement relating to goods which, immediately before the starting date, are exempt under section 14 of the RPA, there is a transitional period for the agreement to the extent to which it consists of exempt provisions.
- (2) Sub-paragraph (1) is subject to paragraph 20(4).
- (3) In the case of an agreement relating to goods—
- (a) which on the starting date are the subject of continuing proceedings, and
  - (b) which, when the proceedings are determined, are found to be exempt under section 14 of the RPA,
- there is a transitional period for the agreement, to the extent to which it consists of exempt provisions.
- (4) In each case, the transitional period lasts for five years.
- (5) In sub-paragraphs (1) and (3) “exempt provisions” means those provisions of the agreement which would, disregarding section 14 of the RPA, be—
- (a) void as a result of section 9(1) of the RPA; or
  - (b) unlawful as a result of section 9(2) or 11 of the RPA.

#### *Transitional period for certain agreements*

- 25 (1) This paragraph applies to agreements—

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- (a) which are subject to registration under the RTPA but which—
    - (i) are not non-notifiable agreements within the meaning of section 27A of the RTPA, or
    - (ii) are not agreements to which paragraph 5 applies; and
  - (b) in respect of which the time for furnishing relevant particulars as required by or under the RTPA expires on or after the starting date.
- (2) “Relevant particulars” means—
- (a) particulars which are required to be furnished by virtue of section 24 of the RTPA; or
  - (b) particulars of any variation of an agreement which are required to be furnished by virtue of sections 24 and 27 of the RTPA.
- (3) There is a transitional period of one year for an agreement to which this paragraph applies if—
- (a) relevant particulars are furnished before the starting date; and
  - (b) no person has acted unlawfully (for the purposes of section 27ZA(2) or (3) of the RTPA) in respect of the agreement.
- (4) If relevant particulars are not furnished by the starting date, section 35(1)(a) of the RTPA does not apply in relation to the agreement (unless sub-paragraph (5) applies).
- (5) This sub-paragraph applies if a person falling within section 27ZA(2) or (3) of the RTPA has acted unlawfully for the purposes of those subsections in respect of the agreement.

#### *Special cases*

- 26 (1) In the case of an agreement in respect of which—
- (a) a direction under section 127(2) of the <sup>M70</sup>Financial Services Act 1986 (“the 1986 Act”) is in force immediately before the starting date, or
  - (b) a direction under section 194A(3) of the <sup>M71</sup>Broadcasting Act 1990 (“the 1990 Act”) is in force immediately before the starting date,
- the transitional period lasts for five years.
- (2) To the extent to which an agreement is the subject of a declaration—
- (a) made by the Treasury under section 127(3) of the 1986 Act, and
  - (b) in force immediately before the starting date,
- the transitional period lasts for five years.
- (3) Sub-paragraphs (1) and (2) do not affect the power of—
- (a) the Treasury to make a declaration under section 127(2) of the 1986 Act (as amended by Schedule 2 to this Act),
  - (b) the Secretary of State to make a declaration under section 194A of the 1990 Act (as amended by Schedule 2 to this Act),
- in respect of an agreement for which there is a transitional period.

#### **Marginal Citations**

**M70** 1986 c. 60.

**M71** 1990 c. 42.



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## CHAPTER IV

### THE UTILITIES

#### *General*

- 27 In this Chapter “the relevant period” means the period beginning with the starting date and ending immediately before the fifth anniversary of that date.

#### *Electricity*

- 28 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of a section 100 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of a section 100 order.
- (5) But if an agreement for which there is a transitional period as a result of subparagraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of a section 100 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 29—
- “section 100 order” means an order made under section 100 of the <sup>M72</sup>Electricity Act 1989; and
- expressions which are also used in Part I of the Electricity Act 1989 have the same meaning as in that Part.

#### Marginal Citations

M72 1989 c. 29.

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*Electricity: power to make transitional orders*

- 29 (1) There is a transitional period for an agreement (whether made before or after the starting date) relating to the generation, transmission or supply of electricity which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
  - (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
- (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,
- the transitional period ends on the date on which the agreement so ceases.
- (5) Before making a transitional order, the Secretary of State must consult the Director General of Electricity Supply and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter to the Secretary of State for determination after such consultation as may be so specified.
- (7) In the application of this paragraph to Northern Ireland, the reference in subparagraph (5) to the Director General of Electricity Supply is to be read as a reference to the Director General of Electricity Supply for Northern Ireland.

