



Enterprise Act 2002

2002 CHAPTER 40

PART 4

[^{F1}MARKET STUDIES AND] MARKET INVESTIGATIONS

CHAPTER 4

SUPPLEMENTARY

Regulated markets

168 Regulated markets

- (1) Subsection (2) applies where the [^{F1}CMA] or the Secretary of State is considering for the purposes of this Part whether relevant action would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (2) The [^{F1}CMA] or (as the case may be) the Secretary of State shall, in deciding whether such action would be reasonable and practicable, have regard to the relevant statutory functions of the sectoral regulator concerned.
- (3) In this section “relevant action” means—
 - (a) [^{F2}modifying the conditions of a licence granted under section 7 of the Telecommunications Act 1984 (c. 12);]
 - ^{F3}(b)
 - (c) modifying the conditions of a licence granted under section 7 [^{F4}or 7A][^{F4}, 7A or 7AB] of the Gas Act 1986 (c. 44);
 - (d) modifying the conditions of a licence granted under section 6 of the Electricity Act 1989 (c. 29);

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- (e) modifying networking arrangements (within the meaning given by [F5section 290 of the Communications Act 2003]);
 - (f) modifying the conditions of a company’s appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56);
 - [F6(ff) modifying the conditions of a licence granted under Chapter 1A of Part 2 of the Act of 1991 or modifying the terms and conditions of an agreement under section 66D [F7 or 117E] of that Act;]
 - (g) modifying the conditions of a licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
 - (h) modifying the conditions of a licence granted under section 8 of the Railways Act 1993 (c. 43);
 - [F8(hh) modifying the conditions of a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005;]
 - (i) modifying an access agreement (within the meaning given by section 83(1) of the Act of 1993) or a franchise agreement (within the meaning given by section 23(3) of that Act);
 - (j) modifying conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order;
 - (k) modifying the conditions of a licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2));
 - [F9(l)
 - (m) modifying the conditions of a licence granted under section 5 of the Transport Act 2000 (c. 38).
 - [F10(n) modifying the conditions of a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006.]
 - [F11(o) modifying regulatory conditions imposed under Part 3 of the Postal Services Act 2011;]
 - [F12(p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012.]
 - [F13(q) modifying the conditions of a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012]
- (4) In this section “relevant statutory functions” means—
- (a) [F14; in relation to any licence granted under section 7 of the Telecommunications Act 1984, the duties and obligations of the Director General of Telecommunications imposed on him by or in pursuance of any enactment or other provision mentioned in section 7(5)(a) of that Act;]
 - [F15(b)
 - (c) in relation to any licence granted under section 7 [F16 or 7A][F16, 7A or 7AB] of the Gas Act 1986 (c. 44), the objectives and duties of the Gas and Electricity Markets Authority under section 4AA and 4AB(2) of that Act;
 - (d) in relation to any licence granted under section 6 of the Electricity Act 1989 (c. 29), the objectives and duties of the Gas and Electricity Markets Authority under section 3A and 3B(2) of that Act;
 - [F17(e) in relation to any networking arrangements (within the meaning given by section 290 of the Communications Act 2003), the duty of the Office of Communications under subsection (1) of section 3 of that Act to secure the matters mentioned in subsection (2)(c) of that section;]

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- (f) in relation to a company's appointment under Chapter 1 of Part 2 of the Water Industry Act 1991 (c. 56), the duties of [^{F18}the Water Services Regulation Authority] under section 2 of that Act;
- [^{F19}(ff) in relation to a licence granted under Chapter 1A of Part 2 of the Act of 1991 or an agreement under section 66D [^{F20}or 117E] of that Act, the duties of the Authority under section 2 of that Act or under that section and section 66D [^{F20}or 117E] of that Act (as the case may be);]
- (g) in relation to any licence granted under article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), the duty of the Director General of Electricity Supply for Northern Ireland under article 6 of that Order;
- (h) in relation to any licence granted under section 8 of the Railways Act 1993 (c. 43) [^{F21}where none of the conditions of the licence relate to consumer protection], the duties of the [^{F22}Office of Rail and Road] under section 4 of that Act;
- [^{F23}(hh) in relation to a SNRP issued pursuant to the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 where none of the conditions of the SNRP relate to consumer protection, the duties of the Department for Regional Development under regulation 36 of those Regulations;]
- (i) [^{F24}in relation to any licence granted under section 8 of the Act of 1993 where one or more than one condition of the licence relates to consumer protection, the duties of the [^{F25}Office of Rail Regulation] under section 4 of that Act and the duties of the Strategic Rail Authority under section 207 of the Transport Act 2000 (c. 38);]
- (j) in relation to any access agreement (within the meaning given by section 83(1) of the Act of 1993), the duties of the [^{F22}Office of Rail and Road] under section 4 of the Act of 1993;
- (k) in relation to any franchise agreement (within the meaning given by section 23(3) of the Act of 1993), the duties of the [^{F26}Secretary of State, the Scottish Ministers and the National Assembly for Wales under section 4 of the Act of 1993];
- (l) in relation to conditions in force under Part 4 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)) other than any conditions imposed or modified in pursuance of article 40(3) or (4) of that Order, the duties of the Civil Aviation Authority under article 30(2) and (3) of that Order;
- (m) in relation to any licence granted under article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)), the duties of the Director General of Gas for Northern Ireland under article 5 of that Order;
- [^{F27}(n)
- (o) in relation to any licence granted under section 5 of the Transport Act 2000, the duties of the Civil Aviation Authority under section 87 of that Act.
- [^{F28}(p) in relation to a company's appointment under Chapter I of Part III of the Water and Sewerage Services (Northern Ireland) Order 2006, the duties of the Northern Ireland Authority for Utility Regulation under Article 6 of that Order]
- [^{F29}(q) in relation to regulatory conditions imposed under Part 3 of the Postal Services Act 2011, the duty of the Office of Communications under section 29 of that Act;]
- [^{F30}(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act.]

