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## SCHEDULES

### SCHEDULE 1

Section 1

#### THE OFFICE OF FAIR TRADING

##### *Membership*

- 1 (1) The OFT shall consist of a chairman and no fewer than four other members, appointed by the Secretary of State.
- (2) The Secretary of State shall consult the chairman before appointing any other member.

##### *Terms of appointment, remuneration, pensions etc.*

- 2 (1) Subject to this Schedule, the chairman and other members shall hold and vacate office in accordance with the terms of their respective appointments.
- (2) The terms of appointment of the chairman and other members shall be determined by the Secretary of State.
- 3 (1) An appointment of a person to hold office as chairman or other member shall be for a term not exceeding five years.
- (2) A person holding office as chairman or other member—
  - (a) may resign that office by giving notice in writing to the Secretary of State; and
  - (b) may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour.
- (3) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.
- 4 (1) The OFT shall pay to the chairman and other members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State.
- (2) The OFT shall, if required to do so by the Secretary of State—
  - (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who holds or has held office as chairman or other member; or
  - (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- (3) If, where any person ceases to hold office as chairman or other member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the OFT shall pay to him such amount by way of compensation as the Secretary of State may determine.

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### *Staff*

- 5 (1) The Secretary of State shall, after consulting the chairman, appoint a person (who may, subject to sub-paragraph (2), also be a member of the OFT) to act as chief executive of the OFT on such terms and conditions as the Secretary of State may think appropriate.
- (2) A person appointed as chief executive after the end of the transitional period may not at the same time be chairman.
- (3) In sub-paragraph (2) “the transitional period” means the period of two years beginning with the day on which this paragraph comes into force.
- 6 The OFT may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such other staff as it may determine.

### *Membership of committees or sub-committees of OFT*

- 7 The members of a committee or sub-committee of the OFT may include persons who are not members of the OFT (and a sub-committee may include persons who are not members of the committee which established it).

### *Proceedings etc.*

- 8 (1) The OFT may regulate its own procedure (including quorum).
- (2) The OFT shall consult the Secretary of State before making or revising its rules and procedures for dealing with conflicts of interest.
- (3) The OFT shall from time to time publish a summary of its rules and procedures for dealing with conflicts of interest.
- 9 The validity of anything done by the OFT is not affected by a vacancy among its members or by a defect in the appointment of a member.
- 10 (1) The application of the seal of the OFT shall be authenticated by the signature of—
- (a) any member; or
  - (b) some other person who has been authorised for that purpose by the OFT, whether generally or specially.
- (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.
- 11 A document purporting to be duly executed under the seal of the OFT, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, be taken to be so executed or signed.

### *Performance of functions*

- 12 (1) Anything authorised or required to be done by the OFT (including exercising the power under this paragraph) may be done by—
- (a) any member or employee of the OFT who is authorised for that purpose by the OFT, whether generally or specially;
  - (b) any committee of the OFT which has been so authorised.
- (2) Sub-paragraph (1)(b) does not apply to a committee whose members include any person who is not a member or employee of the OFT.

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### *Supplementary powers*

- 13 The OFT has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

### *Parliamentary Commissioner Act 1967 (c. 13)*

- 14 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation), there is inserted at the appropriate place—  
“Office of Fair Trading.”

### *House of Commons Disqualification Act 1975 (c. 24)*

- 15 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—  
“The Office of Fair Trading.”

### *Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 16 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—  
“The Office of Fair Trading.”

## SCHEDULE 2

Section 12

### THE COMPETITION APPEAL TRIBUNAL

#### *Appointment, etc. of President and chairmen*

- 1 (1) A person is not eligible for appointment as President unless—  
(a) he has a 10 year general qualification;  
(b) he is an advocate or solicitor in Scotland of at least 10 years' standing; or  
(c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 10 years' standing;  
and he appears to the Lord Chancellor to have appropriate experience and knowledge of competition law and practice.
- (2) A person is not eligible for appointment as a chairman unless—  
(a) he has a 7 year general qualification;  
(b) he is an advocate or solicitor in Scotland of at least 7 years' standing; or  
(c) he is a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;  
and he appears to the Lord Chancellor to have appropriate experience and knowledge (either of competition law and practice or any other relevant law and practice).
- (3) Before appointing an advocate or solicitor in Scotland under this paragraph, the Lord Chancellor must consult the Lord President of the Court of Session.

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- (4) In this paragraph “general qualification” has the same meaning as in section 71 of the Courts and Legal Services Act 1990 (c. 41).
- 2 (1) The members appointed as President or as chairmen shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A person may not be a chairman for more than 8 years (but this does not prevent a temporary re-appointment for the purpose of continuing to act as a member of the Tribunal as constituted for the purposes of any proceedings instituted before the end of his term of office).
- (3) The President and the chairmen may resign their offices by notice in writing to the Lord Chancellor.
- (4) The Lord Chancellor may remove a person from office as President or chairman on the ground of incapacity or misbehaviour.
- 3 If the President is absent or otherwise unable to act the Lord Chancellor may appoint as acting President any person qualified for appointment as a chairman.

*Appointment, etc. of ordinary members*

- 4 (1) Ordinary members shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.
- (2) A person may not be an ordinary member for more than 8 years (but this does not prevent a temporary re-appointment for the purpose of continuing to act as a member of the Tribunal as constituted for the purposes of any proceedings instituted before the end of his term of office).
- (3) An ordinary member may resign his office by notice in writing to the Secretary of State.
- (4) The Secretary of State may remove a person from office as an ordinary member on the ground of incapacity or misbehaviour.

*Remuneration etc. for members*

- 5 (1) The Competition Service shall pay to the President, the chairmen and the ordinary members such remuneration (whether by way of salaries or fees), and such allowances, as the Secretary of State may determine.
- (2) The Competition Service shall, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who holds or has held office as President, a chairman or an ordinary member; or
  - (b) make such payments as may be so determined towards provision for the payment of a pension, allowance or gratuities to or in respect of such a person.

*Compensation for loss of office*

- 6 If, where any person ceases to hold office as President, a chairman or ordinary member, the Secretary of State determines that there are special circumstances which

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make it right that he should receive compensation, the Competition Service shall pay to him such amount by way of compensation as the Secretary of State may determine.

*Staff, accommodation and property*

- 7 Any staff, office accommodation or equipment required for the Tribunal shall be provided by the Competition Service.

*Miscellaneous*

- 8 The President must arrange such training for members of the Tribunal as he considers appropriate.
- 9 In this Schedule “chairman” and “ordinary member” mean respectively a member of the panel of chairmen, or a member of the panel of ordinary members, appointed under section 12.
- 10 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—  
“The Competition Appeal Tribunal.”
- 11 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—  
“The Competition Appeal Tribunal.”

SCHEDULE 3

Section 13

THE COMPETITION SERVICE

**PART 1**

CONSTITUTION ETC.

*Membership of the Service*

- 1 (1) The Service shall consist of—  
(a) the President of the Competition Appeal Tribunal;  
(b) the Registrar of the Competition Appeal Tribunal; and  
(c) one or more appointed members.
- (2) An appointed member shall be appointed by the Secretary of State after consulting the President.

*Chairman of Service*

- 2 (1) Subject to sub-paragraph (2), the members shall choose one of their number to be chairman of the Service.

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- (2) The Secretary of State shall designate one of the members to be the first chairman of the Service for such period as the Secretary of State may determine.

#### *Appointed members*

- 3 An appointed member shall hold and vacate office in accordance with the terms of his appointment (and is eligible for re-appointment).

#### *Allowances, etc. for members*

- 4 (1) The Service shall pay—
- (a) such travelling and other allowances to its members, and
  - (b) such remuneration to any appointed member,
- as may be determined by the Secretary of State.
- (2) The Service shall, if required to do so by the Secretary of State—
- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who holds or has held office as an appointed member; or
  - (b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.
- 5 If, where any person ceases to hold office as an appointed member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Service shall pay to him such amount by way of compensation as the Secretary of State may determine.

#### *Staff*

- 6 (1) The Service may, with the approval of the Secretary of State as to numbers and terms and conditions of service, appoint such staff as it may determine.
- (2) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies shall include the staff of the Service.
- (3) The Service shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subparagraph (2) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

#### *Procedure*

- 7 (1) The Service may regulate its own procedure (including quorum).
- (2) The validity of anything done by the Service is not affected by a vacancy among its members or by a defect in the appointment of a member.
- 8 (1) The application of the seal of the Service shall be authenticated by the signature of—
- (a) any member; or
  - (b) some other person who has been authorised for that purpose by the Service, whether generally or specially.

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(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.

9 A document purporting to be duly executed under the seal of the Service, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, be taken to be so executed or signed.

#### *The Service's powers*

10 The Service has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

#### *Accounts*

11 (1) The Service shall keep proper accounts and proper records in relation to its accounts.

(2) In performing that duty the Service shall, in addition to accounts and records relating to its own activities (including the services provided to the Tribunal), keep separate accounts and separate records in relation to the activities of the Tribunal.

12 (1) The Service shall—

- (a) prepare a statement of accounts in respect of each of its financial years; and
- (b) prepare a statement of accounts for the Tribunal for each of its financial years.

(2) The Service must send copies of the accounts required by sub-paragraph (1) to the Secretary of State and to the Comptroller and Auditor General before the end of August following the financial year to which they relate.

(3) Those 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 them;
- (b) the manner in which that information is to be presented; and
- (c) the methods and principles according to which they are to be prepared.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on each statement of accounts received by him; and
- (b) lay copies of each statement before Parliament.

(5) In this paragraph “financial year” means the period of 12 months ending with 31st March.

## **PART 2**

### TRANSFERS OF PROPERTY ETC. BETWEEN THE COMMISSION AND THE SERVICE

13 (1) The Secretary of State may make one or more schemes for the transfer to the Service of defined property, rights and liabilities of the Commission (including rights and liabilities relating to contracts of employment).

(2) A scheme may define the property, rights and liabilities to be transferred by specifying or describing them or by referring to all (or all except anything specified

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- or described) of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor.
- (3) The property, rights and liabilities which may be transferred include any that would otherwise be incapable of being transferred or assigned.
- (4) A scheme may include supplementary, incidental, transitional and consequential provision.
- 14 (1) On the day appointed by a scheme under paragraph 13, the property, rights and liabilities which are the subject of the scheme shall, by virtue of this sub-paragraph, be transferred in accordance with the provisions of the scheme.
- (2) If, after that day, the Commission and the Service so agree in writing, the scheme shall for all purposes be deemed to have come into force on that day with such modification as may be agreed.
- (3) An agreement under sub-paragraph (2) may, in connection with giving effect to modifications to the scheme, include supplemental, incidental, transitional and consequential provision.
- 15 The transfer by paragraph 14(1) of the rights and liabilities relating to an individual's contract of employment does not break the continuity of his employment and, accordingly—
- (a) he is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 as having been dismissed by virtue of the transfer; and
- (b) his period of employment with the transferor counts as a period of employment with the transferee for the purposes of that Act.
- 16 (1) Anything done by or in relation to the transferor for the purposes of or in connection with anything transferred by paragraph 14(1) which is in effect immediately before it is transferred shall be treated as if done by or in relation to the transferee.
- (2) There may be continued by or in relation to the transferee anything (including legal proceedings) relating to anything so transferred which is in the process of being done by or in relation to the transferor immediately before it is transferred.
- (3) A reference to the transferor in any document relating to anything so transferred shall be taken (so far as necessary for the purposes of or in consequence of the transfer) as a reference to the transferee.
- (4) A transfer under paragraph 14(1) does not affect the validity of anything done by or in relation to the transferor before the transfer takes effect.

### PART 3

#### MISCELLANEOUS

- 17 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—
- “The Competition Service.”
- 18 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), there is inserted at the appropriate place—

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“The Competition Service.”

## SCHEDULE 4

Sections 14 and 15

### TRIBUNAL: PROCEDURE

#### PART 1

#### GENERAL

#### *Decisions of the Tribunal*

- 1 (1) A decision of the Tribunal in any proceedings before it must—
  - (a) state the reasons for the decision and whether it was unanimous or taken by a majority;
  - (b) be recorded in a document signed and dated by the chairman of the Tribunal dealing with the proceedings.
- (2) In preparing that document the Tribunal shall have regard to the need for excluding, so far as practicable—
  - (a) information the disclosure of which would in its opinion be contrary to the public interest;
  - (b) commercial information the disclosure of which would or might, in its opinion, significantly harm the legitimate business interests of the undertaking to which it relates;
  - (c) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.
- (3) But the Tribunal shall also have regard to the extent to which any disclosure mentioned in sub-paragraph (2) is necessary for the purpose of explaining the reasons for the decision.
- (4) The President shall make such arrangements for the publication of the decisions of the Tribunal as he considers appropriate.

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

- C1** Sch. 4 para. 1(2)(b) modified (25.7.2003 for certain purposes, 29.12.2003 for certain further purposes) by Communications Act 2003 (c. 21), ss. 195(8), 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(2) (with art. 11)
- Sch. 4 para. 1(2)(b) modified (29.12.2003) by Communications Act 2003 (c. 21), ss. 294(1), 411(2)(3), Sch. 11 para. 10(7) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1) (subject to arts. 3(3), 11)

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### *Enforcement of decisions in Great Britain*

- 2 If a decision of the Tribunal is registered in England and Wales in accordance with rules of court or any practice direction—
- (a) payment of damages which are awarded by the decision;
  - (b) costs or expenses awarded by the decision; and
  - (c) any direction given as a result of the decision,
- may be enforced by the High Court as if the damages, costs or expenses were an amount due in pursuance of a judgment or order of the High Court, or as if the direction were an order of the High Court.
- 3 If a decision of the Tribunal awards damages, costs or expenses, or results in any direction being given, the decision may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.
- 4 Subject to rules of court or any practice direction, a decision of the Tribunal may be registered or recorded for execution—
- (a) for the purpose of enforcing a direction given as a result of the decision, by the Registrar of the Tribunal or a person who was a party to the proceedings;
  - (b) for the purpose of enforcing a decision to award damages, costs or expenses (other than a decision to which paragraph (c) applies), by the person to whom the sum concerned was awarded; and
  - (c) for the purpose of enforcing a decision to award damages which is the subject of an order under section 47B(6) of the 1998 Act, by the specified body concerned.

### *Enforcement of decisions in Northern Ireland*

- 5 (1) A decision of the Tribunal may be enforced in Northern Ireland with the leave of the High Court in Northern Ireland—
- (a) in the case of a direction given as a result of the decision, by the Registrar of the Tribunal or a person who was a party to the proceedings;
  - (b) for the purpose of enforcing a decision to award damages, costs or expenses (other than a decision to which paragraph (c) applies), by the person to whom the sum concerned was awarded; and
  - (c) for the purpose of enforcing a decision to award damages which is the subject of an order under section 47B(6) of the 1998 Act, by the specified body concerned.
- (2) For the purpose of enforcing in Northern Ireland a decision to award damages, costs or expenses—
- (a) payment may be enforced as if the damages, costs or expenses were an amount due in pursuance of a judgment or order of the High Court in Northern Ireland; and
  - (b) a sum equal to the amount of damages, costs or expenses shall be deemed to be payable under a money judgment within the meaning of Article 2(2) of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (and the provisions of that Order apply accordingly).
- (3) For the purpose of enforcing in Northern Ireland a direction given as a result of a decision of the Tribunal, the direction may be enforced as if it were an order of the High Court in Northern Ireland.

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### *Miscellaneous*

- 6 A decision of the Tribunal in proceedings under section 47B of the 1998 Act which—
- (a) awards damages to an individual in respect of a claim made or continued on his behalf (but is not the subject of an order under section 47B(6)); or
  - (b) awards costs or expenses to an individual in respect of proceedings in respect of a claim made under section 47A of that Act prior to its being continued on his behalf in the proceedings under section 47B,
- may only be enforced by the individual concerned with the permission of the High Court or Court of Session.
- 7 An award of costs or expenses against a specified body in proceedings under section 47B of the 1998 Act may not be enforced against any individual on whose behalf a claim was made or continued in those proceedings.
- 8 In this Part of this Schedule any reference to damages includes a reference to any sum of money (other than costs or expenses) which may be awarded in respect of a claim made under section 47A of the 1998 Act or included in proceedings under section 47B of that Act.

## **PART 2**

### TRIBUNAL RULES

#### *General*

- 9 In this Schedule “the Tribunal”, in relation to any proceedings before it, means the Tribunal as constituted (in accordance with section 14) for the purposes of those proceedings.
- 10 Tribunal rules may make different provision for different kinds of proceedings.

#### *Institution of proceedings*

- 11 (1) Tribunal rules may make provision as to the period within which and the manner in which proceedings are to be brought.
- (2) That provision may, in particular—
- (a) provide for time limits for making claims to which section 47A of the 1998 Act applies in proceedings under section 47A or 47B;
  - (b) provide for the Tribunal to extend the period in which any particular proceedings may be brought; and
  - (c) provide for the form, contents, amendment and acknowledgement of the documents by which proceedings are to be instituted.
- 12 Tribunal rules may provide for the Tribunal to reject any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) if it considers that—
- (a) the person instituting them does not have a sufficient interest in the decision with respect to which the proceedings are brought; or
  - (b) the document by which he institutes them discloses no valid grounds for bringing them.
- 13 Tribunal rules may provide for the Tribunal—

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- (a) to reject the whole of any proceedings under section 47B of the 1998 Act if it considers that the person bringing the proceedings is not entitled to do so or that the proceedings do not satisfy the requirements of section 47B(1);
  - (b) to reject any claim which is included in proceedings under section 47B if it considers that—
    - (i) the claim is not a consumer claim (within the meaning of section 47B(2)) which may be included in such proceedings; or
    - (ii) the individual concerned has not consented to its being made or continued on his behalf in such proceedings; or
  - (c) to reject any claim made under section 47A of the 1998 Act or included in proceedings under section 47B of that Act if it considers that there are no reasonable grounds for making it.
- 14 Tribunal rules may provide for the Tribunal to reject any proceedings if it is satisfied that the person instituting the proceedings has habitually and persistently and without any reasonable ground—
- (a) instituted vexatious proceedings (whether against the same person or against different persons); or
  - (b) made vexatious applications in any proceedings.
- 15 Tribunal rules must ensure that no proceedings are rejected without giving the parties the opportunity to be heard.

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

- 16 (1) Tribunal rules may make provision for the carrying out by the Tribunal of a preliminary consideration of proceedings (a “pre-hearing review”).
- (2) That provision may include—
- (a) provision enabling such powers to be exercised on a pre-hearing review as may be specified in the rules;
  - (b) provision for security and supplemental provision relating to security.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) “provision for security” means provision authorising the Tribunal, in specified circumstances, to order a party to the proceedings, if he wishes to continue to participate in them, to pay a deposit not exceeding such sum as may be specified or calculated in a specified manner; and
  - (b) “supplemental provision”, in relation to security, means provision as to—
    - (i) the manner in which the amount of a deposit is to be determined;
    - (ii) the consequences of non-payment of a deposit;
    - (iii) the circumstances in which the deposit, or any part of it, may be refunded to the person who paid it or paid to another party to the proceedings.

#### *Conduct of the hearing*

- 17 (1) Tribunal rules may make provision—
- (a) as to the manner in which proceedings are to be conducted, including provision for any hearing to be held in private if the Tribunal considers it appropriate because it is considering information of a kind mentioned in paragraph 1(2);

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- (b) as to the persons entitled to appear on behalf of the parties;
  - (c) for requiring persons to attend to give evidence and produce documents, and for authorising the administration of oaths to witnesses;
  - (d) as to the evidence which may be required or admitted and the extent to which it should be oral or written;
  - (e) allowing the Tribunal to fix time limits with respect to any aspect of proceedings and to extend any time limit (before or after its expiry);
  - (f) enabling the Tribunal, on the application of any party or on its own initiative, to order—
    - (i) the disclosure between, or the production by, the parties of documents or classes of documents; or
    - (ii) such recovery or inspection of documents as might be ordered by a sheriff;
  - (g) for the appointment of experts for the purposes of proceedings;
  - (h) for the award of costs or expenses, including allowances payable to persons in connection with attendance before the Tribunal;
  - (i) for taxing or otherwise settling any costs or expenses awarded by the Tribunal or for the enforcement of any order awarding costs or expenses.
- (2) Rules under sub-paragraph (1)(h) may provide, in relation to a claim made under section 47A of the 1998 Act which is continued on behalf of an individual in proceedings under section 47B of that Act, for costs or expenses to be awarded to or against that individual in respect of proceedings on that claim which took place before it was included in the proceedings under section 47B of that Act.
- (3) Otherwise Tribunal rules may not provide for costs or expenses to be awarded to or against an individual on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act.
- (4) Tribunal rules may make provision enabling the Tribunal to refer any matter arising in any proceedings (other than proceedings under section 47A or 47B of the 1998 Act) back to the authority that made the decision to which the proceedings relate, if it appears that the matter has not been adequately investigated.
- (5) A person who without reasonable excuse fails to comply with—
  - (a) any requirement imposed by virtue of sub-paragraph (1)(c); or
  - (b) any requirement with respect to the disclosure, production, recovery or inspection of documents which is imposed by virtue of sub-paragraph (1)(f),is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *Quorum*

- 18 (1) Tribunal rules may make provision as to the consequences of a member of the Tribunal being unable to continue after part of any proceedings have been heard.
- (2) The rules may allow the Tribunal to consist of the remaining members for the rest of the proceedings.
- (3) The rules may enable the President, if it is the chairman of the Tribunal who is unable to continue—
  - (a) to appoint either of the remaining members to chair the Tribunal; and

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- (b) if that person is not a member of the panel of chairmen, to appoint himself or some other suitably qualified person to attend the proceedings and advise the remaining members on any questions of law arising.
- (4) For the purpose of sub-paragraph (3) a person is “suitably qualified” if he is, or is qualified for appointment as, a member of the panel of chairmen.

#### *Interest*

- 19 (1) Tribunal rules may make provision allowing the Tribunal to order that interest is payable on any sum awarded by the Tribunal or on any fees ordered to be paid under paragraph 20.
- (2) That provision may include provision—
- (a) as to the circumstances in which such an order may be made;
  - (b) as to the manner in which, and the periods in respect of which, interest is to be calculated and paid.

#### *Fees*

- 20 (1) Tribunal rules may provide—
- (a) for fees to be chargeable in respect of specified costs of proceedings; and
  - (b) for the amount of such costs to be determined by the Tribunal.
- (2) Any sums received in respect of such fees shall be paid into the Consolidated Fund.

#### *Withdrawal of proceedings*

- 21 (1) Tribunal rules may make provision—
- (a) preventing a party who has instituted proceedings from withdrawing them without the permission of the Tribunal or, in specified circumstances, the President or the Registrar;
  - (b) for the Tribunal to grant permission to withdraw proceedings on such conditions as it considers appropriate;
  - (c) enabling the Tribunal to publish any decision which it would have made in any proceedings, had the proceedings not been withdrawn;
  - (d) as to the effect of withdrawal of proceedings; and
  - (e) as to the procedure to be followed if parties to proceedings agree to settle.
- (2) Tribunal rules may make, in relation to a claim included in proceedings under section 47B of the 1998 Act, any provision which may be made under sub-paragraph (1) in relation to the whole proceedings.

#### *Interim orders*

- 22 (1) Tribunal rules may provide for the Tribunal to make an order, on an interim basis—
- (a) suspending the effect of any decision which is the subject matter of proceedings before it;
  - (b) in the case of an appeal under section 46 or 47 of the 1998 Act, varying the conditions or obligations attached to an exemption;
  - (c) granting any remedy which the Tribunal would have had power to grant in its final decision.

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- (2) Tribunal rules may also make provision giving the Tribunal powers similar to those given to the OFT by section 35 of the 1998 Act.

### Miscellaneous

- 23 (1) Tribunal rules may make provision enabling the Tribunal to decide where to sit for the purposes of, or of any part of, any proceedings before it.
- (2) Tribunal rules may make provision enabling the Tribunal to decide that any proceedings before it are to be treated, for purposes connected with—
- (a) any appeal from a decision of the Tribunal made in those proceedings; and
  - (b) any other matter connected with those proceedings,
- as proceedings in England and Wales, Scotland or Northern Ireland (regardless of the decision made for the purposes of sub-paragraph (1)).
- (3) For the purposes of sub-paragraph (2), Tribunal rules may provide for each claim made or continued on behalf of an individual in proceedings under section 47B of the 1998 Act to be treated as separate proceedings.
- 24 Tribunal rules may make provision—
- (a) for a person who is not a party to be joined in any proceedings;
  - (b) for hearing a person who is not a party where, in any proceedings, it is proposed to make an order or give a direction in relation to that person;
  - (c) for proceedings to be consolidated on such terms as the Tribunal thinks appropriate in such circumstances as may be specified.
- 25 Tribunal rules may make provision for the Tribunal to transfer a claim made in proceedings under section 47A of the 1998 Act to—
- (a) the High Court or a county court in England and Wales or Northern Ireland; or
  - (b) the Court of Session or a sheriff court in Scotland.
- 26 Tribunal rules may make provision in connection with the transfer of any proceedings from a court mentioned in paragraph 25 to the Tribunal under section 16.

## SCHEDULE 5

Section 21

### PROCEEDINGS UNDER PART 1 OF THE 1998 ACT

- 1 Part 1 of the 1998 Act is amended as follows.
- 2 In section 46 (appealable decisions)—
- (a) in subsections (1) and (2), for “the Competition Commission” there is substituted “the Tribunal”;
  - (b) in subsection (3) (in the full-out words), after “other decision” there is inserted “under this Part”;
  - (c) subsection (3)(h) shall cease to have effect.

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#### Commencement Information

- II** Sch. 5 para. 2 partly in force; Sch. 5 para. 2 not in force at Royal assent see s. 279; Sch. 5 para. 2(a)(b) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch.

3 Section 48 (appeal tribunals) shall cease to have effect.

4 For section 49 there is substituted—

#### “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.”

#### Commencement Information

- I2** Sch. 5 para. 4 wholly in force at 18.7.2004; Sch. 5 para. 4 not in force at Royal Assent see s. 279; Sch. 5 para. 4 in force for certain purposes at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 5 para. 4 in force for remaining purposes at 18.7.2004 by S.I. 2004/1866 {art. 2}

5 In section 58(1) (findings of fact by director)—

- (a) in paragraph (a), after “appeal” there is inserted “ under section 46 or 47 ”; and
- (b) in paragraph (b), for “an appeal tribunal” there is substituted “ the Tribunal ”.

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

- (a) the definition of “appeal tribunal” shall cease to have effect;
- (b) after the definition of “the Treaty” there is inserted—

““the Tribunal” means the Competition Appeal Tribunal;

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

7 (1) Schedule 7 (the Competition Commission) is amended as follows.

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- (2) In paragraph 1 (interpretation)—
- (a) the definitions of “appeal panel member” and “the President” shall cease to have effect; and
  - (b) in the definition of “general functions”, paragraph (a) and the word “or” after it shall cease to have effect.
- (3) In paragraph 2 (membership), sub-paragraphs (1)(a), (3)(a) and (4) shall cease to have effect.
- (4) Paragraph 4 (the President) shall cease to have effect.
- (5) In paragraph 5 (the Council)—
- (a) sub-paragraph (2)(b), and
  - (b) in sub-paragraph (3), the words “and paragraph 5 of Schedule 8”, shall cease to have effect.
- (6) Part 3 (appeals) shall cease to have effect.
- 8 (1) Schedule 8 (appeals) is amended as follows.
- (2) Paragraph 1 shall cease to have effect.
- (3) In paragraph 2 (general procedure for appeals under Part 1)—
- (a) in sub-paragraph (1), for the words from “Competition” to “Commission” (in the second place it appears) there is substituted “ Tribunal under section 46 or 47 must be made by sending a notice of appeal to it ”;
  - (b) in sub-paragraph (3), for “tribunal” there is substituted “ Tribunal ”; and
  - (c) after sub-paragraph (3) there is inserted—
- “(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.”
- (4) In paragraph 3, for “tribunal” (in each place) there is substituted “ Tribunal ”.
- (5) Paragraphs 4 to 14 shall cease to have effect.

## SCHEDULE 6

Section 70

### SCHEDULE TO BE INSERTED IN THE WATER INDUSTRY ACT 1991

#### “SCHEDULE 4ZA

Section 34

##### APPLICATION OF PROVISIONS OF ENTERPRISE ACT 2002 TO MERGERS OF WATER ENTERPRISES

- 1 Part 3 of the 2002 Act (and any other provisions of that Act so far as relating to that Part) shall apply, with such prescribed modifications as the Secretary of State considers to be necessary or expedient, in relation to water mergers and merger references under

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- section 32 of this Act as it applies in relation to relevant merger situations and references under Part 3 of that Act.
- 2 The modifications made by virtue of paragraph 1 above shall include modifications to give effect to paragraphs 3 to 6 below.
- 3 (1) The first questions to be decided by the Competition Commission on a merger reference under section 32(a) of this Act shall be—
- (a) whether arrangements are in progress which, if carried into effect, will result in a water merger; and
  - (b) if so, whether that merger may be expected to prejudice the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises.
- (2) The first questions to be decided by the Competition Commission on a merger reference under section 32(b) of this Act shall be—
- (a) whether a water merger has taken place; and
  - (b) if so, whether that merger has prejudiced, or may be expected to prejudice, the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises.
- (3) Any decision of the Competition Commission on a merger reference under section 32(a) of this Act that arrangements are in progress which, if carried into effect, will result in a water merger shall be treated as a decision that no arrangements are in progress which, if carried into effect, will result in a water merger if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998 (c. 41).
- (4) Any decision of the Competition Commission on a merger reference under section 32(a) of this Act that a water merger may be expected to prejudice the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger may be expected not to prejudice that ability of the Director if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (5) Any decision of the Competition Commission on a merger reference under section 32(b) of this Act that a water merger has taken place shall be treated as a decision that no water merger has taken place if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (6) Any decision of the Competition Commission on a merger reference under section 32(b) of this Act that a water merger has prejudiced, or may be expected to prejudice, the ability of the Director, in carrying out his functions by virtue of this Act, to make comparisons between different water enterprises shall be treated as a decision that the water merger has not prejudiced, or may be expected not to prejudice, that ability of the Director if the decision is not that of at least two-thirds of the members of the group constituted in connection with the reference in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- 4 (1) In deciding, on a merger reference under section 32(a) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to the Director or any adverse effect which may be expected to result from the prejudice to the Director and, if so, what action should be taken, the Competition Commission may, in particular,

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- have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—
- (a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or
  - (b) the benefits which may be expected to accrue are substantially more important than the prejudice concerned.
- (2) In deciding, on a merger reference under section 32(b) of this Act whether to take action for the purpose of remedying, mitigating or preventing the prejudice to the Director or any adverse effect which has resulted from, or may be expected to result from, the prejudice to the Director and, if so, what action should be taken, the Competition Commission may, in particular, have regard to the effect of any such action on any relevant customer benefits in relation to the merger concerned provided that—
- (a) a consideration of those benefits would not prevent a solution to the prejudice concerned; or
  - (b) the benefits which have accrued, or may be expected to accrue, are substantially more important than the prejudice concerned.
- (3) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for other matters to which the Competition Commission may or must have regard in deciding the questions as mentioned in sub-paragraph (1) or (2) above (including matters which are to take priority over the effect of action on relevant customer benefits).
- 5 (1) No enforcement action shall be taken on a merger reference under section 32(b) of this Act in respect of an actual merger unless the reference was made within the period of four months beginning with whichever is the later of—
- (a) the day on which the merger took place; and
  - (b) the day on which the material facts about the transactions which resulted in the merger first came to the attention of the OFT or were made public (within the meaning given by section 24(3) of the 2002 Act).
- (2) This paragraph is without prejudice to the power of the Secretary of State to provide in regulations made under paragraph 1 above for extensions of the four month period; and, if any such provision is made in such regulations, the provision which is to be made in regulations under paragraph 1 above by virtue of sub-paragraph (1) above or paragraph 6 below may be adjusted accordingly.
- 6 If, on a merger reference under section 32(b) of this Act, the Competition Commission are satisfied that the reference was not made within the period of four months mentioned in paragraph 5 above, its report on the reference shall state that fact.
- 7 (1) For the purposes of this Schedule a benefit is a relevant customer benefit if—
- (a) it is a benefit to relevant customers in the form of—
    - (i) lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom; or
    - (ii) greater innovation in relation to such goods or services; and
  - (b) the Competition Commission believes—
    - (i) in the case of a merger reference under section 32(a) of this Act, as mentioned in sub-paragraph (2) below; and
    - (ii) in the case of a merger reference under section 32(b) of this Act, as mentioned in sub-paragraph (3) below.
- (2) The belief, in the case of a merger reference under section 32(a) of this Act, is that—

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- (a) the benefit may be expected to accrue within a reasonable period as a result of the merger concerned; and
  - (b) the benefit is unlikely to accrue without the merger concerned or a similar prejudice to the Director.
- (3) The belief, in the case of a merger reference under section 32(b) of this Act is that—
- (a) the benefit has accrued as a result of the merger concerned or may be expected to accrue within a reasonable period as a result of the merger concerned; and
  - (b) the benefit was, or is, unlikely to accrue without the merger concerned or a similar prejudice to the Director.
- (4) In sub-paragraph (1) above “relevant customers” means—
- (a) customers of any person carrying on an enterprise which, in the merger concerned, has ceased to be, or (as the case may be) will cease to be, a distinct enterprise;
  - (b) customers of such customers; and
  - (c) any other customers in a chain of customers beginning with the customers mentioned in paragraph (a);
- and in this sub-paragraph “customers” includes future customers.
- 8 In this Schedule—
- “customers”, “goods”, “market in the United Kingdom”, “services” and “relevant merger situation” have the same meanings as in Part 3 of the 2002 Act; and
  - “water merger” means a merger of any two or more water enterprises.”

## SCHEDULE 7

Section 85

### ENFORCEMENT REGIME FOR PUBLIC INTEREST AND SPECIAL PUBLIC INTEREST CASES

#### *Pre-emptive undertakings and orders*

- 1 (1) Sub-paragraph (2) applies where an intervention notice or special intervention notice is in force.
- (2) The Secretary of State may, for the purpose of preventing pre-emptive action, accept from such of the parties concerned as he considers appropriate undertakings to take such action as he considers appropriate.
- (3) Sub-paragraph (4) applies where an intervention notice is in force.
- (4) The Secretary of State may, for the purpose of preventing pre-emptive action, adopt an undertaking accepted by the OFT under section 71 if the undertaking is still in force when the Secretary of State adopts it.
- (5) An undertaking adopted under sub-paragraph (4)—
- (a) shall continue in force, in accordance with its terms, when adopted;
  - (b) may be varied or superseded by an undertaking under this paragraph; and
  - (c) may be released by the Secretary of State.
- (6) Any other undertaking under this paragraph—

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- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Secretary of State.
- (7) References in this Part to undertakings under this paragraph shall, unless the context otherwise requires, include references to undertakings adopted under this paragraph; and references to the acceptance or giving of undertakings under this paragraph shall be construed accordingly.
- (8) An undertaking which is in force under this paragraph in relation to a reference or possible reference under section 45 or (as the case may be) 62 shall cease to be in force if an order under paragraph 2 or an undertaking under paragraph 3 comes into force in relation to that reference.
- (9) An undertaking under this paragraph shall, if it has not previously ceased to be in force, cease to be in force when the intervention notice concerned or (as the case may be) special intervention notice concerned ceases to be in force.
- (10) No undertaking shall be accepted by the Secretary of State under this paragraph before the making of a reference under section 45 or (as the case may be) 62 unless the undertaking relates to a relevant merger situation which has been, or may have been, created or (as the case may be) a special merger situation which has been, or may have been, created.
- (11) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this paragraph.
- (12) In this paragraph and paragraph 2 “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 45 or (as the case may be) 62 or impede the taking of any action under this Part which may be justified by the Secretary of State’s decisions on the reference.
- 2 (1) Sub-paragraph (2) applies where an intervention notice or special intervention notice is in force.
- (2) The Secretary of State or the OFT may by order, for the purpose of preventing pre-emptive action—
- (a) prohibit or restrict the doing of things which the Secretary of State or (as the case may be) the OFT considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.
- (3) Sub-paragraph (4) applies where an intervention notice is in force.
- (4) The Secretary of State or the OFT may, for the purpose of preventing pre-emptive action, adopt an order made by the OFT under section 72 if the order is still in force when the Secretary of State or (as the case may be) the OFT adopts it.
- (5) An order adopted under sub-paragraph (4)—

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- (a) shall continue in force, in accordance with its terms, when adopted; and
  - (b) may be varied or revoked by an order under this paragraph.
- (6) Any other order under this paragraph—
- (a) shall come into force at such time as is determined by or under the order; and
  - (b) may be varied or revoked by another order.
- (7) References in this Part to orders under this paragraph shall, unless the context otherwise requires, include references to orders adopted under this paragraph; and references to the making of orders under this paragraph shall be construed accordingly.
- (8) An order which is in force under this paragraph in relation to a reference or possible reference under section 45 or (as the case may be) 62 shall cease to be in force if an undertaking under paragraph 1 or 3 comes into force in relation to that reference.
- (9) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force when the intervention notice concerned or (as the case may be) special intervention notice concerned ceases to be in force.
- (10) No order shall be made by the Secretary of State or the OFT under this paragraph before the making of a reference under section 45 or (as the case may be) 62 unless the order relates to a relevant merger situation which has been, or may have been, created or (as the case may be) a special merger situation which has been, or may have been, created.
- (11) The Secretary of State or (as the case may be) the OFT shall, as soon as reasonably practicable, consider any representations received by that person in relation to varying or revoking an order under this paragraph.

*Undertakings in lieu of reference under section 45 or 62*

- 3 (1) Sub-paragraph (2) applies if the Secretary of State has power to make a reference to the Commission under section 45 or 62 and otherwise intends to make such a reference.
- (2) The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned, accept from such of the parties concerned as he considers appropriate undertakings to take such action as he considers appropriate.
- (3) In proceeding under sub-paragraph (2), the Secretary of State shall, in particular—
- (a) accept the decisions of the OFT included in its report under section 44 so far as they relate to the matters mentioned in subsections (4) and (5) of that section; or
  - (b) (as the case may be) accept the decisions of the OFT included in its report under section 61 so far as they relate to the matters mentioned in subsections (3)(a) and (4) of that section.
- (4) In proceeding under sub-paragraph (2) in relation to an anti-competitive outcome, the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.