*Gas*

- 30 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of section 62 or a section 62 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.

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- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of section 62 or a section 62 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of section 62 or a section 62 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) also applies in relation to a modification which is treated as an agreement made on or after 28th November 1985 by virtue of section 62(4).
- (7) Sub-paragraph (3) is subject to paragraph 20.
- (8) In this paragraph and paragraph 31—
  - “section 62” means section 62 of the <sup>M73</sup>Gas Act 1986;
  - “section 62 order” means an order made under section 62.

#### Marginal Citations

M73 1986 c. 44.

#### *Gas: power to make transitional orders*

- 31
- (1) There is a transitional period for an agreement of a description falling within section 62(2)(a) and (b) or section 62(2A)(a) and (b) which—
    - (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Secretary of State (whether before or after the making of the agreement but before the end of the relevant period); and
    - (b) satisfies such conditions as may be specified in the order.
  - (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
  - (3) The transitional period for such an agreement ends at the end of the relevant period.
  - (4) But if the agreement—
    - (a) ceases to be one to which a transitional order applies, or
    - (b) ceases to satisfy one or more of the conditions specified in the transitional order,the transitional period ends on the date when the agreement so ceases.
  - (5) Before making a transitional order, the Secretary of State must consult the Director General of Gas Supply and the Director.
  - (6) The conditions specified in a transitional order may include—
    - (a) conditions which are to be satisfied in relation to a time before the coming into force of this paragraph;
    - (b) conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to

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the Secretary of State, the Director or the Director General of Gas Supply for determination after such consultation as may be so specified.

*Gas: Northern Ireland*

- 32 (1) For an agreement to which, immediately before the starting date, the RTPA does not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the starting date; and
  - (b) ending at the end of the relevant period.
- (2) For an agreement which is made at any time after the starting date and to which, had the RTPA not been repealed, that Act would not at the time at which the agreement is made have applied by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the agreement is made; and
  - (b) ending at the end of the relevant period.
- (3) For an agreement (whether made before or after the starting date) which, during the relevant period, is varied at any time in such a way that it becomes an agreement which, had the RTPA not been repealed, would at that time have been one to which that Act did not apply by virtue of an Article 41 order, there is a transitional period—
- (a) beginning on the date on which the variation is made; and
  - (b) ending at the end of the relevant period.
- (4) If an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) is varied during the relevant period, the transitional period for the agreement continues if, had the RTPA not been repealed, the agreement would have continued to be one to which that Act did not apply by virtue of an Article 41 order.
- (5) But if an agreement for which there is a transitional period as a result of sub-paragraph (1), (2) or (3) ceases to be one to which, had it not been repealed, the RTPA would not have applied by virtue of an Article 41 order, the transitional period ends on the date on which the agreement so ceases.
- (6) Sub-paragraph (3) is subject to paragraph 20.
- (7) In this paragraph and paragraph 33—
- “Article 41 order” means an order under Article 41 of the <sup>M74</sup>Gas (Northern Ireland) Order 1996;
- “Department” means the Department of Economic Development.

**Marginal Citations**

M74 [S.I. 1996/275 \(N.I. 2\)](#).

*Gas: Northern Ireland – power to make transitional orders*

- 33 (1) There is a transitional period for an agreement of a description falling within Article 41(1) which—
- (a) is specified, or is of a description specified, in an order (“a transitional order”) made by the Department (whether before or after the making of the agreement but before the end of the relevant period); and

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- (b) satisfies such conditions as may be specified in the order.
- (2) A transitional order may make provision as to when the transitional period in respect of such an agreement is to start or to be deemed to have started.
- (3) The transitional period for such an agreement ends at the end of the relevant period.
- (4) But if the agreement—
  - (a) ceases to be one to which a transitional order applies, or
  - (b) ceases to satisfy one or more of the conditions specified in the transitional order,the transitional period ends on the date when the agreement so ceases.
- (5) Before making a transitional order, the Department must consult the Director General of Gas for Northern Ireland and the Director.
- (6) The conditions specified in a transitional order may include conditions which refer any matter (which may be the general question whether the Chapter I prohibition should apply to a particular agreement) to the Department for determination after such consultation as may be so specified.

