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SCHEDULES

SCHEDULE 25

MINOR AND CONSEQUENTIAL AMENDMENTS

Competition Act 1998 (c. 41)

- 38 (1) The 1998 Act is amended as follows.
- (2) In section 3(4)(b) (excluded agreements), for “the Fair Trading Act 1973” there is substituted “ the Enterprise Act 2002 ”.
- (3) In section 4 (individual exemptions), for “Director” (in each place), “him” and “he” there is substituted “ OFT ”, “ it ” and “ it ” respectively.
- (4) In section 5 (cancellation etc. of individual exemptions), for “Director” (in each place), “he” (in each place) and “his” (in both places) there is substituted “ OFT ”, “ it ” and “ its ” respectively.
- (5) In section 6 (block exemptions)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
- (b) in subsection (6)(c), for “he” there is substituted “ it ”.
- (6) In section 7 (block exemptions: opposition), for “Director” (in each place), and “his” (in both places) there is substituted “ OFT ” and “ its ” respectively.
- (7) In section 8 (block exemptions: procedure)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
- (b) in subsection (1), for “his”, “he” and “him” there is substituted “ its ”, “ it ” and “ it ” respectively;
- (c) in subsection (3), for “he” there is substituted “ it ”.
- (8) In section 10 (parallel agreements)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
- (b) in subsection (8), for “his”, “him” and “he” there is substituted “ its ”, “ it ” and “ it ” respectively.
- (9) In section 12 (requests for Director to examine agreements), for “Director” (in each place) there is substituted “ OFT ”.
- (10) In section 13 (notification for guidance), for “Director” (in each place), “him”, “his” (in both places) and “he” there is substituted “ OFT ”, “ the OFT ”, “ its ” and “ it ” respectively.
- (11) In section 14 (notification for a decision), for “Director” (in each place) and “him” there is substituted “ OFT ” and “ the OFT ” respectively.

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- (12) In section 15 (effect of guidance), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” (in each place) there is substituted “OFT”, “it”, “its” and “it” respectively.
- (13) In section 16 (effect of a decision that the Chapter 1 prohibition has not been infringed), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” there is substituted “OFT”, “it”, “its” and “it” respectively.
- (14) In section 20 (requests for Director to consider conduct), for “Director” (in each place) there is substituted “OFT”.
- (15) In section 21 (notification for guidance), for “Director” (in both places), “him” and “his” there is substituted “OFT”, “the OFT” and “its” respectively.
- (16) In section 22 (notification for a decision), for “Director” (in both places) and “him” there is substituted “OFT” and “the OFT” respectively.
- (17) In section 23 (effect of guidance), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” (in both places) there is substituted “OFT”, “it”, “its” and “it” respectively.
- (18) In section 24 (effect of a decision that the Chapter 2 prohibition has not been infringed), for “Director” (in each place), “he” (in each place), “his” (in each place) and “him” there is substituted “OFT”, “it”, “its” and “it” respectively.
- (19) In section 25 (Director’s power to investigate), for “Director’s” and “Director” there is substituted “OFT’s” and “OFT” respectively.
- (20) In section 26 (powers when conducting investigations)—
- (a) in subsection (1), for “Director”, “him” (in both places) and “he” there is substituted “OFT”, “it” and “it” respectively;
 - (b) in subsection (5), for “Director” there is substituted “OFT”.
- (21) In section 27 (power to enter premises without a warrant)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in subsection (3), for “he” (in both places) there is substituted “it”.
- (22) In section 28 (power to enter premises under a warrant)—
- (a) in subsection (1), for “Director” (in both places) there is substituted “OFT”;
 - (b) in subsection (2)—
 - (i) for “Director” there is substituted “OFT”;
 - (ii) for “his officers whom he” there is substituted “the OFT’s officers whom the OFT”.
- (23) In section 31 (decisions following an investigation), for “Director” (in both places) there is substituted “OFT”.
- (24) In section 32 (directions in relation to agreements)—
- (a) in subsection (1), for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
 - (b) in subsection (2), for “Director’s”, “his” and “him” there is substituted “OFT’s”, “its” and “it” respectively.
- (25) In section 33 (directions in relation to conduct)—