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- (5) No undertaking shall be accepted by the Secretary of State under this paragraph in connection with a possible reference under section 45 if a public interest consideration mentioned in the intervention notice concerned has not been finalised and the period of 24 weeks beginning with the giving of that notice has not expired.
  - (6) The Secretary of State may delay making a decision as to whether to accept any such undertaking (and any related decision as to whether to make a reference under section 45) if he considers that there is a realistic prospect of the public interest consideration being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned.
  - (7) A delay under sub-paragraph (6) shall not extend beyond—
    - (a) the time when the public interest consideration is finalised; or
    - (b) if earlier, the expiry of the period of 24 weeks mentioned in that sub-paragraph.
  - (8) An undertaking under this paragraph—
    - (a) shall come into force when accepted;
    - (b) may be varied or superseded by another undertaking; or
    - (c) may be released by the Secretary of State.
  - (9) An undertaking under this paragraph which is in force in relation to a relevant merger situation or (as the case may be) a special merger situation shall cease to be in force if an order comes into force under paragraph 5 or 6 in relation to that undertaking.
  - (10) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.
- 4
- (1) The relevant authority shall not make a reference under section 22, 33 or 45 in relation to the creation of a relevant merger situation or (as the case may be) a reference under section 62 in relation to the creation of a special merger situation if—
    - (a) the Secretary of State has accepted an undertaking or group of undertakings under paragraph 3; and
    - (b) the relevant merger situation or (as the case may be) the special merger situation is the situation by reference to which the undertaking or group of undertakings was accepted.
  - (2) In sub-paragraph (1) “the relevant authority” means—
    - (a) in relation to a possible reference under section 22 or 33, the OFT; and
    - (b) in relation to a possible reference under section 45 or 62, the Secretary of State.
  - (3) Sub-paragraph (1) does not prevent the making of a reference if material facts about relevant arrangements or transactions, or relevant proposed arrangements or transactions, were not notified (whether in writing or otherwise) to the Secretary of State or the OFT or made public before any undertaking concerned was accepted.
  - (4) For the purposes of sub-paragraph (3) arrangements or transactions, or proposed arrangements or transactions, are relevant if they are the ones in consequence of which the enterprises concerned ceased or may have ceased, or may cease, to be distinct enterprises.

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- (5) In sub-paragraph (3) “made public” means so publicised as to be generally known or readily ascertainable.
- 5 (1) Sub-paragraph (2) applies where the Secretary of State considers that—
- (a) an undertaking accepted by him under paragraph 3 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by him under that paragraph, information which was false or misleading in a material respect was given to him or the OFT by the person giving the undertaking before he decided to accept the undertaking.
- (2) The Secretary of State may, for any of the purposes mentioned in paragraph 3(2), make an order under this paragraph.
- (3) Sub-paragraphs (3) and (4) of paragraph 3 shall apply for the purposes of sub-paragraph (2) above as they apply for the purposes of sub-paragraph (2) of that paragraph.
- (4) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.
- (5) An order under this paragraph
- (a) shall come into force at such time as is determined by or under the order; and
  - (b) may contain provision which is different from the provision contained in the undertaking concerned.
- (6) No order shall be varied or revoked under this paragraph unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

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

- C2** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(2)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C3** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C4** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(5)(a)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

- 6 (1) Sub-paragraph (2) applies where—
- (a) the Secretary of State has the power to make an order under paragraph 5 in relation to a particular undertaking and intends to make such an order; or
  - (b) the Secretary of State has the power to make an order under paragraph 10 in relation to a particular undertaking and intends to make such an order.
- (2) The Secretary of State may, for the purpose of preventing any action which might prejudice the making of that order, make an order under this paragraph.

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- (3) No order shall be made under sub-paragraph (2) unless the Secretary of State has reasonable grounds for suspecting that it is or may be the case that action which might prejudice the making of the order under paragraph 5 or (as the case may be) 10 is in progress or in contemplation.
- (4) An order under sub-paragraph (2) may—
  - (a) prohibit or restrict the doing of things which the Secretary of State considers would prejudice the making of the order under paragraph 5 or 10;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;
  - (d) do anything which may be done by virtue of paragraph 19 of Schedule 8.
- (5) An order under this paragraph shall come into force at such time as is determined by or under the order.
- (6) An order under this paragraph shall, if it has not previously ceased to be in force, cease to be in force on—
  - (a) the coming into force of an order under paragraph 5 or (as the case may be) 10 in relation to the undertaking concerned; or
  - (b) the making of the decision not to proceed with such an order.
- (7) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or revoking an order under this paragraph.

*Statutory restrictions following reference under section 45 or 62*

- 7 (1) Sub-paragraphs (2) and (3) apply where—
  - (a) a reference has been made under section 45(2) or (3) or 62(2) but not finally determined; and
  - (b) no undertakings under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Secretary of State—
  - (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;
  - (b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or
  - (c) transfer the ownership or control of any enterprises to which the reference relates.
- (3) No relevant person shall, without the consent of the Secretary of State, assist in any of the activities mentioned in paragraphs (a) to (c) of sub-paragraph (2).
- (4) The prohibitions in sub-paragraphs (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.

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- (5) The consent of the Secretary of State under sub-paragraph (2) or (3)—
- (a) may be general or specific;
  - (b) may be revoked by the Secretary of State; and
  - (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of sub-paragraph (5) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Sub-paragraphs (2) and (3) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
  - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
  - (c) a person carrying on business in the United Kingdom.
- (8) For the purpose of this paragraph a reference under section 45(2) or (3) is finally determined if—
- (a) the time within which the Commission is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
  - (b) the Commission decides to cancel the reference under section 53(1);
  - (c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
  - (d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
  - (e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
  - (f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
  - (g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (9) For the purpose of this paragraph a reference under section 62(2) is finally determined if—
- (a) the time within which the Commission is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
  - (b) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
  - (c) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
  - (d) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an

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- undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
- (e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (10) For the purposes of this paragraph the time when a reference under section 45(2) or (3) or (as the case may be) 62(2) is finally determined is—
- (a) in a case falling within sub-paragraph (8)(a) or (c) or (as the case may be) (9)(a) or (b), the expiry of the time concerned;
- (b) in a case falling within sub-paragraph (8)(b), (d) or (e) or (as the case may be) (9)(c), the making of the decision concerned;
- (c) in a case falling within sub-paragraph (8)(f) or (as the case may be) (9)(d), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
- (d) in a case falling within sub-paragraph (8)(g) or (as the case may be) (9)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (11) In this paragraph “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
- (b) any subsidiary of any person falling within paragraph (a); or
- (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.
- 8 (1) Sub-paragraph (2) applies where—
- (a) a reference has been made under section 45(4) or (5) or 62(3); and
- (b) no undertakings under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) special merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Secretary of State, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (3) The consent of the Secretary of State under sub-paragraph (2)—
- (a) may be general or specific;
- (b) may be revoked by the Secretary of State; and
- (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of sub-paragraph (3) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Sub-paragraph (2) shall apply to a person’s conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;

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- (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
  - (c) a person carrying on business in the United Kingdom.
- (6) In this paragraph—
- “company” includes any body corporate;
  - “relevant period” means the period beginning with the publication of the decision of the Secretary of State to make the reference concerned and ending when the reference is finally determined;
  - “relevant person” means—
    - (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
    - (b) any subsidiary of any person falling within paragraph (a); or
    - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and
  - “share” means share in the capital of a company, and includes stock.
- (7) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 45(4) or (5) is finally determined if—
- (a) the Commission cancels the reference under section 48(1) or 53(1);
  - (b) the time within which the Commission is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
  - (c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
  - (d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
  - (e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
  - (f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
  - (g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (8) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under section 62(3) is finally determined if—
- (a) the Commission cancels the reference under section 64(1);
  - (b) the time within which the Commission is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
  - (c) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
  - (d) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;

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- (e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
  - (f) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (9) For the purposes of the definition of “relevant period” in sub-paragraph (6) above, the time when a reference under section 45(4) or (5) or (as the case may be) 62(3) is finally determined is—
- (a) in a case falling within sub-paragraph (7)(a), (d) or (e) or (as the case may be) (8)(a) or (d), the making of the decision concerned;
  - (b) in a case falling within sub-paragraph (7)(b) or (c) or (as the case may be) (8)(b) or (c), the expiry of the time concerned;
  - (c) in a case falling within sub-paragraph (7)(f) or (as the case may be) (8)(e), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
  - (d) in a case falling within sub-paragraph (7)(g) or (as the case may be) (8)(f), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (10) Section 79 shall apply for the purposes of paragraph 7 and this paragraph in relation to a reference under section 45 or 62 as it applies for the purposes of sections 77 and 78 in relation to a reference under section 22 or 33.
- (11) In its application by virtue of sub-paragraph (10) section 79 shall have effect as if—
- (a) subsections (1) and (2) were omitted; and
  - (b) for the reference in subsection (4) to the OFT there were substituted a reference to the Secretary of State.

#### *Final undertakings and orders*

- 9 (1) The Secretary of State may, in accordance with section 55 or (as the case may be) 66(5) to (7), accept, from such persons as he considers appropriate, undertakings to take action specified or described in the undertakings.
- (2) An undertaking under this paragraph—
- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; and
  - (c) may be released by the Secretary of State.
- (3) An undertaking which is in force under this paragraph in relation to a reference under section 45 or 62 shall cease to be in force if an order under paragraph 6(1)(b) or 10 comes into force in relation to the subject-matter of the undertaking.
- (4) No undertaking shall be accepted under this paragraph in relation to a reference under section 45 or 62 if an order has been made under—
- (a) paragraph 6(1)(b) or 10 in relation to the subject-matter of the undertaking; or
  - (b) paragraph 11 in relation to that reference.

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- (5) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.
- 10 (1) Sub-paragraph (2) applies where the Secretary of State considers that—
- (a) an undertaking accepted by him under paragraph 9 has not been, is not being or will not be fulfilled; or
  - (b) in relation to an undertaking accepted by him under that paragraph, information which was false or misleading in a material respect was given to him or the OFT by the person giving the undertaking before he decided to accept the undertaking.
- (2) The Secretary of State may, for any purpose mentioned in section 55(2) or (as the case may be) 66(6), make an order under this paragraph.
- (3) Subsections (3) and (4) of section 55 or (as the case may be) subsection (7) of section 66 shall apply for the purposes of sub-paragraph (2) above as they or it applies for the purposes of section 55(2) or (as the case may be) 66(6).
- (4) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.
- (5) An order under this paragraph—
- (a) shall come into force at such time as is determined by or under the order; and
  - (b) may contain provision which is different from the provision contained in the undertaking concerned.
- (6) No order shall be varied or revoked under this paragraph unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

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

- C5** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(2)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C6** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(4)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C7** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by 2002 (c. 40), ss. 278, 279, {Sch. 25 para. 18(5)(a)}); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

- 11 (1) The Secretary of State may, in accordance with section 55 or (as the case may be) 66(5) to (7), make an order under this paragraph.
- (2) An order under this paragraph may contain—
- (a) anything permitted by Schedule 8; and
  - (b) such supplementary, consequential or incidental provision as the Secretary of State considers appropriate.

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- (3) An order under this paragraph shall come into force at such time as is determined by or under the order.
- (4) No order shall be made under this paragraph in relation to a reference under section 45 or (as the case may be) 62 if an undertaking has been accepted under paragraph 9 in relation to that reference.
- (5) No order shall be varied or revoked under this paragraph unless the OFT advises that such a variation or revocation is appropriate by reason of a change of circumstances.

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

- C8** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 144(2) (as substituted by 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(2)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C9** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, s. 238(2) (as substituted by 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C10** Ss. 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a), 164(1), Sch. 7 paras. 5, 10, 11 modified (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(2) (as substituted by 2002 c. 40, ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

SCHEDULE 8

Section 86(4)

PROVISION THAT MAY BE CONTAINED IN CERTAIN ENFORCEMENT ORDERS

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

- C11** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, s. 144(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(2)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C12** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, s. 238(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(4)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C13** Sch. 8: power to make orders conferred (20.6.2003) by 1988 c. 48, Sch. 2A para. 17(1A) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, Sch. 25 para. 18(5)(a)); S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- C14** Sch. 8 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592, art. 15, Sch. 3 para. 2(1)(a)(2) (as amended (29.12.2003) by S.I. 2003/3180, art. 2, Sch. para. 10(16))

*Introductory*

- 1 This Schedule applies in relation to such orders, and to such extent, as is provided by this Part and Part 4 and any other enactment; and references in this Schedule to an order shall be construed accordingly.

*General restrictions on conduct*

- 2 (1) An order may—
  - (a) prohibit the making or performance of an agreement;

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- (b) require any party to an agreement to terminate the agreement.
- (2) An order made by virtue of sub-paragraph (1) shall not—
- (a) prohibit the making or performance of; or
- (b) require any person to terminate,
- an agreement so far as, if made, the agreement would relate, or (as the case may be) so far as the agreement relates, to the terms and conditions of employment of any workers or to the physical conditions in which any workers are required to work.
- 3 (1) An order may prohibit the withholding from any person of—
- (a) any goods or services;
- (b) any orders for any such goods or services.
- (2) References in sub-paragraph (1) to withholding include references to—
- (a) agreeing or threatening to withhold; and
- (b) procuring others to withhold or to agree or threaten to withhold.
- 4 An order may prohibit requiring as a condition of the supply of goods or services to any person—
- (a) the buying of any goods;
- (b) the making of any payment in respect of services other than the goods or services supplied;
- (c) the doing of any other such matter or the refraining from doing anything mentioned in paragraph (a) or (b) or any other such matter.
- 5 An order may prohibit—
- (a) discrimination between persons in the prices charged for goods or services;
- (b) anything which the relevant authority considers to be such discrimination;
- (c) procuring others to do anything which is such discrimination or which the relevant authority considers to be such discrimination.
- 6 An order may prohibit—
- (a) giving, or agreeing to give in other ways, any preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
- (b) giving, or agreeing to give in other ways, anything which the relevant authority considers to be a preference in respect of the supply of goods or services or in respect of the giving of orders for goods or services;
- (c) procuring others to do anything mentioned in paragraph (a) or (b).
- 7 An order may prohibit—
- (a) charging, for goods or services supplied, prices differing from those in any published list or notification;
- (b) doing anything which the relevant authority considers to be charging such prices.
- 8 (1) An order may regulate the prices to be charged for any goods or services.
- (2) No order shall be made by virtue of sub-paragraph (1) unless the relevant report in relation to the matter concerned identifies the prices charged for the goods or services as requiring remedial action.

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(3) In this paragraph “the relevant report” means the report of the Commission which is required by the enactment concerned before an order can be made under this Schedule.

9 An order may prohibit the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.

#### *General obligations to be performed*

10 (1) An order may require a person to supply goods or services or to do anything which the relevant authority considers appropriate to facilitate the provision of goods or services.

(2) An order may require a person who is supplying, or is to supply, goods or services to supply such goods or services to a particular standard or in a particular manner or to do anything which the relevant authority considers appropriate to facilitate the provision of such goods or services to that standard or in that manner.

11 An order may require any activities to be carried on separately from any other activities.

#### *Acquisitions and divisions*

12 (1) An order may prohibit or restrict—  
(a) the acquisition by any person of the whole or part of the undertaking or assets of another person’s business;  
(b) the doing of anything which will or may result in two or more bodies corporate becoming interconnected bodies corporate.

(2) An order may require that if—  
(a) an acquisition of the kind mentioned in sub-paragraph (1)(a) is made; or  
(b) anything is done which results in two or more bodies corporate becoming interconnected bodies corporate;

the persons concerned or any of them shall observe any prohibitions or restrictions imposed by or under the order.

(3) This paragraph shall also apply to any result consisting in two or more enterprises ceasing to be distinct enterprises (other than any result consisting in two or more bodies corporate becoming interconnected bodies corporate).

13 (1) An order may provide for—  
(a) the division of any business (whether by the sale of any part of the undertaking or assets or otherwise);  
(b) the division of any group of interconnected bodies corporate.

(2) For the purposes of sub-paragraph (1)(a) all the activities carried on by way of business by any one person or by any two or more interconnected bodies corporate may be treated as a single business.

(3) An order made by virtue of this paragraph may contain such provision as the relevant authority considers appropriate to effect or take account of the division, including, in particular, provision as to—

(a) the transfer or creation of property, rights, liabilities or obligations;

*Status: Point in time view as at 29/12/2004.*

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- (b) the number of persons to whom the property, rights, liabilities or obligations are to be transferred or in whom they are to be vested;
  - (c) the time within which the property, rights, liabilities or obligations are to be transferred or vested;
  - (d) the adjustment of contracts (whether by discharge or reduction of any liability or obligation or otherwise);
  - (e) the creation, allotment, surrender or cancellation of any shares, stock or securities;
  - (f) the formation or winding up of any company or other body of persons corporate or unincorporate;
  - (g) the amendment of the memorandum and articles or other instruments regulating any such company or other body of persons;
  - (h) the extent to which, and the circumstances in which, provisions of the order affecting a company or other body of persons corporate or unincorporate in its share capital, constitution or other matters may be altered by the company or other body of persons concerned;
  - (i) the registration of the order under any enactment by a company or other body of persons corporate or unincorporate which is affected by it as mentioned in paragraph (h);
  - (j) the continuation, with any necessary change of parties, of any legal proceedings;
  - (k) the approval by the relevant authority or another person of anything required by virtue of the order to be done or of any person to whom anything is to be transferred, or in whom anything is to be vested, by virtue of the order; or
  - (l) the appointment of trustees or other persons to do anything on behalf of another person which is required of that person by virtue of the order or to monitor the doing by that person of any such thing.
- 14 The references in paragraph 13 to the division of a business as mentioned in subparagraph (1)(a) of that paragraph shall, in the case of an order under section 75, 83, 84, 160 or 161, or an order under paragraph 5, 10 or 11 of Schedule 7, be construed as including references to the separation, by the sale of any part of any undertaking or assets concerned or other means, of enterprises which are under common control (within the meaning of section 26) otherwise than by reason of their being enterprises of interconnected bodies corporate.

*Supply and publication of information*

- 15 (1) An order may require a person supplying goods or services to publish a list of prices or otherwise notify prices.
- (2) An order made by virtue of this paragraph may also require or prohibit the publication or other notification of further information.
- 16 An order may prohibit any person from notifying (whether by publication or otherwise) to persons supplying goods or services prices recommended or suggested as appropriate to be charged by those persons for those goods or services.
- 17 (1) An order may require a person supplying goods or services to publish—
- (a) accounting information in relation to the supply of the goods or services;
  - (b) information in relation to the quantities of goods or services supplied;
  - (c) information in relation to the geographical areas in which they are supplied.

*Status: Point in time view as at 29/12/2004.*

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- (2) In sub-paragraph (1) “accounting information”, in relation to a supply of goods or services, means information as to—
- (a) the costs of the supply, including fixed costs and overheads;
  - (b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier; and
  - (c) the income attributable to the supply.
- 18 An order made by virtue of paragraph 15 or 17 may provide for the manner in which information is to be published or otherwise notified.
- 19 An order may—
- (a) require any person to supply information to the relevant authority;
  - (b) where the OFT is not the relevant authority, require any person to supply information to the OFT;
  - (c) provide for the publication, by the person who has received information by virtue of paragraph (a) or (b), of that information.

#### *National security*

- 20 (1) An order may make such provision as the person making the order considers to be appropriate in the interests of national security (within the meaning of section 58(1)).
- (2) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.

#### *Newspaper mergers*

- [<sup>F1</sup>20A(1) This paragraph applies in relation to any order—
- (a) which is to be made following the giving of—
    - (i) an intervention notice which mentions a newspaper public interest consideration;
    - (ii) an intervention notice which mentions any other media public interest consideration in relation to a relevant merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise;
    - (iii) a special intervention notice which mentions a consideration specified in section 58(2A) or (2B); or
    - (iv) a special intervention notice which, in relation to a special merger situation in which one of the enterprises ceasing to be distinct is a newspaper enterprise, mentions a consideration specified in section 58(2C); and
  - (b) to which the consideration concerned is still relevant.
- (2) The order may make such provision as the person making the order considers to be appropriate in all circumstances of the case.
- (3) Such provision may, in particular, include provision requiring a person to do, or not to do, particular things.
- (4) Provision made by virtue of this paragraph may, in particular, include provision—

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- (a) altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
  - (b) requiring the agreement of the relevant authority or another person before the taking of particular action (including the appointment or dismissal of an editor, journalists or directors or acting as a shadow director);
  - (c) attaching conditions to the operation of a newspaper;
  - (d) prohibiting consultation or co-operation between subsidiaries.
- (5) In this paragraph “newspaper public interest consideration” means a media public interest consideration other than one which is such a consideration—
- (a) by virtue of section 58(2C); or
  - (b) by virtue of having been, in the opinion of the Secretary of State, concerned with broadcasting and a consideration that ought to have been specified in section 58.
- (6) This paragraph is without prejudice to the operation of the other paragraphs of this Schedule in relation to the order concerned.]

#### Textual Amendments

**F1** Sch. 8 para. 20A inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 387, 411(2)(3) (with transitional provisions in Sch. 18); S.I. 2003/3142, art. 3(1), Sch. (subject to arts. 3(3), 11)

#### Supplementary

- 21 (1) An order, as well as making provision in relation to all cases to which it may extend, may make provision in relation to—
- (a) those cases subject to specified exceptions; or
  - (b) any particular case or class of case.
- (2) An order may, in relation to the cases in relation to which it applies, make the full provision which may be made by it or any less provision (whether by way of exception or otherwise).
- (3) An order may make provision for matters to be determined under the order.
- (4) An order may—
- (a) make different provision for different cases or classes of case or different purposes;
  - (b) make such transitional, transitory or saving provision as the person making it considers appropriate.
- 22 (1) An order which may prohibit the doing of anything (or the refraining from doing anything) may in particular by virtue of paragraph 21(2) prohibit the doing of that thing (or the refraining from doing of it) except to such extent and in such circumstances as may be provided by or under the order.
- (2) Any such order may, in particular, prohibit the doing of that thing (or the refraining from doing of it)—
- (a) without the agreement of the relevant authority or another person; or

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- (b) by or in relation to a person who has not been approved by the relevant authority or another person.

### Interpretation

- 23 References in this Schedule to the notification of prices or other information are not limited to the notification in writing of prices or other information.
- 24 In this Schedule “the relevant authority” means—
- (a) in the case of an order to be made by the OFT, the OFT;
  - (b) in the case of an order to be made by the Commission, the Commission; and
  - (c) in the case of an order to be made by the Secretary of State, the Secretary of State.

## SCHEDULE 9

Sections 86(5), 164(2) and 168(9)

### CERTAIN AMENDMENTS OF SECTORAL ENACTMENTS

#### PART 1

##### POWER OF ENFORCEMENT ORDERS TO AMEND LICENCE CONDITIONS ETC.

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

- <sup>1</sup> [F2(1) Section 95 of the Telecommunications Act 1984 (modification of licence conditions by order) shall be amended as follows.

- (2) For subsections (1) and (2) there shall be substituted—

“(1) Where the Office of Fair Trading, the Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of licences granted under section 7 above to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (2) In subsection (1) above, “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of a commercial activity connected with telecommunications; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of a commercial activity connected with telecommunications; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United

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Kingdom for goods or services which prevents, restricts or distorts competition relates to commercial activities connected with telecommunications.”

(3) For subsection (3) there shall be substituted—

“(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”]

#### Textual Amendments

**F2** Sch. 9 para. 1 repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(1), Sch. 1 (with arts. 3(3), 11)

#### *Airports Act 1986 (c. 31)*

2 (1) Section 54 of the Airports Act 1986 (modification of certain conditions in force under Part 4 of that Act) shall be amended as follows.

(2) For subsection (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In subsection (1) “relevant order” means—

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

(3) Subsection (3) shall cease to have effect.

(4) For subsection (4) there shall be substituted—

“(4) Expressions used in subsection (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

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- 3 In paragraph 13 of Schedule 1 to that Act—
- (a) for “section 54(3)(b)” there shall be substituted “ section 54(1A) ”;
  - (b) for “the reference” there shall be substituted “ references ”; and
  - (c) for “a reference” there shall be substituted “ references ”.

*Gas Act 1986 (c. 44)*

- 4 (1) Section 27 of the Gas Act 1986 (modification of licence conditions by order) shall be amended as follows.

- (2) For subsection (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular licence; or
- (b) the standard conditions of licences under section 7 above, licences under subsection (1) of section 7A above or licences under subsection (2) of that section,

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

- (1ZA) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—
  - (i) activities authorised or regulated by a licence; or
  - (ii) the storage of gas on terms which have been determined by the holder of a licence under section 7 above, or could have been determined by the holder if he had thought fit or had been required to determine them by or under a condition of the licence.”

- (3) In subsection (2)—

- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”;
- (b) for the words “section, he” there shall be substituted “ section, the relevant authority ”; and
- (c) for the words “as he considers” there shall be substituted “ as the relevant authority considers ”.

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- (4) Subsections (3) and (4) shall cease to have effect.
- (5) In subsection (5)—
- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
  - (b) for the words “he”, in both places where they appear, there shall be substituted “ the relevant authority ”.
- (6) For subsection (6) there shall be substituted—
- “(6) Expressions used in subsection (1ZA) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

*Electricity Act 1989 (c. 29)*

- 5 (1) Section 15 of the Electricity Act 1989 (modification of licence conditions by order) shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted—
- “(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity.”
- (3) For subsection (2B) there shall be substituted—
- “(2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and

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- (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of any licence of that type granted before that time.”
- (4) In subsection (2C)—
  - (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
  - (b) for the words “he”, in both places where they appear, there shall be substituted “the relevant authority”.
- (5) For subsection (3) there shall be substituted—

“(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

*Broadcasting Act 1990 (c. 42)*

- 6 For section 193 of the Broadcasting Act 1990 (modification of networking arrangements in consequence of reports under competition legislation) there shall be substituted—

**“193 Modification of networking arrangements in consequence of competition legislation**

- (1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of any networking arrangements to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) “relevant order” means—
  - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of programmes for broadcasting in regional Channel 3 services; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of such programmes; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of programmes for broadcasting in regional Channel 3 services.
- (3) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.
- (4) In this section —

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“networking arrangements” means any such arrangements as are mentioned in section 39(1) above; and

“regional Channel 3 service” has the meaning given by section 14(6) above.”

*Water Industry Act 1991 (c. 56)*

7 (1) Section 17 of the Water Industry Act 1991 (modification of conditions of appointment by order) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may, subject to subsection (3), also provide for the modification of the conditions of a company’s appointment under this Chapter to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above “relevant order” means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by a relevant undertaker; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by a relevant undertaker; or

(b) an order under section 160 or 161 of the 2002 Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition is—

(i) the structure or an aspect of the structure of a market for the supply of goods or services by a relevant undertaker; or

(ii) the conduct of a relevant undertaker or of customers of a relevant undertaker.”

(3) For subsection (4) there shall be substituted—

“(4) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.”

**Commencement Information**

**I3** Sch. 9 para. 7 not in force at Royal Assent see s. 279; Sch. 9 para. 7 in force at 20.6.2003 subject to art. 3(1) of the commencing S.I. by S.I. 2003/1397, art. 2(1), Sch.; Sch. 9 para. 7 in force for water purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

8 In section 36(1) of that Act (interpretation of Part 2 of that Act)—

(a) the definition of “the 1973 Act”, and the word “and” at the end of the definition, shall cease to have effect; and

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(b) at the end of the subsection there shall be inserted—

““the 2002 Act” means the Enterprise Act 2002;”.

#### Commencement Information

**I4** Sch. 9 para. 8 wholly in force at 29.12.2004; Sch. 9 para. 8 not in force at Royal Assent see s. 279; Sch. 9 para. 8(b) in force at 20.6.2003 by S.I. 2003/1397, art. 2(I), Sch., Sch. 9 para. 8(a) in force at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

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

9 For article 18 of the Electricity (Northern Ireland) Order 1992 (modification of licence conditions by order) there shall be substituted—

#### Modification by order under other statutory provisions

“18 (1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In paragraph (1) “relevant order” means—

(a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—

(i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or

(ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission or supply of electricity.

(3) In paragraph (2) expressions which are also used in Part 3 or, as the case may be, Part 4 of the Enterprise Act 2002 have the same meanings as in that Part of that Act.”

*Railways Act 1993 (c. 43)*

10 (1) Section 16 of the Railways Act 1993 (modification of licence conditions by order) shall be amended as follows.

(2) For subsections (1) and (2) there shall be substituted—

“(1) Where the OFT, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a

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licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In subsection (1) above “relevant order” means—

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

(3) In subsection (3) for the words “Secretary of State” there shall be substituted “relevant authority”.

(4) For subsection (5) there shall be substituted—

“(5) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part; and in subsection (2) above “services relating to railways” has the same meaning as in section 67(2A) of this Act.”

*Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))*

11 (1) Article 45 of the Airports (Northern Ireland) Order 1994 (modification of certain conditions in force under Part 4 of that Order) shall be amended as follows.

(2) For paragraph (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the revocation or modification of any relevant conditions to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was carried on by an airport operator; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is carried on by an airport operator; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition

*Status: Point in time view as at 29/12/2004.*

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relates to the carrying on of any operational activities relating to one or more than one airport.”

(3) Paragraph (3) shall cease to have effect.

(4) For paragraph (4) there shall be substituted—

“(4) Expressions used in paragraph (1A) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.”

12 In paragraph 13 of Schedule 6 to that Order—

- (a) for “Article 45(3)(b)” there shall be substituted “ Article 45(1A) ”;
- (b) for “the reference” there shall be substituted “ references ”; and
- (c) for “a reference” there shall be substituted “ references ”.

*Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))*

13 (1) Article 18 of the Gas (Northern Ireland) Order 1996 (modification of licence conditions by order) shall be amended as follows.

(2) For paragraph (1) there shall be substituted—

“(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of—

- (a) the conditions of a particular licence; or
- (b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1),

to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(1A) In paragraph (1) “relevant order” means—

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

(3) In paragraph (2)—

- (a) for the words “Secretary of State modifies under paragraph (1)(ii)” there shall be substituted “ relevant authority modifies under paragraph (1)(b) ”; and
- (b) for the word “he”, in both places where it appears, there shall be substituted “ the relevant authority ”.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (4) Paragraph (3) shall cease to have effect.
- (5) In paragraph (4)—
- (a) for the words “Secretary of State” there shall be substituted “ relevant authority ”; and
  - (b) for the word “he”, in both places where it appears, there shall be substituted “ the relevant authority ”.
- (6) For paragraph (5) there shall be substituted—
- “(5) Expressions used in paragraph (1A) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that paragraph as in that Part.”

*Postal Services Act 2000 (c. 26)*

- 14 (1) Section 21 of the Postal Services Act 2000 (modification of licence conditions by order) shall be amended as follows.
- (2) For subsections (1) to (4) there shall be substituted—
- “(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of postal services; or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of postal services; or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of postal services.”
- (3) In subsection (5) for the words “Secretary of State” there shall be substituted “ relevant authority ”.
- (4) For subsection (6) there shall be substituted—
- “(6) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.”

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

*Transport Act 2000 (c. 38)*

- 15 (1) Section 19 of the Transport Act 2000 (modification of licence conditions by order) shall be amended as follows.
- (2) For subsections (1) to (4) there shall be substituted—
- “(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) above “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the 2002 Act where—
- (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of air traffic services; or
- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of air traffic services; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of air traffic services.”
- (3) In subsection (5) for the words “Secretary of State” there shall be substituted “relevant authority”.
- (4) For subsection (6) there shall be substituted—
- “(6) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the 2002 Act have the same meanings in that subsection as in that Part.”
- (5) In subsection (7) for the words “1973 Act is the Fair Trading Act 1973” there shall be substituted “2002 Act is the Enterprise Act 2002”.

**PART 2**

APPLICATION OF PART 4 OF THIS ACT TO SECTORAL REGULATORS

*Telecommunications Act 1984 (c. 12)*

- 16 <sup>F3</sup>(1) Section 50 of the Telecommunications Act 1984 (application of monopoly provisions etc. to the Director General of Telecommunications) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Director General of Telecommunications) there shall be substituted—
- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the Office of Fair Trading.

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(2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with telecommunications.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires)."

(3) For subsection (4) there shall be substituted—

“(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(4) In subsection (6)—

- (a) for the words “subsection (2)” there shall be substituted “ subsection (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(5) For subsection (6A) there shall be substituted—

“(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”

(6) Subsection (7) shall cease to have effect.]

#### Textual Amendments

**F3** Sch. 9 para. 16 repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, arts. 1(2), 2(1), 3(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(1), Sch. 1 (with arts. 3(3), 11)

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

17 (1) Section 36A of the Gas Act 1986 (application of monopoly provisions etc. to the Gas and Electricity Markets Authority) shall be amended as follows.

(2) For subsection (2) (monopoly functions to be exercisable concurrently by the Gas and Electricity Markets Authority) there shall be substituted—

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“(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the Office of Fair Trading.

(2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the carrying on of activities to which this subsection applies.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(3) In subsection (4) for the word “(2)” there shall be substituted “ (2A) ”.

(4) For subsection (5) there shall be substituted—

“(5) Before the Office of Fair Trading or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.

(5A) Neither the Office of Fair Trading nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(5) In subsection (7) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(6) For subsection (8) there shall be substituted—

“(8) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Authority.”

(7) Subsection (9) shall cease to have effect.

(8) In subsection (10) for the words “mentioned in subsection (2) or (3) above” there shall be substituted “ exercisable by the Authority by virtue of subsection (2) or (3) above ”.

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

18 (1) Section 43 of the Electricity Act 1989 (application of monopoly provisions etc. to the Gas and Electricity Markets Authority) shall be amended as follows.

(2) For subsection (2) (monopoly functions to be exercisable concurrently by the Gas and Electricity Markets Authority) there shall be substituted—

“(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the Office of Fair Trading.

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- (2A) This subsection applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.
- (2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”
- (3) For subsection (4) there shall be substituted—
- “(4) Before the Office of Fair Trading or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.
- (4A) Neither the Office of Fair Trading nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”
- (4) In subsection (6)—
- (a) for the word “(2)” there shall be substituted “ (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.
- (5) For subsection (6A) there shall be substituted—
- “(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Authority.”
- (6) Subsection (7) shall cease to have effect.

*Water Industry Act 1991 (c. 56)*

- 19 (1) Section 31 of the Water Industry Act 1991 (application of monopoly provisions etc. to the Director General of Water Services) shall be amended as follows.
- (2) For subsection (2) (monopoly functions to be exercisable concurrently by the Director General of Water Services) there shall be substituted—
- “(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Director and the OFT.
- (2A) This subsection applies to the functions of the OFT under Part 4 of the 2002 Act (other than sections 166 and 171) so far as relating to commercial activities connected with the supply of water or the provision of sewerage services.”
- (3) For subsection (4) there shall be substituted—

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“(4) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the 2002 Act to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(4) For subsections (5) and (6) there shall be substituted—

“(5) Before the OFT or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(6) Neither the OFT nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(5) In subsection (8)—

- (a) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (b) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “Part 4 of the 2002 Act”.

(6) For subsection (8A) there shall be substituted—

“(8A) Section 117 of the 2002 Act (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Director.”

(7) Subsection (9) shall cease to have effect.

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

20 (1) Article 46 of the Electricity (Northern Ireland) Order 1992 (application of monopoly provisions etc. to the Director General of Electricity Supply for Northern Ireland) shall be amended as follows.

(2) For paragraph (2) (monopoly functions to be exercisable concurrently by the Director) there shall be substituted—

“(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections

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166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(3) For paragraph (4) there shall be substituted—

“(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.”

(4) In paragraph (6)—

- (a) for the words “paragraph (2)” there shall be substituted “ paragraph (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(5) For paragraph (6A) there shall be substituted—

“(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”

(6) Paragraph (7) shall cease to have effect.

*Railways Act 1993 (c. 43)*

21 (1) Section 67 of the Railways Act 1993 (application of monopoly provisions etc. to the Rail Regulator) shall be amended as follows.

(2) For subsection (2) (monopoly functions to be exercisable concurrently by the Rail Regulator) there shall be substituted—

“(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Regulator and the OFT.

(2A) This subsection applies to the functions of the OFT under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to the supply of services relating to railways.

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) above, references in Part 4 of the Act of 2002 to the OFT (including references in provisions of that Act applied by that Part) shall be construed as including references to the Regulator (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

(3) In subsection (3ZA) for the words “subsection (3)” there shall be substituted “ subsections (2A) and (3) ”.

(4) For subsection (4) there shall be substituted—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

“(4) Before the OFT or the Regulator first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, that person shall consult the other.

(4A) Neither the OFT nor the Regulator shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.”

(5) In subsection (7)—

- (a) for the words “on a monopoly reference” there shall be substituted “ under section 136 or 142 of the Enterprise Act 2002 ”;
- (b) the words from “was made” to “that it” shall cease to have effect; and
- (c) for the word “him” there shall be substituted “ the Regulator ”.

(6) In subsection (8)—

- (a) for the word “(2)” there shall be substituted “ (2A) ”;
- (b) the words from “or paragraph” to “Act 1994” shall cease to have effect; and
- (c) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(7) For subsection (9) there shall be substituted—

“(9) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Regulator by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the OFT included references to the Regulator.”

(8) Subsection (10) shall cease to have effect.

*Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))*

22 (1) Article 23 of the Gas (Northern Ireland) Order 1996 (application of monopoly provisions etc. to the Director General of Gas for Northern Ireland) shall be amended as follows.

(2) For paragraph (2) (monopoly functions to be exercisable concurrently by the Director) there shall be substituted—

“(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the conveyance, storage or supply of gas.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).”

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

(3) For paragraph (4) there shall be substituted—

“(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.”

(4) In paragraph (6) for the words “Part IV or section 86 or 88 of the 1973 Act” there shall be substituted “ Part 4 of the Enterprise Act 2002 ”.

(5) For paragraph (7) there shall be substituted—

“(7) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.”

(6) Paragraph (8) shall cease to have effect.

(7) In paragraph (9) for the words “mentioned in paragraph (2) or (3)” there shall be substituted “ exercisable by the Director by virtue of paragraph (2) or (3) ”.

*Transport Act 2000 (c. 38)*

23 (1) Section 85 of the Transport Act 2000 (interpretation of Chapter V) shall be amended as follows.

(2) In subsection (1) for paragraph (a) there shall be substituted—

“(a) the 2002 Act is the Enterprise Act 2002;”.

(3) In subsection (3)—

(a) the words “the 1973 Act or” shall cease to have effect; and

(b) for the words “Act concerned” there shall be substituted “ 1998 Act ”.

24 (1) Section 86 of that Act (functions exercisable by the CAA and the Director) shall be amended as follows.

(2) For subsection (2) there shall be substituted—

“(2) This subsection applies to the OFT’s functions under Part 4 of the 2002 Act (other than sections 166 and 171) so far as they relate to the supply of air traffic services.”

(3) In subsection (4)(a) for the words from the beginning to “Act” there shall be substituted “ Part 4 of the 2002 Act (except for sections 166 and 171 but including provisions of that Act applied by that Part) ”.

(4) In subsection (7)(a) for the words from the beginning to “Act” there shall be substituted “ Part 4 of the 2002 Act ”.

25 In section 87 of that Act (CAA’s 1973 Act functions) for the word “1973”, wherever it appears, there shall be substituted “ 2002 ”.

*Status: Point in time view as at 29/12/2004.*

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- 26 In section 89 of that Act (carrying out functions) for the word “1973”, wherever it appears, there shall be substituted “ 2002 ”.