#### *Railways*

- 34 (1) In this paragraph—
- “section 131” means section 131 of the <sup>M75</sup>Railways Act 1993 (“the 1993 Act”);
  - “section 131 agreement” means an agreement—
    - (a) to which the RTPA does not apply immediately before the starting date by virtue of section 131(1); or
    - (b) in respect of which a direction under section 131(3) is in force immediately before that date;
  - “non-exempt agreement” means an agreement relating to the provision of railway services (whether made before or after the starting date) which is not a section 131 agreement; and
  - “railway services” has the meaning given by section 82 of the 1993 Act.
- (2) For a section 131 agreement there is a transitional period of five years.
  - (3) There is a transitional period for a non-exempt agreement to the extent to which the agreement is at any time before the end of the relevant period required or approved—
    - (a) by the Secretary of State or the Rail Regulator in pursuance of any function assigned or transferred to him under or by virtue of any provision of the 1993 Act;
    - (b) by or under any agreement the making of which is required or approved by the Secretary of State or the Rail Regulator in the exercise of any such function; or
    - (c) by or under a licence granted under Part I of the 1993 Act.
  - (4) The transitional period conferred by sub-paragraph (3)—
    - (a) is to be taken to have begun on the starting date; and
    - (b) ends at the end of the relevant period.
  - (5) Sub-paragraph (3) is subject to paragraph 20.

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- (6) Any variation of a section 131 agreement on or after the starting date is to be treated, for the purposes of this paragraph, as a separate non-exempt agreement.

#### Marginal Citations

M75 1993 c. 43.

#### *The regulators*

- 35 (1) Subject to sub-paragraph (3), each of the regulators may exercise, in respect of sectoral matters and concurrently with the Director, the functions of the Director under paragraph 3, 7, 19(3), 36, 37, 38 or 39.
- (2) In sub-paragraph (1) “sectoral matters” means—
- <sup>F267</sup>(a) . . . . .
  - (b) in the case of the Director General of Gas Supply, the matters referred to in section 36A(3) and (4) of the <sup>M76</sup>Gas Act 1986;
  - (c) in the case of the Director General of Electricity Supply, the matters referred to in section 43(3) of the <sup>M77</sup>Electricity Act 1989;
  - (d) in the case of the Director General of Electricity Supply for Northern Ireland, the matters referred to in Article 46(3) of the <sup>M78</sup>Electricity (Northern Ireland) Order 1992;
  - (e) in the case of the Director General of Water Services, the matters referred to in section 31(3) of the <sup>M79</sup>Water Industry Act 1991;
  - (f) in the case of the Rail Regulator, the matters referred to in section 67(3) of the <sup>M80</sup>Railways Act 1993;
  - (g) in the case of the Director General of Gas for Northern Ireland, the matters referred to in Article 23(3) of the <sup>M81</sup>Gas (Northern Ireland) Order 1996.
  - [<sup>F268</sup>(h) in the case of the Civil Aviation Authority, the supply of air traffic services within the meaning given by section 98 of the Transport Act 2000.]
- (3) The power to give directions in paragraph 7(2) is exercisable by the Director only but if the Director is preparing directions which relate to a matter in respect of which a regulator exercises concurrent jurisdiction, he must consult that regulator.
- (4) Consultations conducted by the Director before the enactment date, with a view to preparing directions which have effect on or after that date, are to be taken to satisfy sub-paragraph (3).
- (5) References to enactments in sub-paragraph (2) are to the enactments as amended by or under this Act.

#### Textual Amendments

**F267** Sch. 13 para. 35(2)(a) repealed (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\), s. 411\(2\)](#), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#)); [S.I. 2003/3142, art. 3\(1\)](#), [Sch. 1](#) (with [art. 11](#))

**F268** Sch. 13 para. 35(2)(h) inserted (1.2.2001) by [2000 c. 38, ss. 97](#), [Sch. 8 Pt. IV para. 16\(3\)](#) (with [s. 106](#)); [S.I. 2001/57, art. 3](#), [Sch. 2 Pt. I](#)

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#### Marginal Citations

- M76** 1986 c. 44.  
**M77** 1989 c. 29.  
**M78** S.I. 1992/231 (N.I.1).  
**M79** 1991 c. 56.  
**M80** 1993 c. 43.  
**M81** S.I. 1996/275 (N.I.2).

