

*Status: Point in time view as at 01/10/2011.*

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## SCHEDULES

### SCHEDULE 24

Section 276

#### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

##### **Textual Amendments applied to the whole legislation**

- F1** Act: for the words "solicitor of the Supreme Court of Northern Ireland" wherever they occur there is substituted (prosp.) the words "solicitor of the Court of Judicature of Northern Ireland" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 5](#) [Editorial Note: this amendment will be carried through into the text of the Act at the same time as any other effects on the Act for the year in which the relevant commencement order (or first such order) is made]

##### *Operation of references to OFT before commencement of section 2(3)*

- 1 (1) This paragraph applies to any provision contained in this Act, or made by virtue of this Act, which contains a reference to the OFT but comes into force before the time at which section 2(3) comes into force.
- (2) Until that time any reference to the OFT is to be taken as a reference to the Director.

##### *Pensions etc. of former Directors*

- 2 In the case of any such person who has held the office of the Director as may be determined by the Secretary of State with the approval of the Minister for the Civil Service—
- (a) such pension, allowance or gratuity shall be paid to or in respect of him on his retirement or death, or
- (b) such contributions or payments shall be paid towards provision for such a pension, allowance or gratuity,
- as may be so determined.

##### *First financial year of the OFT*

- 3 (1) If the period beginning with the day on which the OFT is established and ending with the next 31st March is six months or more, the first financial year of the OFT is that period.
- (2) Otherwise the first financial year of the OFT is the period beginning with the day on which it is established and ending with 31st March in the following year.

##### *First annual plan of the OFT*

- 4 (1) The OFT's first annual plan (as required by section 3(1)) shall be published within the period of three months beginning with the day on which it is established.

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- (2) Subject to sub-paragraph (3), that annual plan shall relate to the period beginning with the date of publication and ending with the next 31st March.
- (3) If the period mentioned in sub-paragraph (2) is three months or less, that annual plan shall relate to the period beginning with the date of publication and ending with the 31st March in the following year.

*Last annual report of the Director General of Fair Trading*

- 5 (1) After the abolition of the office of the Director, any duty of his to make an annual report, in relation to any calendar year for which such a report has not been made, shall be performed by the OFT.
- (2) The period between the abolition of that office and the end of the preceding calendar year (if less than 12 months) shall be treated as the calendar year for which the last annual report is required.
- (3) If that period is nine months or more, the OFT shall make the last annual report as soon as practicable after the end of that period.
- (4) Otherwise the OFT shall make the last annual report no later than the making of its first report under section 4(1).
- (5) In this paragraph “annual report” means a report required by section 125(1) of the 1973 Act.

*Effect of transfers under section 2*

- 6 (1) In this paragraph—
  - “commencement” means the commencement of section 2(1);
  - “transferred” means transferred by section 2(1).
- (2) Anything which—
  - (a) has been done by or in relation to the Director for the purposes of or in connection with anything transferred; and
  - (b) is in effect immediately before commencement,
 shall be treated as if done by or in relation to the OFT.
- (3) Anything (including legal proceedings) which—
  - (a) relates to anything transferred; and
  - (b) is in the process of being done by or in relation to the Director immediately before it is transferred,
 may be continued by or in relation to the OFT.
- (4) Nothing in section 2 or this paragraph affects the validity of anything done by or in relation to the Director before commencement.

*First President and Registrar of the Competition Appeal Tribunal*

- 7 The person who is President of the Competition Commission Appeal Tribunals (under paragraph 4 of Schedule 7 to the 1998 Act) immediately before the commencement of section 12 is on that date to become the President of the

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Competition Appeal Tribunal as if duly appointed under that section, on the same terms.

- 8 The person who is Registrar of Appeal Tribunals (under paragraph 5 of Schedule 8 to the 1998 Act) immediately before the commencement of section 12 is on that date to become the Registrar of the Competition Appeal Tribunal as if duly appointed under that section, on the same terms.
- 9 Any person who is a member of the Competition Commission appeal panel (but not a member of the panel of chairmen) immediately before the commencement of section 12 is on that date to become a member of the Competition Appeal Tribunal, on such terms and for such a period as the Secretary of State may determine.
- 10 Any member of the Competition Commission appeal panel who is, immediately before the commencement of section 12, a member of the panel of chairmen under paragraph 26 of Schedule 7 to the 1998 Act is on that date to become a chairman of the Competition Appeal Tribunal, on such terms and for such a period as the Lord Chancellor may determine.
- 11 Nothing in paragraph 7, 8, 9 or 10 applies to any person who, before the commencement of section 12, gives notice to the Secretary of State stating that he does not wish that paragraph to apply to him.