## SCHEDULE 10

Section 90

## PROCEDURAL REQUIREMENTS FOR CERTAIN ENFORCEMENT UNDERTAKINGS AND ORDERS

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

- C15** Sch. 10 applied (20.6.2003) by 1980 c. 21, s. 12(6) (as substituted by Enterprise Act 2002 (c. 40), ss. 278, 279, **Sch. 25 para. 10(4)**); S.I. 2003/1397, **art. 2(1)**, Sch. (with art. 8)  
Sch. 10 applied (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(6), 411(2)(3), **Sch. 18 para. 62(7)(a)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- C16** Sch. 10 applied (with modifications) (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 15, **Sch. 3 para. 2(1)(b)(3)**

*Requirements for accepting undertakings and making orders*

- 1 Paragraph 2 applies in relation to—
- (a) any undertaking under section 73 or 82 or paragraph 3 or 9 of Schedule 7 (other than an undertaking under the enactment concerned which varies an undertaking under that enactment but not in any material respect); and
  - (b) any order under section 75, 83 or 84 or paragraph 5, 10 or 11 of Schedule 7 (other than an order under the enactment concerned which is a revoking order of the kind dealt with by paragraphs 6 to 8 below).
- 2 (1) Before accepting an undertaking to which this paragraph applies or making an order to which this paragraph applies, the OFT, the Commission or (as the case may be) the Secretary of State (in this Schedule “the relevant authority”) shall—
- (a) give notice of the proposed undertaking or (as the case may be) order; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under sub-paragraph (1) shall state—
- (a) that the relevant authority proposes to accept the undertaking or (as the case may be) make the order;
  - (b) the purpose and effect of the undertaking or (as the case may be) order;
  - (c) the situation that the undertaking or (as the case may be) order is seeking to deal with;
  - (d) any other facts which the relevant authority considers justify the acceptance of the undertaking or (as the case may be) the making of the order;
  - (e) a means of gaining access to an accurate version of the proposed undertaking or (as the case may be) order at all reasonable times; and
  - (f) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed undertaking or (as the case may be) order.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (3) A notice under sub-paragraph (1) shall be given by—
- (a) in the case of a proposed order, serving on any person identified in the order as a person on whom a copy of the order should be served a copy of the notice and a copy of the proposed order; and
  - (b) in every case, publishing the notice.
- (4) The relevant authority shall not accept the undertaking with modifications or (as the case may be) make the order with modifications unless the relevant authority—
- (a) gives notice of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (5) A notice under sub-paragraph (4) shall state—
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period (not less than 7 days starting with the date of the publication of the notice under sub-paragraph (4)) within which representations may be made in relation to the proposed modifications.
- (6) A notice under sub-paragraph (4) shall be given by—
- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) in every case, publishing the notice.
- 3 (1) If, after giving notice under paragraph 2(1) or (4), the relevant authority decides—
- (a) not to accept the undertaking concerned or (as the case may be) make the order concerned; and
  - (b) not to proceed by virtue of paragraph 5;
- the relevant authority shall give notice of that decision.
- (2) A notice under sub-paragraph (1) shall be given by—
- (a) in the case of a proposed order, serving a copy of the notice on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) in every case, publishing the notice.
- 4 As soon as practicable after accepting an undertaking to which paragraph 2 applies or (as the case may be) making an order to which that paragraph applies, the relevant authority shall (except in the case of an order which is a statutory instrument)—
- (a) serve a copy of the undertaking on any person by whom it is given or (as the case may be) serve a copy of the order on any person identified in the order as a person on whom a copy of the order should be served; and
  - (b) publish the undertaking or (as the case may be) the order.
- 5 (1) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority—
- (a) has already given notice under paragraph 2(1) but not paragraph 2(4) in relation to the proposed undertaking or order; and
  - (b) considers that the modifications which are now being proposed are not material in any respect.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (2) The requirements of paragraph 2(4) (and those of paragraph 2(1)) shall not apply if the relevant authority—
- (a) has already given notice under paragraphs 2(1) and (4) in relation to the matter concerned; and
  - (b) considers that the further modifications which are now being proposed do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 2(4).

#### *Termination of undertakings and orders*

- 6 Paragraph 7 applies where the relevant authority is proposing to—
- (a) release any undertaking under section 73 or 82 or paragraph 3 or 9 of Schedule 7 (other than in connection with accepting an undertaking under the enactment concerned which varies or supersedes an undertaking under that enactment); or
  - (b) revoke any order under section 75, 83 or 84 or paragraph 5, 10 or 11 of Schedule 7 (other than in connection with making an order under the enactment concerned which varies or supersedes an order under that enactment).
- 7 (1) Before releasing an undertaking to which this paragraph applies or (as the case may be) revoking an order to which this paragraph applies, the relevant authority shall—
- (a) give notice of the proposed release or (as the case may be) revocation; and
  - (b) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under sub-paragraph (1) shall state—
- (a) the fact that a release or (as the case may be) revocation is proposed;
  - (b) the reasons for it; and
  - (c) the period (not less than 15 days starting with the date of publication of the notice in the case of an undertaking and not less than 30 days starting with that date in the case of an order) within which representations may be made in relation to the proposed release or (as the case may be) revocation.
- (3) If after giving notice under sub-paragraph (1) the relevant authority decides not to proceed with the release or (as the case may be) the revocation, the relevant authority shall give notice of that decision.
- (4) A notice under sub-paragraph (1) or (3) shall be given by—
- (a) serving a copy of the notice on the person who gave the undertaking which is being released or (as the case may be) on any person identified in the order being revoked as a person on whom a copy of the order should be served; and
  - (b) publishing the notice.
- 8 As soon as practicable after releasing the undertaking or making the revoking order, the relevant authority shall (except in the case of an order which is a statutory instrument)—
- (a) serve a copy of the release of the undertaking on the person who gave the undertaking or (as the case may be) serve a copy of the revoking order on any person identified in the order being revoked as a person on whom a copy of that order should be served; and
  - (b) publish the release or (as the case may be) the revoking order.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

*Power to dispense with the requirements of the Schedule*

- 9 The relevant authority may dispense with any or all of the requirements of this Schedule if the relevant authority considers that the relevant authority has special reasons for doing so.

SCHEDULE 11

Section 185

THE COMPETITION COMMISSION

- 1 Schedule 7 to the 1998 Act is amended as follows.

**Commencement Information**

- I5** Sch. 11 para. 1 partly in force; Sch. 11 para. 1 not in force at Royal Assent see s. 279; Sch. 11 para. 1 in force for certain purposes on 1.4.2003 by S.I. 2003/766, art. 2, Sch.; 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.; 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

- 2 In paragraph 1 (interpretation), after the definition of “newspaper merger reference” there is inserted—

““newspaper panel member” means a member of the panel maintained under paragraph 22;”.

- 3 In paragraph 2 (appointment of members)—

(a) in sub-paragraph (1)(c), for the words from the beginning to “from” there is substituted “the members of”;

(b) in sub-paragraph (1), after paragraph (d) there is inserted—

“(e) one or more members appointed by the Secretary of State to serve on the Council.”;

(c) after sub-paragraph (1) there is inserted—

“(1A) A person may not be, at the same time, a member of the Commission and a member of the Tribunal.”;

(d) in sub-paragraph (2), for “(a)” there is substituted “(aa)”;

(e) in sub-paragraph (3), before paragraph (b) there is inserted—

“(aa) a newspaper panel member;”.

**Commencement Information**

- I6** Sch. 11 para. 3 wholly in force at 20.6.2003; Sch. 11 para. 3 not in force at Royal Assent see s. 279; Sch. 11 para. 3(a)(b)(d)(e) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 11 para. 3(c) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

- 4 In paragraph 5 (the Council)—

(a) in sub-paragraph (1), the word “management” shall cease to have effect;

(b) in sub-paragraph (2)(a), after “Chairman” there is inserted “and any deputy chairmen of the Commission”;

(c) in sub-paragraph (2), before paragraph (c) there is inserted—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

“(bb) the member or members appointed under paragraph 2(1)(e);”;

and

(d) after sub-paragraph (3) there is inserted—

“(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.”

#### Commencement Information

**17** Sch. 11 para. 4 wholly in force at 20.6.2003; Sch. 11 para. 4 not in force at Royal Assent see s. 279; Sch. 11 para. 4(a)-(c) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 11 para. 4(d) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1) Sch.

5 In paragraph 6 (terms of appointment)—

(a) in sub-paragraph (2), for “five years at a time” there is substituted “ 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) ”; and

(b) sub-paragraph (5) shall cease to have effect.

6 Paragraph 7(4) (approval of Treasury) shall cease to have effect.

7 Before paragraph 8 there is inserted—

“7A The Commission may publish advice and information in relation to any matter connected with the exercise of its functions.”

8 In paragraph 9 (staff)—

(a) sub-paragraph (2), and in sub-paragraph (3) the words “and the President”, shall cease to have effect;

(b) in sub-paragraph (4), for paragraphs (a) and (b) there is substituted “ the Secretary of State as to numbers and terms and conditions of service ”.

9 Paragraph 10 (procedure) shall cease to have effect.

10 (1) Paragraph 15 (discharge of certain functions by groups) is amended as follows.

(2) In sub-paragraph (1), after “sub-paragraph (7)” there is inserted “ or (8) ”.

(3) For sub-paragraph (5) (members of newspaper panel) there is substituted—

“(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.”

(4) In sub-paragraph (7) (Chairman’s role in setting aside merger references), paragraph (b) (and the word “or” before it) shall cease to have effect.

(5) After sub-paragraph (7) there is inserted—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

“(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.”

#### Commencement Information

**I8** Sch. 11 para. 10 partly in force; Sch. 11 para. 10 not in force at Royal Assent see s. 279; Sch. 11 para. 10(1) in force for certain purposes and para. 10(3) in force on 1.4.2003 by S.I. 2003/766, art. 2, Sch.; Sch. 11 para. 10(2)(5) in force and Sch. 11 para. 10(1)(4) in force for certain purposes at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.; Sch. 11 para. 10(4) in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

- 11 (1) Paragraph 20 (requirement for two-thirds majority on reports) is amended as follows.
- (2) In sub-paragraph (1), for “sub-paragraph (2)” there is substituted “ sub-paragraphs (2) to (9) ”.
- (3) For sub-paragraph (2) there is substituted—
- “(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 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.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (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.
- (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.”

#### Commencement Information

- 19** [Sch. 11 para. 11](#) not in force at Royal Assent see [s. 279](#); [Sch. 11 para. 11](#) in force at 20.6.2003 subject to art. 3(1) of the commencing S.I. by [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#); [Sch. 11 para. 11](#) in force for water purposes at 29.12.2004 by [S.I. 2004/3233](#), [art. 2](#), [Sch.](#)

- 12 In paragraph 22 (panel of persons to act in newspaper merger references), for the words from the beginning to “suitable” there is substituted “ There are to be members of the Commission appointed by the Secretary of State to form a panel of persons available ”.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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 12

Section 187

## COMPETITION COMMISSION: CERTAIN PROCEDURAL RULES

## “SCHEDULE 7A

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

## 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 section 59 of the Fair Trading Act 1973 (c. 41), 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) and (n) 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.

## 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—

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- (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.”

## SCHEDULE 13

Section 210

### LISTED DIRECTIVES

#### PART 1

##### DIRECTIVES

- 1 Council Directive [84/450/EEC](#) of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising.
- 2 Council Directive [85/577/EEC](#) of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.
- 3 Council Directive [87/102/EEC](#) of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit as last amended by Directive [98/7/EC](#).
- 4 Council Directive [90/314/EEC](#) of 13 June 1990 on package travel, package holidays and package tours.
- 5 Council Directive [93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.
- 6 Directive [94/47/EC](#) of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.
- 7 Directive [97/7/EC](#) of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

*Status: Point in time view as at 29/12/2004.*

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VALID FROM 08/01/2007

[<sup>F4</sup>7A Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising <sup>M1</sup>.

#### Textual Amendments

**F4** Sch. 13 para. 7A, 7B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006](#) (S.I. 2006/3363), [reg. 22\(2\)\(b\)](#)

#### Marginal Citations

**M1** OJ No. L 290, 23.10.1997, p 18.

VALID FROM 08/01/2007

7B Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers <sup>M2</sup>.]

#### Textual Amendments

**F4** Sch. 13 para. 7A, 7B inserted (8.1.2007) by [The Enterprise Act 2002 \(Amendment\) Regulations 2006](#) (S.I. 2006/3363), [reg. 22\(2\)\(b\)](#)

#### Marginal Citations

**M2** OJ No. L 80, 18.3.1998, p. 27.

8 Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

9 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”).

[<sup>F5</sup>9A Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.]

#### Textual Amendments

**F5** Sch. 13 para. 9A inserted (31.10.2004) by [The Financial Services \(Distance Marketing\) Regulations 2004](#) (S.I. 2004/2095), [reg. 26](#)

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

VALID FROM 08/01/2007

[<sup>F6</sup>9B Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights <sup>M3</sup>.]

#### Textual Amendments

**F6** Sch. 13 para. 9B inserted (8.1.2007) by The Enterprise Act 2002 (Amendment) Regulations 2006 (S.I. 2006/3363), reg. 22(2)(c)

#### Marginal Citations

**M3** OJ No. L 46, 17.2.2004, p 1.

## PART 2

### PROVISIONS OF DIRECTIVES

- 10 Articles 10 to 21 of Council Directive 89/552/EEC of 3 October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities as amended by Directive 97/36/EC.
- 11 [<sup>F7</sup>Articles 86 to 100] of the Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use.

#### Textual Amendments

**F7** Words in Sch. 13 para. 11 substituted (20.6.2003) by The Enterprise Act 2002 (Part 8 Community Infringements Specified UK Laws) Order 2003 (S.I. 2003/1374), art. 2

## SCHEDULE 14

Sections 238 and 243

### SPECIFIED FUNCTIONS

- [<sup>F8</sup>Parts 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the Fair Trading Act 1973 (c. 41).]  
Trade Descriptions Act 1968 (c. 29).  
[<sup>F9</sup>Hallmarking Act 1973 (c. 43).]  
Prices Act 1974 (c. 24).  
Consumer Credit Act 1974 (c. 39).  
[<sup>F10</sup>Customs and Excise Management Act 1979 (c. 12).]  
Estate Agents Act 1979 (c. 38).  
Competition Act 1980 (c. 21).

*Status: Point in time view as at 29/12/2004.*

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[<sup>F11</sup>Video Recordings Act 1984 (c. 39).]  
Consumer Protection Act 1987 (c. 43).  
[<sup>F12</sup>Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)).  
Copyright, Designs and Patents Act 1988 (c. 48).]  
Property Misdescriptions Act 1991 (c. 29).  
Timeshare Act 1992 (c. 35).  
[<sup>F13</sup>Clean Air Act 1993 (c. 11)  
[<sup>F14</sup>Value Added Tax Act 1994 (c. 23).]  
Trade Marks Act 1994 (c. 26).]  
Competition Act 1998 (c. 41).  
Chapter 3 of Part 10 and Chapter 2 of Part 18 of the Financial Services and Markets Act 2000 (c. 8).  
An order made under section 95 of that Act.  
[<sup>F15</sup>Fireworks Act 2003.]

#### Textual Amendments

- F8** Sch. 14: words in entry substituted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 3, **Sch. 1 para. 2**
- F9** Sch. 14: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 3, **Sch. 1 para. 3**
- F10** Sch. 14: entry inserted (31.10.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) \(No. 2\) Order 2003 \(S.I. 2003/2580\)](#), art. 3, **Sch. para. 2**
- F11** Sch. 14: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 3, **Sch. 1 para. 4**
- F12** Sch. 14: entries inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 3, **Sch. 1 para. 5**
- F13** Sch. 14: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 3, **Sch. 1 para. 6**
- F14** Sch. 14: entry inserted (31.10.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) \(No. 2\) Order 2003 \(S.I. 2003/2580\)](#), art. 3, **Sch. para. 3**
- F15** Sch. 14: entry inserted (E.W.S.) (28.11.2003 and 15.7.2004 for certain purposes and otherwise prosp.) by [Fireworks Act 2003 \(c. 22\)](#), **ss. 12(3)**, 18 (with s. 2(8)); S.I. 2003/3084, **art. 2**, Sch.; S.I. 2004/1831, **art. 2**, Sch.

## SCHEDULE 15

Section 241

### ENACTMENTS CONFERRING FUNCTIONS

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

- C17** Sch. 15 modified by [The Wireless Telegraphy \(Pre-Consolidation Amendments\) Order 2006 \(S.I. 2006/1391\)](#), arts. 1, 2, **Sch. para. 7(3)(i)** (the said S.I. coming into force immediately before the commencement of the Act resulting from the Wireless Telegraphy Bill introduced in the House of Lords

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on 20.4.2006 - the [Wireless Telegraphy Act 2006 \(c. 36\)](#) came into force on 8.2.2007, see [s. 126](#) of the said Act)

Gun Barrel Proof Act 1868 (cap 113).

Gun Barrel Proof Act 1950 (cap 3).

Trade Descriptions Act 1968.

Unsolicited Goods and Services Act 1971 (c. 30).

Fair Trading Act 1973.

Hallmarking Act 1973 (c. 43).

Prices Act 1974.

[<sup>F16</sup>the relevant statutory provisions within the meaning of Part I of the Health and Safety at Work etc. Act 1974 (c. 37).]

Consumer Credit Act 1974.

[<sup>F17</sup>Unsolicited Goods and Services (Northern Ireland) Order 1976 (S.I. 1976/57 (N.I. 1)).]

Gun Barrel Proof Act 1978 (c. 9).

[<sup>F18</sup>the relevant statutory provisions within the meaning of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)).]

Estate Agents Act 1979.

Competition Act 1980.

[<sup>F19</sup>Weights and Measures (Northern Ireland) Order 1981 (S.I. 1981/231 (N.I. 10)).]

National Audit Act 1983 (c. 44).

Telecommunications Act 1984 (c. 12).

[<sup>F20</sup>Video Recordings Act 1984 (c. 39).]

Companies Act 1985 (c. 6).

Weights and Measures Act 1985 (c. 72).

Airports Act 1986 (c. 31).

Gas Act 1986 (c. 44).

[<sup>F21</sup>Insolvency Act 1986 (c. 45).]

[<sup>F22</sup>Company Directors Disqualification Act 1986 (c. 46).]

Financial Services Act 1986 (c. 60).

[<sup>F23</sup>Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)).]

Consumer Protection Act 1987 (c. 43).

[<sup>F24</sup>Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20)).]

[<sup>F25</sup>Banking Act 1987 (c. 22).]

[<sup>F26</sup>Education Reform Act 1988 (c. 40).]

Copyright, Designs and Patents Act 1988 (c. 48).

[<sup>F27</sup>The Education (Unrecognised Degrees) (Northern Ireland) Order 1988 (S.I. 1988/1989 (N.I. 22)).]

Water Act 1989 (c. 15).

Electricity Act 1989 (c. 29).

[<sup>F28</sup>Companies Act 1989 (c. 40).]

[<sup>F29</sup>Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18)).]

[<sup>F30</sup>Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).]

[<sup>F31</sup>Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5)).]

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- [<sup>F32</sup>Companies No. 2 (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)).]  
Courts and Legal Services Act 1990 (c. 41).  
Broadcasting Act 1990 (c. 42).  
Property Misdescriptions Act 1991 (c. 29).  
Water Industry Act 1991 (c. 56).  
Water Resources Act 1991 (c. 57).  
Statutory Water Companies Act 1991 (c. 58).  
Land Drainage Act 1991 (c. 59).  
[<sup>F33</sup>Water Consolidation (Consequential Provisions) Act 1991 (c. 60).]  
Timeshare Act 1992 (c. 35).  
[<sup>F34</sup>Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).]  
[<sup>F35</sup>Clean Air Act 1993 (c. 11).]  
Railways Act 1993 (c. 43).  
Coal Industry Act 1994 (c. 21).  
Trade Marks Act 1994 (c. 26).  
[<sup>F36</sup>Part IV of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)).]  
Gas Act 1995 (c. 45).  
Broadcasting Act 1996 (c. 55).  
[<sup>F37</sup>Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)).]  
Competition Act 1998 (c. 41).  
Financial Services and Markets Act 2000 (c. 8).  
Government Resources and Accounts Act 2000 (c. 20).  
Postal Services Act 2000 (c. 26).  
Utilities Act 2000 (c. 27).  
[<sup>F38</sup>Transport Act 2000 (c. 38).]  
[<sup>F39</sup>Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)).]  
[<sup>F40</sup>Communications Act 2003.]  
[<sup>F41</sup>Fireworks Act 2003.]  
[<sup>F42</sup>Water Act 2003 (c. 37).]

#### Textual Amendments

- F16** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 2**
- F17** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 3**
- F18** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 4**
- F19** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 5**
- F20** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 6**
- F21** Sch. 15: entry inserted (20.6.2003) by [The Enterprise Act 2002 \(Part 9 Restrictions on Disclosure of Information\) \(Amendment and Specification\) Order 2003 \(S.I. 2003/1400\)](#), art. 4, **Sch. 2 para. 7**

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- F22** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 7**
- F23** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 8**
- F24** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 9**
- F25** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 9**
- F26** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 10**
- F27** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 11**
- F28** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 12**
- F29** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 12**
- F30** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 12**
- F31** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 12**
- F32** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 12**
- F33** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 13**
- F34** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 14**
- F35** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 14**
- F36** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 15**
- F37** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 16**
- F38** Sch. 15: entry substituted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 17**
- F39** Sch. 15: entry inserted (20.6.2003) by The Enterprise Act 2002 (Part 9 Restrictions on Disclosure of Information) (Amendment and Specification) Order 2003 (S.I. 2003/1400), art. 4, **Sch. 2 para. 18**
- F40** Sch. 15: entry inserted (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(7)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F41** Sch. 15: entry inserted (E.W.S.) (28.11.2003 for certain purposes, 15.7.2004 for certain further purposes and otherwise prosp.) by Fireworks Act 2003 (c. 22), **ss. 12(3)**, 18 (with s. 2(8)); S.I. 2003/3084, **art. 2**, Sch.; S.I. 2004/1831, **art. 2**, Sch.
- F42** Sch. 15: entry inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(4)**; S.I. 2004/641, **art. 3(y)**, Sch. 2

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## SCHEDULE 16

Section 248

## SCHEDULE B1 TO INSOLVENCY ACT 1986

## “SCHEDULE B1

## ADMINISTRATION

## ARRANGEMENT OF SCHEDULE

Nature of administration	Paragraphs 1 to 9
Appointment of administrator by court	Paragraphs 10 to 13
Appointment of administrator by holder of floating charge	Paragraphs 14 to 21
Appointment of administrator by company or directors	Paragraphs 22 to 34
Administration application: special cases	Paragraphs 35 to 39
Effect of administration	Paragraphs 40 to 45
Process of administration	Paragraphs 46 to 58
Functions of administrator	Paragraphs 59 to 75
Ending administration	Paragraphs 76 to 86
Replacing administrator	Paragraphs 87 to 99
General	Paragraphs 100 to 116

## NATURE OF ADMINISTRATION

**Administration**

- 1 (1) For the purposes of this Act “administrator” of a company means a person appointed under this Schedule to manage the company’s affairs, business and property.
- (2) For the purposes of this Act—
  - (a) a company is “in administration” while the appointment of an administrator of the company has effect,
  - (b) a company “enters administration” when the appointment of an administrator takes effect,
  - (c) a company ceases to be in administration when the appointment of an administrator of the company ceases to have effect in accordance with this Schedule, and
  - (d) a company does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.
- 2 A person may be appointed as administrator of a company—
  - (a) by administration order of the court under paragraph 10,
  - (b) by the holder of a floating charge under paragraph 14, or
  - (c) by the company or its directors under paragraph 22.

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### **Purpose of administration**

- 3 (1) The administrator of a company must perform his functions with the objective of—
- (a) rescuing the company as a going concern, or
  - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
  - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—
- (a) that it is not reasonably practicable to achieve that objective, or
  - (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
  - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.
- 4 The administrator of a company must perform his functions as quickly and efficiently as is reasonably practicable.

### **Status of administrator**

- 5 An administrator is an officer of the court (whether or not he is appointed by the court).

### **General restrictions**

- 6 A person may be appointed as administrator of a company only if he is qualified to act as an insolvency practitioner in relation to the company.
- 7 A person may not be appointed as administrator of a company which is in administration (subject to the provisions of paragraphs 90 to 97 and 100 to 103 about replacement and additional administrators).
- 8 (1) A person may not be appointed as administrator of a company which is in liquidation by virtue of—
- (a) a resolution for voluntary winding up, or
  - (b) a winding-up order.
- (2) Sub-paragraph (1)(a) is subject to paragraph 38.
- (3) Sub-paragraph (1)(b) is subject to paragraphs 37 and 38.
- 9 (1) A person may not be appointed as administrator of a company which—
- (a) has a liability in respect of a deposit which it accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
  - (b) is not an authorised deposit taker.

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- (2) A person may not be appointed as administrator of a company which effects or carries out contracts of insurance.
- (3) But sub-paragraph (2) does not apply to a company which—
- (a) is exempt from the general prohibition in relation to effecting or carrying out contracts of insurance, or
  - (b) is an authorised deposit taker effecting or carrying out contracts of insurance in the course of a banking business.
- (4) In this paragraph—
- “authorised deposit taker” means a person with permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, and
- “the general prohibition” has the meaning given by section 19 of that Act.
- (5) This paragraph shall be construed in accordance with—
- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act (regulated activities).

#### APPOINTMENT OF ADMINISTRATOR BY COURT

##### ***Administration order***

- 10 An administration order is an order appointing a person as the administrator of a company.

##### ***Conditions for making order***

- 11 The court may make an administration order in relation to a company only if satisfied—
- (a) that the company is or is likely to become unable to pay its debts, and
  - (b) that the administration order is reasonably likely to achieve the purpose of administration.

##### ***Administration application***

- 12 (1) An application to the court for an administration order in respect of a company (an “administration application”) may be made only by—
- (a) the company,
  - (b) the directors of the company,
  - (c) one or more creditors of the company,
  - (d) the justices’ chief executive for a magistrates’ court in the exercise of the power conferred by section 87A of the Magistrates’ Courts Act 1980 (c. 43) (fine imposed on company), or
  - (e) a combination of persons listed in paragraphs (a) to (d).
- (2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—
- (a) any person who has appointed an administrative receiver of the company,
  - (b) any person who is or may be entitled to appoint an administrative receiver of the company,

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- (c) any person who is or may be entitled to appoint an administrator of the company under paragraph 14, and
  - (d) such other persons as may be prescribed.
- (3) An administration application may not be withdrawn without the permission of the court.
- (4) In sub-paragraph (1) “creditor” includes a contingent creditor and a prospective creditor.
- [<sup>F43</sup>(5) Sub-paragraph (1) is without prejudice to section 7(4)(b).]

### ***Powers of court***

- 13 (1) On hearing an administration application the court may—
- (a) make the administration order sought;
  - (b) dismiss the application;
  - (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) treat the application as a winding-up petition and make any order which the court could make under section 125;
  - (f) make any other order which the court thinks appropriate.
- (2) An appointment of an administrator by administration order takes effect—
- (a) at a time appointed by the order, or
  - (b) where no time is appointed by the order, when the order is made.
- (3) An interim order under sub-paragraph (1)(d) may, in particular—
- (a) restrict the exercise of a power of the directors or the company;
  - (b) make provision conferring a discretion on the court or on a person qualified to act as an insolvency practitioner in relation to the company.
- (4) This paragraph is subject to paragraph 39.

## **APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE**

### ***Power to appoint***

- 14 (1) The holder of a qualifying floating charge in respect of a company’s property may appoint an administrator of the company.
- (2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—
- (a) states that this paragraph applies to the floating charge,
  - (b) purports to empower the holder of the floating charge to appoint an administrator of the company,
  - (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 29(2), or
  - (d) purports to empower the holder of a floating charge in Scotland to appoint a receiver who on appointment would be an administrative receiver.

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- (3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—
- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
  - (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
  - (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

### **Restrictions on power to appoint**

- 15 (1) A person may not appoint an administrator under paragraph 14 unless—
- (a) he has given at least two business days' written notice to the holder of any prior floating charge which satisfies paragraph 14(2), or
  - (b) the holder of any prior floating charge which satisfies paragraph 14(2) has consented in writing to the making of the appointment.
- (2) One floating charge is prior to another for the purposes of this paragraph if—
- (a) it was created first, or
  - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- (3) Sub-paragraph (2) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—
- (“ it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ”.
- 16 An administrator may not be appointed under paragraph 14 while a floating charge on which the appointment relies is not enforceable.
- 17 An administrator of a company may not be appointed under paragraph 14 if—
- (a) a provisional liquidator of the company has been appointed under section 135, or
  - (b) an administrative receiver of the company is in office.

### **Notice of appointment**

- 18 (1) A person who appoints an administrator of a company under paragraph 14 shall file with the court—
- (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is the holder of a qualifying floating charge in respect of the company's property,
  - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
  - (c) that the appointment is in accordance with this Schedule.

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- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
  - (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
  - (a) which is false, and
  - (b) which he does not reasonably believe to be true.

#### ***Commencement of appointment***

- 19 The appointment of an administrator under paragraph 14 takes effect when the requirements of paragraph 18 are satisfied.
- 20 A person who appoints an administrator under paragraph 14—
  - (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 18 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

#### ***Invalid appointment: indemnity***

- 21 (1) This paragraph applies where—
  - (a) a person purports to appoint an administrator under paragraph 14, and
  - (b) the appointment is discovered to be invalid.
- (2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

### APPOINTMENT OF ADMINISTRATOR BY COMPANY OR DIRECTORS

#### ***Power to appoint***

- 22 (1) A company may appoint an administrator.
- (2) The directors of a company may appoint an administrator.

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### ***Restrictions on power to appoint***

- 23 (1) This paragraph applies where an administrator of a company is appointed—
- (a) under paragraph 22, or
  - (b) on an administration application made by the company or its directors.
- (2) An administrator of the company may not be appointed under paragraph 22 during the period of 12 months beginning with the date on which the appointment referred to in sub-paragraph (1) ceases to have effect.
- 24 (1) If a moratorium for a company under Schedule A1 ends on a date when no voluntary arrangement is in force in respect of the company, this paragraph applies for the period of 12 months beginning with that date.
- (2) This paragraph also applies for the period of 12 months beginning with the date on which a voluntary arrangement in respect of a company ends if—
- (a) the arrangement was made during a moratorium for the company under Schedule A1, and
  - (b) the arrangement ends prematurely (within the meaning of section 7B).
- (3) While this paragraph applies, an administrator of the company may not be appointed under paragraph 22.
- 25 An administrator of a company may not be appointed under paragraph 22 if—
- (a) a petition for the winding up of the company has been presented and is not yet disposed of,
  - (b) an administration application has been made and is not yet disposed of, or
  - (c) an administrative receiver of the company is in office.

### ***Notice of intention to appoint***

- 26 (1) A person who proposes to make an appointment under paragraph 22 shall give at least five business days' written notice to—
- (a) any person who is or may be entitled to appoint an administrative receiver of the company, and
  - (b) any person who is or may be entitled to appoint an administrator of the company under paragraph 14.
- (2) A person who proposes to make an appointment under paragraph 22 shall also give such notice as may be prescribed to such other persons as may be prescribed.
- (3) A notice under this paragraph must—
- (a) identify the proposed administrator, and
  - (b) be in the prescribed form.
- 27 (1) A person who gives notice of intention to appoint under paragraph 26 shall file with the court as soon as is reasonably practicable a copy of—
- (a) the notice, and
  - (b) any document accompanying it.
- (2) The copy filed under sub-paragraph (1) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—
- (a) that the company is or is likely to become unable to pay its debts,
  - (b) that the company is not in liquidation, and

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- (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by paragraphs 23 to 25, and
  - (d) to such additional effect, and giving such information, as may be prescribed.
- (3) A statutory declaration under sub-paragraph (2) must—
- (a) be in the prescribed form, and
  - (b) be made during the prescribed period.
- (4) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.
- 28 (1) An appointment may not be made under paragraph 22 unless the person who makes the appointment has complied with any requirement of paragraphs 26 and 27 and—
- (a) the period of notice specified in paragraph 26(1) has expired, or
  - (b) each person to whom notice has been given under paragraph 26(1) has consented in writing to the making of the appointment.
- (2) An appointment may not be made under paragraph 22 after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under paragraph 27(1).

### ***Notice of appointment***

- 29 (1) A person who appoints an administrator of a company under paragraph 22 shall file with the court—
- (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is entitled to make an appointment under paragraph 22,
  - (b) that the appointment is in accordance with this Schedule, and
  - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.

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- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.
- 30 In a case in which no person is entitled to notice of intention to appoint under paragraph 26(1) (and paragraph 28 therefore does not apply)—
- (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under paragraph 27(2), and
  - (b) paragraph 29(2)(c) shall not apply.

### ***Commencement of appointment***

- 31 The appointment of an administrator under paragraph 22 takes effect when the requirements of paragraph 29 are satisfied.
- 32 A person who appoints an administrator under paragraph 22—
- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 29 are satisfied, and
  - (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).
- 33 If before the requirements of paragraph 29 are satisfied the company enters administration by virtue of an administration order or an appointment under paragraph 14—
- (a) the appointment under paragraph 22 shall not take effect, and
  - (b) paragraph 32 shall not apply.

### ***Invalid appointment: indemnity***

- 34 (1) This paragraph applies where—
- (a) a person purports to appoint an administrator under paragraph 22, and
  - (b) the appointment is discovered to be invalid.
- (2) The court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

## ADMINISTRATION APPLICATION – SPECIAL CASES

### ***Application by holder of floating charge***

- 35 (1) This paragraph applies where an administration application in respect of a company—
- (a) is made by the holder of a qualifying floating charge in respect of the company's property, and
  - (b) includes a statement that the application is made in reliance on this paragraph.
- (2) The court may make an administration order—

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- (a) whether or not satisfied that the company is or is likely to become unable to pay its debts, but
- (b) only if satisfied that the applicant could appoint an administrator under paragraph 14.

### ***Intervention by holder of floating charge***

- 36 (1) This paragraph applies where—
- (a) an administration application in respect of a company is made by a person who is not the holder of a qualifying floating charge in respect of the company's property, and
  - (b) the holder of a qualifying floating charge in respect of the company's property applies to the court to have a specified person appointed as administrator (and not the person specified by the administration applicant).
- (2) The court shall grant an application under sub-paragraph (1)(b) unless the court thinks it right to refuse the application because of the particular circumstances of the case.

### ***Application where company in liquidation***

- 37 (1) This paragraph applies where the holder of a qualifying floating charge in respect of a company's property could appoint an administrator under paragraph 14 but for paragraph 8(1)(b).
- (2) The holder of the qualifying floating charge may make an administration application.
- (3) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (2)—
- (a) the court shall discharge the winding-up order,
  - (b) the court shall make provision for such matters as may be prescribed,
  - (c) the court may make other consequential provision,
  - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the court may specify.
- 38 (1) The liquidator of a company may make an administration application.
- (2) If the court makes an administration order on hearing an application made by virtue of sub-paragraph (1)—
- (a) the court shall discharge any winding-up order in respect of the company,
  - (b) the court shall make provision for such matters as may be prescribed,
  - (c) the court may make other consequential provision,
  - (d) the court shall specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (e) this Schedule shall have effect with such modifications as the court may specify.

### ***Effect of administrative receivership***

- 39 (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—
- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order,

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- (b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 238 to 240 (transaction at undervalue and preference) if an administration order were made,
  - (c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 245 (avoidance of floating charge) if an administration order were made, or
  - (d) the court thinks that the security by virtue of which the receiver was appointed would be challengeable under section 242 (gratuitous alienations) or 243 (unfair preferences) or under any rule of law in Scotland.
- (2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

#### EFFECT OF ADMINISTRATION

##### ***Dismissal of pending winding-up petition***

- 40 (1) A petition for the winding up of a company—
- (a) shall be dismissed on the making of an administration order in respect of the company, and
  - (b) shall be suspended while the company is in administration following an appointment under paragraph 14.
- (2) Sub-paragraph (1)(b) does not apply to a petition presented under—
- (a) section 124A (public interest), or
  - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (3) Where an administrator becomes aware that a petition was presented under a provision referred to in sub-paragraph (2) before his appointment, he shall apply to the court for directions under paragraph 63.

##### ***Dismissal of administrative or other receiver***

- 41 (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.
- (2) Where a company is in administration, any receiver of part of the company's property shall vacate office if the administrator requires him to.
- (3) Where an administrative receiver or receiver vacates office under sub-paragraph (1) or (2)—
- (a) his remuneration shall be charged on and paid out of any property of the company which was in his custody or under his control immediately before he vacated office, and
  - (b) he need not take any further steps under section 40 or 59.
- (4) In the application of sub-paragraph (3)(a)—
- (a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

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- (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and
- (c) the provision for payment is subject to paragraph 43.

### ***Moratorium on insolvency proceedings***

- 42 (1) This paragraph applies to a company in administration.
- (2) No resolution may be passed for the winding up of the company.
  - (3) No order may be made for the winding up of the company.
  - (4) Sub-paragraph (3) does not apply to an order made on a petition presented under—
    - (a) section 124A (public interest), or
    - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
  - (5) If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.

### ***Moratorium on other legal process***

- 43 (1) This paragraph applies to a company in administration.
- (2) No step may be taken to enforce security over the company's property except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the court.
  - (3) No step may be taken to repossess goods in the company's possession under a hire-purchase agreement except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the court.
  - (4) A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to premises let to the company except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the court.
  - (5) In Scotland, a landlord may not exercise a right of irritancy in relation to premises let to the company except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the court.
  - (6) No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the company or property of the company except—
    - (a) with the consent of the administrator, or
    - (b) with the permission of the court.
- [<sup>F44</sup>(6A) An administrative receiver of the company may not be appointed.]
- (7) Where the court gives permission for a transaction under this paragraph it may impose a condition on or a requirement in connection with the transaction.

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(8) In this paragraph “landlord” includes a person to whom rent is payable.

### ***Interim moratorium***

- 44 (1) This paragraph applies where an administration application in respect of a company has been made and—
- (a) the application has not yet been granted or dismissed, or
  - (b) the application has been granted but the administration order has not yet taken effect.
- (2) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator under paragraph 14 is filed with the court until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period of five business days beginning with the date of filing expires without an administrator having been appointed.
- (3) Sub-paragraph (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.
- (4) This paragraph also applies from the time when a copy of notice of intention to appoint an administrator is filed with the court under paragraph 27(1) until—
- (a) the appointment of the administrator takes effect, or
  - (b) the period specified in paragraph 28(2) expires without an administrator having been appointed.
- (5) The provisions of paragraphs 42 and 43 shall apply (ignoring any reference to the consent of the administrator).
- (6) If there is an administrative receiver of the company when the administration application is made, the provisions of paragraphs 42 and 43 shall not begin to apply by virtue of this paragraph until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.
- (7) This paragraph does not prevent or require the permission of the court for—
- (a) the presentation of a petition for the winding up of the company under a provision mentioned in paragraph 42(4),
  - (b) the appointment of an administrator under paragraph 14,
  - (c) the appointment of an administrative receiver of the company, or
  - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

### ***Publicity***

- 45 (1) While a company is in administration every business document issued by or on behalf of the company or the administrator must state—
- (a) the name of the administrator, and
  - (b) that the affairs, business and property of the company are being managed by him.
- (2) Any of the following commits an offence if without reasonable excuse he authorises or permits a contravention of sub-paragraph (1)—
- (a) the administrator,

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- (b) an officer of the company, and
  - (c) the company.
- (3) In sub-paragraph (1) “business document” means—
- (a) an invoice,
  - (b) an order for goods or services, and
  - (c) a business letter.