## CHAPTER V

### EXTENDING THE TRANSITIONAL PERIOD

- 36 (1) A party to an agreement for which there is a transitional period may apply to the Director, not less than three months before the end of the period, for the period to be extended.
- (2) The Director may (on his own initiative or on an application under sub-paragraph (1))
- (a) extend a one-year transitional period by not more than twelve months;
  - (b) extend a transitional period of any period other than one year by not more than six months.
- (3) An application under sub-paragraph (1) must—
- (a) be in such form as may be specified; and
  - (b) include such documents and information as may be specified.
- (4) If the Director extends the transitional period under this paragraph, he must give notice in such form, and to such persons, as may be specified.
- (5) The Director may not extend a transitional period more than once.
- (6) In this paragraph—
- “person” has the same meaning as in Part I; and
  - “specified” means specified in rules made by the Director under section 51.

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

- C53** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), ss. 371(8), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

## CHAPTER VI

### TERMINATING THE TRANSITIONAL PERIOD

#### General

- 37 (1) Subject to sub-paragraph (2), the Director may by a direction in writing terminate the transitional period for an agreement, but only in accordance with paragraph 38.

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- (2) The Director may not terminate the transitional period, nor exercise any of the powers in paragraph 38, in respect of an agreement which is excluded from the Chapter I prohibition by virtue of any of the provisions of Part I of this Act other than paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 [<sup>F269</sup>or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].

#### Textual Amendments

**F269** Words in Sch. 13 para. 37(2) inserted (1.3.2000) by [S.I. 2000/311](#), [art. 2](#)

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

**C53** [Sch. 13 paras. 36-39](#) modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))

#### *Circumstances in which the Director may terminate the transitional period*

- 38 (1) If the Director is considering whether to give a direction under paragraph 37 (“a direction”), he may in writing require any party to the agreement concerned to give him such information in connection with that agreement as he may require.
- (2) If at the end of such period as may be specified in rules made under section 51, a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (1), the Director may give a direction.
- (3) The Director may also give a direction if he considers—
- (a) that the agreement would, but for the transitional period or a relevant exclusion, infringe the Chapter I prohibition; and
  - (b) that he would not be likely to grant the agreement an unconditional individual exemption.
- (4) For the purposes of sub-paragraph (3) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (5) In this paragraph—
- “person” has the same meaning as in Part I;
  - “relevant exclusion” means an exclusion under paragraph 1 of Schedule 1 or paragraph 2 or 9 of Schedule 3 [<sup>F270</sup>or the Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000].

#### Textual Amendments

**F270** Words in the definition of “relevant exclusion” in Sch. 13 para. 38(5) inserted (1.9.2000) by [S.I. 2000/2031](#), [art. 2](#)

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

**C53** [Sch. 13 paras. 36-39](#) modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), [ss. 371\(8\)](#), [411\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), [arts. 1\(2\)](#), [2\(1\)](#), [Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142](#), [art. 1\(3\)](#)); [S.I. 2003/3142](#), [art. 3\(2\)](#) (with [art. 11](#))



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*Procedural requirements on giving a paragraph 37 direction*

- 39 (1) The Director must specify in a direction under paragraph 37 (“a direction”) the date on which it is to have effect (which must not be less than 28 days after the direction is given).
- (2) Copies of the direction must be given to—
- (a) each of the parties concerned, and
  - (b) the Secretary of State,
- not less than 28 days before the date on which the direction is to have effect.
- (3) In relation to an agreement to which a direction applies, the transitional period (if it has not already ended) ends on the date specified in the direction unless, before that date, the direction is revoked by the Director or the Secretary of State.
- (4) If a direction is revoked, the Director may give a further direction in respect of the same agreement only if he is satisfied that there has been a material change of circumstance since the revocation.
- (5) If, as a result of paragraph 24(1) or (3), there is a transitional period in respect of provisions of an agreement relating to goods—
- (a) which immediately before the starting date are exempt under section 14 of the RPA, or
  - (b) which, when continuing proceedings are determined, are found to be exempt under section 14 of the RPA,
- the period is not affected by paragraph 37 or 38.