#### *Tribunal rules*

- 12 (1) Any rules made under section 48 of the 1998 Act which are in force immediately before the commencement of section 15 above shall be treated after that commencement as having been made under section 15.
- (2) The Secretary of State may treat any consultation carried out with the President of the Competition Commission Appeal Tribunals (before the appointment of the President of the Competition Appeal Tribunal) as being as effective for the purposes of section 15(1) as if it had been carried out with the President of the Competition Appeal Tribunal.

#### *Merger references*

- 13 (1) Subject to paragraphs 15 to 18, the old law shall continue to apply where—
- (a) two or more enterprises have ceased to be distinct enterprises (within the meaning of Part 5 of the 1973 Act); and
  - (b) the cessation has occurred before the appointed day.
- (2) Subject to sub-paragraphs (3), (4) and (5) and paragraphs 15 to 18, the old law shall continue to apply in relation to any relevant arrangements which were in progress or in contemplation before the appointed day and are in progress or in contemplation on that day and (if events so require) the actual results of those arrangements where, before the appointed day—
- (a) a merger notice was given, and not rejected under section 75B(7) of the 1973 Act or withdrawn, in relation to the arrangements;
  - (b) no merger notice was so given but, in relation to the arrangements—
    - (i) a reference was made under section 75 of the 1973 Act;
    - (ii) undertakings were accepted under section 75G of that Act; or

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- (iii) a decision was made by the Secretary of State neither to make a reference under section 75 of that Act nor to accept undertakings under section 75G of that Act; or
- (c) a merger notice was so given, was rejected under section 75B(7) of the 1973 Act or withdrawn, paragraph (a) does not apply in relation to a different merger notice given in relation to the arrangements and, in relation to the arrangements, paragraph (b)(i), (ii) or (iii) applies.
- (3) Subject to sub-paragraph (8), the new law shall, in a case of the kind mentioned in sub-paragraph (2)(a), apply in relation to any relevant arrangements and (if events so require) the actual results of those arrangements if, on or after the appointed day, a merger notice is rejected under section 75B(7) of the 1973 Act or withdrawn in relation to the arrangements.
- (4) Subject to sub-paragraph (8), the new law shall, in a case of the kind mentioned in sub-paragraph (2)(a), apply in relation to any relevant arrangements and (if events so require) the actual results of those arrangements if—
- (a) the making of a reference under section 64 or 75 of the 1973 Act in relation to those arrangements and (if events so require) the actual results of those arrangements was, immediately before the appointed day and by virtue of section 75C(1)(c), (e) or (g) of that Act, not prevented;
  - (b) the period for considering the merger notice has expired (whether before, on or after the appointed day); and
  - (c) no reference has been made under section 64 or 75 of the 1973 Act and no undertakings have been accepted under section 75G of that Act.
- (5) Subject to sub-paragraph (8), the new law shall, in a case of the kind mentioned in sub-paragraph (2)(a), apply in relation to any relevant arrangements and (if events so require) the actual results of those arrangements if—
- (a) the making of a reference under section 64 or 75 of the 1973 Act in relation to those arrangements and (if events so require) the actual results of those arrangements becomes, on or after the appointed day and by virtue of section 75C(1)(b), (c), (d), (e) or (g) of that Act, not prevented;
  - (b) the period for considering the merger notice has expired (whether before, on or after the appointed day); and
  - (c) no reference has been made under section 64 or 75 of the 1973 Act and no undertakings have been accepted under section 75G of that Act.
- (6) Subject to sub-paragraph (8), the new law shall apply in relation to relevant arrangements and (if events so require) the actual results of those arrangements if—
- (a) the arrangements were in progress or in contemplation before the appointed day and are in progress or in contemplation on that day;
  - (b) before the appointed day and in relation to the arrangements—
    - (i) no reference was made under section 75 of the 1973 Act;
    - (ii) no undertakings were accepted under section 75G of that Act; and
    - (iii) a decision neither to make a reference under section 75 of that Act nor to accept undertakings under section 75G of that Act was not made by the Secretary of State; and
  - (c) no merger notice was given to the Director or the OFT before that day in relation to the arrangements.