## PROCESS OF ADMINISTRATION

### ***Announcement of administrator’s appointment***

- 46 (1) This paragraph applies where a person becomes the administrator of a company.
- (2) As soon as is reasonably practicable the administrator shall—
    - (a) send a notice of his appointment to the company, and
    - (b) publish a notice of his appointment in the prescribed manner.
  - (3) As soon as is reasonably practicable the administrator shall—
    - (a) obtain a list of the company’s creditors, and
    - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
  - (4) The administrator shall send a notice of his appointment to the registrar of companies before the end of the period of 7 days beginning with the date specified in sub-paragraph (6).
  - (5) The administrator shall send a notice of his appointment to such persons as may be prescribed before the end of the prescribed period beginning with the date specified in sub-paragraph (6).
  - (6) The date for the purpose of sub-paragraphs (4) and (5) is—
    - (a) in the case of an administrator appointed by administration order, the date of the order,
    - (b) in the case of an administrator appointed under paragraph 14, the date on which he receives notice under paragraph 20, and
    - (c) in the case of an administrator appointed under paragraph 22, the date on which he receives notice under paragraph 32.
  - (7) The court may direct that sub-paragraph (3)(b) or (5)—
    - (a) shall not apply, or
    - (b) shall apply with the substitution of a different period.
  - (8) A notice under this paragraph must—
    - (a) contain the prescribed information, and
    - (b) be in the prescribed form.
  - (9) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.

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### **Statement of company's affairs**

- 47 (1) As soon as is reasonably practicable after appointment the administrator of a company shall by notice in the prescribed form require one or more relevant persons to provide the administrator with a statement of the affairs of the company.
- (2) The statement must—
- (a) be verified by a statement of truth in accordance with Civil Procedure Rules,
  - (b) be in the prescribed form,
  - (c) give particulars of the company's property, debts and liabilities,
  - (d) give the names and addresses of the company's creditors,
  - (e) specify the security held by each creditor,
  - (f) give the date on which each security was granted, and
  - (g) contain such other information as may be prescribed.
- (3) In sub-paragraph (1) "relevant person" means—
- (a) a person who is or has been an officer of the company,
  - (b) a person who took part in the formation of the company during the period of one year ending with the date on which the company enters administration,
  - (c) a person employed by the company during that period, and
  - (d) a person who is or has been during that period an officer or employee of a company which is or has been during that year an officer of the company.
- (4) For the purpose of sub-paragraph (3) a reference to employment is a reference to employment through a contract of employment or a contract for services.
- (5) In Scotland, a statement of affairs under sub-paragraph (1) must be a statutory declaration made in accordance with the Statutory Declarations Act 1835 (c. 62) (and sub-paragraph (2)(a) shall not apply).
- 48 (1) A person required to submit a statement of affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.
- (2) The administrator may—
- (a) revoke a requirement under paragraph 47(1), or
  - (b) extend the period specified in sub-paragraph (1) (whether before or after expiry).
- (3) If the administrator refuses a request to act under sub-paragraph (2)—
- (a) the person whose request is refused may apply to the court, and
  - (b) the court may take action of a kind specified in sub-paragraph (2).
- (4) A person commits an offence if he fails without reasonable excuse to comply with a requirement under paragraph 47(1).

### **Administrator's proposals**

- 49 (1) The administrator of a company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under sub-paragraph (1) must, in particular—
- (a) deal with such matters as may be prescribed, and
  - (b) where applicable, explain why the administrator thinks that the objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved.

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- (3) Proposals under this paragraph may include—
  - (a) a proposal for a voluntary arrangement under Part I of this Act (although this paragraph is without prejudice to section 4(3));
  - (b) a proposal for a compromise or arrangement to be sanctioned under section 425 of the Companies Act (compromise with creditors or members).
- (4) The administrator shall send a copy of the statement of his proposals—
  - (a) to the registrar of companies,
  - (b) to every creditor of the company of whose claim and address he is aware, and
  - (c) to every member of the company of whose address he is aware.
- (5) The administrator shall comply with sub-paragraph (4)—
  - (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, before the end of the period of eight weeks beginning with the day on which the company enters administration.
- (6) The administrator shall be taken to comply with sub-paragraph (4)(c) if he publishes in the prescribed manner a notice undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).
- (8) A period specified in this paragraph may be varied in accordance with paragraph 107.

### ***Creditors' meeting***

- 50 (1) In this Schedule “creditors’ meeting” means a meeting of creditors of a company summoned by the administrator—
  - (a) in the prescribed manner, and
  - (b) giving the prescribed period of notice to every creditor of the company of whose claim and address he is aware.
- (2) A period prescribed under sub-paragraph (1)(b) may be varied in accordance with paragraph 107.
- (3) A creditors’ meeting shall be conducted in accordance with the rules.

### ***Requirement for initial creditors’ meeting***

- 51 (1) Each copy of an administrator’s statement of proposals sent to a creditor under paragraph 49(4)(b) must be accompanied by an invitation to a creditors’ meeting (an “initial creditors’ meeting”).
- (2) The date set for an initial creditors’ meeting must be—
  - (a) as soon as is reasonably practicable after the company enters administration, and
  - (b) in any event, within the period of ten weeks beginning with the date on which the company enters administration.

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- (3) An administrator shall present a copy of his statement of proposals to an initial creditors' meeting.
  - (4) A period specified in this paragraph may be varied in accordance with paragraph 107.
  - (5) An administrator commits an offence if he fails without reasonable excuse to comply with a requirement of this paragraph.
- 52 (1) Paragraph 51(1) shall not apply where the statement of proposals states that the administrator thinks—
- (a) that the company has sufficient property to enable each creditor of the company to be paid in full,
  - (b) that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), or
  - (c) that neither of the objectives specified in paragraph 3(1)(a) and (b) can be achieved.
- (2) But the administrator shall summon an initial creditors' meeting if it is requested—
- (a) by creditors of the company whose debts amount to at least 10% of the total debts of the company,
  - (b) in the prescribed manner, and
  - (c) in the prescribed period.
- (3) A meeting requested under sub-paragraph (2) must be summoned for a date in the prescribed period.
- (4) The period prescribed under sub-paragraph (3) may be varied in accordance with paragraph 107.

#### ***Business and result of initial creditors' meeting***

- 53 (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
- (a) approve them without modification, or
  - (b) approve them with modification to which the administrator consents.
- (2) After the conclusion of an initial creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
- (a) the court,
  - (b) the registrar of companies, and
  - (c) such other persons as may be prescribed.
- (3) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (2).

#### ***Revision of administrator's proposals***

- 54 (1) This paragraph applies where—
- (a) an administrator's proposals have been approved (with or without modification) at an initial creditors' meeting,
  - (b) the administrator proposes a revision to the proposals, and
  - (c) the administrator thinks that the proposed revision is substantial.

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- (2) The administrator shall—
  - (a) summon a creditors' meeting,
  - (b) send a statement in the prescribed form of the proposed revision with the notice of the meeting sent to each creditor,
  - (c) send a copy of the statement, within the prescribed period, to each member of the company of whose address he is aware, and
  - (d) present a copy of the statement to the meeting.
- (3) The administrator shall be taken to have complied with sub-paragraph (2)(c) if he publishes a notice undertaking to provide a copy of the statement free of charge to any member of the company who applies in writing to a specified address.
- (4) A notice under sub-paragraph (3) must be published—
  - (a) in the prescribed manner, and
  - (b) within the prescribed period.
- (5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
  - (a) approve it without modification, or
  - (b) approve it with modification to which the administrator consents.
- (6) After the conclusion of a creditors' meeting the administrator shall as soon as is reasonably practicable report any decision taken to—
  - (a) the court,
  - (b) the registrar of companies, and
  - (c) such other persons as may be prescribed.
- (7) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (6).

#### ***Failure to obtain approval of administrator's proposals***

- 55 (1) This paragraph applies where an administrator reports to the court that—
  - (a) an initial creditors' meeting has failed to approve the administrator's proposals presented to it, or
  - (b) a creditors' meeting has failed to approve a revision of the administrator's proposals presented to it.
- (2) The court may—
  - (a) provide that the appointment of an administrator shall cease to have effect from a specified time;
  - (b) adjourn the hearing conditionally or unconditionally;
  - (c) make an interim order;
  - (d) make an order on a petition for winding up suspended by virtue of paragraph 40(1)(b);
  - (e) make any other order (including an order making consequential provision) that the court thinks appropriate.

#### ***Further creditors' meetings***

- 56 (1) The administrator of a company shall summon a creditors' meeting if—

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- (a) it is requested in the prescribed manner by creditors of the company whose debts amount to at least 10% of the total debts of the company, or
  - (b) he is directed by the court to summon a creditors' meeting.
- (2) An administrator commits an offence if he fails without reasonable excuse to summon a creditors' meeting as required by this paragraph.

### ***Creditors' committee***

- 57 (1) A creditors' meeting may establish a creditors' committee.
- (2) A creditors' committee shall carry out functions conferred on it by or under this Act.
- (3) A creditors' committee may require the administrator—
- (a) to attend on the committee at any reasonable time of which he is given at least seven days' notice, and
  - (b) to provide the committee with information about the exercise of his functions.

### ***Correspondence instead of creditors' meeting***

- 58 (1) Anything which is required or permitted by or under this Schedule to be done at a creditors' meeting may be done by correspondence between the administrator and creditors—
- (a) in accordance with the rules, and
  - (b) subject to any prescribed condition.
- (2) A reference in this Schedule to anything done at a creditors' meeting includes a reference to anything done in the course of correspondence in reliance on sub-paragraph (1).
- (3) A requirement to hold a creditors' meeting is satisfied by conducting correspondence in accordance with this paragraph.

## FUNCTIONS OF ADMINISTRATOR

### ***General powers***

- 59 (1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.
- (2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).
- (3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.
- 60 The administrator of a company has the powers specified in Schedule 1 to this Act.
- 61 The administrator of a company—
- (a) may remove a director of the company, and
  - (b) may appoint a director of the company (whether or not to fill a vacancy).
- 62 The administrator of a company may call a meeting of members or creditors of the company.

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- 63 The administrator of a company may apply to the court for directions in connection with his functions.
- 64 (1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.
- (2) For the purpose of sub-paragraph (1)—
- (a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator’s powers,
  - (b) it is immaterial whether the power is conferred by an enactment or an instrument, and
  - (c) consent may be general or specific.

### ***Distribution***

- 65 (1) The administrator of a company may make a distribution to a creditor of the company.
- (2) Section 175 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.
- (3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the court gives permission.
- 66 The administrator of a company may make a payment otherwise than in accordance with paragraph 65 or paragraph 13 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

### ***General duties***

- 67 The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.
- 68 (1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—
- (a) any proposals approved under paragraph 53,
  - (b) any revision of those proposals which is made by him and which he does not consider substantial, and
  - (c) any revision of those proposals approved under paragraph 54.
- (2) If the court gives directions to the administrator of a company in connection with any aspect of his management of the company’s affairs, business or property, the administrator shall comply with the directions.
- (3) The court may give directions under sub-paragraph (2) only if—
- (a) no proposals have been approved under paragraph 53,
  - (b) the directions are consistent with any proposals or revision approved under paragraph 53 or 54,
  - (c) the court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 53 or 54, or
  - (d) the court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 53 or 54.

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### ***Administrator as agent of company***

- 69 In exercising his functions under this Schedule the administrator of a company acts as its agent.

### ***Charged property: floating charge***

- 70 (1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.
- (2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.
- (3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

### ***Charged property: non-floating charge***

- 71 (1) The court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.
- (2) An order under sub-paragraph (1) may be made only—
- (a) on the application of the administrator, and
  - (b) where the court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.
- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—
- (a) the net proceeds of disposal of the property, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the property at market value.
- (4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.
- (5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.
- (6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

### ***Hire-purchase property***

- 72 (1) The court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.
- (2) An order under sub-paragraph (1) may be made only—
- (a) on the application of the administrator, and
  - (b) where the court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

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- (3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—
  - (a) the net proceeds of disposal of the goods, and
  - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the court as the net amount which would be realised on a sale of the goods at market value.
- (4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar of companies before the end of the period of 14 days starting with the date of the order.
- (5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

### ***Protection for secured or preferential creditor***

- 73 (1) An administrator's statement of proposals under paragraph 49 may not include any action which—
- (a) affects the right of a secured creditor of the company to enforce his security,
  - (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
  - (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.
- (2) Sub-paragraph (1) does not apply to—
- (a) action to which the relevant creditor consents,
  - (b) a proposal for a voluntary arrangement under Part I of this Act (although this sub-paragraph is without prejudice to section 4(3)), or
  - (c) a proposal for a compromise or arrangement to be sanctioned under section 425 of the Companies Act (compromise with creditors or members).
- (3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

### ***Challenge to administrator's conduct of company***

- 74 (1) A creditor or member of a company in administration may apply to the court claiming that—
- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
  - (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) A creditor or member of a company in administration may apply to the court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.
- (3) The court may—
- (a) grant relief;
  - (b) dismiss the application;

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- (c) adjourn the hearing conditionally or unconditionally;
  - (d) make an interim order;
  - (e) make any other order it thinks appropriate.
- (4) In particular, an order under this paragraph may—
- (a) regulate the administrator’s exercise of his functions;
  - (b) require the administrator to do or not do a specified thing;
  - (c) require a creditors’ meeting to be held for a specified purpose;
  - (d) provide for the appointment of an administrator to cease to have effect;
  - (e) make consequential provision.
- (5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—
- (a) is within the administrator’s powers under this Schedule;
  - (b) was taken in reliance on an order under paragraph 71 or 72.
- (6) An order may not be made under this paragraph if it would impede or prevent the implementation of—
- (a) a voluntary arrangement approved under Part I,
  - (b) a compromise or arrangement sanctioned under section 425 of the Companies Act (compromise with creditors and members), or
  - (c) proposals or a revision approved under paragraph 53 or 54 more than 28 days before the day on which the application for the order under this paragraph is made.

### **Misfeasance**

- 75 (1) The court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a company, or
  - (b) has been or has purported to be the administrator of a company.
- (2) An examination under this paragraph may be held only on the application of—
- (a) the official receiver,
  - (b) the administrator of the company,
  - (c) the liquidator of the company,
  - (d) a creditor of the company, or
  - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
  - (b) has become accountable for money or other property of the company,
  - (c) has breached a fiduciary or other duty in relation to the company, or
  - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person’s conduct the court may order him—
- (a) to repay, restore or account for money or property;
  - (b) to pay interest;
  - (c) to contribute a sum to the company’s property by way of compensation for breach of duty or misfeasance.

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- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company’s administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 98 only with the permission of the court.

## ENDING ADMINISTRATION

### *Automatic end of administration*

- 76 (1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.
- (2) But—
- (a) on the application of an administrator the court may by order extend his term of office for a specified period, and
  - (b) an administrator’s term of office may be extended for a specified period not exceeding six months by consent.
- 77 (1) An order of the court under paragraph 76—
- (a) may be made in respect of an administrator whose term of office has already been extended by order or by consent, but
  - (b) may not be made after the expiry of the administrator’s term of office.
- (2) Where an order is made under paragraph 76 the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.
- 78 (1) In paragraph 76(2)(b) “consent” means consent of—
- (a) each secured creditor of the company, and
  - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company’s unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (2) But where the administrator has made a statement under paragraph 52(1)(b) “consent” means—
- (a) consent of each secured creditor of the company, or
  - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) Consent for the purposes of paragraph 76(2)(b) may be—
- (a) written, or
  - (b) signified at a creditors’ meeting.
- (4) An administrator’s term of office—
- (a) may be extended by consent only once,
  - (b) may not be extended by consent after extension by order of the court, and

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- (c) may not be extended by consent after expiry.
- (5) Where an administrator's term of office is extended by consent he shall as soon as is reasonably practicable—
  - (a) file notice of the extension with the court, and
  - (b) notify the registrar of companies.
- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (5) commits an offence.

### ***Court ending administration on application of administrator***

- 79 (1) On the application of the administrator of a company the court may provide for the appointment of an administrator of the company to cease to have effect from a specified time.
- (2) The administrator of a company shall make an application under this paragraph if—
    - (a) he thinks the purpose of administration cannot be achieved in relation to the company,
    - (b) he thinks the company should not have entered administration, or
    - (c) a creditors' meeting requires him to make an application under this paragraph.
  - (3) The administrator of a company shall make an application under this paragraph if—
    - (a) the administration is pursuant to an administration order, and
    - (b) the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company.
  - (4) On an application under this paragraph the court may—
    - (a) adjourn the hearing conditionally or unconditionally;
    - (b) dismiss the application;
    - (c) make an interim order;
    - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

### ***Termination of administration where objective achieved***

- 80 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 or 22.
- (2) If the administrator thinks that the purpose of administration has been sufficiently achieved in relation to the company he may file a notice in the prescribed form—
    - (a) with the court, and
    - (b) with the registrar of companies.
  - (3) The administrator's appointment shall cease to have effect when the requirements of sub-paragraph (2) are satisfied.
  - (4) Where the administrator files a notice he shall within the prescribed period send a copy to every creditor of the company of whose claim and address he is aware.
  - (5) The rules may provide that the administrator is taken to have complied with sub-paragraph (4) if before the end of the prescribed period he publishes in the prescribed

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manner a notice undertaking to provide a copy of the notice under sub-paragraph (2) to any creditor of the company who applies in writing to a specified address.

- (6) An administrator who fails without reasonable excuse to comply with sub-paragraph (4) commits an offence.

### ***Court ending administration on application of creditor***

- 81 (1) On the application of a creditor of a company the court may provide for the appointment of an administrator of the company to cease to have effect at a specified time.
- (2) An application under this paragraph must allege an improper motive—
- (a) in the case of an administrator appointed by administration order, on the part of the applicant for the order, or
  - (b) in any other case, on the part of the person who appointed the administrator.
- (3) On an application under this paragraph the court may—
- (a) adjourn the hearing conditionally or unconditionally;
  - (b) dismiss the application;
  - (c) make an interim order;
  - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

### ***Public interest winding-up***

- 82 (1) This paragraph applies where a winding-up order is made for the winding up of a company in administration on a petition presented under—
- (a) section 124A (public interest), or
  - (b) section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by Financial Services Authority).
- (2) This paragraph also applies where a provisional liquidator of a company in administration is appointed following the presentation of a petition under any of the provisions listed in sub-paragraph (1).
- (3) The court shall order—
- (a) that the appointment of the administrator shall cease to have effect, or
  - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the court makes an order under sub-paragraph (3)(b) it may also—
- (a) specify which of the powers under this Schedule are to be exercisable by the administrator, and
  - (b) order that this Schedule shall have effect in relation to the administrator with specified modifications.

### ***Moving from administration to creditors' voluntary liquidation***

- 83 (1) This paragraph applies in England and Wales where the administrator of a company thinks—
- (a) that the total amount which each secured creditor of the company is likely to receive has been paid to him or set aside for him, and

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- (b) that a distribution will be made to unsecured creditors of the company (if there are any).
- (2) This paragraph applies in Scotland where the administrator of a company thinks—
    - (a) that each secured creditor of the company will receive payment in respect of his debt, and
    - (b) that a distribution will be made to unsecured creditors (if there are any).
  - (3) The administrator may send to the registrar of companies a notice that this paragraph applies.
  - (4) On receipt of a notice under sub-paragraph (3) the registrar shall register it.
  - (5) If an administrator sends a notice under sub-paragraph (3) he shall as soon as is reasonably practicable—
    - (a) file a copy of the notice with the court, and
    - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
  - (6) On the registration of a notice under sub-paragraph (3)—
    - (a) the appointment of an administrator in respect of the company shall cease to have effect, and
    - (b) the company shall be wound up as if a resolution for voluntary winding up under section 84 were passed on the day on which the notice is registered.
  - (7) The liquidator for the purposes of the winding up shall be—
    - (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
    - (b) if no person is nominated under paragraph (a), the administrator.
  - (8) In the application of Part IV to a winding up by virtue of this paragraph—
    - (a) section 85 shall not apply,
    - (b) section 86 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3),
    - (c) section 89 does not apply,
    - (d) sections 98, 99 and 100 shall not apply,
    - (e) section 129 shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-paragraph (3), and
    - (f) any creditors' committee which is in existence immediately before the company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under section 101.

### ***Moving from administration to dissolution***

- 84 (1) If the administrator of a company thinks that the company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the registrar of companies.
- (2) The court may on the application of the administrator of a company disapply sub-paragraph (1) in respect of the company.

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- (3) On receipt of a notice under sub-paragraph (1) the registrar shall register it.
- (4) On the registration of a notice in respect of a company under sub-paragraph (1) the appointment of an administrator of the company shall cease to have effect.
- (5) If an administrator sends a notice under sub-paragraph (1) he shall as soon as is reasonably practicable—
  - (a) file a copy of the notice with the court, and
  - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of three months beginning with the date of registration of a notice in respect of a company under sub-paragraph (1) the company is deemed to be dissolved.
- (7) On an application in respect of a company by the administrator or another interested person the court may—
  - (a) extend the period specified in sub-paragraph (6),
  - (b) suspend that period, or
  - (c) disapply sub-paragraph (6).
- (8) Where an order is made under sub-paragraph (7) in respect of a company the administrator shall as soon as is reasonably practicable notify the registrar of companies.
- (9) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (5).

#### ***Discharge of administration order where administration ends***

- 85 (1) This paragraph applies where—
  - (a) the court makes an order under this Schedule providing for the appointment of an administrator of a company to cease to have effect, and
  - (b) the administrator was appointed by administration order.
- (2) The court shall discharge the administration order.

#### ***Notice to Companies Registrar where administration ends***

- 86 (1) This paragraph applies where the court makes an order under this Schedule providing for the appointment of an administrator to cease to have effect.
- (2) The administrator shall send a copy of the order to the registrar of companies within the period of 14 days beginning with the date of the order.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

### REPLACING ADMINISTRATOR

#### ***Resignation of administrator***

- 87 (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—

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- (a) in the case of an administrator appointed by administration order, by notice in writing to the court,
- (b) in the case of an administrator appointed under paragraph 14, by notice in writing to the [<sup>F45</sup>holder of the floating charge by virtue of which the appointment was made] ,
- (c) in the case of an administrator appointed under paragraph 22(1), by notice in writing to the company, or
- (d) in the case of an administrator appointed under paragraph 22(2), by notice in writing to the directors of the company.

### ***Removal of administrator from office***

88 The court may by order remove an administrator from office.

### ***Administrator ceasing to be qualified***

- 89 (1) The administrator of a company shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (2) Where an administrator vacates office by virtue of sub-paragraph (1) he shall give notice in writing—
- (a) in the case of an administrator appointed by administration order, to the court,
  - (b) in the case of an administrator appointed under paragraph 14, to the [<sup>F46</sup>holder of the floating charge by virtue of which the appointment was made] ,
  - (c) in the case of an administrator appointed under paragraph 22(1), to the company, or
  - (d) in the case of an administrator appointed under paragraph 22(2), to the directors of the company.
- (3) An administrator who fails without reasonable excuse to comply with sub-paragraph (2) commits an offence.

### ***Supplying vacancy in office of administrator***

- 90 Paragraphs 91 to 95 apply where an administrator—
- (a) dies,
  - (b) resigns,
  - (c) is removed from office under paragraph 88, or
  - (d) vacates office under paragraph 89.
- 91 (1) Where the administrator was appointed by administration order, the court may replace the administrator on an application under this sub-paragraph made by—
- (a) a creditors' committee of the company,
  - (b) the company,
  - (c) the directors of the company,
  - (d) one or more creditors of the company, or
  - (e) where more than one person was appointed to act jointly or concurrently as the administrator, any of those persons who remains in office.
- (2) But an application may be made in reliance on sub-paragraph (1)(b) to (d) only where—
- (a) there is no creditors' committee of the company,

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- (b) the court is satisfied that the creditors' committee or a remaining administrator is not taking reasonable steps to make a replacement, or
  - (c) the court is satisfied that for another reason it is right for the application to be made.
- 92 Where the administrator was appointed under paragraph 14 the holder of the floating charge by virtue of which the appointment was made may replace the administrator.
- 93 (1) Where the administrator was appointed under paragraph 22(1) by the company it may replace the administrator.
- (2) A replacement under this paragraph may be made only—
    - (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
    - (b) where consent is withheld, with the permission of the court.
- 94 (1) Where the administrator was appointed under paragraph 22(2) the directors of the company may replace the administrator.
- (2) A replacement under this paragraph may be made only—
    - (a) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property, or
    - (b) where consent is withheld, with the permission of the court.
- 95 The court may replace an administrator on the application of a person listed in paragraph 91(1) if the court—
- (a) is satisfied that a person who is entitled to replace the administrator under any of paragraphs 92 to 94 is not taking reasonable steps to make a replacement, or
  - (b) that for another reason it is right for the court to make the replacement.

***Substitution of administrator: competing floating charge-holder***

- 96 (1) This paragraph applies where an administrator of a company is appointed under paragraph 14 by the holder of a qualifying floating charge in respect of the company's property.
- (2) The holder of a prior qualifying floating charge in respect of the company's property may apply to the court for the administrator to be replaced by an administrator nominated by the holder of the prior floating charge.
  - (3) One floating charge is prior to another for the purposes of this paragraph if—
    - (a) it was created first, or
    - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
  - (4) Sub-paragraph (3) shall have effect in relation to Scotland as if the following were substituted for paragraph (a)—
    - (“) it has priority of ranking in accordance with section 464(4)(b) of the Companies Act 1985 (c. 6), ”.

***Substitution of administrator appointed by company or directors: creditors' meeting***

- 97 (1) This paragraph applies where—

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- (a) an administrator of a company is appointed by a company or directors under paragraph 22, and
  - (b) there is no holder of a qualifying floating charge in respect of the company's property.
- (2) A creditors' meeting may replace the administrator.
- (3) A creditors' meeting may act under sub-paragraph (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

***Vacation of office: discharge from liability***

- 98 (1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.
- (2) The discharge provided by sub-paragraph (1) takes effect—
- (a) in the case of an administrator who dies, on the filing with the court of notice of his death,
  - (b) in the case of an administrator appointed under paragraph 14 or 22, at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors, or
  - (c) in any case, at a time specified by the court.
- (3) For the purpose of the application of sub-paragraph (2)(b) in a case where the administrator has made a statement under paragraph 52(1)(b), a resolution shall be taken as passed if (and only if) passed with the approval of—
- (a) each secured creditor of the company, or
  - (b) if the administrator has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
- (a) applies to liability accrued before the discharge takes effect, and
  - (b) does not prevent the exercise of the court's powers under paragraph 75.

***Vacation of office: charges and liabilities***

- 99 (1) This paragraph applies where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).
- (2) In this paragraph—
- “the former administrator” means the person referred to in sub-paragraph (1), and
  - “cessation” means the time when he ceases to be the company's administrator.
- (3) The former administrator's remuneration and expenses shall be—

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- (a) charged on and payable out of property of which he had custody or control immediately before cessation, and
  - (b) payable in priority to any security to which paragraph 70 applies.
- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation, and
  - (b) payable in priority to any charge arising under sub-paragraph (3).
- (5) Sub-paragraph (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
- (a) action taken within the period of 14 days after an administrator’s appointment shall not be taken to amount or contribute to the adoption of a contract,
  - (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment, and
  - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In sub-paragraph (5)(c) “wages or salary” includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be treated as relating to the period by reference to which the entitlement to holiday accrued),
  - (b) a sum payable in respect of a period of absence through illness or other good cause,
  - (c) a sum payable in lieu of holiday,
  - (d) in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security, and
  - (e) a contribution to an occupational pension scheme.

## GENERAL

### ***Joint and concurrent administrators***

100 (1) In this Schedule—

- (a) a reference to the appointment of an administrator of a company includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a company, and
  - (b) a reference to the appointment of a person as administrator of a company includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a company.
- (2) The appointment of a number of persons to act as administrator of a company must specify—
- (a) which functions (if any) are to be exercised by the persons appointed acting jointly, and
  - (b) which functions (if any) are to be exercised by any or all of the persons appointed.

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- 101 (1) This paragraph applies where two or more persons are appointed to act jointly as the administrator of a company.
- (2) A reference to the administrator of the company is a reference to those persons acting jointly.
- (3) But a reference to the administrator of a company in paragraphs 87 to 99 of this Schedule is a reference to any or all of the persons appointed to act jointly.
- (4) Where an offence of omission is committed by the administrator, each of the persons appointed to act jointly—
- (a) commits the offence, and
  - (b) may be proceeded against and punished individually.
- (5) The reference in paragraph 45(1)(a) to the name of the administrator is a reference to the name of each of the persons appointed to act jointly.
- (6) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a company, this paragraph applies only in relation to those functions.
- 102 (1) This paragraph applies where two or more persons are appointed to act concurrently as the administrator of a company.
- (2) A reference to the administrator of a company in this Schedule is a reference to any of the persons appointed (or any combination of them).
- 103 (1) Where a company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the company.
- (2) Where a company entered administration by administration order, an appointment under sub-paragraph (1) must be made by the court on the application of—
- (a) a person or group listed in paragraph 12(1)(a) to (e), or
  - (b) the person or persons acting as the administrator of the company.
- (3) Where a company entered administration by virtue of an appointment under paragraph 14, an appointment under sub-paragraph (1) must be made by—
- (a) the holder of the floating charge by virtue of which the appointment was made, or
  - (b) the court on the application of the person or persons acting as the administrator of the company.
- (4) Where a company entered administration by virtue of an appointment under paragraph 22(1), an appointment under sub-paragraph (1) above must be made either by the court on the application of the person or persons acting as the administrator of the company or—
- (a) by the company, and
  - (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.
- (5) Where a company entered administration by virtue of an appointment under paragraph 22(2), an appointment under sub-paragraph (1) must be made either by the court on the application of the person or persons acting as the administrator of the company or—
- (a) by the directors of the company, and

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- (b) with the consent of each person who is the holder of a qualifying floating charge in respect of the company's property or, where consent is withheld, with the permission of the court.
- (6) An appointment under sub-paragraph (1) may be made only with the consent of the person or persons acting as the administrator of the company.

### ***Presumption of validity***

- 104 An act of the administrator of a company is valid in spite of a defect in his appointment or qualification.

### ***Majority decision of directors***

- 105 A reference in this Schedule to something done by the directors of a company includes a reference to the same thing done by a majority of the directors of a company.

### ***Penalties***

- 106 (1) A person who is guilty of an offence under this Schedule is liable to a fine (in accordance with section 430 and Schedule 10).
- (2) A person who is guilty of an offence under any of the following paragraphs of this Schedule is liable to a daily default fine (in accordance with section 430 and Schedule 10)—
- (a) paragraph 20,
  - (b) paragraph 32,
  - (c) paragraph 46,
  - (d) paragraph 48,
  - (e) paragraph 49,
  - (f) paragraph 51,
  - (g) paragraph 53,
  - (h) paragraph 54,
  - (i) paragraph 56,
  - (j) paragraph 71,
  - (k) paragraph 72,
  - (l) paragraph 77,
  - (m) paragraph 78,
  - (n) paragraph 80,
  - (o) paragraph 84,
  - (p) paragraph 86, and
  - (q) paragraph 89.

### ***Extension of time limit***

- 107 (1) Where a provision of this Schedule provides that a period may be varied in accordance with this paragraph, the period may be varied in respect of a company—
- (a) by the court, and
  - (b) on the application of the administrator.

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- (2) A time period may be extended in respect of a company under this paragraph—
- (a) more than once, and
  - (b) after expiry.
- 108 (1) A period specified in paragraph 49(5), 50(1)(b) or 51(2) may be varied in respect of a company by the administrator with consent.
- (2) In sub-paragraph (1) “consent” means consent of—
- (a) each secured creditor of the company, and
  - (b) if the company has unsecured debts, creditors whose debts amount to more than 50% of the company’s unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (3) But where the administrator has made a statement under paragraph 52(1)(b) “consent” means—
- (a) consent of each secured creditor of the company, or
  - (b) if the administrator thinks that a distribution may be made to preferential creditors, consent of—
    - (i) each secured creditor of the company, and
    - (ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (4) Consent for the purposes of sub-paragraph (1) may be—
- (a) written, or
  - (b) signified at a creditors’ meeting.
- (5) The power to extend under sub-paragraph (1)—
- (a) may be exercised in respect of a period only once,
  - (b) may not be used to extend a period by more than 28 days,
  - (c) may not be used to extend a period which has been extended by the court, and
  - (d) may not be used to extend a period after expiry.
- 109 Where a period is extended under paragraph 107 or 108, a reference to the period shall be taken as a reference to the period as extended.

#### ***Amendment of provision about time***

- 110 (1) The Secretary of State may by order amend a provision of this Schedule which—
- (a) requires anything to be done within a specified period of time,
  - (b) prevents anything from being done after a specified time, or
  - (c) requires a specified minimum period of notice to be given.
- (2) An order under this paragraph—
- (a) must be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### ***Interpretation***

- 111 (1) In this Schedule—

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- “administrative receiver” has the meaning given by section 251,
- “administrator” has the meaning given by paragraph 1 and, where the context requires, includes a reference to a former administrator,
- “company” includes a company which may enter administration by virtue of Article 3 of the EC Regulation,
- “correspondence” includes correspondence by telephonic or other electronic means,
- “creditors’ meeting” has the meaning given by paragraph 50,
- “enters administration” has the meaning given by paragraph 1,
- “floating charge” means a charge which is a floating charge on its creation,
- “in administration” has the meaning given by paragraph 1,
- “hire-purchase agreement” includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,
- “holder of a qualifying floating charge” in respect of a company’s property has the meaning given by paragraph 14,
- “market value” means the amount which would be realised on a sale of property in the open market by a willing vendor,
- “the purpose of administration” means an objective specified in paragraph 3, and
- “unable to pay its debts” has the meaning given by section 123.

- (2) A reference in this Schedule to a thing in writing includes a reference to a thing in electronic form.
- (3) In this Schedule a reference to action includes a reference to inaction.

### **Scotland**

- 112 In the application of this Schedule to Scotland—
  - (a) a reference to filing with the court is a reference to lodging in court, and
  - (b) a reference to a charge is a reference to a right in security.
- 113 Where property in Scotland is disposed of under paragraph 70 or 71, the administrator shall grant to the disponee an appropriate document of transfer or conveyance of the property, and—
  - (a) that document, or
  - (b) recording, intimation or registration of that document (where recording, intimation or registration of the document is a legal requirement for completion of title to the property),has the effect of disencumbering the property of or, as the case may be, freeing the property from, the security.
- 114 In Scotland, where goods in the possession of a company under a hire-purchase agreement are disposed of under paragraph 72, the disposal has the effect of extinguishing as against the disponee all rights of the owner of the goods under the agreement.
- 115 (1) In Scotland, the administrator of a company may make, in or towards the satisfaction of the debt secured by the floating charge, a payment to the holder of a floating charge which has attached to the property subject to the charge.

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- (2) In Scotland, where the administrator thinks that the company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of section 176A(2)(a), he may file a notice to that effect with the registrar of companies.
- (3) On delivery of the notice to the registrar of companies, any floating charge granted by the company shall, unless it has already so attached, attach to the property which is subject to the charge and that attachment shall have effect as if each floating charge is a fixed security over the property to which it has attached.
- 116 In Scotland, the administrator in making any payment in accordance with paragraph 115 shall make such payment subject to the rights of any of the following categories of persons (which rights shall, except to the extent provided in any instrument, have the following order of priority)—
- (a) the holder of any fixed security which is over property subject to the floating charge and which ranks prior to, or *pari passu* with, the floating charge,
  - (b) creditors in respect of all liabilities and expenses incurred by or on behalf of the administrator,
  - (c) the administrator in respect of his liabilities, expenses and remuneration and any indemnity to which he is entitled out of the property of the company,
  - (d) the preferential creditors entitled to payment in accordance with paragraph 65,
  - (e) the holder of the floating charge in accordance with the priority of that charge in relation to any other floating charge which has attached, and
  - (f) the holder of a fixed security, other than one referred to in paragraph (a), which is over property subject to the floating charge.”

#### Textual Amendments

- F43** Words in Sch. 16 added (20.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(2\)](#)
- F44** Words in Sch. 16 inserted (20.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(3\)](#)
- F45** Words in Sch. 16 substituted (20.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(4\)](#)
- F46** Words in Sch. 16 substituted (20.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 2\(5\)](#)

## SCHEDULE 17

Section 248

### ADMINISTRATION: MINOR AND CONSEQUENTIAL AMENDMENTS

#### General

- 1 In any instrument made before section 248(1) to (3) of this Act comes into force—
- (a) a reference to the making of an administration order shall be treated as including a reference to the appointment of an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (c. 45) (inserted by section 248(2) of this Act), and
  - (b) a reference to making an application for an administration order by petition shall be treated as including a reference to making an administration

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application under that Schedule, appointing an administrator under paragraph 14 or 22 of that Schedule or giving notice under paragraph 15 or 26 of that Schedule.

*Magistrates' Courts Act 1980 (c. 43)*

- 2 In section 87A(1) of the Magistrates' Court Act 1980 (fine imposed on company) for "section 9 or 124 of the Insolvency Act 1986" substitute " section 124 of, or paragraph 12 of Schedule B1 to, the Insolvency Act 1986 ”.

*Companies Act 1985 (c. 6)*

- 3 The Companies Act 1985 shall be amended as follows.
- 4 In section 225 (alteration of accounting reference date)—
- (a) in subsection (4) for "an administration order is in force" substitute " the company is in administration ”, and
  - (b) in subsection (6) for "An accounting reference period may not in any case, unless an administration order is in force" substitute " A company's accounting reference period may not in any case, unless the company is in administration ”.
- 5 In section 425(1) (power of company to compromise) for "an administration order being in force in relation to a company" substitute " in administration ”.
- 6 In section 427A(3) (mergers and divisions of public companies) for "an administration order being in force in relation to the company" substitute " where the company is in administration ”.
- 7 In section 652B(3) (duty when applying to strike off defunct company) for paragraph (c) substitute—
- “(c) the company is in administration under Part II of that Act;
  - (ca) an application to the court for an administration order in respect of the company has been made and not finally dealt with or withdrawn;
  - (cb) a copy of notice of intention to appoint an administrator of the company under paragraph 14 of Schedule B1 to that Act has been filed with the court and neither of the events mentioned in paragraph 44(2)(a) and (b) of that Schedule has occurred;
  - (cc) a copy of notice of intention to appoint an administrator of the company under paragraph 22 of that Schedule has been filed with the court and neither of the events mentioned in paragraph 44(4)(a) and (b) of that Schedule has occurred;”.
- 8 In section 652C(4) (director's duty following application to strike off defunct company) for paragraph (d) substitute—
- “(d) an application to the court for an administration order in respect of the company is made under paragraph 12 of Schedule B1 to that Act;
  - (da) an administrator is appointed in respect of the company under paragraph 14 or 22 of that Schedule;

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- (db) a copy of notice of intention to appoint an administrator of the company under paragraph 14 or 22 of that Schedule is filed with the court;”.