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

**C53** Sch. 13 paras. 36-39 modified (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003 (c. 21)**, ss. 371(8), 411(2) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

**PART V**

THE FAIR TRADING ACT 1973

*References to the Monopolies and Mergers Commission*

- 40 (1) If, on the date on which the repeal by this Act of a provision mentioned in subparagraph (2) comes into force, the Monopolies and Mergers Commission has not completed a reference which was made to it before that date, continued consideration of the reference may include consideration of a question which could not have been considered if the provision had not been repealed.
- (2) The provisions are—
- (a) sections 10(2), 54(5) and 78(3) and paragraph 3(1) and (2) of Schedule 8 to the Fair Trading Act 1973 (c. 41);
  - (b) section 11(8)(b) of the Competition Act 1980 (c. 21);
  - (c) section 14(2) of the Telecommunications Act 1984 (c. 12);
  - (d) section 45(3) of the Airports Act 1986 (c. 31);

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- (e) section 25(2) of the Gas Act 1986 (c. 44);
- (f) section 13(2) of the Electricity Act 1989 (c. 29);
- (g) section 15(2) of the Water Industry Act 1991 (c. 56);
- (h) article 16(2) of the <sup>M82</sup>Electricity (Northern Ireland) Order 1992;
- (i) section 14(2) of the Railways Act 1993 (c. 43);
- (j) article 36(3) of the <sup>M83</sup>Airports (Northern Ireland) Order 1994;
- (k) article 16(2) of the <sup>M84</sup>Gas (Northern Ireland) Order 1996.

**Marginal Citations**

**M82** [S.I. 1992/231 \(N.I. 1\)](#).

**M83** [S.I. 1994/426 \(N.I. 1\)](#).

**M84** [S.I. 1996/275 \(N.I. 2\)](#).

*Orders under Schedule 8*

41 (1) In this paragraph—

“the 1973 Act” means the <sup>M85</sup>Fair Trading Act 1973;

“agreement” means an agreement entered into before the date on which the repeal of the limiting provisions comes into force;

“the order” means an order under section 56 or 73 of the 1973 Act;

“the limiting provisions” means sub-paragraph (1) or (2) of paragraph 3 of Schedule 8 to the 1973 Act (limit on power to make orders under paragraph 1 or 2 of that Schedule) and includes any provision of the order included because of either of those sub-paragraphs; and

“transitional period” means the period which—

- (a) begins on the day on which the repeal of the limiting provisions comes into force; and
- (b) ends on the first anniversary of the starting date.

(2) Sub-paragraph (3) applies to any agreement to the extent to which it would have been unlawful (in accordance with the provisions of the order) but for the limiting provisions.

(3) As from the end of the transitional period, the order is to have effect in relation to the agreement as if the limiting provisions had never had effect.

**Marginal Citations**

**M85** [1973 c. 41](#).

*Part III of the Act*

42 (1) The repeals made by section 1 do not affect any proceedings in respect of an application which is made to the Court under Part III of the <sup>M86</sup>Fair Trading Act 1973, but is not determined, before the starting date.

(2) The question whether (for the purposes of sub-paragraph (1)) an application has been determined is to be decided in accordance with sub-paragraphs (3) and (4).

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- (3) If an appeal against the decision on the application is brought, the application is not determined until—
- (a) the appeal is disposed of or withdrawn; or
  - (b) if as a result of the appeal the case is referred back to the Court—
    - (i) the expiry of the period within which an appeal (“the further appeal”) in respect of the Court’s decision on that reference could have been brought had this Act not been passed; or
    - (ii) if later, the date on which the further appeal is disposed of or withdrawn.
- (4) Otherwise, the application is not determined until the expiry of the period within which any party to the application would have been able to bring an appeal against the decision on the application had this Act not been passed.
- (5) Any amendment made by Schedule 12 to this Act which substitutes references to a relevant Court for references to the Court is not to affect proceedings of the kind referred to in sub-paragraph (1).

**Marginal Citations**

**M86** 1973 c. 41.

**PART VI**

THE COMPETITION ACT 1980

*Undertakings*

- 43 (1) Subject to sub-paragraph (2), an undertaking accepted by the Director under section 4 or 9 of the <sup>M87</sup>Competition Act 1980 ceases to have effect on the coming into force of the repeal by this Act of that section.
- (2) If the undertaking relates to an agreement which on the starting date is the subject of continuing proceedings, the undertaking continues to have effect for the purposes of section 29 of the Competition Act 1980 until the proceedings are determined.