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- (a) in subsection (1), for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
 - (b) in subsection (2), for “Director’s”, “his” and “him” there is substituted “OFT’s”, “its” and “it” respectively.
- (26) In section 34 (enforcement of directions), for “Director” there is substituted “OFT”.
- (27) In section 35 (interim measures), for “Director” (in each place), “his” (in both places), “him” and “he” (in each place) there is substituted “OFT”, “its”, “it” and “it” respectively.
- (28) In section 36 (penalty for infringing Chapter 1 or Chapter 2 prohibition)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in subsections (1) and (2), for “him” there is substituted “the OFT”;
 - (c) in subsection (3), for “he” there is substituted “the OFT”.
- (29) In section 37 (recovery of penalties), for “Director” and “him” there is substituted “OFT” and “the OFT” respectively.
- (30) In section 38 (the appropriate level of a penalty), for “Director” (in each place), “he” (in each place) and “his” there is substituted “OFT”, “it” and “its” respectively.
- (31) In section 39 (limited immunity for small agreements), for “Director” (in each place), “he” (in both places) and “his” (in both places) there is substituted “OFT”, “it” and “its” respectively.
- (32) In section 40 (limited immunity in relation to the Chapter 2 prohibition)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in subsection (4), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;
 - (c) in subsection (5), for “his” there is substituted “its”.
- (33) In section 41 (agreements notified to the Commission), for “Director” there is substituted “OFT”.
- (34) In section 44 (false or misleading information), for “Director” (in each place) and “his” there is substituted “OFT” and “its” respectively.
- (35) In section 45 (the Competition Commission), after subsection (7) there is inserted—
- “(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.”
- (36) In section 46 (appealable decisions), for “Director” (in each place) there is substituted “OFT”.
- (37) In section 50 (vertical agreements and land agreements), for “Director” there is substituted “OFT”.
- (38) In section 51—
- (a) in subsection (1), for “Director” and “he” there is substituted “OFT” and “it” respectively;
 - (b) in subsection (2), for “Director’s” there is substituted “OFT’s”;

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- (c) in subsection (3), for “Director” and “he” (in both places) there is substituted “OFT” and “it” respectively;
- (d) in subsections (5) to (9), for “Director” (in each place) there is substituted “OFT”;
- (e) in subsection (10), for “Director” and “his” there is substituted “OFT” and “its”;

and in the cross-heading before that section, for “*Director’s*” there is substituted “*OFT’s*”.

(39) In section 52 (advice and information)—

- (a) in subsections (2) and (3), for “Director” there is substituted “OFT”;
- (b) in subsection (4), for “Director” and “him” there is substituted “OFT” and “it” respectively;
- (c) in subsection (5), for “Director” and “he” there is substituted “OFT” and “it” respectively;
- (d) in subsection (6), for “Director” and “he” (in both places) there is substituted “OFT” and “it” respectively;
- (e) in subsection (8), for “Director” there is substituted “OFT”.

(40) In section 53 (fees), for “Director” (in each place) and “him” there is substituted “OFT” and “it” respectively.

(41) In section 54 (regulators)—

- (a) in subsection (1), for the words from “any person” to the end of the subsection there is substituted “—
 - (a) the Director General of Telecommunications;
 - (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.”;
- (b) for “Director” (in each place) there is substituted “OFT”.

(42) In section 57 (defamation), for “Director” and “his” there is substituted “OFT” and “its” respectively.

(43) In section 58 (findings of fact by Director)—

- (a) for “Director” (in each place) there is substituted “OFT”;
- (b) for “a Director’s” (in both places) there is substituted “an OFT’s”;

and in the cross-heading before that section, for “*Director*” there is substituted “*OFT*”.

(44) In section 59 (interpretation of Part 1) —

- (a) in subsection (1), the definition of “the Director” shall cease to have effect and after the definition of “officer” there is inserted—

““the OFT” means the Office of Fair Trading;”;

- (b) in subsection (4), for “Director” and “he” there is substituted “OFT” and “it” respectively.

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- (45) In section 60 (principles to be applied in determining questions), for “Director” (in both places) there is substituted “OFT”.
- (46) In section 61 (introduction)—
- (a) in subsection (1)—
 - (i) in the definition of “authorised officer”, for “Director” there is substituted “OFT”;
 - (ii) the definition of “the Director” shall cease to have effect;
 - (iii) after the definition of “Commission investigation” there is inserted—
““the OFT” means the Office of Fair Trading;”;
 - (iv) for ““Director’s investigation” means an investigation conducted by the Director” there is substituted ““OFT’s investigation” means an investigation conducted by the OFT”;
 - (v) for ““Director’s special investigation” means a Director’s” there is substituted ““OFT’s special investigation” means an OFT’s”;
 - (vi) in the definition of “premises”, for “a Director’s” there is substituted “an OFT’s”;
 - (b) in subsection (2)—
 - (i) for “a Director’s” there is substituted “an OFT’s”;
 - (ii) for “Director” there is substituted “OFT”;
 - (c) in subsection (3), for “Director” there is substituted “OFT”.
- (47) In section 62 (power to enter premises: Commission investigation)—
- (a) in subsection (1), for “Director” there is substituted “OFT”, and
 - (b) in subsection (5)—
 - (i) in paragraph (a), for “Director” there is substituted “OFT”;
 - (ii) in paragraph (b), for “his officers whom he” there is substituted “the OFT’s officers whom the OFT”.
- (48) In section 63 (power to enter premises: Director’s special investigations)—
- (a) in subsection (1), for “Director, that a Director’s” there is substituted “OFT, that an OFT’s”;
 - (b) in subsections (2) to (4), for “A Director’s” and “Director” there is substituted “An OFT’s” and “OFT” respectively;
 - (c) in subsection (5), for “Director” there is substituted “OFT”;
 - (d) in the sidenote, for “Director’s” there is substituted “OFT’s”.
- (49) In section 71 (regulations, orders and rules), in subsection (4), after paragraph (c) there is inserted—
“(ca) section 45(8),”.
- (50) In Schedule 1 (exclusions: mergers and concentrations)—
- (a) in paragraph 1—
 - (i) in sub-paragraph (1), for the words from “Part V” to “1973 Act”)” there is substituted “Part 3 of the Enterprise Act 2002 (“the 2002 Act”)”;
 - (ii) in sub-paragraph (4), for “Section 65 of the 1973 Act” there is substituted “Section 26 of the 2002 Act”;