*Insolvency Act 1986 (c. 45)*

- 9 The Insolvency Act 1986 shall be amended as follows.
- 10 In section 1 (proposal for company voluntary arrangement)—
- (a) in subsection (1) for “(other than one for which an administration order is in force, or which is being wound up)” substitute “ (other than one which is in administration or being wound up) ”, and
- (b) in subsection (3) for paragraph (a) substitute—
- “(a) where the company is in administration, by the administrator;”.
- 11 In section 5(3) (approval of company voluntary arrangement)—
- (a) for “an administration order is in force” substitute “ is in administration ”, and
- (b) for “discharge the administration order” substitute “ provide for the appointment of the administrator to cease to have effect ”.
- 12 In section 6(2)(c) (challenge of decision in relation to company voluntary arrangement) for “an administration order is in force” substitute “ is in administration ”.
- 13 In section 51 (power to appoint receiver: Scotland) after subsection (2) insert—
- “(2A) Subsections (1) and (2) are subject to section 72A.”

PROSPECTIVE

- 14 At the end of section 100 (creditors’ voluntary winding up of company: appointment of liquidator) add—
- “(4) The court shall grant an application under subsection (3) made by the holder of a qualifying floating charge in respect of the company’s property (within the meaning of paragraph 14 of Schedule B1) unless the court thinks it right to refuse the application because of the particular circumstances of the case.”
- 15 At the end of section 127 (winding-up: avoidance of property disposition) (which becomes subsection (1)) add—
- “(2) This section has no effect in respect of anything done by an administrator of a company while a winding-up petition is suspended under paragraph 40 of Schedule B1.”
- 16 After section 129(1) (commencement of winding up) insert—
- “(1A) Where the court makes a winding-up order by virtue of paragraph 13(1)(e) of Schedule B1, the winding up is deemed to commence on the making of the order.”
- 17 In section 140 (appointment by court of liquidator following administration or voluntary arrangement) for subsection (1) substitute—

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- “(1) Where a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect, the court may appoint as liquidator of the company the person whose appointment as administrator has ceased to have effect.”
- 18 In section 212 (misfeasance of officers)—
- (a) in subsection (1)(b) omit “, administrator”,
  - (b) in subsection (2) omit (in each place) “or administrator”, and
  - (c) in subsection (4)—
    - (i) omit “or administrator”, and
    - (ii) for “that person” substitute “ he ”.
- 19 Section 230(1) (administrator to be qualified insolvency practitioner) shall cease to have effect.
- 20 In section 231(1) and (2) (appointment to office of two or more persons) omit the word “administrator,”.
- 21 In section 232 (validity of office-holder’s act) omit the word “administrator,”.
- 22 In section 233 (utility supplies)—
- (a) for subsection (1)(a) substitute—

“(a) the company enters administration,”,
  - and
  - (b) for subsection (4)(a) substitute—

“(a) the date on which the company entered administration”.
- 23 For section 234(1)(a) (getting in the company’s property) substitute—

“(a) the company enters administration,”.
- 24 For section 235(4)(a) (co-operation with office-holder) substitute—

“(a) the date on which the company entered administration,”.
- 25 For section 238(1)(a) (transactions at an undervalue: England and Wales) substitute—

“(a) the company enters administration,”.
- 26 (1) Section 240 (relevant time for sections 238 and 239) shall be amended as follows.
- (2) For subsection (1)(c) substitute—
    - “(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, and
    - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.”
  - (3) The word “and” after subsection (1)(b) shall cease to have effect.
  - (4) For subsection (3)(a), (aa) and (b) substitute—
    - “(a) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,

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- (b) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of a notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
  - (c) in a case where section 238 or 239 applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect,
  - (d) in a case where section 238 or 239 applies by reason of a company going into liquidation either following conversion of administration into winding up by virtue of Article 37 of the EC Regulation or at the time when the appointment of an administrator ceases to have effect, the date on which the company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed), and
  - (e) in a case where section 238 or 239 applies by reason of a company going into liquidation at any other time, the date of the commencement of the winding up.”
- 27 (1) Section 241 (order under section 238 or 239) shall be amended as follows.
- (2) For subsection (3A) substitute—
- “(3A) Where section 238 or 239 applies by reason of a company’s entering administration, a person has notice of the relevant proceedings if he has notice that—
- (a) an administration application has been made,
  - (b) an administration order has been made,
  - (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed, or
  - (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule.”
- (3) For subsection (3B) substitute—
- “(3B) Where section 238 or 239 applies by reason of a company’s going into liquidation at the time when the appointment of an administrator of the company ceases to have effect, a person has notice of the relevant proceedings if he has notice that—
- (a) an administration application has been made,
  - (b) an administration order has been made,
  - (c) a copy of a notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 has been filed,
  - (d) notice of the appointment of an administrator has been filed under paragraph 18 or 29 of that Schedule, or
  - (e) the company has gone into liquidation.”
- 28 (1) Section 242 (gratuitous alienations: Scotland) shall be amended as follows.
- (2) In subsection (1)(b) for “an administration order is in force in relation to a company” substitute “ a company enters administration ”.

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- (3) In subsection (3)(a)(ii) for “the administration order is made” substitute “ the company enters administration ”.
- 29 (1) Section 243 (unfair preferences: Scotland) shall be amended as follows.
- (2) In subsection (1) for “the making of an administration order in relation to the company” substitute “ the company enters administration ”.
- (3) In subsection (4)(b) for “in the case of an administration order” substitute “ where the company has entered administration ”.
- 30 In section 244(2) (extortionate credit transaction) for “the day on which the administration order was made or (as the case may be) the company went into liquidation” substitute “ the day on which the company entered administration or went into liquidation ”.
- 31 (1) Section 245 (avoidance of floating charge) shall be amended as follows.
- (2) The word “or” after subsection (3)(b) shall cease to have effect.
- (3) For subsection (3)(c) substitute—
- “(c) in either case, at a time between the making of an administration application in respect of the company and the making of an administration order on that application, or
  - (d) in either case, at a time between the filing with the court of a copy of notice of intention to appoint an administrator under paragraph 14 or 22 of Schedule B1 and the making of an appointment under that paragraph.”
- (4) For subsection (5)(a) and (b) substitute—
- “(a) in a case where this section applies by reason of an administrator of a company being appointed by administration order, the date on which the administration application is made,
  - (b) in a case where this section applies by reason of an administrator of a company being appointed under paragraph 14 or 22 of Schedule B1 following filing with the court of a copy of notice of intention to appoint under that paragraph, the date on which the copy of the notice is filed,
  - (c) in a case where this section applies by reason of an administrator of a company being appointed otherwise than as mentioned in paragraph (a) or (b), the date on which the appointment takes effect, and
  - (d) in a case where this section applies by reason of a company going into liquidation, the date of the commencement of the winding up.”
- 32 For section 246(1)(a) (unenforceability of lien on records) substitute—
- “(a) the company enters administration,”.
- 33 (1) Section 247 (meaning of “insolvency” and “go into liquidation”) shall be amended as follows.
- (2) In subsection (1) for “the making of an administration order or the appointment of an administrative receiver” substitute “ or the appointment of an administrator or administrative receiver ”.
- (3) For subsection (3) substitute—

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- “(3) The reference to a resolution for voluntary winding up in subsection (2) includes a reference to a resolution which is deemed to occur by virtue of—
- (a) paragraph 83(6)(b) of Schedule B1, or
  - (b) an order made following conversion of administration or a voluntary arrangement into winding up by virtue of Article 37 of the EC Regulation.”
- 34 (1) Section 387 (preferential debts: “the relevant date”) shall be amended as follows.
- (2) In subsection (2) for paragraphs (a) and (b) substitute—
- “(a) if the company is in administration, the date on which it entered administration, and
  - (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.”
- (3) In subsection (3)—
- (a) in paragraphs (a), (aa) and (ab) for “the date of the making of the administration order” substitute “the date on which the company entered administration”,
  - (b) after paragraph (b) insert—
    - “(ba) if the case does not fall within paragraph (a), (aa), (ab) or (b) and the company is being wound up following administration pursuant to paragraph 83 of Schedule B1, the relevant date is the date on which the company entered administration;”
- and
- (c) in paragraph (c) for “paragraph (a), (aa), (ab) or (b)” substitute “paragraph (a), (aa), (ab), (b) or (ba)”.
- (4) After subsection (3) insert—
- “(3A) In relation to a company which is in administration (and to which no other provision of this section applies) the relevant date is the date on which the company enters administration.”
- 35 In section 422 (power to apply first Group of Parts to banks, &c.) for subsection (1) substitute—
- “(1) The Secretary of State may by order made with the concurrence of the Treasury and after consultation with the Financial Services Authority provide that specified provisions in the first Group of Parts shall apply with specified modifications in relation to any person who—
- (a) has a liability in respect of a deposit which he accepted in accordance with the Banking Act 1979 (c. 37) or 1987 (c. 22), but
  - (b) does not have permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) (regulated activities) to accept deposits.
- (1A) Subsection (1)(b) shall be construed in accordance with—
- (a) section 22 of the Financial Services and Markets Act 2000 (classes of regulated activity and categories of investment),
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act (regulated activities).”

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- 36 In section 424(1)(a) (application for order in relation to transaction defrauding creditor) for “in relation to which an administration order is in force” substitute “is in administration”.
- 37 (1) Schedule A1 (moratorium where directors propose voluntary arrangement) shall be amended as follows.
- (2) In paragraph 4(1) (exclusion from eligibility for moratorium)—
- (a) for paragraph (a) substitute—
- “(a) the company is in administration,”
- and
- (b) after paragraph (f) (and before the word “or”) insert—
- “(fa) an administrator appointed under paragraph 22 of Schedule B1 has held office in the period of 12 months ending with the date of filing.”
- (3) In paragraph 12(1) (effect of moratorium on creditor) for paragraph (d) substitute—
- “(d) no administration application may be made in respect of the company,
- (da) no administrator of the company may be appointed under paragraph 14 or 22 of Schedule B1,”.
- (4) In paragraph 40 (challenge of directors’ actions during moratorium) for sub-paragraph (7) substitute—
- “(7) Sub-paragraph (8) applies where—
- (a) the appointment of an administrator has effect in relation to the company and the appointment took effect before the moratorium came into force, or
- (b) the company is being wound up in pursuance of a petition presented before the moratorium came into force.
- (8) No application for an order under this paragraph may be made by a creditor or member of the company; but such an application may be made instead by the administrator or (as the case may be) the liquidator.”
- 38 (1) Schedule 8 (scope of insolvency rules) shall be amended as follows.
- (2) At the end of paragraph 2 (which becomes sub-paragraph (1)) add—
- “(2) Rules made by virtue of this paragraph about the consequence of failure to comply with practice or procedure may, in particular, include provision about the termination of administration.”
- (3) In paragraph 10 (provision as to committees) for “section 26, 49, 68, 101, 141 or 142 of this Act” substitute “section 49, 68, 101, 141 or 142 of, or paragraph 57 of Schedule B1 to, this Act”.
- (4) After paragraph 14 insert—
- “14A Provision about the application of section 176A of this Act which may include, in particular—
- (a) provision enabling a receiver to institute winding up proceedings;
- (b) provision requiring a receiver to institute winding up proceedings.”

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(5) After paragraph 14A (inserted by sub-paragraph (4) above) insert—

**“Administration**

14B Provision which—

- (a) applies in relation to administration, with or without modifications, a provision of Parts IV to VII of this Act, or
- (b) serves a purpose in relation to administration similar to a purpose that may be served by the rules in relation to winding up by virtue of a provision of this Schedule.”

(6) In paragraph 29 (general provision) for “section 22, 47, 66, 131, 143(2) or 235 of this Act” substitute “ section 47, 66, 131, 143(2) or 235 of, or paragraph 47 of Schedule B1 to, this Act ”.

39 (1) Schedule 10 (punishment of offences) shall be amended as follows.

(2) After the entries for Schedule A1 insert—

“Sch. B1, para. 18(7).	Making false statement in statutory declaration where administrator appointed by holder of floating charge.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 20.	Holder of floating charge failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.
Sch. B1, para. 27(4).	Making false statement in statutory declaration where appointment of administrator proposed by company or directors.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	
Sch. B1, para. 29(7).	Making false statement in statutory	1. On indictment. 2. Summary.	2 years, or a fine or both.	

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	declaration where administrator appointed by company or directors.		6 months, or the statutory maximum or both.	
Sch. B1, para. 32.	Company or directors failing to notify administrator or others of commencement of appointment.	1. On indictment. 2. Summary.	2 years, or a fine or both. 6 months, or the statutory maximum or both.	One-tenth of the statutory maximum.
Sch. B1, para. 45(2).	Administrator, company or officer failing to state in business document that administrator appointed.	Summary.	One-fifth of the statutory maximum.	
Sch. B1, para. 46(9).	Administrator failing to give notice of his appointment.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 48(4).	Failing to comply with provisions about statement of affairs where administrator appointed.	1. On indictment. 2. Summary.	A fine. The statutory maximum.	One-tenth of the statutory maximum.
Sch. B1, para. 49(7).	Administrator failing to send out statement of his proposals.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 51(5).	Administrator failing to arrange initial creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 53(3).	Administrator failing to report decision taken at initial	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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	creditors' meeting.			
Sch. B1, para. 54(7).	Administrator failing to report decision taken at creditors' meeting summoned to consider revised proposal.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 56(2).	Administrator failing to summon creditors' meeting.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 71(6).	Administrator failing to file court order enabling disposal of charged property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 72(5).	Administrator failing to file court order enabling disposal of hire-purchase property.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 77(3).	Administrator failing to notify Registrar of Companies of automatic end of administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 78(6).	Administrator failing to give notice of extension by consent of term of office.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 80(6).	Administrator failing to give notice of termination of	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.

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	administration where objective achieved.			
Sch. B1, para. 84(9).	Administrator failing to comply with provisions where company moves to dissolution.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 86(3).	Administrator failing to notify Registrar of Companies where court terminates administration.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.
Sch. B1, para. 89(3).	Administrator failing to give notice on ceasing to be qualified.	Summary.	One-fifth of the statutory maximum.	One-fiftieth of the statutory maximum.”

(3) Omit the entries for the following provisions—

- (a) section 12(2),
- (b) section 15(8),
- (c) section 18(5),
- (d) section 21(3),
- (e) section 22(6),
- (f) section 23(3),
- (g) section 24(7), and
- (h) section 27(6).

*Company Directors Disqualification Act 1986 (c. 46)*

40 The Company Directors Disqualification Act 1986 shall be amended as follows.

41 In section 6 (duty of court to disqualify unfit director of insolvent company)—

(a) for subsection (2)(b) substitute—

“(b) the company enters administration,”,

(b) for subsection (3)(c) substitute—

“(c) where neither paragraph (a) nor (b) applies but an administrator or administrative receiver has at any time been appointed in respect of the company in question, any court which has jurisdiction to wind it up.”,

and

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(c) for subsection (3A)(b) substitute—

“(b) in a case within paragraph (c) of that subsection, to the appointment of the administrator or (as the case may be) administrative receiver.”

42 In section 7(3) (duty of office-holder to report to Secretary of State) for paragraph (c) substitute—

“(c) in the case of a company which is in administration, the administrator,”.

*Companies Act 1989 (c. 40)*

43 The Companies Act 1989 shall be amended as follows.

44 In section 158 (modification of insolvency law)—

(a) in subsection (3) for paragraph (b) substitute—

“(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,”.

and

(b) after subsection (3) insert—

“(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—

(a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and

(b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.”

45 In section 161(4) (disapplication of enactments to default proceedings) for “sections 10(1)(c), 11(3), 126, 128, 130, 185 or 285 of the Insolvency Act 1986” substitute “section 126, 128, 130, 185 or 285 of, or paragraph 42 or 43 (including paragraph 43(6) as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986”.

46 After section 167(1) (application by exchange or clearing house about taking default proceedings) insert—

“(1A) In subsection (1) a reference to an administration order shall be taken to include a reference to the appointment of an administrator under—

(a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (c.45) (appointment by holder of qualifying floating charge), or

(b) paragraph 22 of that Schedule (appointment by company or directors).”

47 (1) Section 175 (financial markets: administration) shall be amended as follows.

(2) For subsection (1) substitute—

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“(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—

- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
- (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).

(1A) Paragraph 41(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.”

(3) In subsection (2) for “an administration order has been made or a petition for an administration order has been presented” substitute “ the occurrence of an event to which subsection (2A) applies ”.

(4) After subsection (2) insert—

“(2A) This subsection applies to—

- (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
- (b) appointing an administrator under paragraph 14 or 22 of that Schedule (appointment by floating charge holder, company or directors),
- (c) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.”

#### *Coal Industry Act 1994 (c. 21)*

48 (1) Section 36 of the Coal Industry Act 1994 (insolvency of licensed operator) shall be amended as follows.

(2) After subsection (2) insert—

“(2A) Where the administrator of a company which is or has been a licensed operator files a notice with the registrar of companies under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (c. 45) (administration: moving to dissolution), he shall at the same time send a copy to the Authority.”

(3) In subsection (3)—

- (a) after “liquidator” insert “ or administrator ”, and
- (b) after “subsection (2)” insert “ or (2A) ”.

#### *Employment Rights Act 1996 (c. 18)*

49 (1) The Employment Rights Act 1996 shall be amended as follows.

(2) In section 166(7) (application by employee for payment by Secretary of State)—

- (a) in paragraph (a) omit “or an administration order”, and
- (b) after paragraph (a) insert—
  - “(aa) if the company is in administration for the purposes of the Insolvency Act 1986.”.

(3) In section 183(3)(a) (insolvency of employer)—

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- (a) in paragraph (a) omit “or an administration order”, and
- (b) after paragraph (a) insert—
  - “(aa) if the company is in administration for the purposes of the Insolvency Act 1986.”.

(4) Omit section 189(4) (transfer to Secretary of State of rights and remedies: priority of preferential debts).

*Housing Act 1996 (c. 52)*

50 The Housing Act 1996 shall be amended as follows.

51 At the end of section 40 (initial notice to be given to Housing Corporation or Housing for Wales) add—

“(7) Subsections (8) and (9) apply in relation to the reference in subsection (3) to applying for an administration order.

(8) In a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors)—

- (a) the reference includes a reference to appointing an administrator under that paragraph, and
- (b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.

(9) In a case where a copy of a notice of intention to appoint an administrator under either of those paragraphs is filed with the court—

- (a) the reference shall be taken to include a reference to the filing of the copy of the notice, and
- (b) in respect of the filing of a copy of a notice of intention to appoint under either of those paragraphs the reference to the applicant shall be taken as a reference to the person giving the notice.”

52 At the end of section 41 (further notice to be given to Housing Corporation or Housing for Wales) add—

“(6) In subsection (3)—

- (a) the reference to the making of an administration order includes a reference to appointing an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (administration), and
- (b) in respect of an appointment under either of those paragraphs the reference to the applicant shall be taken as a reference to the person making the appointment.”

*Financial Services and Markets Act 2000 (c. 8)*

53 The Financial Services and Markets Act 2000 shall be amended as follows.

54 (1) Section 215 (provision of Financial Services Compensation Scheme in relation to insolvency) shall be amended as follows.

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(2) In subsection (3) for “presents a petition under section 9 of the 1986 Act or Article 22 of the 1989 Order” substitute “ makes an administration application under Schedule B1 to the 1986 Act or presents a petition under Article 22 of the 1989 Order ”.

(3) After subsection (3) insert—

“(3A) In subsection (3) the reference to making an administration application includes a reference to—

- (a) appointing an administrator under paragraph 14 or 22 of Schedule B1 to the 1986 Act, or
- (b) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.”

55 For section 359 (administration order) substitute—

### “359 Administration order

(1) The Authority may make an administration application under Schedule B1 to the 1986 Act (or present a petition under Article 22 of the 1989 Order) in relation to a company or insolvent partnership which—

- (a) is or has been an authorised person,
- (b) is or has been an appointed representative, or
- (c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.

(2) Subsection (3) applies in relation to an administration application made (or a petition presented) by the Authority by virtue of this section.

(3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act (or Article 21(1)(a) of the 1989 Order) as unable to pay its debts—

- (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, and
- (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit.

(4) In this section—

“agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,

“authorised deposit taker” means a person with a Part IV permission to accept deposits (but not a person who has a Part IV permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),

“company” means a company—

- (a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or
- (b) to which Article 21 of the 1989 Order applies, and

“relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—

- (a) section 22,

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- (b) any relevant order under that section, and
- (c) Schedule 2.

- (5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—
- (a) section 22,
  - (b) any relevant order under that section, and
  - (c) Schedule 2.”

56 For section 361 (administrator to report to Authority) substitute—

**“361 Administrator’s duty to report to Authority**

- (1) This section applies where a company or partnership is—
- (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
  - (b) the subject of an administration order under Part III of the 1989 Order.
- (2) If the administrator thinks that the company or partnership is carrying on or has carried on a regulated activity in contravention of the general prohibition, he must report to the Authority without delay.
- (3) Subsection (2) does not apply where the administration arises out of an administration order made on an application made or petition presented by the Authority.”

57 In section 362 (Financial Services Authority’s right to participate in proceedings)—

- (a) in subsection (1) for “presents a petition to the court under section 9 of the 1986 Act (or Article 22 of the 1989 Order)” substitute “ makes an administration application under Schedule B1 to the 1986 Act (or presents a petition under Article 22 of the 1989 Order) ”,
- (b) after subsection (1) insert—
  - “(1A) This section also applies in relation to—
  - (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act of an administrator of a company of a kind described in subsection (1)(a) to (c), or
  - (b) the filing with the court of a copy of notice of intention to appoint an administrator under either of those paragraphs.”,
- (c) in subsection (2)(a) for “petition” substitute “ administration application or the petition ”,
- (d) for subsection (4) substitute—

“(4) The Authority may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act (or Article 39 of the 1989 Order).

(4A) In respect of an application under subsection (4)—

- (a) paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or

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- creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
- (b) Article 39 of the 1989 Order shall have effect with the omission of the words “(including at least himself)”.

and

- (e) in subsection (5)(b) for “section 26 of the 1986 Act” substitute “ paragraph 57 of Schedule B1 to the 1986 Act ”.

58 After section 362 insert—

**“362A Administrator appointed by company or directors**

- (1) This section applies in relation to a company of a kind described in section 362(1)(a) to (c).
- (2) An administrator of the company may not be appointed under paragraph 22 of Schedule B1 to the 1986 Act without the consent of the Authority.
- (3) Consent under subsection (2)—
- (a) must be in writing, and
- (b) must be filed with the court along with the notice of intention to appoint under paragraph 27 of that Schedule.
- (4) In a case where no notice of intention to appoint is required—
- (a) subsection (3)(b) shall not apply, but
- (b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of that Schedule.”

PROSPECTIVE

59 In section 427A(3) (mergers and divisions of public companies) for “an administration order being in force in relation to the company” substitute “ where the company is in administration ”.

SCHEDULE 18

Section 250

SCHEDULE 2A TO INSOLVENCY ACT 1986

“SCHEDULE 2A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF  
ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

***Capital market arrangement***

- 1 (1) For the purposes of section 72B an arrangement is a capital market arrangement if—
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
- (b) at least one party guarantees the performance of obligations of another party, or

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- (c) at least one party provides security in respect of the performance of obligations of another party, or
  - (d) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
  - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
  - (c) a person holds a capital market investment if he has a legal or beneficial interest in it.
- (3) In section 72B(1) and this paragraph “party” to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
  - (b) provides for the raising of finance as part of the arrangement, or
  - (c) is necessary for the purposes of implementing the arrangement.

### **Capital market investment**

- 2 (1) For the purposes of section 72B an investment is a capital market investment if it—
- (a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
  - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “rated” means rated for the purposes of investment by an internationally recognised rating agency,
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and
- “traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (3) In sub-paragraph (2)—
- “recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and
- “foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).
- 3 (1) An investment is also a capital market investment for the purposes of section 72B if it consists of a bond or commercial paper issued to one or more of the following—
- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
  - (b) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,

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- (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),
  - (d) a person who is, when the agreement mentioned in section 72B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
  - (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.
- (2) In sub-paragraph (1)—
- “bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and
  - “commercial paper” has the meaning given by article 9(3) of that order.
- (3) For the purposes of sub-paragraph (1)—
- (a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—
    - (i) in article 19(5)(b), ignore the words after “exempt person”,
    - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute “a controlled activity”, and
    - (iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and
  - (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore article 49(2)(e).

### **“Agreement”**

- 4 For the purposes of sections 72B and 72E and this Schedule “agreement” includes an agreement or undertaking effected by—
- (a) contract,
  - (b) deed, or
  - (c) any other instrument intended to have effect in accordance with the law of England and Wales, Scotland or another jurisdiction.

### **Debt**

- 5 The debt of at least £50 million referred to in section 72B(1)(a) or 72E(2)(a)—
- (a) may be incurred at any time during the life of the capital market arrangement or financed project, and
  - (b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

### **Step-in rights**

- 6 (1) For the purposes of sections 72C to 72E a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
  - (b) make arrangements for carrying out all or part of the project.

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- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

### **Project company**

- 7 (1) For the purposes of sections 72C to 72E a company is a “project company” of a project if—
- (a) it holds property for the purpose of the project,
  - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
  - (c) it is one of a number of companies which together carry out the project,
  - (d) it has the purpose of supplying finance to enable the project to be carried out, or
  - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a “project company” of a project if—
- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
  - (b) it also performs a function which is not—
    - (i) within sub-paragraph (1)(a) to (d),
    - (ii) related to a function within sub-paragraph (1)(a) to (d), or
    - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

### **“Resources”**

- 8 In section 72C “resources” includes—
- (a) funds (including payment for the provision of services or facilities),
  - (b) assets,
  - (c) professional skill,
  - (d) the grant of a concession or franchise, and
  - (e) any other commercial resource.

### **“Public body”**

- 9 (1) In section 72C “public body” means—
- (a) a body which exercises public functions,
  - (b) a body specified for the purposes of this paragraph by the Secretary of State, and
  - (c) a body within a class specified for the purposes of this paragraph by the Secretary of State.
- (2) A specification under sub-paragraph (1) may be—
- (a) general, or
  - (b) for the purpose of the application of section 72C to a specified case.

### **Regulated business**

- 10 (1) For the purposes of section 72D a business is regulated if it is carried on—

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- (a) in reliance on a licence granted to a person under section 7 of the Telecommunications Act 1984 (c. 12) (telecommunications service),
- (b) in reliance on a licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transport and supply of gas),
- (c) in reliance on a licence granted by virtue of section 41C of that Act (power to prescribe additional licensable activity),
- (d) in reliance on a licence under section 6 of the Electricity Act 1989 (c. 29) (supply of electricity),
- (e) by a water undertaker,
- (f) by a sewerage undertaker,
- (g) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),
- (h) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),
- (i) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding),
- (j) in reliance on a licence under section 8 of the Railways Act 1993 (c. 43) (railway services),
- (k) in reliance on a licence exemption under section 7 of that Act (subject to sub-paragraph (2) below),
- (l) by the operator of a system of transport which is deemed to be a railway for a purpose of Part I of that Act by virtue of section 81(2) of that Act (tramways, &c.), or
- (m) by the operator of a vehicle carried on flanged wheels along a system within paragraph (l).

(2) Sub-paragraph (1)(k) does not apply to the operator of a railway asset on a railway unless on some part of the railway there is a permitted line speed exceeding 40 kilometres per hour.

### **“Person”**

- 11 A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.”

## SCHEDULE 19

Section 256

### DURATION OF BANKRUPTCY: TRANSITIONAL PROVISIONS

#### *Introduction*

- 1 This Schedule applies to an individual who immediately before commencement—
- (a) has been adjudged bankrupt, and
  - (b) has not been discharged from the bankruptcy.

- 2 In this Schedule—

“commencement” means the date appointed under section 279 for the commencement of section 256, and

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“pre-commencement bankrupt” means an individual to whom this Schedule applies.

*Neither old law nor new law to apply*

- 3 Section 279 of the Insolvency Act 1986 (c. 45) (bankruptcy: discharge) shall not apply to a pre-commencement bankrupt (whether in its pre-commencement or its post-commencement form).

*General rule for discharge from pre-commencement bankruptcy*

- 4 (1) A pre-commencement bankrupt is [F47, subject to sub-paragraphs (2) and (3),] discharged from bankruptcy at whichever is the earlier of—
- (a) the end of the period of one year beginning with commencement, and
  - (b) the end of the relevant period applicable to the bankrupt under section 279(1) (b) of the Insolvency Act 1986 (duration of bankruptcy) as it had effect immediately before commencement.
- (2) An order made under section 279(3) of that Act before commencement—
- (a) shall continue to have effect in respect of the pre-commencement bankrupt after commencement, and
  - (b) may be varied or revoked after commencement by an order under section 279(3) as substituted by section 256 of this Act.
- (3) Section 279(3) to (5) of that Act as substituted by section 256 of this Act shall have effect after commencement in relation to the period mentioned in sub-paragraph (1) (a) or (b) above.

#### Textual Amendments

**F47** Words in [Sch. 19 para. 4\(1\)](#) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 3](#)

*Second-time bankruptcy*

- 5 (1) This paragraph applies to a pre-commencement bankrupt who was an undischarged bankrupt at some time during the period of 15 years ending with the day before the date on which the pre-commencement bankruptcy commenced.
- (2) The pre-commencement bankrupt shall not be discharged from bankruptcy in accordance with paragraph 4 above.
- (3) An order made before commencement under section 280(2)(b) or (c) of the Insolvency Act 1986 (c. 45) (discharge by order of the court) shall continue to have effect after commencement (including any provision made by the court by virtue of section 280(3)).
- (4) A pre-commencement bankrupt to whom this paragraph applies (and in respect of whom no order is in force under section 280(2)(b) or (c) on commencement) is discharged—
- (a) at the end of the period of five years beginning with commencement, or

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- (b) at such earlier time as the court may order on an application under section 280 of the Insolvency Act 1986 (discharge by order) heard after commencement.
- (5) Section 279(3) to (5) of the Insolvency Act 1986 as substituted by section 256 of this Act shall have effect after commencement in relation to the period mentioned in sub-paragraph (4)(a) above.
- (6) A bankruptcy annulled under section 282 shall be ignored for the purpose of sub-paragraph (1).

### *Criminal bankruptcy*

- 6 A pre-commencement bankrupt who was adjudged bankrupt on a petition under section 264(1)(d) of the Insolvency Act 1986 (criminal bankruptcy)—
  - (a) shall not be discharged from bankruptcy in accordance with paragraph 4 above, but
  - (b) may be discharged from bankruptcy by an order of the court under section 280 of that Act.

### *Income payments order*

- 7 (1) This paragraph applies where—
  - (a) a pre-commencement bankrupt is discharged by virtue of paragraph 4(1)(a), and
  - (b) an income payments order is in force in respect of him immediately before his discharge.
- (2) If the income payments order specifies a date after which it is not to have effect, it shall continue in force until that date (and then lapse).
- (3) But the court may on the application of the pre-commencement bankrupt—
  - (a) vary the income payments order;
  - (b) provide for the income payments order to cease to have effect before the date referred to in sub-paragraph (2).

PROSPECTIVE

### *Bankruptcy restrictions order or undertaking*

- 8 A provision of this Schedule which provides for an individual to be discharged from bankruptcy is subject to—
  - (a) any bankruptcy restrictions order (or interim order) which may be made in relation to that individual, and
  - (b) any bankruptcy restrictions undertaking entered into by that individual.

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## SCHEDULE 20

Section 257

## SCHEDULE 4A TO INSOLVENCY ACT 1986

## “SCHEDULE 4A

## BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

***Bankruptcy restrictions order***

- 1 (1) A bankruptcy restrictions order may be made by the court.
- (2) An order may be made only on the application of—
  - (a) the Secretary of State, or
  - (b) the official receiver acting on a direction of the Secretary of State.

***Grounds for making order***

- 2 (1) The court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).
- (2) The court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—
  - (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years before petition and ending with the date of the application;
  - (b) failing to produce records of that kind on demand by the official receiver or the trustee;
  - (c) entering into a transaction at an undervalue;
  - (d) giving a preference;
  - (e) making an excessive pension contribution;
  - (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
  - (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was himself to be unable to pay his debts;
  - (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
  - (i) failing to account satisfactorily to the court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
  - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;
  - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;
  - (l) fraud or fraudulent breach of trust;
  - (m) failing to cooperate with the official receiver or the trustee.

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- (3) The court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of six years ending with the date of the bankruptcy to which the application relates.
- (4) For the purpose of sub-paragraph (2)—
  - “before petition” shall be construed in accordance with section 351(c),
  - “excessive pension contribution” shall be construed in accordance with section 342A,
  - “preference” shall be construed in accordance with section 340, and
  - “undervalue” shall be construed in accordance with section 339.

### ***Timing of application for order***

- 3 (1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—
  - (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
  - (b) with the permission of the court.
- (2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under section 279(3).

### ***Duration of order***

- 4 (1) A bankruptcy restrictions order—
  - (a) shall come into force when it is made, and
  - (b) shall cease to have effect at the end of a date specified in the order.
- (2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—
  - (a) before the end of the period of two years beginning with the date on which the order is made, or
  - (b) after the end of the period of 15 years beginning with that date.

### ***Interim bankruptcy restrictions order***

- 5 (1) This paragraph applies at any time between—
  - (a) the institution of an application for a bankruptcy restrictions order, and
  - (b) the determination of the application.
- (2) The court may make an interim bankruptcy restrictions order if the court thinks that—
  - (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
  - (b) it is in the public interest to make an interim order.
- (3) An interim order may be made only on the application of—
  - (a) the Secretary of State, or
  - (b) the official receiver acting on a direction of the Secretary of State.
- (4) An interim order—
  - (a) shall have the same effect as a bankruptcy restrictions order, and

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- (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
  - (a) on the determination of the application for the bankruptcy restrictions order,
  - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
  - (c) if the court discharges the interim order on the application of the person who applied for it or of the bankrupt.
- 6 (1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.
- (2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

### ***Bankruptcy restrictions undertaking***

- 7 (1) A bankrupt may offer a bankruptcy restrictions undertaking to the Secretary of State.
- (2) In determining whether to accept a bankruptcy restrictions undertaking the Secretary of State shall have regard to the matters specified in paragraph 2(2) and (3).
- 8 A reference in an enactment to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom a bankruptcy restrictions undertaking has effect.
- 9 (1) A bankruptcy restrictions undertaking—
  - (a) shall come into force on being accepted by the Secretary of State, and
  - (b) shall cease to have effect at the end of a date specified in the undertaking.
- (2) The date specified under sub-paragraph (1)(b) must not be—
  - (a) before the end of the period of two years beginning with the date on which the undertaking is accepted, or
  - (b) after the end of the period of 15 years beginning with that date.
- (3) On an application by the bankrupt the court may—
  - (a) annul a bankruptcy restrictions undertaking;
  - (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

### ***Effect of annulment of bankruptcy order***

- 10 Where a bankruptcy order is annulled under section 282(1)(a) or (2)—
  - (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
  - (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
  - (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.
- 11 Where a bankruptcy order is annulled under section 261, 263D or 282(1)(b)—
  - (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,

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- (b) the court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
- (c) the Secretary of State may accept a bankruptcy restrictions undertaking offered before the annulment, and
- (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

### **Registration**

- 12 The Secretary of State shall maintain a register of—
- (a) bankruptcy restrictions orders,
  - (b) interim bankruptcy restrictions orders, and
  - (c) bankruptcy restrictions undertakings.”

## SCHEDULE 21

Section 257

### EFFECT OF BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

#### *Disqualification for acting as receiver or manager*

- 1 The following shall be substituted for section 31 of the Insolvency Act 1986 (c. 45) (receiver and manager: disqualification)—

#### **“31 Disqualification of bankrupt**

- (1) A person commits an offence if he acts as receiver or manager of the property of a company on behalf of debenture holders while—
  - (a) he is an undischarged bankrupt, or
  - (b) a bankruptcy restrictions order is in force in respect of him.
- (2) A person guilty of an offence under subsection (1) shall be liable to imprisonment, a fine or both.
- (3) This section does not apply to a receiver or manager acting under an appointment made by the court.”

#### *Bankruptcy offences after discharge*

- 2 After section 350(3) of the Insolvency Act 1986 (c. 45) (bankruptcy offences: general: no liability after discharge) there shall be inserted—

“(3A) Subsection (3) is without prejudice to any provision of this Chapter which applies to a person in respect of whom a bankruptcy restrictions order is in force.”

- 3 At the end of section 360 of that Act (obtaining credit and doing business) there shall be inserted—

“(5) This section applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him.

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- (6) For the purposes of subsection (1)(a) as it applies by virtue of subsection (5), the relevant information about the status of the person in question is the information that a bankruptcy restrictions order is in force in respect of him.”

*Disqualification for acting as insolvency practitioner*

- 4 At the end of section 390 of that Act (disqualification for insolvency practitioner) there shall be added—

“(5) A person is not qualified to act as an insolvency practitioner while a bankruptcy restrictions order is in force in respect of him.”

*Prohibition against involvement in company*

- 5 The following shall be substituted for section 11(1) of the Company Directors Disqualification Act 1986 (c. 46) (bankrupt)—

“(1) It is an offence for a person to act as director of a company or directly or indirectly to take part in or be concerned in the promotion, formation or management of a company, without the leave of the court, at a time when—

- (a) he is an undischarged bankrupt, or
- (b) a bankruptcy restrictions order is in force in respect of him.”

SCHEDULE 22

Section 264

INDIVIDUAL VOLUNTARY ARRANGEMENT

*Annulment of bankruptcy on making of voluntary arrangement*

- 1 The following shall be substituted for section 261 of the Insolvency Act 1986 (effect of voluntary arrangement: undischarged bankrupt)—

**“261 Additional effect on undischarged bankrupt**

- (1) This section applies where—
  - (a) the creditors’ meeting summoned under section 257 approves the proposed voluntary arrangement (with or without modifications), and
  - (b) the debtor is an undischarged bankrupt.
- (2) Where this section applies the court shall annul the bankruptcy order on an application made—
  - (a) by the bankrupt, or
  - (b) where the bankrupt has not made an application within the prescribed period, by the official receiver.
- (3) An application under subsection (2) may not be made—
  - (a) during the period specified in section 262(3)(a) during which the decision of the creditors’ meeting can be challenged by application under section 262,

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- (b) while an application under that section is pending, or
  - (c) while an appeal in respect of an application under that section is pending or may be brought.
- (4) Where this section applies the court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement."

#### *Fast-track for making voluntary arrangement*

- 2 The following shall be inserted after section 263 of that Act (implementation of voluntary arrangement)—

#### *"Fast-track voluntary arrangement*

#### **263A Availability**

Section 263B applies where an individual debtor intends to make a proposal to his creditors for a voluntary arrangement and—

- (a) the debtor is an undischarged bankrupt,
- (b) the official receiver is specified in the proposal as the nominee in relation to the voluntary arrangement, and
- (c) no interim order is applied for under section 253.