**Marginal Citations**

**M87** 1980 c. 21.

*Application of sections 25 and 26*

- 44 The repeals made by section 1 do not affect—
- (a) the operation of section 25 of the Competition Act 1980 in relation to an application under section 1(3) of the RTPA which is made before the starting date;
  - (b) an application under section 26 of the Competition Act 1980 which is made before the starting date.

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## PART VII

### MISCELLANEOUS

#### *Disclosure of information*

- 45 (1) Section 55 of this Act applies in relation to information which, immediately before the starting date, is subject to section 41 of the RTPA as it applies in relation to information obtained under or as a result of Part I.
- (2) But section 55 does not apply to any disclosure of information of the kind referred to in sub-paragraph (1) if the disclosure is made—
- (a) for the purpose of facilitating the performance of functions of a designated person under the <sup>M88</sup>Control of Misleading Advertisements Regulations 1988; or
  - (b) for the purposes of any proceedings before the Court or of any other legal proceedings under the RTPA or the <sup>M89</sup>Fair Trading Act 1973 or the Control of Misleading Advertisements Regulations 1988.
- (3) Section 56 applies in relation to information of the kind referred to in sub-paragraph (1) if particulars containing the information have been entered or filed on the special section of the register maintained by the Director under, or as a result of, section 27 of the RTPA or paragraph 10 of this Schedule.
- (4) Section 55 has effect, in relation to the matters as to which section 41(2) of the RTPA had effect, as if it contained a provision similar to section 41(2).

#### **Marginal Citations**

**M88** S.I. 1988/915.

**M89** 1973 c. 41.

#### *The Court*

- 46 If it appears to the Lord Chancellor that a person who ceases to be a non-judicial member of the Court as a result of this Act should receive compensation for loss of office, he may pay to him out of moneys provided by Parliament such sum as he may with the approval of the Treasury determine.

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## SCHEDULE 14

Section 74(3).

### REPEALS AND REVOCATIONS

#### PART I

#### REPEALS

##### Commencement Information

**I36** Sch. 14 Pt. I partly in force; Sch. 14 Pt. I not in force at Royal Assent see s. 76(3); Sch. 14 Pt. I in force for certain purposes at 11.1.1999 by [S.I. 1998/3166, art. 2, Sch.](#); Sch. 14 Pt. I in force for certain purposes at 1.4.1999 by [S.I. 1999/505, art. 2, Sch. 2](#); Sch. 14 Pt. I in force for certain purposes at 10.11.1999 by [S.I. 1999/2859, art. 2](#); Sch. 14 Pt. I (except the repeal of Restrictive Practices Court Act 1976) in force at 1.3.2000 by [S.I. 2000/344, art. 2, Sch.](#)

Chapter	Short title	Extent of repeal
1973 c. 41.	The Fair Trading Act 1973.	Section 4. Section 10(2). Section 45. Section 54(5). Section 78(3). In section 81(1), in the words before paragraph (a), from “and the Commission” to “of this Act”; in paragraph (b), “or the Commission, as the case may be” and “or of the Commission”; in subsection (2), “or the Commission” and “or of the Commission” and in subsection (3), from “and, in the case,” to “85 of this Act”, and “or the Commission, as the case may be.” In section 83, in subsection (1) “Subject to subsection (1A) below” and subsection (1A). In section 135(1), in the words before paragraph (a) and in paragraph (b), “or the Commission”, and paragraph (a). Schedule 3.

