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*Changes to legislation: There are currently no known outstanding effects for the Enterprise Act 2002, Paragraph 28. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 25 **U.K.**

#### MINOR AND CONSEQUENTIAL AMENDMENTS

*Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1))*

- 28 (1) The Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (licence modification references to Commission) paragraphs (8) and (8A) shall cease to have effect.
- (3) After Article 15 there is inserted—

#### **References under Article 15: time limits**

- “15A(1) Every reference under Article 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under Article 15 shall not have effect (and no action shall be taken in relation to it under Article 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under paragraph (3).
- (3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under paragraph (3) in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under paragraph (3)—
- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by him under subparagraph (a) to the licence holder.

#### **References under Article 15: powers of investigation**

- 15B (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 15 as they apply for the purposes of references under that Part—

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- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”
- (4) In Article 16 (reports on licence modification references)—
- (a) after paragraph (1) there is inserted—
    - “(1A) For the purposes of Article 17, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for paragraph (3) there is substituted—
    - “(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 15.

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- (3A) In making any report on a reference under Article 15 the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (3C)(a) or (b) is necessary for the purposes of the report.”
- (5) In Article 46 (functions with respect to competition)—
- (a) paragraph (1) shall cease to have effect;
  - (b) in paragraph (3), for “the Director General of Fair Trading, the functions of that Director” there is substituted “ the Office of Fair Trading, the functions of the Office of Fair Trading ”;
  - (c) in paragraph (3A), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (d) in paragraph (6), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (6) In Article 50 (general functions), in paragraph (3)—
- (a) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) for “that Director” there is substituted “ the Office of Fair Trading ”.
- (7) In Article 51 (publication of information and advice), in paragraph (3)—
- (a) for “The Director General of Fair Trading” there is substituted “ The Office of Fair Trading ”;
  - (b) for “section 124 of the 1973 Act” there is substituted “ section 6 of the Enterprise Act 2002 ”.

#### **Commencement Information**

- II** Sch. 25 para. 28 wholly in force at 20.6.2003; Sch. 25 para. 28 not in force at Royal Assent see s. 279; Sch. 25 para. 28(1) in force for certain purposes and Sch. 25 para. 28(5)(6)(7)(a) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 28(1)(2)-(4)(7)(b) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

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