#### **263B Decision**

- (1) The debtor may submit to the official receiver—
  - (a) a document setting out the terms of the voluntary arrangement which the debtor is proposing, and
  - (b) a statement of his affairs containing such particulars as may be prescribed of his creditors, debts, other liabilities and assets and such other information as may be prescribed.
- (2) If the official receiver thinks that the voluntary arrangement proposed has a reasonable prospect of being approved and implemented, he may make arrangements for inviting creditors to decide whether to approve it.
- (3) For the purposes of subsection (2) a person is a "creditor" only if—
  - (a) he is a creditor of the debtor in respect of a bankruptcy debt, and
  - (b) the official receiver is aware of his claim and his address.
- (4) Arrangements made under subsection (2)—
  - (a) must include the provision to each creditor of a copy of the proposed voluntary arrangement,
  - (b) must include the provision to each creditor of information about the criteria by reference to which the official receiver will determine whether the creditors approve or reject the proposed voluntary arrangement, and
  - (c) may not include an opportunity for modifications to the proposed voluntary arrangement to be suggested or made.

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- (5) Where a debtor submits documents to the official receiver under subsection (1) no application under section 253 for an interim order may be made in respect of the debtor until the official receiver has—
- (a) made arrangements as described in subsection (2), or
  - (b) informed the debtor that he does not intend to make arrangements (whether because he does not think the voluntary arrangement has a reasonable prospect of being approved and implemented or because he declines to act).

### **263C Result**

As soon as is reasonably practicable after the implementation of arrangements under section 263B(2) the official receiver shall report to the court whether the proposed voluntary arrangement has been approved or rejected.

### **263D Approval of voluntary arrangement**

- (1) This section applies where the official receiver reports to the court under section 263C that a proposed voluntary arrangement has been approved.
- (2) The voluntary arrangement—
  - (a) takes effect,
  - (b) binds the debtor, and
  - (c) binds every person who was entitled to participate in the arrangements made under section 263B(2).
- (3) The court shall annul the bankruptcy order in respect of the debtor on an application made by the official receiver.
- (4) An application under subsection (3) may not be made—
  - (a) during the period specified in section 263F(3) during which the voluntary arrangement can be challenged by application under section 263F(2),
  - (b) while an application under that section is pending, or
  - (c) while an appeal in respect of an application under that section is pending or may be brought.
- (5) The court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.
- (6) The Deeds of Arrangement Act 1914 (c. 47) does not apply to the voluntary arrangement.
- (7) A reference in this Act or another enactment to a voluntary arrangement approved under this Part includes a reference to a voluntary arrangement which has effect by virtue of this section.

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### **263E Implementation**

Section 263 shall apply to a voluntary arrangement which has effect by virtue of section 263D(2) as it applies to a voluntary arrangement approved by a creditors' meeting.

### **263F Revocation**

- (1) The court may make an order revoking a voluntary arrangement which has effect by virtue of section 263D(2) on the ground—
  - (a) that it unfairly prejudices the interests of a creditor of the debtor, or
  - (b) that a material irregularity occurred in relation to the arrangements made under section 263B(2).
- (2) An order under subsection (1) may be made only on the application of—
  - (a) the debtor,
  - (b) a person who was entitled to participate in the arrangements made under section 263B(2),
  - (c) the trustee of the bankrupt's estate, or
  - (d) the official receiver.
- (3) An application under subsection (2) may not be made after the end of the period of 28 days beginning with the date on which the official receiver makes his report to the court under section 263C.
- (4) But a creditor who was not made aware of the arrangements under section 263B(2) at the time when they were made may make an application under subsection (2) during the period of 28 days beginning with the date on which he becomes aware of the voluntary arrangement.

### **263G Offences**

- (1) Section 262A shall have effect in relation to obtaining approval to a proposal for a voluntary arrangement under section 263D.
- (2) Section 262B shall have effect in relation to a voluntary arrangement which has effect by virtue of section 263D(2) (for which purposes the words "by a creditors' meeting summoned under section 257" shall be disregarded)."

#### *Role of official receiver*

- 3 The following shall be inserted after section 389A of that Act (authorisation of nominees and supervisors)—

#### **“389B Official receiver as nominee or supervisor**

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).
- (3) An order under subsection (2)—

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- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

## SCHEDULE 23

Section 269

## INDIVIDUAL INSOLVENCY: MINOR AND CONSEQUENTIAL AMENDMENTS

- 1 The Insolvency Act 1986 (c. 45) shall be amended as follows.
- 2 Section 275 (bankruptcy: summary administration) shall cease to have effect.
- 3 In section 280(1) (bankruptcy: discharge by order of court)—
  - (a) for “section 279(1)(a)” substitute “ section 279(6) ”, and
  - (b) for “commencement of the bankruptcy” substitute “ date on which the bankruptcy commences ”.
- 4 In section 282 (annulment of bankruptcy)—
  - (a) in subsection (4) (effect of annulment) after “section 261” insert “ or 263D ”, and
  - (b) omit subsection (5) (previous bankruptcy: disregard of annulled bankruptcy).
- 5 For section 291(4) (co-operation with official receiver) substitute—
 

“(4) The bankrupt shall give the official receiver such inventory of his estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require—

  - (a) for a purpose of this Chapter, or
  - (b) in connection with the making of a bankruptcy restrictions order.”
- 6 In section 292(1)(a) (trustee in bankruptcy: power to appoint) omit the words “except at a time when a certificate for the summary administration of the bankrupt’s estate is in force,”.
- 7 In section 293(1) (trustee in bankruptcy: meeting to appoint) omit the words “and no certificate for the summary administration of the bankrupt’s estate has been issued,”.
- 8 In section 294(1) (power of creditors to requisition meeting) omit the words—
 

“and

  - (b) a certificate for the summary administration of the estate is not for the time being in force,”.
- 9 In section 297 (trustee: special cases)—
  - (a) omit subsections (2) and (3), and
  - (b) in subsection (4) omit the words “but no certificate for the summary administration of the estate is issued”.
- 10 Omit section 298(3) (removal of trustee: summary administration).
- 11 In section 300 (trustee: vacancy)—
  - (a) omit subsection (5), and

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- (b) in subsections (6) and (7) omit the words “or (5)”.
- 12 In section 354(3) (concealment of property) after “the official receiver” insert “, the trustee”.
- 13 At the end of section 355 (concealment and falsification of records) add—
- “(4) In their application to a trading record subsections (2)(d) and (3)(b) shall have effect as if the reference to 12 months were a reference to two years.
- (5) In subsection (4) “trading record” means a book, document or record which shows or explains the transactions or financial position of a person’s business, including—
- (a) a periodic record of cash paid and received,
- (b) a statement of periodic stock-taking, and
- (c) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.”
- 14 In the following provisions of section 399 (appointment of official receiver) for “or winding up” substitute “, winding up or individual voluntary arrangement ”
- (a) subsection (1) (twice), and
- (b) subsection (4).
- 15 In section 429(2)(b) (disability imposed on revoking administration order under County Courts Act 1984) for “not exceeding 2 years” there shall be substituted “not exceeding one year”.
- 16 (1) Schedule 9 (scope of insolvency rules) shall be amended as follows.
- (2) After paragraph 8 (registration of voluntary arrangements) insert—

**“Official receiver acting on voluntary arrangement**

- 8A Provision about the official receiver acting as nominee or supervisor in relation to a voluntary arrangement under Part VIII of this Act, including—
- (a) provision requiring the official receiver to act in specified circumstances;
- (b) provision about remuneration;
- (c) provision prescribing terms or conditions to be treated as forming part of a voluntary arrangement in relation to which the official receiver acts as nominee or supervisor;
- (d) provision enabling those terms or conditions to be varied or excluded, in specified circumstances or subject to specified conditions, by express provision in an arrangement.”
- (3) After paragraph 29 (records) insert—

**“Bankruptcy restrictions orders and undertakings**

- 29A Provision about bankruptcy restrictions orders, interim orders and undertakings, including—
- (a) provision about evidence;
- (b) provision enabling the amalgamation of the register mentioned in paragraph 12 of Schedule 4A with another register;

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- (c) provision enabling inspection of that register by the public.”
- 17 In Schedule 10 (punishment of offences)—
- (a) in the entry for section 31 omit “Undischarged”, and
  - (b) omit the entries for sections 361 and 362.

## SCHEDULE 24

Section 276

### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

#### *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.
- (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.

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### *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 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

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- 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
    - (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,

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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.
- (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

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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—

(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.

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(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.

(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—

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- (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 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

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- (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.

#### *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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## SCHEDULE 25

Section 278

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Registered Designs Act 1949 (c. 88)*

- 1 (1) The Registered Designs Act 1949 is amended as follows.
- (2) In section 11A(1) (powers exercisable in consequence of report of Competition Commission), paragraphs (a) and (b) shall cease to have effect.
- (3) After section 11A there is inserted—

**“11AB Powers exercisable following merger and market investigations**

- (1) Subsection (2) below applies where—
  - (a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following merger or market investigations) applies;
  - (b) the Competition Commission or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or preventing a matter which cannot be dealt with under the enactment concerned; and
  - (c) the matter concerned involves conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences.
- (2) The Competition Commission or (as the case may be) the Secretary of State may apply to the registrar to take action under this section.
- (3) Before making an application the Competition Commission or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.
- (4) The registrar may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1) (c) above.
- (5) An appeal lies from any order of the registrar under this section.
- (6) References in this section to the Competition Commission shall, in cases where section 75(2) of the Enterprise Act 2002 applies, be read as references to the Office of Fair Trading.
- (7) References in section 35, 36, 47, 63, 134 or 141 of the Enterprise Act 2002 (questions to be decided by the Competition Commission in its reports) to taking action under section 41(2), 55, 66, 138 or 147 shall include references to taking action under subsection (2) above.

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- (8) An order made by virtue of this section in consequence of action under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 3 or (as the case may be) 4 of that Act to make an enforcement order (within the meaning of the Part concerned).”

#### Commencement Information

**I10** Sch. 25 para. 1 partly in force; Sch. 25 para. 1 not in force at Royal Assent see s. 279; Sch. 25 para. 1(1)(a) in force for certain purposes and Sch. 25 para. 1(3) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch., Sch. 25 para. 1(1)(2) in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

#### *Agricultural Marketing Act 1958 (c. 47)*

- 2 (1) The Agricultural Marketing Act 1958 is amended as follows.
- (2) In section 19A (action following report by Commission)—
- (a) for subsection (1) there is substituted—
- “(1) Subsection (2) applies in any of the following cases.
- (1A) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (1B) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (1C) The third case is where—
- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
- (i) certain matters indicated in the report operate against the public interest, and
- (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).”;
- (b) in subsection (2)—
- (i) the words from the beginning of the subsection to “this section” shall cease to have effect;

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- (ii) for the words from “those conclusions” to the end of the subsection there is substituted “ a report of a committee of investigation had contained the conclusion that the provision of the scheme in question, or the act or omission in question, is contrary to the interests of consumers of the regulated product ”;
- (c) after subsection (2) there is inserted—
  - “(3) An order made by virtue of this section in a case mentioned in subsection (1A) or (1B) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”
- (3) For the purposes of the Scotland Act 1998 (c. 46) the amendments made by subparagraph (2) shall be taken to be pre-commencement enactments within the meaning of that Act.
- (4) In section 47(2) (restrictions on disclosing certain information obtained under Act), in paragraph (aa) of the proviso—
  - (a) for “the Director General of Fair Trading or any of the staff appointed by that Director General” there is substituted “ the Office of Fair Trading ”;
  - (b) for “the Director General to perform any functions of theirs or his” there is substituted “ the Office of Fair Trading to perform any functions of theirs or its ”;
  - (c) at the end there is inserted “ or the Enterprise Act 2002 ”.

#### Commencement Information

**III** Sch. 25 para. 2 wholly in force at 20.6.2003; Sch. 25 para. 2 not in force at Royal Assent see s. 279; Sch. 25 para. 2(1) in force for certain purposes and Sch. 25 para. 2(4) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 2 in force for remaining purposes at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Public Records Act 1958 (c. 51)

- 3 (1) The Public Records Act 1958 is amended as follows.
- (2) In Part 2 of the Table at the end of paragraph 3 of Schedule 1 (definition of public records)—
  - (a) the entry relating to the Office of the Director General of Fair Trading shall cease to have effect;
  - (b) the following entries are inserted at the appropriate places—
    - “Competition Service”
    - “Office of Fair Trading.”

#### Superannuation Act 1972 (c. 11)

- 4 (1) The Superannuation Act 1972 is amended as follows.
- (2) In Schedule 1 (kinds of employment in relation to which pension schemes may be made), in the list of “Other Bodies”, there is inserted at the appropriate place—

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“The Competition Service.”

*Fair Trading Act 1973 (c. 41)*

- 5 (1) The 1973 Act is amended as follows.
- (2) <sup>F48</sup> . . . . .
- (3) Sections 34 to 42 (additional functions of Director for protection of consumers) shall cease to have effect.
- (4) In section 93B (false or misleading information)—
- (a) in subsection (1)—
- (i) <sup>F49</sup> . . . . .
- (ii) <sup>F49</sup> . . . . .
- (iii) the words “or under the Competition Act 1980” shall cease to have effect;
- (b) after subsection (4) there is inserted—
- “(5) This section shall not have effect in relation to the furnishing of information to the Commission in connection with its functions under any provision of the Enterprise Act 2002 as applied by virtue of section 13B of the Telecommunications Act 1984 or section 44B of the Airports Act 1986.”

**Textual Amendments**

**F48** Sch. 25 para. 5(2) repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, [Sch. para. 7\(2\)](#) (with art. 3)

**F49** Sch. 25 para. 5(4)(a)(i)(ii) repealed (29.12.2003) by [The Enterprise Act 2002 and Media Mergers \(Consequential Amendments\) Order 2003 \(S.I. 2003/3180\)](#), art. 2, [Sch. para. 7\(2\)](#) (with art. 3)

**Commencement Information**

**I12** Sch. 25 para. 5 partly in force; Sch. 25 para. 5 not in force at Royal Assent see s. 279; Sch. 25 para. 5(1) in force for certain purposes and Sch. 25 para. 5(2)(4)(a)(i) in force at 1.4.2003 by [S.I. 2003/766](#), [art. 2](#), [Sch.](#), Sch. 25 para. 5(1)(3)(4)(a)(ii)(iii)(b) in force at 20.6.2003 by [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#)

*Consumer Credit Act 1974 (c. 39)*

- 6 (1) The Consumer Credit Act 1974 is amended as follows.
- (2) In section 1 (general functions of Director)—
- (a) in subsection (1)—
- (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “ the Office of Fair Trading (“the OFT”) ”;
- (ii) for “him” there is substituted “ it ”;
- (iii) for “himself” there is substituted “ itself ”;
- (b) in subsection (2)—
- (i) for “Director” there is substituted “ OFT ”;
- (ii) for “him” there is substituted “ it ”;

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- (c) in the sidenote, for “Director” there is substituted “OFT”;  
and in the heading before that section, for “DIRECTOR GENERAL OF FAIR TRADING” there is substituted “OFFICE OF FAIR TRADING”.
- (3) In section 2 (powers of Secretary of State)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsections (1)(b) and (2), for “his” there is substituted “its”;
  - (c) in subsection (4), for “him” there is substituted “it”.
- (4) In section 4 (dissemination of information and advice)—
- (a) for “Director” there is substituted “OFT”;
  - (b) for “he”, “him” and “his” there is substituted “it”, “it” and “its” respectively.
- (5) In section 6 (form etc. of applications)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3), for “him” there is substituted “it”.
- (6) In section 7 (penalty for false information), for “Director” (in each place) there is substituted “OFT”.
- (7) In section 22 (standard and group licences)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1)(b), for “his” and “he” there is substituted “its” and “it” respectively;
  - (c) in subsection (5), for “him” there is substituted “it”.
- (8) In section 25 (licensee to be a fit person)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (2), for “him” there is substituted “it”.
- (9) In section 27 (determination of applications)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (2), for “him” (in both places) there is substituted “it”.
- (10) In section 28 (exclusion from a group licence)—
- (a) for “Director” (in both places) there is substituted “OFT”;
  - (b) for “he” there is substituted “it”;
  - (c) in paragraph (a), for “his” there is substituted “its”.
- (11) In section 29 (renewal)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (2), for “his” there is substituted “its”.
- (12) In section 30 (variation by request)—
- (a) for “Director” and “he” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in subsection (4)(a), for “his” there is substituted “its”.

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- (13) In section 31 (compulsory variation)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “he” (in both places) there is substituted “ it ”;
  - (c) in subsection (2)(a), for “his” there is substituted “ its ”;
  - (d) in subsection (3), for “he”, “his” and “him” there is substituted respectively “ it ”, “ its ” and “ it ” respectively;
  - (e) in subsection (4)(a), for “his” there is substituted “ its ”.
- (14) In section 32 (suspension and revocation)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “he” (in both places) there is substituted “ it ”;
  - (c) in subsection (2)(a), for “his” there is substituted “ its ”;
  - (d) in subsection (3), for “he”, “his” and “him” there is substituted “ it ”, “ its ” and “ it ” respectively;
  - (e) in subsection (4)(a), for “his” there is substituted “ its ”;
  - (f) in subsection (5), for “he” there is substituted “ it ”;
  - (g) in subsection (8), for “him” there is substituted “ it ”.
- (15) In section 33 (application to end suspension)—
- (a) for “Director” and “he” (in each place) there is substituted “ OFT ” and “ it ” respectively;
  - (b) in subsection (2)(a), for “his” there is substituted “ its ”.
- (16) In section 34 (representations to Director)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsections (2) and (3), for “his” there is substituted “ its ”.
- (17) In section 35 (the register)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsections (1) and (4), for “he” there is substituted “ it ”;
  - (c) in subsection (1)(c), for “him” there is substituted “ it ”.
- (18) In section 36 (duty to notify changes)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (6), for “him” there is substituted “ it ”.
- (19) In section 39 (offences against Part 3), for “Director” there is substituted “ OFT ”.
- (20) In section 40 (enforcement of agreements made by unlicensed trader)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “ it ”;
    - (ii) in paragraph (a), for “his” there is substituted “ its ”;
  - (c) in subsection (5), for “he” there is substituted “ it ”.
- (21) In section 41 (appeals to Secretary of State under Part 3), in subsection (1), for “Director” there is substituted “ OFT ”.
- (22) In section 49 (prohibition of canvassing debtor-creditor agreements off trade premises), for “Director” (in each place) there is substituted “ OFT ”.

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- (23) In section 60 (form and content of agreements), in subsections (3) and (4), for “Director” (in each place) and “he” (in each place) there is substituted “OFT” and “it” respectively.
- (24) In section 64 (duty to give notice of cancellation rights), for “Director” (in each place) there is substituted “OFT”.
- (25) In section 74 (exclusion of certain agreements from Part 5)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3A), for “he” there is substituted “it”.
- (26) In section 101 (right to terminate hire agreement), in subsection (8), for “Director” (in each place) and “he” there is substituted “OFT” and “it” respectively.
- (27) In section 113 (Act not to be evaded by use of security), in subsection (2), for “Director” there is substituted “OFT”.
- (28) In section 148 (agreement for services of unlicensed trader)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (5), for “he” there is substituted “it”.
- (29) In section 149 (regulated agreements made on introductions by unlicensed credit-broker)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3)—
    - (i) for “he” (in both places) there is substituted “it”;
    - (ii) in paragraph (a), for “his” there is substituted “its”;
  - (c) in subsection (5), for “he” there is substituted “it”.
- (30) In section 159 (correction of wrong information), for “Director” there is substituted “OFT”.
- (31) In section 160 (alternative procedure for business consumers)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (1), for “he” there is substituted “it”.
- (32) In section 161 (enforcement authorities)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) subsection (2) (requirement to notify Director of intended prosecution) is omitted;
  - (c) in subsection (3), for “he” and “him” there is substituted “it”.
- (33) In section 162 (powers of entry and inspection), in subsection (5), for “Director” there is substituted “OFT”.
- (34) In section 166 (notification of convictions and judgments to Director), for “Director” (in each place), “Director’s” and “his” there is substituted “OFT”, “OFT’s” and “its” respectively.

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- (35) In section 170 (no further sanctions for breach of Act), for “his”, “Director” and “him” there is substituted “ its ”, “ OFT ” and “ it ” respectively.
- (36) In section 173 (contracting-out forbidden), in subsection (3), for “Director” there is substituted “ OFT ”.
- (37) In section 183 (determinations etc. by Director), for “Director” (in both places) and “him” there is substituted “ OFT ” and “ it ” respectively.
- (38) In section 189 (general interpretation provisions)—
- (a) in subsection (1)—
- (i) the definition of “Director” shall cease to have effect;
- (ii) in the definition of “general notice”, for “Director” and “him” there is substituted “ OFT ” and “ it ” respectively;
- (iii) after the definition of “notice of cancellation” there is inserted—
- ““OFT” means the Office of Fair Trading;”;
- (iv) in the definition of “register”, for “Director” there is substituted “ OFT ”;
- (b) in subsection (5), for “Director” (in both places) there is substituted “ OFT ”.
- (39) In section 191 (special provisions as to Northern Ireland)—
- (a) for “Director” (in both places) there is substituted “ OFT ”;
- (b) in subsection (1), for “his” and “him” there is substituted “ the OFT’s ” and “ the OFT ” respectively.
- (40) In Schedule 1 (prosecution and punishment of offences), in the entry relating to section 7, for “Director” there is substituted “ OFT ”.

*Restrictive Practices Court Act 1976 (c. 33)*

- 7 (1) The Restrictive Practices Court Act 1976 is amended as follows.
- (2) In section 9 (procedure), in subsection (2)(d), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

*Patents Act 1977 (c. 37)*

- 8 (1) The Patents Act 1977 is amended as follows.
- (2) After section 50 there is inserted—

**“50A Powers exercisable following merger and market investigations**

- (1) Subsection (2) below applies where—
- (a) section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following merger or market investigations) applies;
- (b) the Competition Commission or (as the case may be) the Secretary of State considers that it would be appropriate to make an application under this section for the purpose of remedying, mitigating or

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- preventing a matter which cannot be dealt with under the enactment concerned; and
- (c) the matter concerned involves—
- (i) conditions in licences granted under a patent by its proprietor restricting the use of the invention by the licensee or the right of the proprietor to grant other licences; or
  - (ii) a refusal by the proprietor of a patent to grant licences on reasonable terms.
- (2) The Competition Commission or (as the case may be) the Secretary of State may apply to the comptroller to take action under this section.
- (3) Before making an application the Competition Commission or (as the case may be) the Secretary of State shall publish, in such manner as it or he thinks appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to it or him to be affected.
- (4) The comptroller may, if it appears to him on an application under this section that the application is made in accordance with this section, by order cancel or modify any condition concerned of the kind mentioned in subsection (1) (c)(i) above or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.
- (5) References in this section to the Competition Commission shall, in cases where section 75(2) of the Enterprise Act 2002 applies, be read as references to the Office of Fair Trading.
- (6) References in section 35, 36, 47, 63, 134 or 141 of the Enterprise Act 2002 (questions to be decided by the Competition Commission in its reports) to taking action under section 41(2), 55, 66, 138 or 147 shall include references to taking action under subsection (2) above.
- (7) Action taken by virtue of subsection (4) above in consequence of an application under subsection (2) above where an enactment mentioned in subsection (1)(a) above applies shall be treated, for the purposes of sections 91(3), 92(1)(a), 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were the making of an enforcement order (within the meaning of the Part concerned) under the relevant power in Part 3 or (as the case may be) 4 of that Act.”
- (3) In section 51(1) (powers exercisable in consequence of report of Competition Commission), paragraphs (a) and (b) shall cease to have effect.
- (4) In section 53(2) (statements in certain reports of the Competition Commission to be prima facie evidence of the matters stated) after “1980” there is inserted “ or published under Part 3 or 4 of the Enterprise Act 2002 ”.

#### Commencement Information

**I13** Sch. 25 para. 8 partly in force; Sch. 25 para. 8 not in force at Royal Assent see s. 279; Sch. 25 para. 8(1) in force for certain purposes and Sch. 25 para. 8(2)(4) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch., Sch. 25 para. 8(1)(3) in force for certain further purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

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*Estate Agents Act 1979 (c. 38)*

- 9 (1) The Estate Agents Act 1979 is amended as follows.
- (2) In section 3 (orders prohibiting unfit persons from doing estate agency work)—
- (a) in subsection (1), for “the Director General of Fair Trading (in this Act referred to as “the Director”)” there is substituted “ the Office of Fair Trading (in this Act referred to as “the OFT”) ”;
  - (b) for “Director” (in each place) there is substituted “ OFT ”;
  - (c) in subsection (2), for “he” there is substituted “ it ”;
  - (d) in subsections (4) and (5), for “he” (in each place) and “him” there is substituted “ it ”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”.
- (3) In section 4 (warning orders)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “he” there is substituted “ it ”.
- (4) In section 5 (supplementary provisions as to orders under sections 3 and 4), for “Director” (in each place) there is substituted “ OFT ”.
- (5) In section 6 (revocation and variation of orders under sections 3 and 4)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “him” there is substituted “ it ”;
  - (c) in subsections (3) to (5), for “he” (in each place) there is substituted “ it ”;
  - (d) in subsection (3), for “his” there is substituted “ its ”.
- (6) In section 7 (appeals), in subsection (1), for “Director” (in both places) there is substituted “ OFT ”.
- (7) In section 8 (register of orders etc.)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “him” and “his” there is substituted “ it ” and “ its ” respectively;
  - (c) in subsection (3), for “his” there is substituted “ its ”;
  - (d) in subsection (4), for “he” there is substituted “ it ”;
  - (e) in subsection (5), for “him” there is substituted “ it ”.
- (8) In section 9 (information for the Director)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “him” (in each place) and “his” there is substituted “ it ” and “ its ” respectively.
- (9) In—
- (a) section 11 (powers of entry and inspection),
  - (b) section 13 (clients’ money held on trust or as agent), and
  - (c) section 15 (interest on clients’ money),
- for “Director” there is substituted “ OFT ”.
- (10) In section 17 (exemptions from section 16)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;

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- (b) in subsection (1), for “he” and “him” there is substituted “ it ”;
  - (c) in subsection (5), for “he” and “his” (in both places) there is substituted “ it ” and “ its ” respectively.
- (11) In—
- (a) section 19 (regulation of pre-contract deposits outside Scotland),
  - (b) section 20 (regulation of pre-contract deposits in Scotland), and
  - (c) section 21 (transactions in which an estate agent has a personal interest),
- for “Director” there is substituted “ OFT ”.
- (12) In section 25 (general duties of Director)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (1), for “himself” there is substituted “ itself ”;
  - (c) in subsections (2) and (3), for “him” there is substituted “ it ”;
  - (d) in subsection (3), for “he” there is substituted “ it ”.
- (13) In section 26 (enforcement authorities)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) subsection (2) (requirement to notify Director of intended prosecution) is omitted;
  - (c) in subsection (4), for “him” and “he” there is substituted “ it ”.
- (14) In—
- (a) section 29 (service of notices etc.), and
  - (b) section 30 (orders and regulations),
- for “Director” (in each place) there is substituted “ OFT ”.
- (15) In section 33 (general interpretation provisions)—
- (a) the definition of “Director” shall cease to have effect;
  - (b) in the definition of “general notice”, for “Director” and “him” there is substituted “ OFT ” and “ it ” respectively;
  - (c) after the definition of “general notice” there is inserted—
- ““OFT” means the Office of Fair Trading;”.
- (16) In Schedule 2 (procedure etc.)—
- (a) for “Director” and “Director’s” (in each place) there is substituted “ OFT ” and “ OFT’s ”;
  - (b) in paragraph 1, for “his” and “he” there is substituted “ its ” and “ it ” respectively;
  - (c) in paragraphs 3 and 5, for “he” there is substituted “ it ”;
  - (d) in paragraph 6, for “his” (in both places) and “he” (in both places) there is substituted “ its ” and “ it ” respectively;
  - (e) in paragraph 7, for “his” and “he” there is substituted “ its ” and “ it ” respectively;
  - (f) in paragraph 8, for “his”, “he” (in both places) and “him” there is substituted “ its ”, “ it ” and “ it ” respectively;
  - (g) in paragraph 9(1), for “his” (in both places) there is substituted “ its ”;
  - (h) in paragraph 10(2), for “he” there is substituted “ it ”.

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### Competition Act 1980 (c. 21)

- 10 (1) The Competition Act 1980 is amended as follows.
- (2) In section 11 (references of public bodies and certain other persons to the Commission)—
  - (a) in subsection (1)—
    - (i) at the end of paragraph (a) there is inserted “ or ”;
    - (ii) paragraph (c) and the word “or” before it shall cease to have effect;
    - (iii) for “paragraph (a), (b) or (c)” there is substituted “ paragraph (a) or (b) ”;
  - (b) subsections (2), (9) and (9A) shall cease to have effect.
- (3) After section 11 there is inserted—

#### **“11A References under section 11: time-limits**

- (1) Every reference under section 11 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 11 above shall not have effect (and no action shall be taken in relation to it under section 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Secretary of State under subsection (3) below.
- (3) The Secretary of State may, if he has received representations on the subject from the 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 three months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Secretary of State shall publish any extension made by him under subsection (3) above in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.

#### **11B References under section 11: powers of investigation and penalties**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 11 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);

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- (g) section 115 (recovery of penalties); and
  - (h) section 116(statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the word “publication” there were substituted “laying before both Houses of Parliament”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.

#### **11C References under section 11: further supplementary provisions**

- (1) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions under this Act as it applies in relation to functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” were omitted.
- (2) Section 125 of the Enterprise Act 2002 (offences by bodies corporate) shall apply for the purposes of this Act as it applies for the purposes of Part 3 of that Act.
- (3) For the purposes of section 12 below, a conclusion contained in a report of the 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.

#### **11D Interim orders**

- (1) Subsection (2) below applies where, in the circumstances specified in subsection (1) of section 12 below, the Secretary of State has under consideration the making of an order under subsection (5) of that section.
- (2) The Secretary of State may by order, for the purpose of preventing pre-emptive action—
  - (a) prohibit or restrict the doing of things which the Secretary of State considers would constitute pre-emptive action;
  - (b) impose on any person concerned obligations as to the carrying on of any activities or the safeguarding of any assets;
  - (c) provide for the carrying on of any activities or the safeguarding of any assets either by the appointment of a person to conduct or supervise the conduct of any activities (on such terms and with such powers as may be specified or described in the order) or in any other manner;

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- (d) do anything which may be done by virtue of paragraph 19 of Schedule 8 to the Enterprise Act 2002 (information powers).
- (3) An order under this section shall come into force at such time as is determined by or under the order.
- (4) An order under this section shall, if it has not previously ceased to be in force, cease to be in force on the making of the order under section 12(5) below or (as the case may be) on the making of the decision not to make such an order.
- (5) The Secretary of State shall publish any decision made by him not to make an order under section 12(5) below in such manner as he considers most suitable for bringing it to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.
- (6) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or revoking an order under this section.
- (7) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under this section as they apply in relation to orders under paragraph 2 of Schedule 7 to that Act—
  - (a) section 86(2) and (3) (enforcement orders: general provisions);
  - (b) section 87 (delegated power of directions); and
  - (c) section 94(1) to (5), (8) and (9) (rights to enforce orders).
- (8) In this section “pre-emptive action” means action which might impede the making of an order under section 12(5) below.”
- (4) In section 12 (orders following report under section 11)—
  - (a) in subsection (5) for the words from “by order” to the end there is substituted “make an order under this subsection”;
  - (b) after subsection (5) there is inserted—
    - “(5A) An order under subsection (5) above may contain anything permitted by Schedule 8 to the Enterprise Act 2002, except paragraphs 8, 13 and 14 of that Schedule.
    - (5B) An order under subsection (5) above shall come into force at such time as is determined by or under the order.”;
  - (c) for subsection (6) there is substituted—
    - “(6) The following provisions of Part 3 of the Enterprise Act 2002 shall apply in relation to orders under subsection (5) above as they apply in relation to orders under paragraph 11 of Schedule 7 to that Act—
      - (a) section 86(2) and (3) (enforcement orders: general provisions);
      - (b) section 87 (delegated power of directions);
      - (c) section 88 (contents of certain enforcement orders);
      - (d) section 94(1) to (5), (8) and (9) (rights to enforce orders); and
      - (e) Schedule 10 (procedural requirements for orders).

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- (7) The Secretary of State shall publish any decision made by him to dispense with the requirements of Schedule 10 to the Enterprise Act 2002 as applied by subsection (6) above; and shall do so in such manner as he considers most suitable for bringing the decision to the attention of persons who in his opinion would be affected by it or be likely to have an interest in it.”
- (5) In section 16 (general provision as to reports)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (2) the words “or of the Director” shall cease to have effect.
- (6) In section 17 (laying before Parliament and publication of reports)—
- (a) in subsections (1), (3) and (4), the words “or 13(5)” shall cease to have effect;
  - (b) in subsection (4), for the words “against the public interest” there is substituted “inappropriate”;
  - (c) for subsection (5) there is substituted—
- “(5) In deciding what is inappropriate for the purposes of subsection (4) the Secretary of State shall have regard to the considerations mentioned in section 244 of the Enterprise Act 2002.”
- (7) Sections 18 (information and advice about operation of Act), 21 (monopoly references by Secretary of State alone) and 24 (modification of provisions about performance of Commission’s functions) shall cease to have effect.
- (8) In section 31 (orders and regulations)—
- (a) in subsection (1) the words “or regulations” shall cease to have effect;
  - (b) in subsection (3)—
    - (i) the words “regulations under this Act or” shall cease to have effect;
    - (ii) after “11(4)” there is inserted “, 11D”;
    - (iii) after “above” there is inserted “, or section 111(4) or (6) or 114(3) (b) or (4)(b) of the Enterprise Act 2002 as applied by section 11B(1) (c) or (f) above,”;
  - (c) subsection (4) shall cease to have effect;
  - (d) after subsection (4) there is inserted—
- “(5) Any power of the Secretary of State to make an order under this Act —
- (a) may be exercised so as to make different provision for different cases or different purposes; and
  - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.”

(9) In section 33 (interpretation), for subsection (2) there is substituted—

“(2) Unless the context otherwise requires, in this Act “Minister” includes a government department and the following expressions shall have the same meanings as they have in Part 3 of the Enterprise Act 2002—

“business”  
“the Commission”  
“enactment”

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“goods”  
“services”  
“supply (in relation to the supply of goods)”  
“the supply of services”.”

- (10) For the purposes of the Scotland Act 1998 (c. 46) the amendments made by this paragraph shall be taken to be pre-commencement enactments within the meaning of that Act.

*Civil Aviation Act 1982 (c. 16)*

- 11 (1) The Civil Aviation Act 1982 is amended as follows.
- (2) In section 4 (general objectives), in subsections (3) and (4), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

*Agricultural Marketing (Northern Ireland) Order 1982 (S.I. 1982/1080 (N.I. 12))*

- 12 (1) The Agricultural Marketing (Northern Ireland) Order 1982 is amended as follows.
- (2) For article 23 (action following report by Commission) there is substituted—

**Action following report by Competition Commission**

“23 (1) Paragraph (5) applies in any of the following cases.

- (2) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (3) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (4) The third case is where—
- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
- (i) certain matters indicated in the report operate against the public interest, and
- (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).
- (5) The Department shall have the like power to make orders under Article 22 as if a report of a committee of investigation had contained the conclusion that the provision of the scheme in question, or the act or omission in question, is contrary to the interests of consumers of the regulated product.

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- (6) An order made by virtue of this Article in a case falling within paragraph (2) or (3) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”
- (3) In article 42 (action following report by Commission)—
- (a) for paragraph (1) there is substituted—
- “(1) Paragraph (1D) applies in any of the following cases.
- (1A) The first case is where section 138(2) of the Enterprise Act 2002 (duty to remedy adverse effects following market investigation reference) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (1B) The second case is where section 147(2) of the Enterprise Act 2002 (power to remedy adverse effects in public interest cases) applies and whatever is to be remedied, mitigated or prevented relates to any provision of a scheme or any act or omission of a board administering a scheme.
- (1C) The third case is where—
- (a) a report of the Competition Commission under section 11 of the Competition Act 1980 (c. 21) (references of public bodies etc.), as laid before Parliament, contains conclusions to the effect that—
- (i) certain matters indicated in the report operate against the public interest, and
- (ii) those matters consist of or include any provision of a scheme or any act or omission of a board administering a scheme, and
- (b) none of the conclusions is to be disregarded by virtue of section 11C(3) of that Act (requirement for two-thirds majority).
- (1D) The Department, if it thinks fit so to do—
- (a) may by order make such amendments in the scheme as it considers necessary or expedient for the purpose of rectifying the matter;
- (b) may by order revoke the scheme;
- (c) in the event of the matter being one which it is within the power of the board to rectify, may by order direct the board to take such steps to rectify the matter as may be specified in the order, and thereupon it shall be the duty of the board forthwith to comply with the order.”;
- (b) in paragraph (2) for “paragraph (1)” there is substituted “ paragraph (1D) ”;
- (c) in paragraph (3) for “paragraph (1)(b)(iii)” there is substituted “ paragraph (1D)(c) ”;
- (d) in paragraph (5)—

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- (i) for “paragraph (1)(i) or (iii)” there is substituted “ paragraph (1D)(a) or (c) ”;
- (ii) for “paragraph (1)(ii)” there is substituted “ paragraph (1D)(b) ”;
- (e) after paragraph (5) there is inserted—
  - “(5A) Any order made under this Article in a case falling within paragraph (1A) or (1B) shall be treated, for the purposes of sections 162(1) and 166(3) of the Enterprise Act 2002 (duties to register and keep under review enforcement orders etc.), as if it were made under the relevant power in Part 4 of that Act to make an enforcement order (within the meaning of that Part).”

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

- 13 (1) The Telecommunications Act 1984 is amended as follows.
- (2) [<sup>F50</sup>In section 3 (general duties of Secretary of State and Director), in subsection (3C), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.]
  - (3) [<sup>F50</sup>In section 13 (licence modification references to Commission), subsections (9) and (9A) shall cease to have effect.]
  - (4) [<sup>F50</sup>After section 13 there is inserted—

#### “ **References under section 13: time limits** ”

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (3) The Director may, if he has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
  - (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) in the case of a licence granted to a particular person, send to that person a copy of what has been published by him under paragraph (a) above.

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### References under section 13: powers of investigation

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”]
- (5) <sup>F50</sup>In section 14 (reports on licence modification references)—
  - (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of section 15 below, a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Commission, the report shall, if the member

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so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;

(b) for subsection (3) there is substituted—

“(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 13 above.

(3A) In making any report on a reference under section 13 above the 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 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 Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) is necessary for the purposes of the report.”]

(6) [<sup>F50</sup>In section 47 (general functions), in subsection (4)—

(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) [<sup>F50</sup>In section 48 (publication of information and advice), after subsection (3) there is inserted—

“(3A) The Office of Fair Trading shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under this section.”]

(8) [<sup>F50</sup>In section 50 (functions under 1973 and 1980 Acts)—

(a) subsection (1) shall cease to have effect;

(b) in subsection (3)—

(i) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;

(ii) for “that Director” there is substituted “ the Office of Fair Trading ”;

(c) in subsection (3A), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;

(d) in subsection (6), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.]