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- (b) in paragraph 2—
 - (i) in sub-paragraph (1)(a), for “Part V of the 1973 Act” there is substituted “ Part 3 of the 2002 Act ”;
 - (ii) in sub-paragraph (2), for “Section 65 of the 1973 Act” there is substituted “ Section 26 of the 2002 Act ”;
- (c) in paragraph 4—
 - (i) for “Director” (in each place) there is substituted “ OFT ”;
 - (ii) in sub-paragraph (2), for “he” (in both places) and “him” there is substituted “ it ” and “ the OFT ” respectively;
 - (iii) in sub-paragraph (5), for “he” (in both places) there is substituted “ it ”;
- (d) in paragraph 5, for paragraphs (a) to (d) there is substituted—
 - “(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.”

(51) In Schedule 3 (general exclusions)—

- (a) in paragraph 2—
 - (i) for “Director” (in each place) there is substituted “ OFT ”;
 - (ii) in sub-paragraph (4), for “he” (in both places) and “him” there is substituted “ it ” and “ the OFT ” respectively;
 - (iii) in sub-paragraph (7), for “if he” and “he is” there is substituted “ if it ” and “ the OFT is ” respectively;
- (b) in paragraph 9—
 - (i) for “Director” (in each place) there is substituted “ OFT ”;
 - (ii) in sub-paragraph (4), for “he” (in both places) and “him” there is substituted “ it ” and “ the OFT ” respectively;
 - (iii) in sub-paragraph (7), for “he” (in both places) there is substituted “ it ”.

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- (52) In Schedule 5 (notification under Chapter 1: procedure)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in paragraph 3, for “he” (in the first place) and “his” there is substituted “it” and “its” respectively;
 - (c) in paragraph 5(2)—
 - (i) for “he thinks” there is substituted “it thinks”;
 - (ii) for “bringing it” there is substituted “bringing the application”;
 - (iii) for “he is” there is substituted “the OFT is”;
 - (iv) the words “for him” shall cease to have effect;
 - (d) in paragraph 5(3), for “him” there is substituted “it”;
 - (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (53) In Schedule 6 (notification under Chapter 2: procedure)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in paragraph 3(1) and (2), for “he” there is substituted “it”;
 - (c) in paragraph 5(2)—
 - (i) for “he thinks” there is substituted “it thinks”;
 - (ii) for “bringing it” there is substituted “bringing the application”;
 - (iii) for “he is” there is substituted “the OFT is”;
 - (iv) the words “for him” shall cease to have effect;
 - (d) in paragraph 5(3), for “him” there is substituted “it”;
 - (e) in paragraph 6, for “he” and “his” (in both places) there is substituted “it” and “its” respectively.
- (54) In Schedule 8 (appeals)—
- (a) for “Director” (in each place) there is substituted “OFT”;
 - (b) in paragraph 2(2)(c), for “Director’s exercise of his” there is substituted “OFT’s exercise of its”;
 - (c) in paragraph 3(2)(d) and (e), for “himself” there is substituted “itself”.
- (55) In Schedule 9 (Director’s rules), for “Director” (in each place), “he” (in each place), “Director’s” (in each place) and “him” there is substituted “OFT”, “it”, “OFT’s” and “it” respectively.

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]

Commencement Information

- II** [Sch. 25 para. 38](#) wholly in force at 20.6.2003; [Sch. 25 para. 38](#) not in force at Royal Assent see [s. 279](#); [Sch. 25 para. 38\(1\)](#) in force for certain purposes and [Sch. 25 para. 38\(3\)-\(34\)\(36\)-\(48\)\(51\)-\(55\)](#) in force at 1.4.2003 by [S.I. 2003/766](#), [art. 2](#), [Sch.](#), [Sch. 25 para. 38\(35\)\(49\)\(50\)\(d\)](#) in force and [Sch. 25 para.](#)

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38(2)(50)(a)-(c) at 20.6.2003 by S.I. 2003/1397, [art. 2](#), Sch., Sch. 25 para. 38(1)(2)(50)(a)-(c) in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, [art. 2\(1\)](#), Sch.

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]

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