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- (7) Subject to sub-paragraph (8), the new law shall, in a case of the kind mentioned in sub-paragraph (2)(c) (excluding the words from “and” to the end), apply in relation to any relevant arrangements and (if events so require) the actual results of those arrangements if, in relation to the arrangements, sub-paragraph (2)(b)(i), (ii) and (iii) do not apply.
- (8) Subject to paragraphs 15 to 18, the old law shall continue to apply in relation to concentrations with a Community dimension (within the meaning of the European Merger Regulations) notified before the appointed day to the European Commission under article 4 of those Regulations.
- (9) In this paragraph references to relevant arrangements which are in progress or in contemplation on the appointed day include references to the actual results of those arrangements if the arrangements were in progress or in contemplation immediately before the appointed day and have, at the beginning of the appointed day, resulted in two or more enterprises ceasing to be distinct enterprises (within the meaning of Part 5 of the 1973 Act).
- (10) In this paragraph—
- “the European Merger Regulations” has the meaning given by section 129(1);
  - “merger notice” means a notice under section 75A(1) of the 1973 Act;
  - “the new law” means Part 3 of this Act and any related provision of law (including, in particular, any modification made under section 276(2) to that Part or any such provision);
  - “the old law” means sections 64 to 75K of the 1973 Act and any related provision of law (including, in particular, any modification made under section 276(2) to those sections or any such provision); and
  - “relevant arrangements” means arrangements which might result in two or more enterprises ceasing to be distinct enterprises (within the meaning of Part 5 of the 1973 Act).

#### *Monopoly references*

- 14 (1) Subject to paragraphs 15 to 18, the old law shall continue to apply in relation to any monopoly reference made before the appointed day under section 50 or 51 of the 1973 Act.
- (2) No person has to comply on or after the appointed day with a requirement imposed before that day under section 44 of the 1973 Act.
- (3) In this paragraph—
- “monopoly reference” has the meaning given by section 5(3) of the 1973 Act; and
  - “the old law” means Part 4 of the 1973 Act and any related provision of law (including, in particular, any modification made under section 276(2) to that Part or any such provision).

#### *Enforcement undertakings and orders*

- 15 (1) Section 94(1) to (6) shall apply in relation to any undertaking—

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- (a) accepted (whether before, on or after the appointed day) by a Minister of the Crown—
    - (i) in pursuance of a proposal under section 56A of the 1973 Act; or
    - (ii) under section 56F, 75G or 88 of that Act; and
  - (b) of a description specified in an order made by the Secretary of State under this paragraph;
- as it applies in relation to enforcement undertakings under Part 3.
- (2) Section 94(1) to (6) shall apply in relation to any order made by a Minister of the Crown under section 56, 73, 74, 75K or 89 of the 1973 Act (whether before, on or after the appointed day) and of a description specified in an order made by the Secretary of State under this paragraph as it applies in relation to enforcement orders under Part 3.
- (3) Compliance with—
- (a) an undertaking accepted by a Minister of the Crown under section 88 of the 1973 Act (whether before, on or after the appointed day) and of a description specified in an order made by the Secretary of State under this paragraph; or
  - (b) an order made by a Minister of the Crown under section 56, 73, 74 or 89 of the 1973 Act (whether before, on or after the appointed day) and of a description specified in an order made by the Secretary of State under this paragraph;
- shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
- (4) Sub-paragraph (3) and section 94(6) as applied by virtue of sub-paragraph (1) or (2) shall not prejudice any right that a person may have by virtue of section 94(4) as so applied to bring civil proceedings for contravention or apprehended contravention of an undertaking or order.
- (5) Sections 93 and 93A of the 1973 Act shall accordingly cease to apply in relation to undertakings and orders to which sub-paragraphs (1) to (3) above apply.
- 16 (1) Sub-paragraph (2) applies to any undertaking—
- (a) accepted (whether before, on or after the appointed day) by a Minister of the Crown—
    - (i) in pursuance of a proposal under section 56A of the 1973 Act; or
    - (ii) under section 56F, 75G or 88 of that Act; and
  - (b) of a description specified in an order made by the Secretary of State under this paragraph.
- (2) An undertaking to which this sub-paragraph applies may be—
- (a) superseded by a new undertaking accepted by the relevant authority under this paragraph;
  - (b) varied by an undertaking accepted by the relevant authority under this paragraph; or
  - (c) released by the relevant authority.
- (3) Subject to sub-paragraph (4) and any provision made under section 276(2), the power of the relevant authority under this paragraph to supersede, vary or release an undertaking is exercisable in the same circumstances, and on the same terms and conditions, as the power of the Minister concerned to supersede, vary or release the undertaking would be exercisable under the 1973 Act.