(9) In section 101 (general restrictions on disclosure of information)—

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- (a) in subsection (2)(b), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) in subsection (3), after paragraph (o) there is inserted—  
“ (p) the Enterprise Act 2002 ”;
  - (c) in subsection (6)—
    - (i) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
    - (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “ Part 9 of the Enterprise Act 2002 (Information) ”.
- (10) In section 103 (time limits for summary proceedings)—
- (a) that section shall be renumbered as subsection (1) of that section;
  - (b) after that subsection there is inserted—  
“ (2) Subsection (1) above shall not apply for the purposes of an offence under any provision of the Enterprise Act 2002 as applied by virtue of section 13B above.”

#### Textual Amendments

**F50** Sch. 25 para. 13(2)-(8) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/1900, art. 2(1), Sch. 1 (with arts. 3-6 (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(1), Sch. 1 (with arts. 3(3), 11)

#### Commencement Information

**I14** Sch. 25 para. 13 wholly in force at 20.6.2003; Sch. 25 para. 13 not in force at Royal Assent see s. 279; Sch. 25 para. 13(1) in force for certain purposes and Sch. 25 para. 13(2)(6)(8)(b)-(d)(9)(a)(b)(c)(i) at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 13(1)(3)-(5)(7)(8)(a)(9)(c)(ii)(10) in force for remaining purposes at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Airports Act 1986 (c. 31)

- 14 (1) The Airports Act 1986 is amended as follows.
- (2) In section 44 (supplementary provisions relating to references to Commission), subsections (3) and (3A) shall cease to have effect.
  - (3) After section 44 there is inserted—

#### “44A References under section 43: time limits

- (1) Every reference under section 43 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 Commission on a reference under section 43 shall not have effect (and no action shall be taken in relation to it under section 46) 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 CAA under subsection (3).

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*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

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- (3) The CAA may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The CAA shall, in the case of an extension made by it under subsection (3)—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
  - (b) send a copy of what has been published by it under paragraph (a) to the airport operator concerned and the Secretary of State.

#### **44B References under section 43: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 43 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1), have effect in relation to those sections as applied by virtue of that subsection.

*Status: Point in time view as at 29/12/2004.*

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- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (4) In section 45 (reports on references)—
- (a) after subsection (2) there is inserted—
- “(2A) For the purposes of section 46(2), a conclusion contained in a report of the 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.
- (2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 43 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (4) there is substituted—
- “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under section 43.
- (4A) In making any report on a reference under section 43 the Commission must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”
- (5) In section 56 (co-ordination of exercise of functions by CAA and Director General of Fair Trading)—
- (a) in paragraph (a)—
- (i) for “the Director General of Fair Trading of functions under the 1973 Act” there is substituted “ the Office of Fair Trading of functions under the Enterprise Act 2002 ”;
- (ii) for “the Director” there is substituted “ the Office of Fair Trading ”;
- (b) in paragraph (b), for “the Director” there is substituted “ the Office of Fair Trading ”.

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- (6) In section 74 (restriction on disclosure of information)—
- (a) in subsection (2), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) in subsection (3), at the end there is inserted—  
“**(r)** the Enterprise Act 2002”.

#### Commencement Information

**I15** Sch. 25 para. 14 wholly in force at 20.6.2003; Sch. 25 para. 14 not in force at Royal Assent see s. 279; Sch. 25 para. 14(1) in force for certain purposes and Sch. 25 para. 14(5)(6) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 14(1)(2)-(4) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

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

- 15 (1) The Gas Act 1986 is amended as follows.
- (2) In section 4B (exceptions from sections 4AA to 4A), in subsection (3), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (3) In section 24 (licence modification references to Commission)—
- (a) subsections (7) and (7A) shall cease to have effect;
  - (b) in subsection (8), after “sections” there is inserted “ 24A, ”.
- (4) After section 24 there is inserted—

#### “24A References under section 24: time limits

- (1) Every reference under section 24 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 24 above shall not have effect (and no action shall be taken in relation to it under section 26 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall, in the case of an extension made by it under subsection (3) above—
- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

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- (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence or, as the case may be, the relevant licence holders.

#### **24B References under section 24: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 24 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (5) In section 25 (reports on licence modification references)—
  - (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of sections 26 and 26A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference

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concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 24 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (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 section 24 above.
- (3A) In making any report on a reference under section 24 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 26A (Commission’s power to veto modifications following report)—
- (a) after subsection (11) there is inserted—
- “(11A) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8).
- (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.
- (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (11D) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
- (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
- (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 26A(8) of the Gas Act 1986 in connection with the reference concerned or, if no direction has been given by the Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- (“) if earlier, the day on which a notice is published by the Commission under section 26A(8) of the Gas Act 1986 in connection with the reference concerned or, if no direction is given by the Commission under section 26A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.

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- (11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.
- (11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”;
- (b) subsections (12) and (13) shall cease to have effect.
- (7) In section 33 (power of Council to investigate other matters), in subsection (4), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (8) In section 34 (general functions), in subsection (4)—
- (a) for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”; and
- (b) for “that Director” there is substituted “the Office of Fair Trading”.
- (9) In section 35 (publication of information and advice), after subsection (3) there is inserted—
- “(3A) The Office of Fair Trading shall consult the Authority before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Authority under this section.”
- (10) In section 36A (functions with respect to competition)—
- (a) subsection (1) shall cease to have effect;
- (b) in subsection (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 subsection (3A), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”;
- (d) in subsection (7), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (11) In section 41E (references to Commission about activities which are not licensable), subsections (7) and (8) shall cease to have effect.
- (12) After section 41E there is inserted—

**“41EA References under section 41E: time limits**

- (1) Every reference under section 41E above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 41E above shall not have effect (in particular for the purposes of section 41D(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.

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- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### **41EB References under section 41E: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 41E above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 41E above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or

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- (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (13) In section 41F (reports on references under section 41E)—
- (a) after subsection (3) there is inserted—
- “(3A) For the purposes of section 41D(5), 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.
- (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 41E 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 subsection (4) there is substituted—
- “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 41E.
- (4A) In making any report on a reference under section 41E the Competition Commission must have regard to the following considerations before disclosing any information.
- (4B) 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.
- (4C) 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.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”
- (14) In section 62 (exclusion of certain agreements from Restrictive Trade Practices Act 1976), for “the Director General of Fair Trading” (in both places) there is substituted “ the Office of Fair Trading ”.

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#### Commencement Information

**I16** Sch. 25 para. 15 wholly in force at 20.6.2003; Sch. 25 para. 15 not in force at Royal Assent see s. 279; Sch. 25 para. 15(1) in force for certain purposes and Sch. 25 para. 15(2)(4)(7)-(10) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 15(1)(3)-(6)(11)-(13) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Consumer Protection Act 1987 (c. 43)

- 16 (1) The Consumer Protection Act 1987 is amended as follows.
- (2) In section 25 (codes of practice), in subsection (1), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (3) In section 26 (power to make regulations), in subsection (1), for the “Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

#### Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20))

- 17 (1) The Consumer Protection (Northern Ireland) Order 1987 is amended as follows.
- (2) In Article 18 (codes of practice), in paragraph (1), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (3) In Article 19 (power to make regulations), in paragraph (1), for the “Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

#### Copyright, Designs and Patents Act 1988 (c. 48)

- 18 (1) The Copyright, Designs and Patents Act 1988 is amended as follows.
- (2) In section 144 (powers exercisable in consequence of report of Commission) for subsections (1) and (2) there is substituted—
- “(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations) consists of or includes—
- (a) conditions in licences granted by the owner of copyright in a work restricting the use of the work by the licensee or the right of the copyright owner to grant other licences; or
- (b) a refusal of a copyright owner to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the copyright shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and

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paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.”

(3) In section 144(3)—

- (a) for “A Minister” there is substituted “ The Secretary of State, the Office of Fair Trading or (as the case may be) the Competition Commission ”;
- (b) after “he” there is inserted “ or it ”.

(4) In section 238 (powers exercisable for protection of the public interest), for subsections (1) and (2) there is substituted—

“(1) Subsection (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes—

- (a) conditions in licences granted by a design right owner restricting the use of the design by the licensee or the right of the design right owner to grant other licences, or
- (b) a refusal of a design right owner to grant licences on reasonable terms.

(1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the design right shall be available as of right.

(2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7 to, the Act of 2002 shall be construed accordingly.”

(5) In Schedule 2A, in paragraph 17 (powers exercisable in consequence of competition report)—

(a) for sub-paragraphs (1) and (2) there is substituted—

“(1) Sub-paragraph (1A) applies where whatever needs to be remedied, mitigated or prevented by the Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading under section 12(5) of the Competition Act 1980 or section 41(2), 55(2), 66(6), 75(2), 83(2), 138(2), 147(2) or 160(2) of, or paragraph 5(2) or 10(2) of Schedule 7 to, the Enterprise Act 2002 (powers to take remedial action following references to the Commission in connection with public bodies and certain other persons, mergers or market investigations etc.) consists of or includes—

- (a) conditions in licences granted by the owner of a performer’s property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licenses, or

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- (b) a refusal of an owner of a performer’s property rights to grant licences on reasonable terms.
- (1A) The powers conferred by Schedule 8 to the Enterprise Act 2002 include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer’s property rights shall be available as of right.
- (2) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in section 12(5A) of the Competition Act 1980 and in sections 75(4)(a), 83(4)(a), 84(2)(a), 89(1), 160(4)(a), 161(3)(a) and 164(1) of, and paragraphs 5, 10 and 11 of Schedule 7to, the Act of 2002 shall be construed accordingly.”;
- (b) in sub-paragraph (3)—
    - (i) for “A Minister” there is substituted “ The Secretary of State, the Competition Commission or (as the case may be) the Office of Fair Trading ”;
    - (ii) after “he” there is inserted “ or it ”.

#### Commencement Information

**I17** Sch. 25 para. 18 partly in force; Sch. 25 para. 18 not in force at Royal Assent see s. 279; Sch. 25 para. 18(1) in force for certain purposes at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch., Sch. 25 para. 18(1)-(5) in force for certain purposes at 29.12.2004 by S.I. 2004/3233, art. 2, Sch.

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

- 19 (1) The Water Act 1989 is amended as follows.
- (2) In section 174 (general restrictions on disclosure of information)—
- (a) in subsection (2)(d), for sub-paragraph (ii) there is substituted—  
“(ii) the Office of Fair Trading;”
  - (b) in subsection (3), after paragraph (lm) there is inserted—  
“(ln) the Enterprise Act 2002;”.

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

- 20 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 3D (exceptions from sections 3A to 3C), in subsection (4), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (3) In section 12 (licence modification references to Commission)—
- (a) in subsection (6A), after “sections” there is inserted “ 12A, ”;
  - (b) subsections (8) and (8A) shall cease to have effect.
- (4) After section 12 there is inserted—

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#### **“12A References under section 12: time limits**

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

#### **12B References under section 12: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 12 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

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- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (5) In section 13 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of sections 14 and 14A below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (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 section 12 above.
    - (3A) In making any report on a reference under section 12 above the Competition Commission must have regard to the following considerations before disclosing any information.
    - (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
    - (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
      - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
  - (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report."
- (6) In section 14A (Commission's power to veto modifications following report)—
  - (a) after subsection (11) there is inserted—
    - “(11A) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under subsection (4)(a), (6) or (8).
    - (11B) In giving any notice under subsection (4)(a) or (6), or publishing any notice under subsection (8), the Commission must have regard to the following considerations before disclosing any information.
    - (11C) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
    - (11D) The second consideration is the need to exclude from disclosure (so far as practicable)—
      - (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
      - (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.
    - (11E) The third consideration is the extent to which the disclosure of the information mentioned in subsection (11D)(a) or (b) is necessary for the purposes of the notice.
    - (11F) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (11G) and (11H), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this section, as they apply for the purposes of any investigation on references under that Part—
      - (a) section 109 (attendance of witnesses and production of documents etc.);
      - (b) section 110 (enforcement of powers under section 109: general);
      - (c) section 111 (penalties);
      - (d) section 112 (penalties: main procedural requirements);
      - (e) section 113 (payments and interest by instalments);
      - (f) section 114 (appeals in relation to penalties);
      - (g) section 115 (recovery of penalties); and
      - (h) section 116 (statement of policy).
    - (11G) Section 110 shall, in its application by virtue of subsection (11F), have effect as if—

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*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction has been given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period;” and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (11H) Section 111(5)(b) shall, in its application by virtue of subsection (11F), have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a notice is published by the Commission under section 14A(8) of the Electricity Act 1989 in connection with the reference concerned or, if no direction is given by the Commission under section 14A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”
- (11I) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (11F) above, have effect in relation to those sections as applied by virtue of that subsection.
- (11J) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”;
- (b) subsections (12) and (13) shall cease to have effect.
- (7) In section 43 (functions with respect to competition)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (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 subsection (3A), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (d) in subsection (6), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (8) In section 46A (power of Council to investigate other matters), in subsection (2), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (9) In section 47 (general functions), in subsection (3)—

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- (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 ”.
- (10) In section 48 (publication of information and advice), in subsection (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 ”.
- (11) In section 56C (references to Commission about activities which are not licensable), subsections (7) and (8) shall cease to have effect.
- (12) After section 56C there is inserted—

**“56CA References under section 56C: time limits**

- (1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

**56CB References under section 56C: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 56C above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and

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- (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (13) In section 56D (reports on references under section 56C)—
- (a) after subsection (3) there is inserted—
    - “(3A) For the purposes of section 56B(5), 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.
    - (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 56C 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 subsection (4) there is substituted—
    - “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 56C.

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- (4A) In making any report on a reference under section 56C the Competition Commission must have regard to the following considerations before disclosing any information.
- (4B) 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.
- (4C) 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.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.”

#### Commencement Information

**118** Sch. 25 para. 20 wholly in force at 20.6.2003; Sch. 25 para. 20 not in force at Royal Assent see s. 279; Sch. 25 para. 20(1) in force for certain purposes and Sch. 25 para. 20(2)(7)-(9)(10)(a) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 20(1)(3)-(6)(10)(b)(11)-(13) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Companies Act 1989 (c. 40)

- 21 (1) The Companies Act 1989 is amended as follows.
- (2) In section 47 (restrictive practices), in subsection (3)(c), for “Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (3) In section 87 (exceptions from restrictions on disclosure), in subsection (4), for the entry relating to the Director General of Fair Trading there is substituted—
- “The Office of Fair Trading.”
- (4) In Schedule 14 (supervisory and qualifying bodies: restrictive practices)—
- (a) in paragraph 1—
    - (i) in sub-paragraph (1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”)” there is substituted “ the Office of Fair Trading (in this Schedule referred to as “the OFT”) ” and for “Director” there is substituted “ OFT ”;
    - (ii) in sub-paragraph (2), for “Director” and “his” there is substituted “ OFT ” and “ its ” respectively;
  - (b) in paragraph 3—
    - (i) for “Director” (in each place) there is substituted “ OFT ”;
    - (ii) in sub-paragraph (1), for “he” (in both places) and “his” (in both places) there is substituted “ it ” and “ its ” respectively;

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- (iii) in sub-paragraph (3), for “his” there is substituted “ its ”;
  - (iv) in sub-paragraph (4), for “he” (in both places) and “his” there is substituted “ it ” and “ its ” respectively;
- and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”;
- (c) in paragraph 4—
    - (i) for “Director” (in each place) there is substituted “ OFT ”;
    - (ii) in sub-paragraph (1), for “his” there is substituted “ its ”;
    - (iii) in sub-paragraph (2), for “him” there is substituted “ it ”;
    - (iv) sub-paragraph (5) shall cease to have effect;
 and in the cross-heading before that paragraph, for “*Director*” there is substituted “ *OFT* ”;
  - (d) after paragraph 4 there is inserted—

#### “Enforcement

- 4A (1) The court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under paragraph 4.
- (2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.
- (5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.
- (6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.
- (7) In this section “the court”—
  - (a) in relation to England and Wales, means the High Court, and
  - (b) in relation to Scotland, means the Court of Session.
- 4B (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under paragraph 4.
- (2) A person who commits an offence under sub-paragraph (1) shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”;
- (e) in paragraph 5, for “Director”, “he” (in both places), “him” and “his” there is substituted “OFT”, “it”, “it” and “its” respectively, and, in the cross-heading before paragraph 5, for “*Director’s*” there is substituted “*OFT’s*”;
- (f) in paragraphs 6 and 7, for “Director” (in each place) there is substituted “OFT”;
- (g) paragraph 8 (exemption from monopoly provisions) shall cease to have effect.

#### Commencement Information

**I19** Sch. 25 para. 21 wholly in force at 20.6.2003; Sch. 25 para. 21 not in force at Royal Assent see s. 279; Sch. 25 para. 21(1) in force for certain purposes and Sch. 25 para. 21(2)(3)(4)(a)-(f) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 21(1)(4)(g) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### *Companies (Northern Ireland) Order 1989 (S.I. 1990/593 (N.I. 5))*

- 22 (1) The Companies (Northern Ireland) Order 1989 is amended as follows.
- (2) In Article 49 (restrictive practices), in paragraph (3)(c), for “Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
  - (3) In Schedule 14 (supervisory and qualifying bodies: restrictive practices)—
    - (a) in paragraph 1—
      - (i) in sub-paragraph (1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”)” there is substituted “the Office of Fair Trading (in this Schedule referred to as “the OFT”)” and for “Director” there is substituted “OFT”;
      - (ii) in sub-paragraph (2), for “Director” and “his” there is substituted “OFT” and “its” respectively;
    - (b) in paragraph 3—
      - (i) for “Director” (in each place) there is substituted “OFT”;
      - (ii) in sub-paragraph (1), for “he” (in both places) and “his” (in both places) there is substituted “it” and “its” respectively;
      - (iii) in sub-paragraph (3), for “his” there is substituted “its”;
      - (iv) in sub-paragraph (4), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
    - (c) in paragraph 4—
      - (i) for “Director” (in each place) there is substituted “OFT”;
      - (ii) in sub-paragraph (1), for “his” there is substituted “its”;
      - (iii) in sub-paragraph (2), for “him” there is substituted “it”;and in the cross-heading before that paragraph, for “*Director*” there is substituted “*OFT*”;

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- (d) in paragraph 5, for “Director”, “he” (in both places), “him” and “his” there is substituted “OFT”, “it”, “it” and “its” respectively, and, in the cross-heading before paragraph 5, for “*Director’s*” there is substituted “*OFT’s*”;
- (e) in paragraphs 6 and 7, for “Director” (in each place) there is substituted “OFT”.

*Courts and Legal Services Act 1990 (c. 41)*

- 23 (1) The Courts and Legal Services Act 1990 is amended as follows.
- (2) In section 45 (advisory and supervisory functions of Director General of Fair Trading)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (3), for “he” (in both places) and “his” there is substituted “it” and “its” respectively;
  - (c) in subsection (5), for “he” and “his” there is substituted “it” and “its” respectively;
  - (d) in subsection (6), for “Director’s” there is substituted “OFT’s”;
  - (e) in subsection (7), for “him” (in both places) there is substituted “it”;
  - (f) in subsection (8), for “Director’s” there is substituted “its”;
  - (g) in the sidenote, for “Director General of Fair Trading” there is substituted “Office of Fair Trading”.
- (3) In section 46 (investigatory powers of Director)—
- (a) in subsection (1), for “Director” and “him” (in each place) there is substituted “OFT” and “it” respectively;
  - (b) in the sidenote, for “Director” there is substituted “OFT”;
  - (c) subsection (3) shall cease to have effect.
- (4) After section 46 there is inserted—

**“46A Enforcement of notices under section 46**

- (1) The High Court may, on an application by the OFT, enquire into whether any person (“the defaulter”) has refused or otherwise failed, without reasonable excuse, to comply with a notice under section 46(1).
- (2) An application under subsection (1) shall include details of the possible failure which the OFT considers has occurred.
- (3) In enquiring into a case under subsection (1), the High Court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.
- (4) Subsections (5) and (6) apply where the High Court is satisfied, after hearing any witnesses and statements as mentioned in subsection (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under section 46(1).
- (5) The High Court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (6) Where the defaulter is a body corporate, the High Court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.

#### **46B Altering, etc. documents required to be produced under section 46**

- (1) A person commits an offence if he intentionally alters, suppresses or destroys a document which he has been required to produce by a notice under section 46(1).
- (2) A person who commits an offence under subsection (1) shall be 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.”
- (5) In section 50 (exceptions from restrictions on disclosure), in subsection (2)(m)—
- (a) for “Director to discharge any of his” there is substituted “OFT to discharge any of its”;
  - (b) after sub-paragraph (ix) there is inserted—  
“(x) the Enterprise Act 2002;”.
- (6) In section 69 (exemption from liability for damages etc.), in subsection (2)—
- (a) for “Director” there is substituted “OFT”;
  - (b) after “him” there is inserted “or it”.
- (7) In section 105 (tying-in arrangements: supplemental provisions), in subsection (10), for “Director” there is substituted “OFT”.
- (8) In section 107 (tying-in: enforcement)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in subsection (5), for “him” and “he” there is substituted “it”.
- (9) In section 119(1) (interpretation)—
- (a) the definition of “the Director” shall cease to have effect; and
  - (b) after the definition of “officer” there is inserted—  
““the OFT” means the Office of Fair Trading;”.
- (10) In Schedule 4 (authorised bodies)—
- (a) for “Director” (in each place) there is substituted “OFT”;
  - (b) in paragraph 3—
    - (i) in sub-paragraph (2), for “he” there is substituted “it”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “its” and “it” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “it”;
    - (iv) in sub-paragraph (5), for “the Director’s” there is substituted “its”;and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “*Office of Fair Trading*”;
  - (c) in paragraph 12—
    - (i) in sub-paragraph (3), for “he” there is substituted “it”;

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- (ii) in sub-paragraph (4), for “his” and “he” (in both places) there is substituted “ its ” and “ it ” respectively;
  - (iii) in sub-paragraph (5), for “him” there is substituted “ it ”;
  - (iv) in sub-paragraph (6), for “the Director’s” there is substituted “ its ”;
- and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”;
- (d) in paragraph 20—
    - (i) in sub-paragraph (2), for “he” there is substituted “ it ”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “ its ” and “ it ” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “ it ”;
    - (iv) in sub-paragraph (5), for “the Director’s” there is substituted “ its ”;

and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”;
  - (e) in paragraph 28—
    - (i) in sub-paragraph (2), for “he” there is substituted “ it ”;
    - (ii) in sub-paragraph (3), for “his” and “he” (in both places) there is substituted “ its ” and “ it ” respectively;
    - (iii) in sub-paragraph (4), for “him” there is substituted “ it ”;
    - (iv) in sub-paragraph (5), for “the Director’s” there is substituted “ its ”;

and in the cross-heading before that paragraph, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”.

*Broadcasting Act 1990 (c. 42)*

24 (1) The Broadcasting Act 1990 is amended as follows.

- (2) <sup>F51</sup> .....
- (3) <sup>F52</sup> .....
- (4) <sup>F53</sup> .....
- (5) <sup>F54</sup> .....
- (6) <sup>F55</sup> .....

- (7) In section 194A (relevant agreements)—
  - (a) for “Director” (in each place) there is substituted “ OFT ”;
  - (b) in subsection (7)(a)—
    - (i) for “he” there is substituted “ it ”;
    - (ii) for “his” there is substituted “ its ”;
  - (c) in subsection (8), for “he” (in both places) there is substituted “ it ”;
  - (d) in subsection (9)—
    - (i) the definition of “Director” shall cease to have effect; and
    - (ii) after the definition of “Chapter III powers” there is inserted—
 

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

- (8) <sup>F56</sup> .....

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

(9) F57 .....

#### Textual Amendments

- F51** Sch. 25 para. 24(2)-(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F52** Sch. 25 para. 24(2)-(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F53** Sch. 25 para. 24(2)-(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F54** Sch. 25 para. 24(2)-(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F55** Sch. 25 para. 24(2)-(6) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F56** Sch. 25 para. 24(8) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)
- F57** Sch. 25 para. 24(9) repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), **Sch. 19(1)** (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, **art. 3(1)**, Sch. 1 (subject to arts. 3(3), 11)

#### Commencement Information

- I20** Sch. 25 para. 24 wholly in force at 20.6.2003; Sch. 25 para. 24 not in force at Royal Assent see s. 279; Sch. 25 para. 24(1) in force for certain purposes and Sch. 25 para. 24(2)-(8)(9)(a)-(d)(i)(f)(i)(g)(h)(i)(i)(ii)(k)(l) in force at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., Sch. 25 para. 24(1)(9)(d)(ii)(e)(f)(ii)(iii)(i)(iii)(j) in force at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch.

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

- 25 (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 2 (general duties with respect to water industry), in subsection (6B), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading (in this Act referred to as “the OFT”)”.
- (3) In section 12(5) (determinations under conditions of appointment) for “the 1973 Act” there is substituted “the Enterprise Act 2002”.
- (4) In section 14 (conditions of appointment: modification references to Commission), subsections (7) and (7A) shall cease to have effect.
- (5) After section 14 there is inserted—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

#### **“14A References under section 14: time limits**

- (1) Every reference under section 14 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 14 above shall not have effect (and no action shall be taken in relation to it under section 16 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under subsection (3) below.
- (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 subsection (3) above in relation to the same reference.
- (5) The Director shall, in the case of an extension made by him under subsection (3) above—
  - (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 paragraph (a) above to the company whose appointment is mentioned in the reference.

#### **14B References under section 14: powers of investigation**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 14 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) above, have effect in relation to those sections as applied by virtue of that subsection.
- (5) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of that subsection.”
- (6) In section 15 (reports on modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of section 16 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
    - (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 14 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
  - (b) for subsection (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 section 14 above.
    - (3A) In making any report on a reference under section 14 above the Competition Commission must have regard to the following considerations before disclosing any information.
    - (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
    - (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
      - (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

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- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report."
- (7) In section 27 (general duty of Director to keep matters under review), in subsection (4)—
- (a) for "the Director General of Fair Trading" there is substituted " the OFT ";
  - (b) for "that Director" there is substituted " the OFT ".
- (8) In section 31 (functions of Director with respect to competition)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3), for "the Director General of Fair Trading, the functions of that Director" there is substituted " the OFT, the functions of the OFT ";
  - (c) in subsection (4A), for "the Director General of Fair Trading" there is substituted " the OFT ";
  - (d) in subsection (8), for "the Director General of Fair Trading" there is substituted " the OFT ".
- (9) In section 201 (publication of certain information and advice), at the end there is inserted—
- "(4) The OFT shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under subsection (2) of this section."
- (10) In section 206 (restriction on disclosure of information), in subsection (9A)—
- (a) for "the Director General of Fair Trading" there is substituted " the OFT ";
  - (b) for "sections 55 and 56 of that Act (disclosure)" there is substituted " Part 9 of the Enterprise Act 2002 (Information) ".
- (11) In section 219 (general interpretation), in subsection (1), after the definition of "notice" there is inserted—
- "“the OFT” means the Office of Fair Trading;”.
- (12) In Part 1 of Schedule 15 (disclosure of information)—
- (a) in Part 1, for the entry relating to the Director General of Fair Trading there is substituted—
 

“The OFT.”;
  - (b) in Part 2, after the entry relating to Part I of the Transport Act 2000, there is inserted—
 

“The Enterprise Act 2002.”

#### Commencement Information

**I21** Sch. 25 para. 25 wholly in force at 20.6.2003; Sch. 25 para. 25 not in force at Royal Assent see s. 279; Sch. 25 para. 25(1) in force for certain purposes and Sch. 25 para. 25(2)(7)(8)(10)(a)(11)(12) in force

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 25(1)(3)-(6)(9)(10)(b) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

*Water Resources Act 1991 (c. 57)*

- 26 (1) The Water Resources Act 1991 is amended as follows.
- (2) In Schedule 24 (disclosure of information)—
- (a) in Part 1, for the entry relating to the Director General of Fair Trading there is substituted—
- “The Office of Fair Trading.”;
- (b) in Part 2, after the entry relating to Part I of the Transport Act 2000, there is inserted—
- “The Enterprise Act 2002.”

*Tribunals and Inquiries Act 1992 (c. 53)*

- 27 (1) The Tribunals and Inquiries Act 1992 is amended as follows.
- (2) In section 11 (appeals from certain tribunals), in subsection (6), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (3) In section 14 (restricted application of Act in relation to certain tribunals), in subsection (1)(b), for “the Director General of Fair Trading” there is substituted “the Office of Fair Trading”.
- (4) In Part 1 of Schedule 1 (tribunals under direct supervision of council), in column 2—
- (a) for paragraph 9A there is substituted—
- 
- “ 9A. The Competition Appeal Tribunal established under section 12 of the Enterprise Act 2002.”;
- 
- (b) for paragraph 17 there is substituted—
- 
- “ 17. The Office of Fair Trading in respect of its functions under the Consumer Credit Act 1974 and the Estate Agents Act 1979, and any member of its staff authorised to exercise those functions.”
- 

*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—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

### 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—
- (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—

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (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.
    - (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.”

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

- (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

**I22** 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.

#### *Osteopaths Act 1993 (c. 21)*

- 29 (1) The Osteopaths Act 1993 is amended as follows.
- (2) In section 33(2) (competition and anti-competitive practices)—
- (a) for the words from the beginning to “orders)” there is substituted “ Schedule 8 to the Enterprise Act 2002 (provision that may be contained in enforcement orders) ”;
  - (b) for “a competition” there is substituted “ an enforcement ”.
- (3) After section 33(2) there is inserted—
- “(2A) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in sections 160(4)(a), 161(3)(a) and 164(1) of that Act shall be construed accordingly.”
- (4) In section 33(3), for “A competition” there is substituted “ An enforcement ”.
- (5) For section 33(4) there is substituted—
- “(4) In this section “an enforcement order” means an order under—
- (a) section 160 of the Enterprise Act 2002 (orders following failure to fulfil final undertakings); or

*Status: Point in time view as at 29/12/2004.*

*Changes to legislation: Enterprise Act 2002 (repealed) is up to date with all changes known to be in force on or before 11 June 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)*

(b) section 161 of that Act (final orders following market investigation reports).”

(6) For section 33(5) there is substituted—

“(5) For the purposes of an enforcement order section 86(3) of the Enterprise Act 2002 as applied by section 164(2)(a) of that Act (power to apply orders to existing agreements) shall have effect in relation to a regulatory provision as it has effect in relation to an agreement.”

*Railways Act 1993 (c. 43)*

30 (1) The Railways Act 1993 is amended as follows.

(2) In section 4 (general duties of the Secretary of State and the Regulator)—

- (a) in subsection (2)(a), the words from “in cases where” to “market” shall cease to have effect;
- (b) in subsection (7B), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
- (c) subsection (8) shall cease to have effect.

(3) In section 13 (licence modification references to Commission)—

- (a) in subsection (1A), after “section” in the first place where it appears there is inserted “ , section 13A below ”;
- (b) subsections (8) and (8A) shall cease to have effect.

(4) After section 13 there is inserted—

**“13A References under section 13: time limits**

- (1) Every reference under section 13 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under section 13 above shall not have effect (and no action shall be taken in relation to it under section 15 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the appropriate authority under subsection (3) below.
- (3) The appropriate authority may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The appropriate authority shall, in the case of an extension made by it under subsection (3) above—
  - (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and

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*Status: Point in time view as at 29/12/2004.*

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- (b) send a copy of what has been published by it under paragraph (a) above to the holder of the licence.

### **13B References under section 13: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3) below, for the purposes of references under section 13 above as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1) above, have effect as if—
  - (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 13 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders), shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (5) In section 14 (reports on licence modification references)—
  - (a) after subsection (1) there is inserted—

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- “(1A) For the purposes of sections 15 to 15B below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 13 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for subsection (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 section 13 above.
- (3A) In making any report on a reference under section 13 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.
- (3C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Competition Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual’s interests.
- (3D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (3C)(a) or (b) above is necessary for the purposes of the report.”
- (6) In section 15C (provisions supplementary to Commission’s power to veto modifications following report), for subsections (1) and (2) there is substituted—
- “(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15A(4) or 15B(3) above.
- (2) In giving any notice under section 15A(4) or 15B(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) 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.
- (2B) The second consideration is the need to exclude from disclosure (so far as practicable)—

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- (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.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2E) and (2F) below, for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15A or 15B above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of subsection (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under section 15B(5) of the Railways Act 1993 of the modifications made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of subsection (2D) above, have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a copy of the modifications made by the Commission in connection with the reference concerned is sent to the Regulator under section 15B(5) of the Railways Act 1993 or, if no direction is given by the Commission under section 15A(1) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”.

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- (2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15A and 15B above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those subsections.
- (2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (7) In section 22 (amendment of access agreements), in subsection (6A), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (8) In section 66 (amendments of the Fair Trading Act 1973)—
- (a) for subsection (3) there is substituted—
- “(3) For the purposes of Part 3 of the Enterprise Act 2002 (merger references), where a person enters into a franchise agreement as a franchisee, there shall be taken to be brought under his control an enterprise engaged in the supply of the railway services to which the agreement relates.”;
- (b) for subsection (6) there is substituted—
- “(6) Expressions used in subsection (3) above and in Part 3 of the Enterprise Act 2002 have the same meaning in that subsection as they have in that Part.”
- (9) In section 67 (respective functions of the Regulator and the Director General of Fair Trading, and functions of the Competition Commission)—
- (a) subsection (1) shall cease to have effect;
- (b) in subsections (3), (3A) and (8), for “the Director” (in each place) there is substituted “ the OFT ”;
- (c) in the sidenote, for “the Director General of Fair Trading” there is substituted “ OFT ”.
- (10) In section 69 (general functions), in subsection (3), for “the Director” (in both places) there is substituted “ the OFT ”.
- (11) In section 71 (publication of information and advice), in subsection (3)—
- (a) for “The Director” there is substituted “ The OFT ”;
- (b) for “section 124 of the 1973 Act” there is substituted “ section 6 of the Enterprise Act 2002 ”.
- (12) In section 74(7) (annual and other reports of the Regulator), for “Section 125(1) of the 1973 Act (annual and other reports)” there is substituted “ Paragraph 12A(1) of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission) ”.

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- (13) In section 83(1)—
- (a) the definition of “the Director” shall cease to have effect; and
  - (b) after the definition of “notice period” there is inserted—
 

““the OFT” means the Office of Fair Trading;”.
- (14) In section 145 (general restrictions on disclosure of information)—
- (a) in subsection (2)(b), for paragraph (ii) there is substituted—
 

“(ii) the Office of Fair Trading;”;
  - (b) in subsection (3), after paragraph (qr) there is inserted—
 

“(qs) the Enterprise Act 2002;”
  - (c) in subsection (6A)—
    - (i) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
    - (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “ Part 9 of the Enterprise Act 2002 (Information) ”.
- (15) In Schedule 4A (review of access charges by Regulator)—
- (a) for paragraph 10 there is substituted—

**“References under paragraph 9: time limits**

- 10 (1) Every reference under paragraph 9 above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the Competition Commission on a reference under paragraph 9 above shall not have effect (and no action shall be taken in relation to it under paragraph 12 below) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Regulator under sub-paragraph (3) below.
- (3) The Regulator 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 sub-paragraph (3) above in relation to the same reference.
- (5) The Regulator shall, in the case of an extension made by him under sub-paragraph (3) above—
- (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 paragraph (a) above to the persons on whom a copy of the review notice was served.

*Status: Point in time view as at 29/12/2004.*

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### **References under paragraph 9: application of Enterprise Act 2002**

- 10A(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3) below, for the purposes of references under paragraph 9 above as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1) above, have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 9 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 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 sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”;
- (b) in paragraph 11—
- (i) after sub-paragraph (4) there is inserted—

*Status: Point in time view as at 29/12/2004.*

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- “(4A) For the purposes of paragraphs 12 to 14 below, a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (4B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 9 above as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (ii) for sub-paragraph (5) there is substituted—
- “(5) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under paragraph 9 above.
- (5A) In making any report on a reference under paragraph 9 above the Competition Commission must have regard to the following considerations before disclosing any information.
- (5B) 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.
- (5C) 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.
- (5D) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (5C)(a) or (b) above is necessary for the purposes of the report.”;
- (c) in paragraph 15, for sub-paragraphs (1) and (2) there is substituted—
- “(1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph 13(4) or 14(3) above.
- (2) In giving any notice under paragraph 13(4) or 14(3) above, the Competition Commission must have regard to the following considerations before disclosing any information.
- (2A) 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.

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- (2B) 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.
- (2C) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (2B)(a) or (b) above is necessary for the purposes of the notice.
- (2D) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2E) and (2F) below, in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under paragraph 13 or 14 above, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2E) Section 110 shall, in its application by virtue of sub-paragraph (2D) above, have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the sending of a copy to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 of the relevant changes made by the Commission in connection with the reference concerned or, if no direction has been given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (2F) Section 111(5)(b) shall, in its application by virtue of sub-paragraph (2D) above, have effect as if for sub-paragraph (ii) there were substituted—

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(“ if earlier, the day on which a copy of the relevant changes made by the Commission in connection with the reference concerned is sent to the Regulator under paragraph 14 of Schedule 4A to the Railways Act 1993 or, if no direction is given by the Commission under paragraph 13(1) of that Schedule to that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period. ”.

(2G) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under paragraph 13 or 14 above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.

(2H) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 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 sub-paragraph (2D) or (2G) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(2I) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.”

#### Commencement Information

**I23** Sch. 25 para. 30 wholly in force at 20.6.2003; Sch. 25 para. 30 not in force at Royal Assent see s. 279; Sch. 25 para. 30(1) in force for certain purposes and Sch. 25 para. 30(2)(b)(7)(9)(10)(11)(a)(12)-(14) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 30(1)(2)(a)(c)(3)-(6)(8)(11)(b)(15) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### *Chiropractors Act 1994 (c. 17)*

- 31 (1) The Chiropractors Act 1994 is amended as follows.
- (2) In section 33(2) (competition and anti-competitive practices)—
- (a) for the words from the beginning to “orders)” there is substituted “ Schedule 8 to the Enterprise Act 2002 (provision that may be contained in enforcement orders) ”;
  - (b) for “a competition” there is substituted “ an enforcement ”.
- (3) After section 33(2) there is inserted—
- “(2A) The references to anything permitted by Schedule 8 to the Enterprise Act 2002 in sections 160(4)(a), 161(3)(a) and 164(1) of that Act shall be construed accordingly.”
- (4) In section 33(3), for “A competition” there is substituted “ An enforcement ”.
- (5) For section 33(4) there is substituted—

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- “(4) In this section “an enforcement order” means an order under—
- (a) section 160 of the Enterprise Act 2002 (orders following failure to fulfil final undertakings); or
  - (b) section 161 of that Act (final orders following market investigation reports).”

- (6) For section 33(5) there is substituted—

“(5) For the purposes of an enforcement order section 86(3) of the Enterprise Act 2002 as applied by section 164(2)(a) of that Act (power to apply orders to existing agreements) shall have effect in relation to a regulatory provision as it has effect in relation to an agreement.”