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- [^{F31}(s) in relation to a licence granted under Chapter 1 of Part 1 of the Civil Aviation Act 2012, the duties of the Civil Aviation Authority under section 1 of that Act]
- (5) In this section “sectoral regulator” means—
- (a) the Civil Aviation Authority;
 - [^{F32}(b) the Northern Ireland Authority for Utility Regulation.]
 - (d) [^{F33}the Director General of Telecommunications;]
 - (e) the Water Services Regulation Authority;
 - (f) the Gas and Electricity Markets Authority;
 - [^{F34}(g) the Office of Communications;]
 - ^{F35}(h)
 - (i) the [^{F22}Office of Rail and Road]; ^{F36}...
 - [^{F37}(ia) Monitor;]
 - [^{F38}(j) the Secretary of State;
 - (k) the Scottish Ministers; or
 - (l) the National Assembly for Wales][^{F39} or
 - (k) the Department for Regional Development.]
- (6) Subsection (7) applies where the [^{F40}CMA] or the Secretary of State is considering for the purposes of this Part whether modifying the conditions of a licence granted under section 7 [^{F41}or 7A][^{F41}, 7A or 7AB] of the Gas Act 1986 (c. 44) or section 6 of the Electricity Act 1989 (c. 29) would be reasonable and practicable for the purpose of remedying, mitigating or preventing an adverse effect on competition or any detrimental effect on customers so far as resulting from such an effect.
- (7) The [^{F40}CMA] or (as the case may be) the Secretary of State may, in deciding whether modifying the conditions of such a licence would be reasonable and practicable, have regard to those matters to which the Gas and Electricity Markets Authority may have regard by virtue of section 4AA(4) of the Act of 1986 or (as the case may be) section 3A(4) of the Act of 1989.
- (8) The Secretary of State may by order modify subsection (3), (4), (5), (6) or (7).
- (9) Part 2 of Schedule 9 (which makes provision for functions under this Part to be exercisable by various sectoral regulators) shall have effect.

Textual Amendments

- F1** Word in s. 168(1)(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 5 para. 198](#) (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F2** S. 168(3)(a) repealed (25.7.2003 for certain purposes and 29.12.2003 for certain purposes) by [Communications Act 2003 \(c. 21\)](#), ss. 389(1), 411(2)(3), [Sch. 19\(1\)](#) (with transitional provisions in [Sch. 18](#) and [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\(1\)](#) (subject to arts. 3(3), 11)
- F3** S. 168(3)(b) omitted (1.4.2014) by virtue of [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 14\(2\)\(a\)](#) (with [Sch. 10 paras. 12, 17](#)); S.I. 2013/589, art. 5(1)(b)
- F4** Words in s. 168(3)(c) substituted (E.W.S.) (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, [31](#)
- F5** Words in s. 168(3)(e) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), ss. 406(1), 411(2)(3), [Sch. 17 para. 174\(5\)\(a\)](#) (with transitional provisions in [Sch. 18](#)); S.I. 2003/3142, [art. 3\(1\)](#) (subject to arts. 3(3), 11)