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- (4) The duty under section 75J(b) of the 1973 Act to give advice shall be a duty of the OFT to consider what action (if any) it should take.
  - (5) Where the relevant authority has the power by virtue of this paragraph to supersede, vary or release an undertaking accepted by a Minister of the Crown—
    - (a) in pursuance of a proposal under section 56A of the 1973 Act; or
    - (b) under section 56F, 75G or 88 of that Act;the Minister concerned shall accordingly cease to have the power under that Act to supersede, vary or release the undertaking.
  - (6) In this paragraph “the relevant authority” means—
    - (a) in the case of an undertaking accepted in pursuance of a proposal under section 56A of the 1973 Act or an undertaking under section 56F or 75G of that Act, the OFT; and
    - (b) in the case of an undertaking accepted under section 88 of that Act, the Commission.
- 17
  - (1) Any order made by a Minister of the Crown under section 56, 73, 74 or 89 of the 1973 Act (whether before, on or after the appointed day) and of a description specified in an order made by the Secretary of State under this paragraph may be varied or revoked by an order made by the Commission under this paragraph.
  - (2) Any order made by a Minister of the Crown under section 75K of the 1973 Act (whether before, on or after the appointed day) and of a description specified in an order made by the Secretary of State under this paragraph may be varied or revoked by an order made by the OFT under this paragraph.
  - (3) Subject to sub-paragraph (4) and any provision made under section 276(2), the power of the Commission to make an order under sub-paragraph (1), and the power of the OFT to make an order under sub-paragraph (2), is exercisable in the same circumstances, and on the same terms and conditions, as the power of the Minister concerned to make a corresponding varying or revoking order under the 1973 Act would be exercisable.
  - (4) The power of the Commission to make an order under sub-paragraph (1), and the power of the OFT to make an order under sub-paragraph (2), shall not be exercisable by statutory instrument and shall not be subject to the requirements of section 134(1) of the 1973 Act.
  - (5) Where the Commission or the OFT has the power by virtue of this paragraph to vary or revoke an order made by a Minister of the Crown under section 56, 73, 74, 75K or 89 of the 1973 Act, the Minister concerned shall accordingly cease to have the power to do so under that Act.
- 18
  - (1) Section 94(1) to (6) shall apply in relation to undertakings accepted under paragraph 16 and orders made under paragraph 17 as it applies in relation to enforcement undertakings and enforcement orders under Part 3.
  - (2) Compliance with an undertaking accepted by the Commission under paragraph 16 or an order made by it under paragraph 17 shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.
  - (3) Sub-paragraph (2) and section 94(6) as applied by virtue of sub-paragraph (1) shall not prejudice any right that a person may have by virtue of section 94(4) as so

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applied to bring civil proceedings for contravention or apprehended contravention of an undertaking or order.

*Paragraphs 13 to 18: supplementary provision*

- 19 (1) In paragraphs 13 to 18 “the appointed day” means such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (2) An order made by the Secretary of State under paragraph 15, 16 or 17—
- (a) may make different provision for different purposes; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Subordinate Legislation Made**

**P1** Sch. 24 para. 19(1) power partly exercised: 20.6.2003 appointed for specified provisions and purposes by {S.I. 2003/1397}, art. 2 (with savings in arts. 4-12)

*Designation orders under Schedule 4 to the 1998 Act*

- 20 (1) Subject to sub-paragraph (2), the repeals made by section 207 do not affect—
- (a) the operation of Schedule 4 to the 1998 Act in relation to any application for designation of a professional rule which is made before the commencement date;
  - (b) the operation of section 3(1)(d) of and Schedule 4 to the 1998 Act in relation to any designation effected by an order made before the commencement date or on an application mentioned in paragraph (a).
- (2) No designation order (whenever made) shall have any effect in relation to any period of time after the end of the transitional period.
- (3) Subject to sub-paragraph (2) a designation order may be made after the end of the transitional period on an application mentioned in sub-paragraph (1)(a).
- (4) For the purposes of this paragraph—
- “commencement date” means the day on which section 207 comes into force;
  - “designation” means designation under paragraph 2 of Schedule 4 to the 1998 Act; and
  - “the transitional period” means the period of three months beginning with the commencement date.

*Proceedings under Part 3 of the 1973 Act*

- 21 The repeal of section 133(3) of the 1973 Act does not affect any right to disclose information for the purposes of any proceedings before the Restrictive Practices Court to which paragraph 42 of Schedule 13 to the 1998 Act applies.



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### *Supplementary*

- 22 Any provision made by any of paragraphs 1 to 21 shall not apply if, and to the extent that, an order under section 276(2) makes alternative provision or provides for it not to apply.

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