*Coal Industry Act 1994 (c. 21)*

- 32 (1) The Coal Industry Act 1994 is amended as follows.
- (2) In section 59 (information to be kept confidential by the Authority)—
- (a) in subsection (3)(e)(v), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) in subsection (4), after paragraph (n) there is inserted—  
“(o) the Enterprise Act 2002.”

*Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1))*

- 33 (1) The Airports (Northern Ireland) Order 1994 is amended as follows.
- (2) In Article 35 (supplementary provisions relating to references to the Commission), paragraphs (3) and (3A) shall cease to have effect.
- (3) After Article 35 there is inserted—

**References under Article 34: time limits**

- “35A(1) Every reference under Article 34 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 Commission on a reference under Article 34 shall not have effect (and no action shall be taken in relation to it under Article 37) 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 CAA under paragraph (3).
- (3) The CAA may, if it has received representations on the subject from the 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 CAA shall, in the case of an extension made by it under paragraph (3)—

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- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by it under sub-paragraph (a) to the airport operator concerned and the Department.

### **References under Article 34: powers of investigation**

35B (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 34 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of 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 36 (reports on references)—

(a) after paragraph (2) there is inserted—

“(2A) For the purposes of Article 37(2), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in

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connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

- (2B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 34 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.”;
- (b) for paragraph (4) there is substituted—
- “(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under Article 34.
- (4A) In making any report on a reference under Article 34 the Commission must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)—
- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual’s interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (4C)(a) or (b) is necessary for the purposes of the report.”
- (5) In Article 47 (co-ordination of exercise of functions by CAA and Director General of Fair Trading)—
- (a) in paragraph (a)—
- (i) for “the Director General of Fair Trading of functions under the 1973 Act or the 1980 Act” there is substituted “ the Office of Fair Trading of functions under the Enterprise Act 2002 ”;
- (ii) for “the Director” there is substituted “ the Office of Fair Trading ”;
- (b) in paragraph (b), for “the Director” there is substituted “ the Office of Fair Trading ”.
- (6) In Article 49 (restriction on disclosure of information)—
- (a) in paragraph (2), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
- (b) in paragraph (3), at the end there is inserted—
- “(t) the Enterprise Act 2002”.

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#### Commencement Information

**I24** Sch. 25 para. 33 wholly in force at 20.6.2003; Sch. 25 para. 33 not in force at Royal Assent see s. 279; Sch. 25 para. 33(1) in force for certain purposes and Sch. 25 para. 33(5)(6) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 33(1)(2)-(4) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Broadcasting Act 1996 (c. 55)

34 **F58** .....

#### Textual Amendments

**F58** Sch. 25 para. 34 repealed (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(7), 411(2)(3), Sch. 19(1) (with transitional provisions in Sch. 18 and with Sch. 19 Note 1); S.I. 2003/3142, art. 3(1), Sch. 1 (subject to arts. 3(3), 11)

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

- 35 (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 (7)(b)—
- (a) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) for “he” there is substituted “ it ”.
- (3) In section 22 (restriction of functions in relation to competition etc.)—
- (a) subsection (1) shall cease to have effect;
  - (b) in subsection (3), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (c) in subsection (4)—
    - (i) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
    - (ii) for “the Director” there is substituted “ the Office of Fair Trading ”.

#### Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2))

- 36 (1) The Gas (Northern Ireland) Order 1996 is amended as follows.
- (2) In Article 15 (licence modification references to Commission)—
- (a) paragraphs (9) and (9A) shall cease to have effect;
  - (b) in paragraph (10), after “Articles” there is inserted “ 15A, ”.
- (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.

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- (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 holder of the licence or, as the case may be, the relevant licence holders.

### **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—
- (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

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- (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.
- (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 23 (functions with respect to competition)—
- (a) paragraph (1) shall cease to have effect;

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- (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 27 (general functions), in paragraph (3)—
- (a) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”; and
  - (b) for “that Director” there is substituted “ the Office of Fair Trading ”.
- (7) In Article 28 (publication of information and advice), for paragraph (3) there is substituted—
- “(3A) The Office of Fair Trading shall consult the Director before publishing under section 6 of the Enterprise Act 2002 any information or advice which may be published by the Director under this Article.”
- (8) In Article 41(2) (exclusion of certain agreements from Restrictive Trade Practices Act 1976), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

#### **Commencement Information**

**I25** Sch. 25 para. 36 wholly in force at 20.6.2003; Sch. 25 para. 36 not in force at Royal Assent see s. 279; Sch. 25 para. 36(1) in force for certain purposes and Sch. 25 para. 36(5)(6)(8) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 36(1)(2)-(4)(7)(8) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### *Data Protection Act 1998 (c. 29)*

- 37 (1) The Data Protection Act 1998 is amended as follows.
- (2) In section 31 (regulatory activity), in subsection (5)(a), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.

#### *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 ”;

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- (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.
- (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;

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- (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)—
- (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;

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- (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 ”;
  - (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;

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- (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.
- (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

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- (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 ”;
  - (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

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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 ”.

(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)—

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- (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.

#### Commencement Information

**I26** 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. 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.

#### Greater London Authority Act 1999 (c. 29)

- 39 (1) The Greater London Authority Act 1999 is amended as follows.
- (2) In section 235 (restrictions on disclosure of information)—
- (a) in subsection (2)(c), for sub-paragraph (ii) there is substituted—  
“(ii) the Office of Fair Trading,”;
  - (b) in subsection (3), after paragraph (rr) there is inserted—  
“(rs) the Enterprise Act 2002;”.

#### Financial Services and Markets Act 2000 (c. 8)

- 40 (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 159(1) (interpretation of Chapter 3 of Part 10), for the definition of “Director” there is substituted—  
““OFT” means the Office of Fair Trading;”.
- (3) In section 160 (reports by Director General of Fair Trading)—
- (a) for “Director” (in each place), “he” (in each place) and “him” there is substituted “ OFT ”, “ the OFT ” and “ it ” respectively;
  - (b) in the sidenote, for “Director General of Fair Trading” there is substituted “ OFT ”.
- (4) In section 161 (power of Director to request information), for “Director” (in each place) and “him” (in each place) there is substituted “ OFT ” and “ it ” respectively.
- (5) In section 162 (consideration by Competition Commission), for “Director” (in both places) and “he” there is substituted “ OFT ” and “ the OFT ” respectively.
- (6) In section 194 (general grounds on which power of intervention is exercisable), in subsection (3), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (7) In section 203 (power to prohibit the carrying on of Consumer Credit Act business)—

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- (a) in subsection (1)—
- (i) for “the Director General of Fair Trading (“the Director”)” there is substituted “ the Office of Fair Trading (“the OFT”) ”;
  - (ii) for “he” there is substituted “ it ”;
- (b) in subsection (2), for “Director” and “he” there is substituted “ OFT ” and “ it ” respectively;
- (c) in subsections (6) and (7), for “Director” there is substituted “ OFT ”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”.
- (8) In section 204 (power to restrict the carrying on of Consumer Credit Act business), for “Director” (in each place) and “him” there is substituted “ OFT ” and “ it ” respectively.
- (9) In section 295 (notification), for “Director” there is substituted “ OFT ”.
- (10) In section 303 (initial report by Director)—
- (a) in subsection (1), for “Director” there is substituted “ OFT ”;
  - (b) in subsection (2), for “Director”, “him” and “his” there is substituted “ OFT ”, “ the OFT ” and “ its ” respectively;
  - (c) in subsection (3), for “Director” and “him” (in both places) there is substituted “ OFT ” and “ it ” respectively;
  - (d) in subsection (4), for “Director’s”, “he” and “his” there is substituted “ OFT’s ”, “ it ” and “ its ” respectively;
  - (e) in subsection (5), for “Director” and “he” there is substituted “ OFT ” and “ the OFT ” respectively;
  - (f) in the sidenote, for “Director” there is substituted “ OFT ”;
- and in the cross-heading before that section, for “*Director General of Fair Trading*” there is substituted “ *Office of Fair Trading* ”.
- (11) In section 304—
- (a) for “Director” (in each place) and “he” (in each place) there is substituted “ OFT ” and “ the OFT ” respectively;
  - (b) in subsection (5)(b), for “him” there is substituted “ the OFT ”.
- (12) In section 305 (investigations by Director), for “Director” (in each place) and “him” (in each place) there is substituted “ OFT ” and “ it ” respectively.
- (13) In section 306 (consideration by Competition Commission), for “Director’s”, “Director” (in each place) and “him” (in each place) there is substituted “ OFT’s ”, “ OFT ” and “ the OFT ” respectively.
- (14) In—
- (a) section 307 (recognition orders: role of the Treasury), and
  - (b) section 310 (procedure on exercise of certain powers by the Treasury),
- for “Director” there is substituted t.
- (15) In section 313(1) (interpretation of Part 18), for the definition of “Director” there is substituted—
- ““OFT” means the Office of Fair Trading;”.
- (16) In section 399 (misleading the Director General of Fair Trading)—

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- (a) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (b) in the sidenote, for “the Director General of Fair Trading” there is substituted “ the OFT ”.
- (17) In section 401 (proceedings for offences), in subsection (4), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (18) In section 427(3)(a) (transitional provisions), for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (19) In Schedule 3 (EEA passport rights)—
- (a) in paragraph 15(3), for “the Director General of Fair Trading” and “him” there is substituted “ the Office of Fair Trading ” and “ it ” respectively;
  - (b) in paragraph 23(2), for “the Director of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (20) In Schedule 14 (role of Competition Commission)—
- (a) in paragraph 2(a), for “Director” and “it” there is substituted “ OFT ” and “ the Commission ” respectively;
  - (b) after paragraph 2 there is inserted—

*“Investigations under section 162: application of Enterprise Act 2002*

- 2A (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of any investigation by the Commission under section 162 of this Act as they apply for the purposes of references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-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) shall, in its application by virtue of sub-paragraph (1), have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which the report of the Commission on the investigation concerned is made or, if the

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Commission decides not to make a report, the day on which the Commission makes the statement required by section 162(3) of the Financial Services and Markets Act 2000.”

- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Commission in connection with an investigation under section 162 of this Act as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 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 sub-paragraph (1) or (4) above, have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.

*Section 162: modification of Schedule 7 to the Competition Act 1998*

- 2B For the purposes of its application in relation to the function of the Commission of deciding in accordance with section 162(2) of this Act not to make a report, paragraph 15(7) of Schedule 7 to the Competition Act 1998 (power of the Chairman to act on his own while a group is being constituted) has effect as if, after paragraph (a), there were inserted “; or
- (aa) in the case of an investigation under section 162 of the Financial Services and Markets Act 2000, decide not to make a report in accordance with subsection (2) of that section (decision not to make a report where no useful purpose would be served).”

*Reports under section 162: further provision*

- 2C
- (1) For the purposes of section 163 of this Act, a conclusion contained in a report of the 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 investigation concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
  - (2) If a member of a group so constituted disagrees with any conclusions contained in a report made under section 162 of this Act as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
  - (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission under section 162.”;

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- (c) paragraph 3 (applied provisions) shall cease to have effect.
- (21) In Schedule 16 (prohibitions and restrictions imposed by Director General of Fair Trading)—
- (a) in the heading, for “DIRECTOR GENERAL OF FAIR TRADING” there is substituted “ OFFICE OF FAIR TRADING ”;
  - (b) for “Director” (in each place), “his” (in each place), “he” (in both places) and “him” (in both places) there is substituted “ OFT ”, “ its ”, “ the OFT ” and “ the OFT ” respectively.

#### Commencement Information

**I27** Sch. 25 para. 40 wholly in force at 20.6.2003; Sch. 25 para. 40 not in force at Royal Assent see s. 279; Sch. 25 para. 40(1) in force for certain purposes and Sch. 25 para. 40(2)-(20)(a)(21) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 40(1)(20)(b)(c) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Terrorism Act 2000 (c. 11)

- 41 (1) The Terrorism Act 2000 is amended as follows.
- (2) In Schedule 3A (regulated sector and supervisory authorities), in paragraph 4(1), for paragraph (d) there is substituted—
- “(d) the Office of Fair Trading;”.

#### Postal Services Act 2000 (c. 26)

- 42 (1) The Postal Services Act 2000 is amended as follows.
- (2) After section 15 (licence modification references to Commission) there is inserted—

##### “15A References under section 15: time limits

- (1) Every reference under section 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 section 15 shall not have effect (and no action shall be taken in relation to it under section 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 Commission under subsection (3).
- (3) The Commission may, if it has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) in relation to the same reference.
- (5) The Commission shall, in the case of an extension made by it under subsection (3)—

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- (a) publish that extension in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by it under paragraph (a) to the licence holder and the Secretary of State.

### **15B References under section 15: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes of references under section 15 as they apply for the purposes of references under that Part—
  - (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
  - (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), 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) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 15 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”

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(3) After section 16 (reports on licence modification references), there is inserted—

**“16A Reports on references under section 15: further provision**

- (1) For the purposes of sections 17 and 18, 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.
  - (2) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 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.
  - (3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 15.
  - (4) In making any report on a reference under section 15 the Competition Commission must have regard to the following considerations before disclosing any information.
  - (5) 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
  - (6) 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.
  - (7) The third consideration is the extent to which the disclosure of the information mentioned in subsection (6)(a) or (b) is necessary for the purposes of the report.”
- (4) After section 19 (procedural requirements in relation to modification) there is inserted—

**“19A Sections 18 and 19: further provision**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 19(6) or (8).
- (2) In giving any notice under section 19(6) or (8), the Competition Commission must have regard to the following considerations before disclosing any information.
- (3) 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.

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- (4) 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.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), in relation to any investigation by the Competition Commission for the purposes of the exercise of its functions under section 18 as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words from “the publication” to “reference concerned” there were substituted “the sending of a copy to the Secretary of State under section 19(11) of the Postal Services Act 2000 of the modifications made by the Competition Commission in connection with the reference concerned or, if no direction has been given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a copy of the modifications made by the Competition Commission in connection with the reference concerned is sent to the Secretary of State under section 19(11) of the Postal Services Act 2000 or, if no direction is given by the Competition Commission under section 18(2) of that Act in connection with the reference concerned and within the period

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permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”

- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 18 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (5) Section 20 (application of competition legislation to references, etc.) shall cease to have effect.
- (6) In section 57 (power of the Council to investigate other matters), in subsection (2), for paragraph (c) there is substituted—  
“(c) the Office of Fair Trading.”
- (7) In Schedule 7 (disclosure of information), in paragraph 3—  
(a) in sub-paragraph (2), for paragraph (d) there is substituted—  
“(d) the Office of Fair Trading.”;  
(b) in sub-paragraph (3), after paragraph (gg) there is inserted—  
“(gh) the Enterprise Act 2002.”

#### Commencement Information

**I28** Sch. 25 para. 42 wholly in force at 20.6.2003; Sch. 25 para. 42 not in force at Royal Assent see s. 279; Sch. 25 para. 42(1) in force for certain purposes and Sch. 25 para. 42(6)(7) in force at 1.4.2003 by [S.I. 2003/766](#), [art. 2](#), [Sch.](#), [Sch. 25 para. 42\(1\)\(2\)-\(4\)\(5\)](#) in force at 20.6.2003 by [S.I. 2003/1397](#), [art. 2\(1\)](#), [Sch.](#)

#### Utilities Act 2000 (c. 27)

- 43 (1) The Utilities Act 2000 is amended as follows.
- (2) In section 5(9) (annual and other reports of the Authority), for “Section 125(1) of the Fair Trading Act 1973 (annual and other reports)” there is substituted “ Paragraph 12A(1) of Schedule 7 to the Competition Act 1998 (annual reports of the Competition Commission) ”.
- (3) In section 105 (general restrictions on disclosure of information)—  
(a) in subsection (5), for paragraph (c) there is substituted—  
“(c) the Office of Fair Trading.”;  
(b) in subsection (6), after paragraph (r) there is inserted—  
“(s) the Enterprise Act 2002”;

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- (c) in subsection (11)—
- (i) for “the Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”;
  - (ii) for “sections 55 and 56 of that Act (disclosure)” there is substituted “ Part 9 of the Enterprise Act 2002 (Information) ”.

#### Commencement Information

**I29** Sch. 25 para. 43 wholly in force at 20.6.2003; Sch. 25 para. 43 not in force at Royal Assent see s. 279; Sch. 25 para. 43(1) in force for certain purposes and Sch. 25 para. 43(2)-(3)(c)(i) in force at 1.4.2003 by S.I. 2003/766, art. 2, Sch., Sch. 25 para. 43(1)(3)(c)(ii) in force at 20.6.2003 by S.I. 2003/1397, art. 2(1), Sch.

#### Transport Act 2000 (c. 38)

- 44 (1) The Transport Act 2000 is amended as follows.
- (2) In section 12 (licence modification references to Commission), subsections (9), (10) and (11) shall cease to have effect.
- (3) After section 12 there is inserted—

#### “12A References under section 12: time limits

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

#### 12B References under section 12: application of Enterprise Act 2002

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (2) and (3), for the purposes

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of references under section 12 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of subsection (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of subsection (1), 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) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under section 12 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4), have effect in relation to those sections as applied by virtue of those subsections.
- (6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (4) In section 13 (reports on licence modification references)—
- (a) after subsection (1) there is inserted—
    - “(1A) For the purposes of sections 14 to 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.

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- (1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 12 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 subsection (2) there is substituted—
- “(2) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under section 12.
- (2A) In making any report on a reference under section 12 the Competition Commission must have regard to the following considerations before disclosing any information.
- (2B) 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.
- (2C) 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.
- (2D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (2C)(a) or (b) is necessary for the purposes of the report.”
- (5) For section 18 (provisions supplementary to exercise by Commission of functions under sections 15 and 16) there is substituted—

**“18 Sections 15 and 16: general**

- (1) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under section 15(4) or 16(4) or (6).
- (2) In publishing or serving any notice under section 15(4) or 16(4) or (6), the Competition Commission must have regard to the following considerations before disclosing any information.
- (3) 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.
- (4) 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

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- (b) information relating to the private affairs of an individual whose disclosure the Competition Commission thinks might significantly harm the individual's interests.
- (5) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4)(a) or (b) is necessary for the purposes of the notice.
- (6) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections (7) and (8), for the purposes of any investigation by the Competition Commission for the purposes of the exercise of its functions under section 15 or 16, as they apply for the purposes of any investigation on references under that Part—
- (a) section 109 (attendance of witnesses and production of documents etc.);
  - (b) section 110 (enforcement of powers under section 109: general);
  - (c) section 111 (penalties);
  - (d) section 112 (penalties: main procedural requirements);
  - (e) section 113 (payments and interest by instalments);
  - (f) section 114 (appeals in relation to penalties);
  - (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (7) Section 110 shall, in its application by virtue of subsection (6), have effect as if—
- (a) subsection (2) were omitted;
  - (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under section 16(6) of the Transport Act 2000 in connection with the reference concerned or, if no direction has been given by the Commission under section 15(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”; and
  - (c) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (8) Section 111(5)(b) shall, in its application by virtue of subsection (6), have effect as if for sub-paragraph (ii) there were substituted—
- (“ if earlier, the day on which a notice is published by the Commission under section 16(6) of the Transport Act 2000 in connection with the reference concerned or, if no direction is given by the Commission under section 15(2) of that Act in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”
- (9) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with the exercise of its functions under section 15 or 16 as it applies in relation to its functions under Part 3 of that Act but as if, in

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- subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (10) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (6) or (9), have effect in relation to those sections as applied by virtue of those subsections.
- (11) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.”
- (6) In section 85 (interpretation of Chapter 5), in subsection (1), for paragraph (c) there is substituted—
- “(c) the OFT is the Office of Fair Trading.”
- (7) In section 86 (functions exercisable by CAA and the Director)—
- (a) in subsections (1), (4) and (7), for “the Director” there is substituted “ the OFT ”;
- (b) in subsection (3), for “the Director’s” there is substituted “ the OFT’s ”.
- (8) In section 89 (carrying out functions)—
- (a) for “the Director” (in each place) there is substituted “ the OFT ”;
- (b) in subsection (2), for “he or it” there is substituted “ it ”.
- (9) In section 90 (publication of information and advice)—
- (a) in subsection (6), for “The Director must consult the CAA before publishing under section 124 of the 1973 Act” there is substituted “ The Office of Fair Trading must consult the CAA before publishing under section 6 of the Enterprise Act 2002 ”;
- (b) subsection (8) shall cease to have effect.
- (10) In section 91 (review and information)—
- (a) in subsections (3) and (4), for “the Director” (in each place) there is substituted “ the Office of Fair Trading ”;
- (b) subsection (5) shall cease to have effect.
- (11) In Schedule 9 (air traffic: information)—
- (a) in paragraph 3—
- (i) in sub-paragraph (2), for paragraph (b) there is substituted—
- “(b) the Office of Fair Trading;”;
- (ii) in sub-paragraph (3), after paragraph (r) there is inserted—
- “(ra) the Enterprise Act 2002;”
- (b) in paragraph 5, in sub-paragraph (3), for “Director General of Fair Trading” there is substituted “ the Office of Fair Trading ”.
- (12) In Schedule 10 (competition test for exercise of bus functions)—
- (a) for “Director” (in each place) there is substituted “ OFT ”;
- (b) in paragraph 3(1), for “the Director General of Fair Trading (in this Schedule referred to as “the Director”) for him” there is substituted “ the Office of Fair Trading (in this Schedule referred to as “the OFT”) for it ”;
- (c) in paragraph 4, in sub-paragraph (3)—

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- (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 4—
  - (i) in sub-paragraph (4), for “he” (in both places) there is substituted “ it ”;
  - (ii) in sub-paragraph (5), for “him” there is substituted “ it ”;
- (e) in paragraph 5, for “he” there is substituted “ it ”;
- (f) in paragraph 6(1), for “him” (in each place) and “he” there is substituted “ it ” and “ the OFT ” respectively;
- (g) in paragraph 9, for “he” there is substituted “ the OFT ”;
- (h) in paragraph 10, for “he” and “his” (in both places) there is substituted “ the OFT ” and “ its ” respectively;
- (i) in paragraph 11, for “he” (in each place) and “his” (in both places) there is substituted “ the OFT ” and “ its ” respectively;
- (j) in paragraph 12(1), for “he” (in both places) there is substituted “ the OFT ”;
- (k) in paragraphs 13 to 15, for “his” (in each place) there is substituted “ its ”;
- (l) in paragraph 16, for “him” and “his” there is substituted “ the OFT ” and “ its ” respectively.

#### Commencement Information

**I30** Sch. 25 para. 44 wholly in force at 20.6.2003; Sch. 25 para. 44 not in force at Royal Assent see s. 279; Sch. 25 para. 44(1) in force for certain purposes and Sch. 25 para. 44(6)-(12) in force at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch., Sch. 25 para. 44(1)(2)-(5) in force at 20.6.2003 by S.I. 2003/1397, **art. 2(1)**, Sch.

## SCHEDULE 26

Section 278

### REPEALS AND REVOCATIONS

#### Commencement Information

**I31** Sch. 26 partly in force; Sch. 26 not in force at Royal Assent; Sch. 26 in force for certain purposes at 1.4.2003 by S.I. 2003/766, **art. 2**, Sch.; 20.6.2003 by S.I. 2003/1397, **art. 2**, Sch.; 15.9.2003 by S.I. 2003/2093, **art. 2(1)**, Sch. 1; 1.4.2004 by S.I. 2003/2093, **art. 2(2)**, Sch. 2; and 29.12.2004 by S.I. 2004/3233, **art. 2**, Sch.,

#### Reference

Registered Designs Act 1949 (c. 88)  
Agricultural Marketing Act 1958 (c. 47)  
Public Records Act 1958 (c. 51)

#### Extent of repeal or revocation

In section 11A(1), paragraphs (a) and (b).  
In section 19A(2), the words from the beginning of the subsection to “this section”.  
In Schedule 1, in Part 2, the entry relating to the Office of the Director General of Fair Trading.

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Parliamentary Commissioner Act 1967 (c. 13)	In Schedule 2, the entry relating to the Office of the Director General of Fair Trading.
Trade Descriptions Act 1968 (c. 29)	Section 28(5) and (5A).
Local Government Act 1972 (c. 70)	Section 81(1) and (2).
Fair Trading Act 1973 (c. 41)	Sections 1 to 3. In section 5— in subsection (1), paragraph (a) and the word “or” at the end of it, and paragraph (c) and the word “or” before it; subsection (3). Sections 6 to 22. In section 30, subsection (3) and, in subsection (5), the words “, subsection (3)”. Sections 34 to 42. Sections 44 to 56G. Sections 63 to 76. In section 77— subsection (1)(b) and (c); in subsection (2), paragraph (b) and the word “or” before it; subsection (3); in subsection (5), paragraph (b) and the word “and” before it. Sections 78 to 81. In section 82— in subsection (1), the words “the Advisory Committee or”, and, in paragraph (b), the words “the Advisory Committee or of” and the words “, as the case may be,”; in subsection (2), the words “the Advisory Committee or of”; subsection (3); in subsection (4), the words “other than a monopoly reference limited to the facts”. In section 83— in subsection (1), the words from “any report of the Advisory Committee” to “applies, or”; in subsections (3) and (4), the words “of the Advisory Committee or”. Section 84. Section 86. Sections 88 to 93A. In section 93B(1), the words “or under the Competition Act 1980”. Sections 124 and 125. In section 129(4), the words “or 46(2)”. Sections 130 and 131. In section 132(1), the words “section 46,”. Section 133. In section 137(2), the definitions of “the Advisory Committee” and “the Director”.

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	In section 138, the words “Parts II and III,”. Schedules 1, 2 and 4 to 9. In Schedule 12, the entry relating to the Public Records Act 1958.
Prices Act 1974 (c. 24)	In the Schedule, paragraph 12.
Consumer Credit Act 1974 (c. 39)	Section 5. Section 161(2). Section 174. In section 189(1), the definition of “Director”. In Schedule 4, paragraph 28.
House of Commons Disqualification Act 1975 (c. 24)	In Schedule 1, in Part 3, the entry relating to the Director General of Fair Trading.
Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Schedule 1, in Part 3, the entry relating to the Director General of Fair Trading.
Patents Act 1977 (c. 37)	In section 51(1), paragraphs (a) and (b). In Schedule 5, paragraph 7.
Estate Agents Act 1979 (c. 38)	Section 9(5). Section 10. Section 26(2). In section 33(1), the definition of “Director”.
Competition Act 1980 (c. 21)	In section 11, in subsection (1), paragraph (c) and the word “or” before it, and subsections (2), (9) and (9A). Section 13. In section 16, subsection (1) and, in subsection (2), the words “or of the Director”. In section 17, in subsections (1), (3) and (4), the words “or 13(5)”. Section 18. In section 19, subsections (1) to (3), (4)(c), (d) and (f) and (5) and (6). Sections 20, 21 and 24. In section 31, in subsection (1), the words “or regulations”, in subsection (3), the words “regulations under this Act or”, and subsection (4).
Telecommunications Act 1984 (c. 12)	In section 13, subsections (9) and (9A). In section 50— subsection (1); in subsection (6), the words from “or paragraph” to “Act 1994”; subsection (7). In Schedule 4, paragraphs 57, 60(2), 72 and 73.
Dentists Act 1984 (c. 24)	In Schedule 5, paragraph 6.

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Companies Consolidation (Consequential Provisions) Act 1985 (c. 9)	In Schedule 2, the entry relating to section 92 of the Fair Trading Act 1973.
Administration of Justice Act 1985 (c. 61)	In section 60(6), the words “in paragraph 10A of Schedule 4 to the Fair Trading Act 1973 and”.
Insolvency Act 1985 (c. 65)	In Schedule 8, paragraph 22.
Bankruptcy (Scotland) Act 1985 (c. 66)	In Schedule 3, paragraphs 1 to 3 and 8 to 8C.
Weights and Measures Act 1985 (c. 72)	In Schedule 12, paragraph 6.
Airports Act 1986 (c. 31)	In section 44, subsections (3) and (3A). In section 54, subsection (3). In Schedule 4, paragraphs 3, 4, 6 and 7.
Gas Act 1986 (c. 44)	In section 24, subsections (7) and (7A). In section 26A, subsections (12) and (13). Section 27(3) and (4). In section 36A, subsections (1) and (9). In section 41E, subsections (7) and (8). In Schedule 7, paragraphs 15, 19, 27 and 28.
Insolvency Act 1986 (c. 45)	In section 212— in subsection (1)(b), the word “, administrator”; in subsection (2), in each place, the words “or administrator”; in subsection (4), the words “or administrator”. Section 230(1). In section 231, in each place, the word “administrator,”. In section 232, the word “administrator,”. In section 240(1), the word “and” before paragraph (c). In section 245(3), the word “or” before paragraph (c). Section 275. Section 282(5). In section 292(1)(a), the words “except at a time when a certificate for the summary administration of the bankrupt’s estate is in force,”. In section 293(1), the words “and no certificate for the summary administration of the bankrupt’s estate has been issued,”. In section 294(1), paragraph (b) and the word “and” before it. In section 297— subsections (2) and (3); in subsection (4), the words “but no certificate for the summary administration of the estate is issued”. Section 298(3).

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	<p>In section 300— subsection (5); in subsections (6) and (7), the words “or (5)”.</p> <p>In section 310(1), the words “, on the application of the trustee.”.</p> <p>Sections 361 and 362.</p> <p>Section 405.</p> <p>In section 427— in subsection (1), the words “England and Wales or”;</p> <p>subsection (7).</p> <p>In Schedule 6, paragraphs 1 to 7.</p> <p>In Schedule 10— the entry for section 12(2); the entry for section 15(8); the entry for section 18(5); the entry for section 21(3); the entry for section 22(6); the entry for section 23(3); the entry for section 24(7); the entry for section 27(6); in the entry for section 31, the word “Undischarged”;</p> <p>the entries for sections 361 and 362.</p>
Consumer Protection Act 1987 (c. 43)	<p>Section 38.</p> <p>In Schedule 4, paragraphs 2(2), 3, 4 and 7.</p>
Consumer Protection (Northern Ireland) Order 1987 (S.I. 1987/2049 (N.I. 20))	<p>In Schedule 3, paragraphs 2 and 4.</p>
Income and Corporation Taxes Act 1988 (c. 1)	<p>In Schedule 29, in paragraph 32, in the Table, the references relating to the Insolvency Act 1986.</p>
Criminal Justice Act 1988 (c. 33)	<p>Section 62(2)(a).</p>
Copyright, Designs and Patents Act 1988 (c. 48)	<p>In Schedule 7, paragraph 15.</p>
Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915)	<p>Regulation 7(6)(a), (b), (d) and (e).</p>
Water Act 1989 (c. 15)	<p>In Schedule 25, paragraphs 45(3), 47, 57 and 59(2).</p>
Electricity Act 1989 (c. 29)	<p>In section 12, subsections (8) and (8A).</p> <p>In section 14A, subsections (12) and (13).</p> <p>In section 43— subsection (1); in subsection (6), the words from “or paragraph” to “Act 1994”;</p> <p>subsection (7).</p> <p>In section 56C, subsections (7) and (8).</p> <p>In Schedule 16, paragraphs 16, 17(2), 24, 25 and 36.</p>

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Companies Act 1989 (c. 40)	Sections 146 to 150. Section 152. In Schedule 14, paragraphs 4(5) and 8. In Schedule 20, paragraphs 3 to 11, 14 to 16 and 19.
Courts and Legal Services Act 1990 (c. 41)	Section 46(3). In section 119(1), the definition of “the Director”. In Schedule 18, paragraphs 4, 6, 22 and 23.
Broadcasting Act 1990 (c. 42)	Section 187(3). Section 192. In section 194A(9), the definition of “Director”. In Schedule 4, in paragraph 4, sub-paragraphs (7) and (7A), in paragraph 5, sub-paragraph (5), in paragraph 8, sub-paragraphs (3) and (4) and, in paragraph 10, the definition of “the Director”. In Schedule 20, paragraphs 20 and 28.
EEC Merger Control (Consequential Provisions) Regulations 1990 (S.I. 1990/1563)	Regulation 2.
Property Misdescriptions Act 1991 (c. 29)	In the Schedule, paragraphs 2 and 7.
Finance Act 1991 (c. 31)	In Schedule 2, paragraphs 21A and 22.
Water Industry Act 1991 (c. 56)	In section 14, subsections (7) and (7A) . In section 31— subsection (1); in subsection (8), the words from “or paragraph” to “Act 1994”; subsection (9). In section 36(1), the definition of “the 1973 Act” and the word “and” at the end of it.
Water Consolidation (Consequential Provisions) Act 1991 (c. 60)	In Schedule 1, paragraphs 24, 26, 33, 34 and 52.
Social Security (Consequential Provisions) Act 1992 (c. 6)	In Schedule 2, paragraph 73.
Timeshare Act 1992 (c. 35)	In Schedule 2, paragraphs 2(1) and 5.
Electricity (Northern Ireland) Order 1992 (S.I. 1992/ 231 (N.I. 1))	Article 15(8) and (8A). In Article 46, paragraph (1), in paragraph (6), the words from “or paragraph” to “Act 1994”, and paragraph (7). In Schedule 12, paragraphs 9, 10, 14, 20, 21 and 31.
Finance Act 1993 (c. 34)	Section 36(1) to (3).
Railways Act 1993 (c. 43)	In section 4, in subsection (2)(a), the words from “in cases where” to “market”, and subsection (8).

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	Section 13(8) and (8A). Section 66(1) and (2). In section 67— subsection (1); in subsection (7), the words from “was made” to “that it”; in subsection (8), the words from “or paragraph” to “Act 1994”; subsection (10). In section 83(1), the definition of “the Director”. In Schedule 12, paragraphs 7, 8, 11, 12(2) and (3) and 26.
Finance Act 1994 (c. 9)	In Schedule 6, paragraph 13(1) and (2). In Schedule 7, paragraph 7(2).
Coal Industry Act 1994 (c. 21)	In Schedule 9, paragraphs 14, 15, 21 and 23.
Value Added Tax Act 1994 (c. 23)	In Schedule 14, paragraph 8.
Deregulation and Contracting Out Act 1994 (c. 40)	Section 7(1). Section 9. Schedule 2. In Schedule 4, paragraph 2. In Schedule 11, paragraphs 2(3) and (4) and 4(6).
Airports (Northern Ireland) Order 1994 (S.I. 1994/426)	Article 35(3) and (3A). In Article 45, paragraph (3). In Schedule 9, paragraphs 2, 4, 7 and 8.
Finance Act 1995 (c. 4)	In section 17, the words “section 386(1) of the Insolvency Act 1986) (categories of preferential debts) and”.
Finance Act 1996 (c. 8)	In Schedule 5, paragraph 12(1) and (2).
Employment Rights Act 1996 (c. 18)	In sections 166(7)(a) and 183(3)(a), the words “or an administration order.” Section 189(4).
Channel Tunnel Rail Link Act 1996 (c. 61)	Section 22(1).
Gas (Northern Ireland) Order 1996 (S.I. 1996/ 275 (N.I. 2))	Article 15(9) and (9A). Article 18(3). Article 23(1) and (8). In Schedule 6, the entries relating to sections 16 and 133 of the Fair Trading Act 1973, the entry relating to the Estate Agents Act 1979, the entry relating to the Competition Act 1980 and the entries relating to section 38 of the Consumer Protection Act 1987.
Deregulation (Fair Trading Act 1973) (Amendment)(Merger Reference Time Limits) Order 1996 (S.I. 1996/345)	The whole Order.
Finance Act 1997 (c. 16)	In Schedule 2, paragraph 6.

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Justices of the Peace Act 1997 (c. 25)

Section 65.

Competition Act 1998 (c. 41)

In section 3(1), paragraph (d) and the word “or” before it.  
Section 46(3)(h).  
Section 48.  
Sections 55 and 56.  
In section 59(1), the definitions of “appeal tribunal” and “the Director”.  
In section 61(1), the definition of “the Director”.  
Sections 66 and 67.  
Schedule 4.  
In Schedule 5, in paragraph 5(2), the words “for him”.  
In Schedule 6, in paragraph 5(2), the words “for him”.  
In Schedule 7—  
in paragraph 1, the definitions of “appeal panel member” and “President” and, in the definition of “general functions”, paragraph (a) and the word “or” at the end of it;  
paragraph 2(1)(a), (3)(a) and (4);  
paragraph 4;  
in paragraph 5, in sub-paragraph (1), the word “management”, sub-paragraph (2)(b) and, in sub-paragraph (3), the words “and paragraph 5 of Schedule 8”;  
paragraph 6(5);  
paragraph 7(4);  
in paragraph 9, sub-paragraph (2) and in sub-paragraph (3), the words “and the President”.  
paragraph 10;  
in paragraph 15(7), paragraph (b) and the word “or” before it;  
paragraphs 23 to 27.  
In Schedule 8, paragraphs 1 and 4 to 14.  
In Schedule 10—  
paragraph 1;  
paragraph 2(7) and (10);  
paragraph 3(6) and (9) to (11);  
paragraph 4(6) and (9);  
paragraph 5(7), (9), (10) and (13);  
paragraph 6(6) and (9);  
paragraph 7(6) and (9);  
paragraph 8(6) and (9) to (11);  
paragraph 9(5);  
paragraph 10(4);  
paragraph 12(4) and (6);  
paragraph 13(8);  
paragraph 15(4);  
paragraph 17(6).

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	Schedule 11. In Schedule 12— paragraph 1(4) to (7) and (14); paragraph 3; paragraph 4(3), (4), (9), (10), (12) and (15) (a); paragraph 10.
Competition Act 1998 (Competition Commission) Transitional, Consequential and Supplemental Provisions Order 1999 (S.I. 1999/ 506)	Article 22.
Financial Services and Markets Act 2000 (c. 8)	Section 351(1) to (3) and (7). In Schedule 14, paragraph 3. Schedule 19.
Finance Act 2000 (c. 17)	In Schedule 7, paragraphs 2 and 3.
Regulation of Investigatory Powers Act 2000 (c. 23)	In section 32(6), the word “and” at the end of paragraph (l). In section 35(10), the word “or” at the end of paragraph (b). In section 36— in subsection (1), the word “or” at the end of paragraph (c); in subsection (6), the word “and” at the end of paragraph (f). In section 37(1), the word “or” at the end of paragraph (c).
Postal Services Act 2000 (c. 26)	Section 20.
Utilities Act 2000 (c. 27)	Section 40(2), (4) and (5). In Schedule 6, paragraph 9.
Transport Act 2000 (c. 38)	Section 12(9), (10) and (11). In section 85(3), the words “the 1973 Act or”. Section 90(8). Section 91(5). In Schedule 8, paragraphs 11 and 12. In Schedule 10, in paragraph 4(3), the words “for him”.
Insolvency Act 2000 (c. 39)	Section 9. In Schedule 4, paragraph 13(3).
Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000 (S.I. 2000/311)	Article 9(5).
Finance Act 2001 (c. 9)	In Schedule 5, paragraphs 17(1) and (2) and 18.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	In Schedule 4, paragraphs 5, 9, 10, 11, 17, 27, 30 and 33.

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Stop Now Orders (E.C. Directive)  
Regulations 2001 (S.I. 2001/1422)

The whole Regulations.

EC Competition Law (Articles 84 and  
85) Enforcement Regulations 2001 (S.I.  
2001/2916)

Regulation 35(1) and (2).

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