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		In Schedule 8, paragraph 3(1) and (2).
1976 c. 33.	The Restrictive Practices Court Act 1976.	The whole Act.
1976 c. 34.	The Restrictive Trade Practices Act 1976.	The whole Act.
1976 c. 53.	The Resale Prices Act 1976.	The whole Act.
1976 c. 76.	The Energy Act 1976.	Section 5.
1977 c. 19.	The Restrictive Trade Practices Act 1977.	The whole Act.
1977 c. 37.	The Patents Act 1977.	Sections 44 and 45.
1979 c. 38.	The Estate Agents Act 1979.	In section 10(3), “or the Restrictive Trade Practices Act 1976.”
1980 c. 21.	The Competition Act 1980.	Sections 2 to 10.  In section 11(8), paragraph (b) and the “and” immediately before it.  In section 13(1), from “but the giving” to the end.  In section 15, subsections (2) (b), (3) and (4).  Section 16(3).  In section 17, “8(1)” in subsections (1) and (3) to (5) and in subsection (2) “8(1) or”.  In section 19(3), paragraph (d).  In section 19(5)(a), “or in anything published under section 4(2)(a) above”.  Section 22.  Sections 25 to 30.  In section 31, subsection (2) and “10” in subsection (3).  Section 33(3) and (4).
1984 c. 12.	The Telecommunications Act 1984.	Section 14(2).  In section 16(5), the “or” immediately after paragraph (a).

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		In section 50(4), paragraph (c) and the “and” immediately after it.
		In section 50(5), “or (3)”.
		In section 50(7), “or the 1980 Act”.
		In section 95(1), “or section 10(2)(a) of the 1980 Act”.
		In section 95(2), paragraph (c) and the “or” immediately before it.
		In section 95(3), “or the 1980 Act”.
		In section 101(3), paragraphs (d) and (e).
1986 c. 31.	The Airports Act 1986.	Section 45(3).
		In section 54(1), “or section 10(2)(a) of the 1980 Act”.
		In section 54(3), paragraph (c) and the “or” immediately before it.
		In section 54(4), “or the 1980 Act”.
		In section 56(a)(ii), “or the 1980 Act”.
1986 c. 44.	The Gas Act 1986.	Section 25(2).
		In section 27(1), “or section 10(2)(a) of the Competition Act 1980”.
		In section 27(3)(a), from “or” to “competition reference”.
		In section 27(6), “or the said Act of 1980”.
		In section 28(5), the “or” immediately after paragraph (aa).
		In section 36A(5), paragraph (d) and the “and” immediately before it.
		In section 36A(6), “or (3)”.

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		In section 36A(8), “or under the 1980 Act”.
		In section 36A(9), “or the 1980 Act”.
		In section 42(3), paragraphs (e) and (f).
1986 c. 60.	The Financial Services Act 1986.	Section 126.
1987 c. 43.	The Consumer Protection Act 1987.	In section 38(3), paragraphs (e) and (f).
1987 c. 53.	The Channel Tunnel Act 1987.	In section 33(2), paragraph (c) and the “and” immediately before it.
		In section 33(5), paragraphs (b) and (c).
1988 c. 54.	The Road Traffic (Consequential Provisions) Act 1988.	In Schedule 3, paragraph 19.
1989 c. 15.	The Water Act 1989.	In section 174(3), paragraphs (d) and (e).
1989 c. 29.	The Electricity Act 1989.	Section 13(2).
		In section 15(1), paragraph (b) and the “or” immediately before it.
		In section 15(2), paragraph (c) and the “or” immediately before it.
		In section 15(3), “or the 1980 Act”.
		In section 25(5), the “or” immediately after paragraph (b).
		In section 43(4), paragraph (c) and the “and” immediately after it.
		In section 43(5), “or (3)”.
		In section 43(7), “or the 1980 Act”.
		In section 57(3), paragraphs (d) and (e).
1989 c. 40.	The Companies Act 1989.	In Schedule 20, paragraphs 21 to 24.



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1990 c. 42.	The Broadcasting Act 1990.	In section 193(2), paragraph (c) and the “and” immediately before it.  In section 193(4), “or the Competition Act 1980”.
1991 c. 56.	The Water Industry Act 1991.	In section 12(5), “or the 1980 Act”.  Section 15(2).  In section 17(1), paragraph (b) and the “or” immediately before it.  In section 17(2), paragraph (c) and the “or” immediately before it.  In section 17(4), “or the 1980 Act”.  In section 31(4), paragraph (c) and the “and” immediately before it.  In section 31(5), “or in subsection (3) above”.  In section 31(6), “or in subsection (3) above”.  In section 31(7), “or (3)”.  In section 31(9), “or the 1980 Act”.  In Part II of Schedule 15, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1991 c. 57.	The Water Resources Act 1991.	In Part II of Schedule 24, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
1993 c. 21.	The Osteopaths Act 1993.	In section 33(4), paragraph (b) and the “or” immediately before it.  In section 33(5), “or section 10 of the Act of 1980”.
1993 c. 43.	The Railways Act 1993.	Section 14(2).