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- F6** S. 168(3)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(a)**; S.I. 2005/2714, **art. 3(c)**
- F7** Words in s. 168(3)(ff) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 129(2)**; S.I. 2017/462, **art. 3(k)(xxiv)**
- F8** S. 168(3)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(a)**
- F9** S. 168(3)(l) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(a)**; S.I. 2011/2329, **art. 3**
- F10** S. 168(3)(n) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(3)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F11** S. 168(3)(o) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(2)(b)**; S.I. 2011/2329, **art. 3**
- F12** S. 168(3)(p) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(a)**, 306(4); S.I. 2013/671, **art. 2(3)**
- F13** S. 168(3)(q) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(2)(b)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, **art. 2(3)**
- F14** S. 168(4)(a) 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 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)** (subject to arts. 3(3), 11)
- F15** S. 168(4)(b) omitted (1.4.2014) by virtue of Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(a)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, **art. 5(1)(b)**
- F16** Words in s. 168(4)(c) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**
- F17** S. 168(4)(e) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(b)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F18** Words in s. 168(4)(f) substituted (1.4.2006) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 7 para. 36(3)(a)**; S.I. 2005/2714, **art. 4(f)**
- F19** S. 168(4)(ff) inserted (1.12.2005) by Water Act 2003 (c. 37), ss. 101(1), 105(3), **Sch. 8 para. 55(2)(b)**; S.I. 2005/2714, **art. 3(c)**
- F20** Words in s. 168(4)(ff) inserted (1.4.2017) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 129(3)**; S.I. 2017/462, **art. 3(k)(xxiv)**
- F21** Words in s. 168(4)(h) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(a), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F22** Words in s. 168(4)(h)(j)(5)(i) substituted (16.10.2015) by The Office of Rail Regulation (Change of Name) Regulations 2015 (S.I. 2015/1682), reg. 1(2), **Sch. para. 4(q)(ii)**
- F23** S. 168(4)(hh) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(b)**
- F24** S. 168(4)(i) repealed (E.W.S.) (24.7.2005) by Railways Act 2005 (c. 14), ss. 59, 60, Sch. 12 para. 18(2)(b), **Sch. 13 Pt. 1** (with s. 14(4)(5), Sch. 11 para. 11(2)); S.I. 2005/1909, **art. 2**, Sch.
- F25** Words in s. 168 substituted (5.7.2004) by Railways and Transport Safety Act 2003 (c. 20), ss. 16(5), 120(1), **Sch. 2 para. 19(u)**; S.I. 2004/827, **art. 4(g)**
- F26** Words in s. 168(4)(k) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(2)(c)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F27** S. 168(4)(n) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(a)**; S.I. 2011/2329, **art. 3**

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- F28** S. 168(4)(p) added (N.I.) (1.4.2007) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(4)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F29** S. 168(4)(q) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(3)(b)**; S.I. 2011/2329, art. 3
- F30** S. 168(4)(r) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F31** S. 168(4)(s) inserted (6.4.2013) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 14(3)(b)** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 2(3)
- F32** S. 168(5)(b) substituted (N.I.) (1.4.2007) for s. 168(5)(b)(c) by The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2)(3), 308, **Sch. 12 para. 46(5)** (with arts. 8(9), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F33** S. 168(5)(d) 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 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)** (subject to arts. 3(3), 11)
- F34** S. 168(5)(g) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406(1), 411(2)(3), **Sch. 17 para. 174(5)(c)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** (subject to arts. 3(3), 11)
- F35** S. 168(5)(h) omitted (1.10.2011) by virtue of Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 164(4)**; S.I. 2011/2329, art. 3
- F36** Word in s. 168(5)(i) repealed (16.10.2005 for E.W.S) and omitted (3.1.2006 for N.I.) by virtue of Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 13 Pt. 1**; S.I. 2005/2812, **art. 2(1)**, Sch. 1; S.R. 2005/537, reg. 45, **Sch. 5 Pt. 1 para. 4(c)**
- F37** S. 168(5)(ia) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 74(7)(c)**, 306(4); S.I. 2013/671, art. 2(3)
- F38** S. 168(5)(j)-(l) substituted (E.W.S.) (24.7.2005 for certain purposes and 16.10.2005 otherwise) for s. 168(5)(j) by Railways Act 2005 (c. 14), ss. 59, 60, **Sch. 12 para. 18(3)**; S.I. 2005/1909, **art. 2**, Sch.; S.I. 2005/2812, **art. 2(1)**, Sch. 1
- F39** S. 168(5)(k) inserted (N.I.) (3.1.2006) by The Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), reg. 45, **Sch. 5 Pt. 1 para. 4(c)(ii)**
- F40** Word in s. 168(6)(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 5 para. 198** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F41** Words in s. 168(6) substituted (E.W.S.) (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, **31**

Modifications etc. (not altering text)

- C1** S. 168 applied (with modifications) (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 1(f)**
- C2** S. 168(3)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**
- C3** S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(a)**
 S. 168(4)(h) modified (28.11.2005) by The Railway (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050), reg. 14, **Sch. 3 para. 8(b)**

Status:

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