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		In section 16(1), paragraph (b) and the “or” immediately before it.
		In section 16(2), paragraph (c) and the “or” immediately before it.
		In section 16(5), “or the 1980 Act”.
		In section 67(4), paragraph (c) and the “and” immediately after it.
		In section 67(6)(a), “or (3)”.
		In section 67(9), “or under the 1980 Act”.
		Section 131.
		In section 145(3), paragraphs (d) and (e).
1994 c. 17.	The Chiropractors Act 1994.	In section 33(4), paragraph (b) and the “or” immediately before it.
		In section 33(5), “or section 10 of the Act of 1980”.
1994 c. 21.	The Coal Industry Act 1994.	In section 59(4), paragraphs (e) and (f).
1994 c. 40.	The Deregulation and Contracting Out Act 1994.	Sections 10 and 11.
		In section 12, subsections (1) to (6).
		In Schedule 4, paragraph 1.
		In Schedule 11, in paragraph 4, sub-paragraphs (3) to (6).
1996 c. 55.	The Broadcasting Act 1996.	Section 77(2).

## PART II

### REVOCATIONS

#### Commencement Information

**I37** Sch. 14 Pt. II wholly in force; Sch. 14 Pt. II not in force at Royal Assent see s. 76(3); Sch. 14 Pt. II in force for certain purposes at 1.4.1999 by S.I. 1999/505, art. 2, **Sch. 2**; Sch. 14 Pt. II fully in force at 1.3.2000 by S.I. 2000/344, art. 2, **Sch.**

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Reference	Title	Extent of revocation
S.I. 1981/1675 (N.I.26).	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraphs 42 and 43.
S.I. 1982/1080 (N.I.12).	The Agricultural Marketing (Northern Ireland) Order 1982.	In Schedule 8, the entry relating to paragraph 16(2) of Schedule 3 to the Fair Trading Act 1973 and in the entry relating to the Competition Act 1980, "and 15(3)".
S.I. 1986/1035 (N.I.9).	The Companies Consolidation (Consequential Provisions)(Northern Ireland) Order 1986.	In Part II of Schedule 1, the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976.
S.I. 1992/231 (N.I.1).	The Electricity (Northern Ireland) Order 1992.	Article 16(2).  In Article 18— (a) in paragraph (1), subparagraph (b) and the "or" immediately before it; (b) in paragraph (2), subparagraph (c) and the "or" immediately before it; (c) in paragraph (3) "or the 1980 Act".  In Article 28(5), the "or" immediately after subparagraph (b).  In Article 46— (a) in paragraph (4), subparagraph (c) and the "and" immediately after it; (b) in paragraph (5), "or (3)"; (c) in paragraph (7), "or the 1980 Act".  Article 61(3)(f) and (g).  In Schedule 12, paragraph 16.
S.I. 1994/426 (N.I.1).	The Airports (Northern Ireland) Order 1994.	Article 36(3).  In Article 45— (a) in paragraph (1), "or section 10(2)(a) of the 1980 Act";

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S.I. 1996/275 (N.I.2).	The Gas (Northern Ireland) Order 1996.	<p>(b) in paragraph (3), subparagraph (c) and the “or” immediately before it;          (c) in paragraph (4), “or the 1980 Act”.</p> <p>In Article 47(a)(ii), “or the 1980 Act”.</p> <p>In Schedule 9, paragraph 5.          Article 16(2).</p> <p>In Article 18—          (a) in paragraph (1), subparagraph (b) and the “or” immediately before it;          (b) in paragraph (3), subparagraph (c) and the “or” immediately before it;          (c) in paragraph (5), “or the 1980 Act”.</p> <p>In Article 19(5), the “or” immediately after subparagraph (b).</p> <p>In Article 23—          (a) in paragraph (4), subparagraph (d) and the “and” immediately before it;          (b) in paragraph (5), “or (3)”;          (c) in paragraph (7), “or under the 1980 Act”;          (d) in paragraph (8), “or the 1980 Act”.</p> <p>Article 44(4)(f) and (g).</p>
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